

**REAL ESTATE REGULATORY AUTHORITY**

**HIMACHAL PRADESH**

**Complaint No.HPRERA2022024/C**

**IN THE MATTERS OF: -**

Rajlaxmi Bolar, D/O Sh. Ashok Sita Ram Swant, Resident of 735  
Ashtwinayak Society, Near Guru Nanak Hospital Bandra (E)  
Mumbai, Maharashtra, 400051

.....complainant

Versus

M/s Rajdeep & Co. Infrastructure Private Limited, through its  
directed Mr. Rajdeep Sharma S/o Sh. Sansar Chand, Resident of  
Tower No. A2, Penthouse No.1, Niramal Chayya, Zirakpur, Mohali,  
Punjab, 140603

.....Respondent

**Present: Smt. Rajlaxmi Bolar complainant**

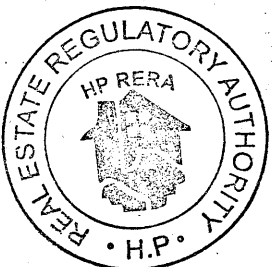
**Sh.Rishi Kaushal, Advocate for the  
respondent/promoter**

**Final date of hearing (through WebEx) : 17.07.2023**

**Date of pronouncement of orders : 22.08.2023**

**Order**

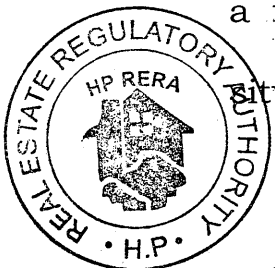
**Coram: - Rajeev Verma (Member)**



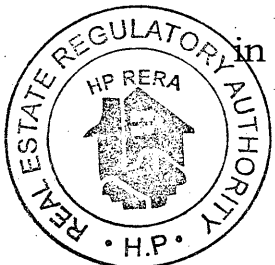
**1. BRIEF FACTS IN THE COMPLAINT:**

The complainant filed a complaint in the office of this Authority on 18.06.2022 which was diarized as Diary No. 375. The complaint was heard on 16.07.2022 and 06.08.2022 where it was observed by this Authority that the reliefs claimed for by the complainant are unspecific and beyond the jurisdiction of this Authority, and on the request of the complainant granted the liberty to file the amended complaint in accordance with the prescribed format and in form- "M" which has been prescribed specifically in HP REAL Estate (Regulation and Development) Rules, 2017 clearly mentioning the facts of the complaint along with all relevant documents substantiating the complaint and relief sought.

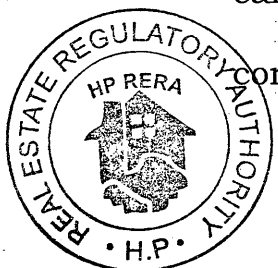
2. The present amended complaint against the respondent was filed by complainant on 17.08.2022 in "Form-M" bearing complaint No. HPRERA2022024/C of the HP Real Estate (Regulation and Development) Rules, 2017 was allowed by order of this Authority dated 23.08.2022. Thereafter amended complaint, reply and rejoinder were taken on record. As per the amended complaint, it was pleaded by the complainant that the complainant purchased a flat/apartment No. 301, H block, in "Residency Himalayas" situated at Mohal Bharari, Tehsil Shimla (U), Shimla, H.P with



area measuring 738 sq. ft. from respondent company on 23.01.2018 and paid Rs. Twenty Two Lakhs out of total sale consideration amount. It was pleaded that the complainant paid Rs. 22 Lakhs for the said apartment and acknowledgement of Rs, 3,00,000/- dated 21.01.2018, receipts of Rs. 1,00,000/- dated 27 Sept, 2017, Rs. 2,00,000 dated 17<sup>th</sup> October 2017, and Rs. 15,00,000 dated 29<sup>th</sup> January, 2018 which are on record. The agreement for sale referred to as Builder Buyer Agreement was executed on 23<sup>rd</sup> Jan, 2018. It was further pleaded that the possession of the apartment/unit in question was to be handed over in July 2019 as averred in clause 30 of Builder Buyer Agreement and despite reminders respondent/promoter failed to provide the possession of flat. The complainant kept waiting and requested the respondent/promoter to handover the apartment or return the amount with bank MCLR interest rate, but it was alleged that the respondent/promoter did not revert to the complainant. It was further pleaded that after six months an official from the respondent company Mr. Anil Chaudary called the complainant and stated that they are discontinuing the project "Residency Himalayas" due to some technical and land approval issues and they are going to shift her to a flat, unit 203 in another ongoing project situated on Second Floor Tower-I at



✓ “Mashobra Hills” Shimla HP, measuring 755 sq. ft. to which the complainant agreed and as demanded by the complainant the respondent promoter issued allotment letter dated 21<sup>st</sup> March, 2020 with deduction of 1 year compensation amount of Rs. 1,78,500/- from her balance amount with an understanding to get paid the compensation amount as per RERA rules on regular basis but from August 2020 the complainant kept following up for compensation and possession of the flat but her calls were not picked up by the CMD or staff/ Anil Chaudhry/ other staff and her messages were not responded to most of the time .The complainant further alleged that she received email from the respondent promoter threatening of cancellation of unit citing bad behavior of the complainant with sales team and informing that the project has not been completed because of covid 19 and as per the discussions with board of directors, the company has decided to cancel the unit and refund the amount with 6.5% interest per annum from the date of receipt till date excluding the 18 months period of covid pandemic. The complainant further pleaded that the Ld. Counsel for respondent conveyed during the second hearing on 06.08.2023 that the promoter company cancelled the flat and discontinued the investment of the complainant. The complainant has alleged that she has not

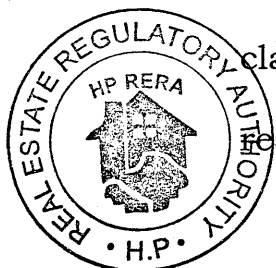


received the possession of flat till the filing of the complaint. In view of the above, it was prayed in the complaint that the respondent shall be directed to hand over the possession of the flat as per the possession date as mentioned in the fresh allotment letter as well as written letter mentioning all clauses as per decision of RERA officers. It was further pleaded that the respondent be penalized for causing harassment to the complainant.

### **3. Reply by the respondent:**

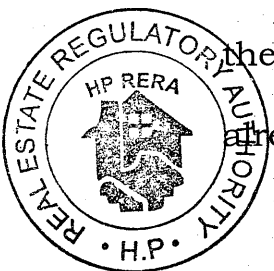
The respondent/promoter has filed a detailed reply to the complaint on 07.09.2022. It has been submitted in the reply by the respondent that this complaint is false, frivolous and there is no cause of action to file the present complaint. The respondent has pleaded that it is an admitted fact that the unit of the complainant was shifted from Residency Himalayas to the new project of the respondent at Mashobra Hills, with the due consent of the complainant and duly compensated for the same by offering the new unit at the discounted price of Rs. 5 Lakhs, which is duly apparent from the allotment letter dated 21.03.2020. It has been pleaded that the amount of Rs. 22 Lakhs

claimed to have been paid by the complainant is denied by the respondent/promoter and further pleaded that the allotment



letters dated 23rd Jan, 2018, 01.02.2018 and 21.3.2020 clearly show that the payment of Rs. 18 Lakh was received by the respondent for the said unit and the aforesaid allotment letters are on record. Further, the receipt/acknowledgement dated 21.01.2018 amounting to Rs. 3 Lakhs was denied by the respondent and submitted that no such consideration was ever paid by the complainant to the respondent and submitted that no such receipt has ever been issued by the respondent. It was further denied in the pleadings by the respondent that the possession note on the allotment letter dated 21.03.2020 was made by the office of the respondent/promoter. The respondent further pleaded that it is apparent from the allotment letters dated 23.01.2018, 01.02.2018 and MoU dated 18.05.2018 that these pertain to the previous flat allotted in project Residency Himalayas and not with respect to the new flat allotted to the complainant in Mashobra Hills. It was further stated that the complainant has been given discount on account of delay in the delivery of possession of new flat further adding that the complainant in the first place has no right to compensation on account of delay as no such condition has been agreed between

the parties and further stated that answering respondent has already declared the date of possession in the said project as

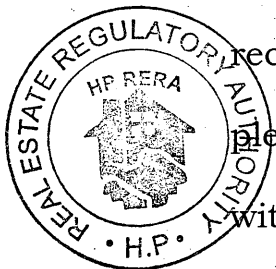


2025. It was further pleaded that the complainant was short tempered and misbehaved with every employee of the respondent company during their telephonic conversation as well as in the messages. It was further pleaded that the respondent/promoter was left with no other option except to cancel the allotment dated 21.03.2020 which was conveyed to her vide email dated 10.05.2022 which is annexed as **Annexure R-2**. The respondent further pleaded that they are still willing to refund the amount of Rs 18 Lakhs as paid by the complainant along with simple bank interest. In view of the aforesaid pleadings it was prayed to dismiss the present complaint.

#### **4. Rejoinder to the reply:**

It was pleaded by way of filing rejoinder that the possession of the flat was not handed over to complainant even though five years have elapsed since booking of the flat. Further it was pleaded that the complainant was harassed by the respondent by not attending her calls and messages. It was asserted that the payment of Rs. 22 Lakhs was paid by the complainant for the said apartment and the copies of account statement and payment

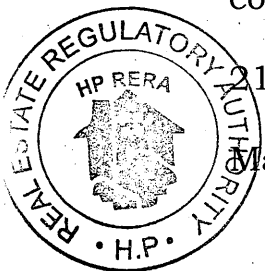
receipts are on record as **annexure A-F**. The complainant further pleaded that all copies of receipts of transactions done by her with the respondent are very true and genuine. The complainant



further pleaded that the officials/staff of the respondent company time and again committed to the payment of compensation on account of delay in delivery of possession but the same was never paid to her. Further, Complainant has annexed whatsapp chat details in enclosure 12, 13 and 14 in support of her claim. The complainant further pleaded that an email from respondent received by the complainant informing her of the cancellation of said flat/apartment. Thus, the complainant has stated that the respondent has failed to fulfill their obligation and there is a cause of action.

#### **5. Arguments advanced by the complainant**

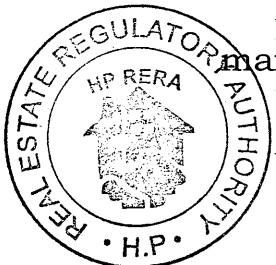
It was argued by the complainant that the complainant has paid total consideration of Rs. 22 Lakh and the allotment letter dated 21.03.2020 was issued by the respondent which stated that Rs. 18 Lakh of total consideration/payment has been received by the respondent. It was further argued by her that Rs. Three Lakh was paid in cash to the respondent for which as a matter of proof the acknowledgement and other receipts of transaction have been appended by the complainant. It was further argued by the complainant that the headnote of allotment letter dated 21.03.2020 stated that possession for the apartment/flat in Washobra Hills will be delivered by Aug, 2020 plus Three Months





Grace Period but the respondent failed to handover possession within the agreed time and delayed the delivery of possession up till 2027. It was further argued that the respondent sold the flats/apartments without registration of the project and there are other hearsay complaints regarding delay in delivering possession of the flats to other allottees. She further argued that the respondent/promoter has not provided with any of the requested documents and there was no reply from respondent whenever she repeatedly asked for the same. She further pleaded that the respondent was asking for installments of payments even though complainant has chosen the down payment plan. The complainant further argued that the promoter promised to pay 50% of the payable gst and promised to provide the basic amenities mentioned in the brochure of the previous project of Residency Himalayas at Bharari Shimla. It was further argued that the respondent has misled the complainant as well as the authority and suppressed material facts and therefore the complaint is liable to be allowed. The complainant, on the specific question from the authority about the reasons for not signing the agreement for sale, conveyed that she did not accept the allotment letter dated 21.03.2020 and requested the respondent

many times to show the exact payment as paid by her and she



also conveyed that she insisted on the condition of the fifty percent of payable GST and issues related to specifications and facilities as mentioned in the brochure.. The complainant further averred that she did not accept the document as the compensation was not paid to her as was committed by the respondent.

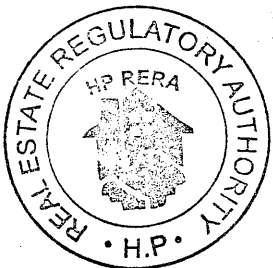
6. The Authority specifically asked her about the exchange of any correspondence with the respondent on these issues by way of emails, letters, etc. for the period between 21.03.2020, when the allotment letter for Mashobra hill flat was provided/issued by the respondent, till March, 2022, the dates from which she has provided the exported chat detail with the office of the respondent , The complainant conveyed that she was regularly in touch with the respondent company on phone but did not send any email. The complainant further conveyed that she could not send letters because of the prevailing covid situation in the country during that same period.
7. On the query of the Authority about the first payment of Rs 1,00,000/- dated 21.09.2017 marked as **annexure A** in her rejoinder and receipt of Rs. 1,00,000/- issued by the respondent on 27 Sept, 2017, being the same payment and **annexure B** is not a separate payment but is the receipt of the payment as paid



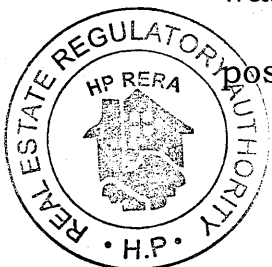
as shown vide **annexure A**, the complainant could not provide any answer. The Authority granted complainant the liberty to provide proof of the payment detail, if any, of Rs 1,00,000/- claimed to have been paid by her vide Annexure **B** within three days from the date of the hearing, so that the same could be taken on record.

8. Pertaining to the copy of receipt of Rs. 3,00,000/- the complainant argued that it is a notarized document and is as good as the original document. On the other specific question from the Authority about the document confirming / showing the extension of benefit of fifty percent payable GST, compensation if any, committed by the respondent and provisions of furniture etc. as was shown in the brochure of the previous Bharari project, to fresh allotted Mashobra project also, she admitted that the respondent did not provide any document in writing but committed orally and that's the reason that she did not accept the allotment letter dated 21.03.2020 and raised these issues with the respondent on phone regularly but the respondent rather than addressing her issues, unilaterally sent the mail on 10.05.2022 conveying her about the cancellation of unit.

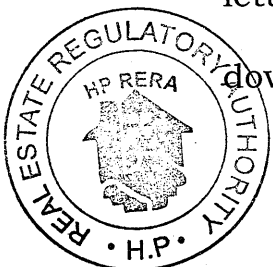
#### **9. Arguments by the respondent**



It was argued on behalf of the respondent that he as per the mutual agreement/settlement issued an allotment letter dated 21.03.2020 allotting an apartment to the complainant in Mashobra Hills project coming up on the outskirts of Shimla, measuring super area of 755 Sq. feet for a total consideration amounting to Rs. 25,21,500/- plus additional society charges amounting to Rs. 3,15,466/-. The Ld. Counsel for respondent company has admitted that a sum of Rs. 18 Lakh has been paid by the complainant and denied the receipt of an amount of Rs. 3 lakhs, claimed to have been paid in cash by the complainant. It was submitted on behalf of the respondent that it is an admitted fact in the complaint that the complainant was transferred from Bharari project to Mashobra Hills project by the respondent. It was further denied on behalf of respondent that he offered to pay 50% of the gst charges on behalf of the complainant for the flat in Mashobra Hills and it was pleaded that the offer of payment of fifty percent of gst charges was only with respect to the flat in the Bharari project as the same benefit was not extended to the complainant for the flat in Mashobra Hills project because it was pleaded that the allotment already was on discounted price. It was absolutely denied on behalf of the respondent that any possession date was mentioned by the respondent in the



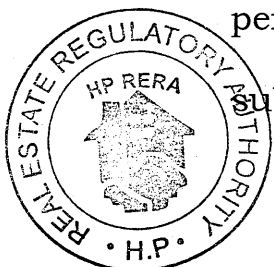
allotment letter dated 21.03.2020 and it was alleged to have been added by the complainant at her own level. It was further argued on behalf of the respondent that the facilities like furniture LCD etc. as was offered in the Bharari project was not extended to the complainant for the Mashobra flat for the same reason. The allotment letter dated 21.03.2020 is complete with all terms, payment received and balance payment to be made by the complainant. It was further argued that no other benefit except as mentioned in the allotment letter dated 21.03.2020 was offered to her in any form. It was further argued on behalf of the respondent that the Mashobra Hills Brochure is available online and that they have incorporated the services and facilities promised to every allottee of the project including the complainant. It is also in the draft agreement for sale as has been sent to her on the directions of the Authority during the course of hearings but the same has not been received after appending signatures from the complainant. This denial of allotment letter and not signing the agreement for sale implies that the complainant is not ready to accept the allotment of flat in Mashobra Hills project. It was further argued on behalf of the respondent that the allotment letter dated 21<sup>st</sup> march, 2020 shows that the payment is not a down payment but it is a construction link based which is a stage



wise payment and as the complainant has made a payment up to the stage of casting of third slab, the respondent is not asking for any payment at this stage. It was further submitted in original complaint that the complainant is seeking compensation which is not maintainable as the compensation is to be decided by the Adjudicating Officer under Section 71 of the Act and in the amended complaint the complainant is seeking possession of the said flat. It was further submitted on behalf of the respondent that if the complainant is ready to take possession the respondent is ready to give possession on the date that respondent has mentioned in agreement for sale and if the respondent is unable to give possession on such date then the respondent is liable for violations of his obligations as per the act. The ld. counsel for the respondent reiterated that they are willing to refund her invested amount with simple interest as was offered to her earlier, in case she is not willing to continue with the project for whatever reasons.

**10. Issues and findings of the Authority:**

I have heard the arguments advanced by the complainant & Ld. Counsel for the respondent promotor and perused the record pertaining to the case. I have duly considered the entire submissions and contentions submitted before me during the



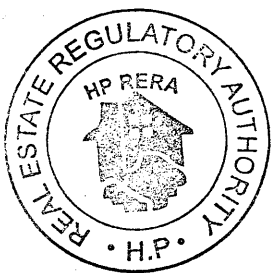
course of arguments. This Authority is of the view that there are two main issues that require the consideration and adjudication, namely: -

**A. Jurisdiction of the Authority**

**B. Dispute regarding following various issues related to registration of the real estate project(s), compensation, payment made, facilities and possession of the flat: -**

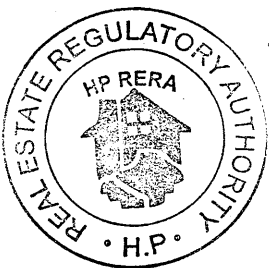
The complainant raised certain issues related to registration of the project(s), payments made, commitment of promoter about bearing of fifty percent of Govt taxes by the promoter, services facilities and specifications in the flat in the new project which were not in the complaint filed but have been taken on record during hearing of the case in the interest of justice and the issue of charges towards open parking have been taken Suo motto and all these issues have been adjudicated below;

- i)** The issue related to booking of flat originally in Residency Himalayas and subsequently in Mashobra Hills in violation of section 3 of RERD Act and accepting payment more than 10% without signing the agreement for sale in violation of section 13 of RERD Act, 2016.
- ii)** Reasons/ Developments leading to issuance of allotment letter dated 21.3.2020 in Mashobra Hills Project along



with terms and conditions and validity of the allotment letter

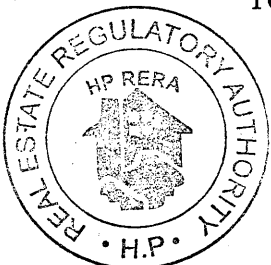
- iii)** Issue of non-execution of Agreement for Sale in terms of allotment letter dated 21.3.2020
- iv)** The issue of dispute about payment of Rs. 1,00,000 dated 27 September 2017
- v)** The issue of dispute about payment of Rs. 3.0 Lakhs claimed to have been paid in cash by the complainant on 21.01.2018
- vi)** The issue of total payment paid by the complainant for the flat in Residency Himalayas Project Bharari Shimla and consideration of the same for flat in Mashobra Hills
- vii)** The issues of payment plan, parking charges, services & facilities and specifications in the new allotted flat and the issue of sharing of payment of 50% of Goods and Service tax, GST, between the allottee and the respondent promoter
- viii)** The issue of balance payment towards the flat in Mashobra Hills Project
- ix)** Date of possession of flat in Mashobra Hills Project
- x)** Issue of the adjudication of compensation



### **11.A) Jurisdiction of the Authority**



This Authority after careful examination of the statutory provisions of the Real Estate (Regulation & Development) Act, 2016 along with judicial pronouncements of various Courts including the Hon'ble Apex Court, deliberates the matter by explaining various provisions of the Act in this regard. The Authority in terms of the section 3(1), 11(3), 11(4), 11(5), 13, 17(1), 19(3), 19(4), 19(6), 19(10), 35(2), 37, and 38 read with Section 31 of the RERD Act has necessary jurisdiction to adjudicate the complaint filed by complainant for various relief(s) except for compensation which is in the domain of adjudicating officer under section 71 and 72 of the Act *ibid.* further 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. Further Section 34 of the Act prescribes that it is the function of the Authority to ensure that promoter ensures compliance of the obligations cast upon it. Further Section 3(1) of the RERD Act, 2016 casts an obligation on the promoter that he is responsible for prior registration of the real estate project prescribed under the provision of the Act which reads as below:-



**Sec 3(1)** *No promoter shall advertise, market, book, sell, or offer for sale, or invite persons to purchase in any manner*

any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

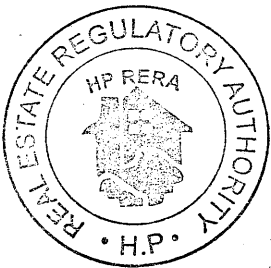
*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of said project within a period of three months from the date of commencement of this Act:*

*Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provision of this Act or the Rules and regulations made thereunder, shall apply to such projects from the stage of registration.*

Further 11(3) of the Act casts an obligation on the promoter that at the time of booking and issue of allotment letter it is his responsibility to provide the information about sanctioned plan, layout plan, along with specifications approved by the competent authority to the allottee which reads as below:-

**Sec 11(3)** *the promoter at the time of the booking and issue of allotment letter be responsible to make available to the allottee, the following information, namely:-*

- a. *sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;*
- b. *the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.*



Further 11(4) of the ACT cast an obligation on the promoter that he shall be responsible to fulfill the responsibilities and

functions prescribed under the provisions of the act, which reads as under:-

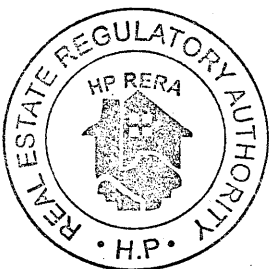
**11(4) the promoter shall-**

- a. *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made there under of allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:*

*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section(3) of Section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.*

- b. *Be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;*
- c. *Be responsible to obtain the lease certificate, where the real estate project is developed on the leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;*
- d. *Be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;*
- e. *Enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:*

*Provided that in the absence of local laws, the association of allottees by whatever name called, shall be formed*

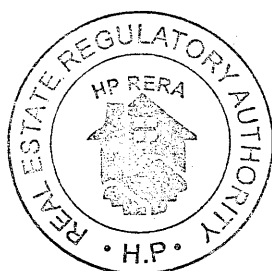


*within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be , in the project;*

- f. 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;*
- g. Pay all outgoing until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be , which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions ,which are related to the project):*

*Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be , the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings, which may be taken therefore by such authority or person;*

- h. After he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be.*



Further sec 11(5) of the Act cast an obligation on the promoter that he may cancel the allotment only in terms of the agreement for sale, the section is reproduced as under:-

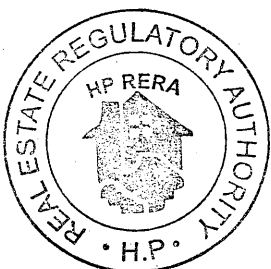
**11(5)** *the promoter may cancel the allotment only in terms of the agreement for sale:*

*Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause,*

Further Section 13(1) cast an obligation on the promoter that no deposit or advance more than ten percent of the total cost of the apartment to be taken by the promoter without first entering into the agreement for sale. Section 13(2) casts and obligation on the promoter for entering into the Agreement for sale only in the prescribed format. of the sections mentioned above reads as below: -

**Sec 13(1)** *a promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.*

**Sec 13(2)** *The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments,*

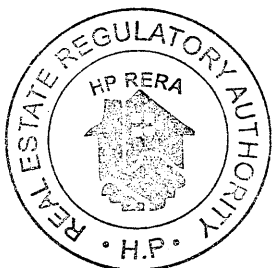


*along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.*

Further section 17(1) and proviso to the section, cast an obligation on the promoter to execute the conveyance deed and hand over possession of the flat to the allottee within a period as mentioned in the sanctioned plans and in the absence of any law governing the same, the execution of the conveyance deed and possession is to be handed over within three months after taking the occupancy certificate. The section and the proviso have been reproduced herebelow,

*Section 17 (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.*

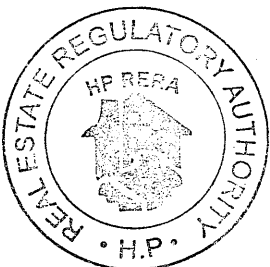
Further section 19(3), 19(4), 19(6) and 19(10) of the Act describes the rights and duties of allottees. This section is reproduced as under:-

**Sec 19(3)** *The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of [clause (1)] of sub-section (2) of section 4.*

**19(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 thereunder.*

**19(6)** *Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes; water and electricity charges, maintenance charges, ground rent, and other charges, it any.*

**19(10)** *every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued*



*for the said apartment, plot or building, as the case may be.*

Further section 35(2) of the Act empowers the Authority to call for information which reads as below:-

**Sec 35(2)** *notwithstanding anything contained in any other law for the time being in force, while exercising the power under sub section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-*

- (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;*
- (ii) summoning and enforcing the attendance of persons and examining them on oath;*
- (iii) issuing commissions for the examination of witnesses or documents;*
- (iv) any other matter which may be prescribed.*

Further sec 37 of the Act empowers the Authority to issue directions for the purpose of discharging its functions under the provisions of this Act which reads as below:-

**Sec 37** *The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.*

Further section 38(1) & 38(2) of the Act empowers the Authority to impose a penalty or interest in regards to any contravention of the provision of this Act.





**Sec 38(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 regulations made thereunder.*

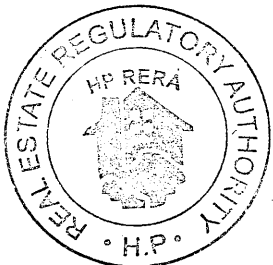
**38(2)** *The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.*

Thus, from the reading of the above mentioned provisions of the Act, it is very clear that the Authority has power to adjudicate the present case.

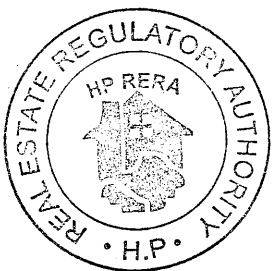
**12. B) Coming to the various issues of dispute, the Authority dealt with the above mentioned each issue and noted its conclusions which are as under: -**

**(i)The issue related to booking of flat in Residency Himalayas and subsequently in Mashobra Hills in violation of section 3 of RERD Act, 2016 and accepting payment more than 10% without entering into the 'agreement for sale' in violation of section 13 of RERD Act**

The said project " Residency Himalayas" was not a registered project in 2017 and it is of paramount importance to adjudicate whether the project was a registerable project as only then the provisions of The Real Estate(Regulation and Development ) Act, 2016 and The

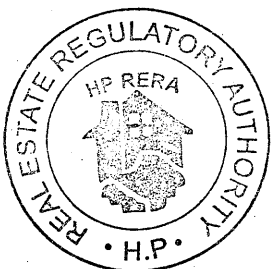


Real Estate(Regulation and Development ) Rules, 2017 will apply. The promoter was developing the project “Residency Himalayas” after having entered into joint development agreements with land owners in 2016 and approval for the drawings in the name of various land owners were given on 01.06.2017 and these facts came to the notice of the Authority while adjudicating two complaints in the same project and against the same promoter. It has been adjudicated by this authority in complaint no. HPRERA/OFL/2020-21 Titled as Mrs Anjali Bhatnagar wife of Rakesh Bhatnagar and Sh Rakesh Bhatnagar versus Rajdeep and co Infrastructure Pvt Ltd. and held in the order dated 28.09.2022 that the said project “Residency Himalayas” is a real estate project which ought to have been registered with the Authority by virtue of total no. of flats in all the buildings being more than 8 and collective land area of all land owners being more than 500 sqm and all land owners separately entering into the joint development agreement with the respondent firm to develop the project in collaboration with them. The jurisdiction of the authority in hearing the complaint in the instant case as well as the other complaint of Renu



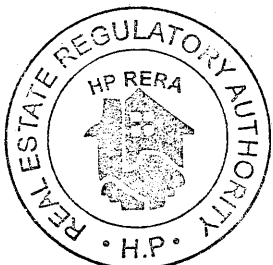
Jain against the same promoter in the same project was not challenged by the Respondent firm thereby admitting it to be a real estate project which was not registered by the respondent firm.

**13.** The promoter firm booked the flat no. 301 in Tower H measuring super area of 738 sft in Residency Himalayas by accepting first payment on 21.09.2017 and taking the application form for flat booking on 23.10.2017 and subsequently issuing the conditional allotment letter on 23.01.2018 and final allotment letter on 01.02.2018 .The Real Estate ( Regulation and Development) Act 2016 came into existence on 26 March 2016 but sections 3 to 19, section 40, sections 59 to 70 and sections 79 to 80 came into force on 01.05.2017. On a plain reading of section 3(1) which is reproduced “under jurisdiction of the Authority” above, it was mandatory for every promoter to register the real estate project with the Real Estate Regulatory Authority before advertising, marketing, booking, selling or offering for sale , any flat or apartment in any real estate project .It is provided in the first proviso of section 3(1) that projects that are ongoing on the date of commencement of this Act and for which the completion



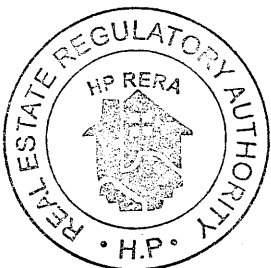
certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act. In exercise of powers conferred under section 84 of the Act, the state of Himachal Pradesh notified The Himachal Pradesh Real Estate (Regulation and Development) Rules on 28<sup>th</sup> September, 2017.

**14.** As per section 3(1), the project was to be registered before booking or selling any flat in the said project. However the HP Real estate(Regulation and Development) rules were notified only on 28<sup>th</sup> September 2017 and since the whole registration process , as per the rules, was to be online on the portal of the Authority which portal/ website at that time was not functional thus the promoters were not able to adhere to the provisions for some time. The promoter booked the flat, took advance/ booking amount on 21.09.2017 and 23.10.2017 and issued provisional allotment letter on 23.01.2018 and final allotment letter on 01.02.2018, but did not take the registration even till the date of allotment letter i.e. 01.02.2018 and thereafter till 2020 when eventually the said booked flat was shifted to other real estate project of the same promoter, which is a



violation of section 3(1). Further the respondent promoter shifted the flat of the complainant to another project, Mashobra Hills, Shimla, with the consent of the complainant/ allottee and issued the allotment letter dated 21.03.2020. The said Mashobra Hills project was also not registered with this Authority at that point of time and the promoter applied for registration of this project only on 24.11.2021, which was finally registered by the Authority on 04.03.2022 which clearly establishes that the promoter yet again, as on 21.03.2020, acted in violation of section 3 of the Act .

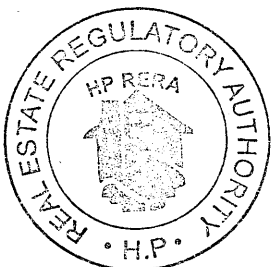
**15.** Further the respondent, after taking the booking amount of Rs. 3,00,000 in September/ October 2017 took another payment of Rs. 15,00,000/- on 23.01.2018, making the total received payment to Rs. 18,00,000/- out of the total consideration price of Rs. 33,12,000/- as per application form which is 54.34 percent of the total consideration amount and 59.76 percent as per the total consideration price of Rs. 30,12,000 (Rs. 27,00,000 as BSP and additional cost of Rs. 3,12,000 as per application form) as per allotment letter dated 01.02.2018



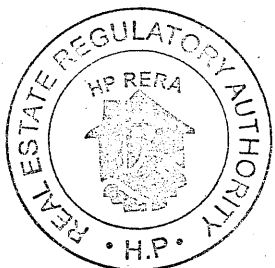
**16.** The promoter accepted 59.76 percent of the total consideration amount in violation of section 13 of the Act which mandates that the promoter cannot take more than 10% of the total consideration amount without first entering into the agreement for sale. The Authority thus concludes that the promoter has acted in violation of section 3 by booking the flat in both the projects, without registering with the Authority and has acted in violation of section 13 of the Act by accepting more than 10% of the consideration amount without entering into the Agreement for sale. Therefore, he is liable to be penalized under Section 59 and 61 of the Act *ibid*.

**17. (ii) Reasons/ Developments leading to of allotment letter dated 21.03.2020 in Mashobra Hills Project along with terms and conditions:**

The complainant booked a flat numbering 301, 3<sup>rd</sup> floor H wing measuring super area 738 sft in “Residency Himalayas” Project being developed by the Respondent Firm, Rajedeeep and co infrastructure Pvt Ltd., by filling an application form on 23.10.2017, annexed on page no. 173 in the file which was provided on email by the complainant on the directions of the Authority, for which the



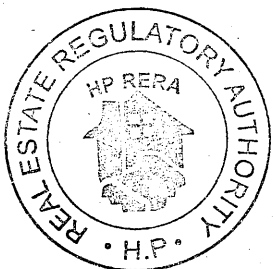
complainant had paid a booking amount of Rs. 1,00,000/- paid vide NEFT transaction dated 21.09.2017 from her account no. 00000030304970573 in the account of the respondent company which is annexed as **annexure "A"** with rejoinder filed by the complainant. Further the complainant paid another payment of Rs. 2,00,000/- paid vide RTGS transaction dated 17.10.2017, the receipt of which is annexed as **annexure "C"** with the rejoinder. The complainant having paid Rs. 3,00,000/- as stated above, booked the flat by filling the application form for flat dated 23.10.2017 which clearly mentioned about the above stated payment of Rs. 1,00,000/- and Rs. 2,00,000/-, totaling to Rs. 3,00,000/- on the first page of application form, and on the second page of the said form the personal details of the complainant have been filled and on the third page the details of the flat have been filled which show the flat no. 301, on third floor, type residential, Tower H wing, measuring super area as 738 sft. Further mentioning the total, (A). basic cost of the unit as 30,00,000/- plus (B) Additional cost towards club, car parking, power back up installation cost, external electrification cost and firefighting equipment cost and



other cost as per sheet and (C) Maintenance security towards interest free maintenance security (IFMS) as per sheet Totaling all three components to Rs. 33,12,000/-.

The form also mentioned about the payment plan option as construction linked payment plan. The last page further mentioned about additional discount payment plan which showed a discount of 10% on the BSP, basic cost of the unit. The said application form has been signed by both i.e., the complainant and the respondent.

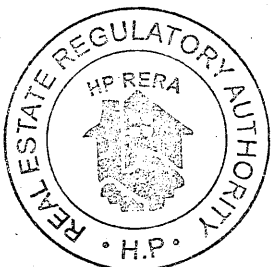
**18.** The respondent issued an allotment letter dated 23.01.2018 mentioning about the allotment of the flat on a basic selling price of Rs. 27,00,000/- plus additional cost and showed the previously paid Rs. 3,00,000/-, in two installments, Rs 1,00,000 paid on 27.09.2017 and Rs. 2,00,000/- paid on 17.10.2017 and also mentioned about third payment of Rs. 15,00,000/- paid vide cheque on 23.01.2018 with a condition that this allotment letter is subject to the realization of cheque payment. The respondent further issued another allotment letter dated 01.02.2018 mentioning all the details as were mentioned in the allotment letter dated 23.01.2018 except that the condition of the realization of payment was deleted and



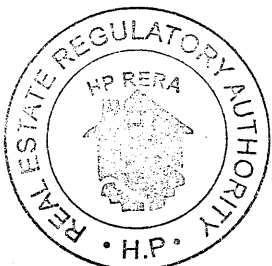


thus the allotment letter dated 01.02.2018 attained finality, confirming about the allotment of the flat no 301 in Residency Himalayas Bharari Shimla after having received the total payment of Rs. 18,00,000/. Further mentioning that payment up to the casting of third slab had been paid till date and balance installments are five in number in accordance with the progress of work as mentioned therein. On the back page of the allotment letters under title" important" there are five conditions and the fifth one is about payment of Govt taxes as applicable, which is one of the issues of adjudication as raised by the complainant. The complainant has provided the copies of unsigned Memorandum of understanding dated 17<sup>th</sup> May, 2018 and Builder Buyer Agreement dated 23.01.2018 annexed as **enclosure 3** and **enclosure 5** resp with the rejoinder.

**19.** Further ,The complainant in the facts of the complaint pleaded that she was given to understand by the respondent firm that due to some technical and land approval issues they are discontinuing the project of Residency Himalayas at Bharari Shimla so they are going to shift her flat/ investment to another ongoing project,



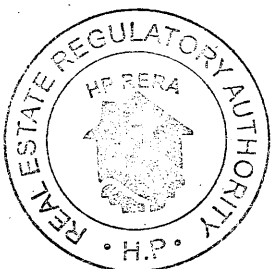
Mashobra Hills Shimla along with compensation as per MCLR interest rate till possession to which the complainant consented and subsequent to that the allotment letter dated 21.03,2020 was issued to the complainant by the respondent firm, allotting her 1BHK flat no.203 on second floor, in Tower I in Mashobra Hills, Shimla measuring super area 755 sft at a total of basic selling price, BSP, of Rs. 25,21,500/- after giving a discount of Rs. 1,78,500/- agreed to be the compensation/ discount for shifting the flat to the new project and adjusting this amount in the basic selling price of Rs. 27,00,000/- as was agreed between both the parties for the old allotted flat thus fixing the basic selling price, BSP for the new flat in Mashobra Hills as Rs. 25,21,500/- and society charges of Rs. 3,15,466/-, further mentioning about the payment plan opted by the respondent according to which the payment of 71.38% of the BSP which further was elaborated in the third column of the table, specifying that payment of Rs. 1,00,000/- by way of NEFT dated 27.09.2017, payment of Rs. 2,00,000/- by way of RTGS dated 17.10.2017 and last payment of Rs. 15,00,000/- by way of cheque bearing no. 180682 dated



23.01.2018 totaling Rs. 18,00,000/- has been received by the respondent firm. The said allotment letter further showed that there are four pending installments which are to be paid according to the progress of work and this type of payment plan is referred to as the construction linked plan in Real estate Industry. The said allotment letter mentioned certain conditions under title" important" as were mentioned in the previous allotment letters of Residency Himalayas project and the last condition mentioned about payment of Govt taxes as applicable making it clear that all installments of the payments are to be paid in time by the allottee/ complainant and all govt taxes as payable are also to be paid by the allottee.

**20.** There is a **hand-written note** in the allotment letter, as per the copy provided by the complainant, mentioning about the possession date as August 2020 + 3 months grace period.

**21.** This allotment letter dated 21.3.2020 pertaining to the flat in Mashobra Hills Shimla, is the only document issued by the respondent to the complainant mentioning about payment received, balance payments, stages of payment and other terms and conditions and is held to be a valid



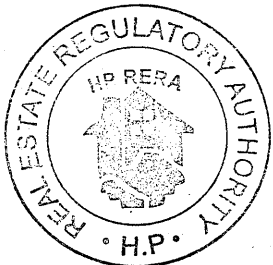
document so far as allotment of the flat in Mashobra Hills is concerned.

**22. (iii) Issue of non-execution of Agreement for Sale in terms of allotment letter dated 21.03.2020:**

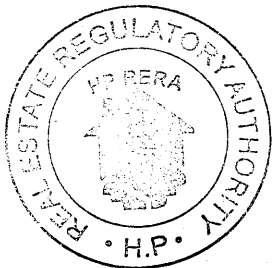
These issues were not raised by the complainant in the complaint filed by her but subsequently raised these issues during the course of hearing and being important issues related to the flat and in the interest of complete justice, were considered by the Authority for adjudication.

The agreement for sale by the name BBA was provided by the respondent promoter to the complainant, post the allotment letter dated 01.02.2018 in case of flat in Residency Himalayas Bharari but remained unsigned and subsequent to discussions among both the parties, the flat was shifted to another project Mashobra Hills Shimla, the allotment letter for which was issued by the respondent on 21.03.2020 mentioning the details of flat, payment received and stages of payments along with other terms in this project.

**23.** The complainant received the allotment letter dated 21.03.2020 mentioning the total BSP, basic sale price of Rs. 25,21,500/-, as discounted price because of the

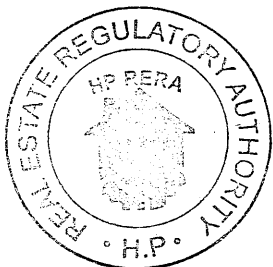


shifting of the flat from the old project to New Project in Mashobra Hills Shimla, having got a compensation/discount of Rs. 1,78,500/- which was adjusted in the basic selling price of Rs. 27,00,000/- of Mashobra Hills flat , making the BSP for the new flat to Rs. 25,21,500/- plus society charges of 3,15,466/- which was not objected to by the parties and now both, BSP and society charges have been reflected in the allotment letter dated 21.03.2020. However no agreement for sale was entered into between both the parties subsequent to the allotment letter dated 21.03. 2020. The complainant has stated during the arguments that she did not accept the terms of the allotment letter and kept raising the issue of discrepancies time and again with the respondent but the respondent did not agree with her. The respondent also did not send her the agreement for sale which was his obligation as per the provisions of the Act and rules as a result of which the agreement for sale was not signed between both the parties. The complainant during arguments agreed that she did not send any letter or email to the promoter pointing out whatever discrepancies she had observed in the allotment letter dated 21.03.2020 and

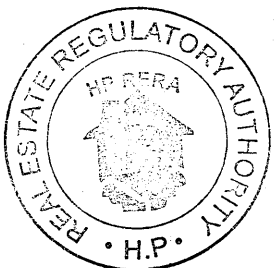


also did not ask for the agreement for sale. The complainant has provided selective whatsapp chat details with the rejoinder that was exchanged with the promoter firm executives starting march 2022 showing that she continuously kept pressing for the compensation as was promised to her and the respondent has also provided selective whatsapp chat screenshots as were sent by the complainant starting April 2022 showing her persistent bad behavior and foul language. **The conversation made through whatsapp cannot be relied upon by this authority for want of legal evidence to authenticate the same.**

**24.** The agreement for sale is the main document which was not provided by the respondent and the complainant also did not even ask for the same as she did not agree to certain terms of the allotment letter and did not receive the compensation amount as pleaded by her during arguments .The Authority during hearings of the case directed the respondent promoter vide order **dated 09.02.2023** to send her the draft of agreement for sale in accordance with the terms of allotment letter dated 21.03.2020 so that the same could be signed between both

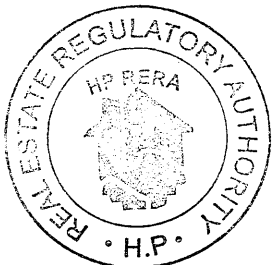


the parties or any discrepancy if noted by her could be brought to the notice of the respondent. The discrepancies were also noted by the Authority in the mentioning of the floor on which the flat is located, carpet area and parking charges and other details and directed the promoter to amend the same by correcting the details and send a copy of the correct agreement for sale and amicably work out the differences with the complainant pertaining to the sharing of the taxes and provision of services, facilities and furniture etc. if earlier agreed upon between both the parties. The reconciliation on these issues did not work out between the parties and the respondent sent the final and corrected draft of agreement for sale mentioning all correct details about the nomenclature of the correct floor, correct carpet area and other details of the flat and provided a copy of the same to the Authority also. The complainant did not sign the same raising the issues of omittance of certain payments claimed to have been paid by her and missing conditions about sharing of the GST and provision of services and facilities as agreed to her by the promoter and therefore the contentious issues have been adjudicated below by the Authority.



**25. (iv) The issue of dispute about payment of Rs. 1,00,000/- dated 27 September, 2017:**

The complainant has claimed to have paid Rs. 1,00,000/- on 27<sup>th</sup> September, 2017 also by way of NEFT and in her support annexed the **annexure "B"** with the rejoinder, in addition to the NEFT payment of Rs. 1,00,000/- dated 21 sept, 2017 annexed as **Annexure 'A'** with the rejoinder and is also mentioned in the hand-written account statement that has submitted as **enclosure 10** with rejoinder and this payment of Rs. 1,00,000/- claimed to have been paid by NEFT dated 27.09.2017 has been denied by the respondent. The complainant had paid Rs. 1,00,000/- by NEFT on 21 Sept, 2017 and has annexed **Annexure-A** in its support which is a copy of the bank statement of the SBI account of the complainant which clearly shows that one NEFT in favour of the respondent was made on 21.09.2017 as booking amount, the very first installment. The respondent issued a receipt for this very first payment of Rs. 1,00,000/- on 27 September, 2017 which has been annexed as **Annexure "B"** by the complainant as a separate payment. It appeared that the annexure B is the receipt of the payment of Rs. 1,00,000/.

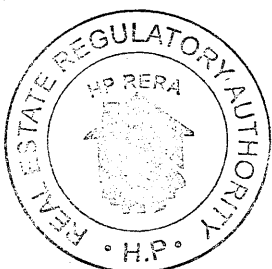




During arguments, the complainant could not provide any reply about the same. A liberty was granted to the complainant during final hearing to provide the payment detail of this another payment of Rs. 1,00,000/- claimed to have been paid on 27 sept, 2017 if she has paid to the respondent for which this receipt has been issued and the complainant was granted three days' time to email the detail of this alleged additional payment of Rs. 1,00,000/- failing which it will be clear that no such additional payment of Rs. 1,00,000/- has ever been made. The complainant did not provide any such payment detail and this Authority concludes that the annexure B, the receipt of payment of Rs. 1,00,000/- is towards the NEFT payment dated 21.09.2017 and not an additional payment.

**26. (v) The issue of dispute about payment of Rs. 3.0 Lakhs claimed to have been paid in cash by the complainant on 21.01.2018:**

The complainant has claimed to have paid Rs. 3,00,000/- on 21.01 2018 by way of cash to one Sh Anil Chaudhry in the respondent firm, which amount was denied by the respondent, and in her support, the complainant has annexed the acknowledgement marked as **Enclosure 1(D)**



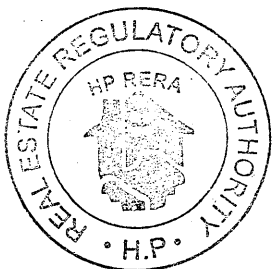
submitted with MA 28 of 2023, received by the office of the Authority by post on 09.01.2023 after the direction of this Authority to submit the original notarized document by post vide order dated 05.01.2023 .The document is titled **“ACKNOWLEDGEMENT”** and is reproduced here below,

“Received with thanks an amount of Rs. 3,00,000(Three lacs only) from Mrs Rajlaxmee Rohitaksha Bolar W/o Mr. Rohitaksha Janardhan Bolar Address-735,3B, Ashtivinayak Society, near Gurunanak Hospital Kalanagar, Bandra(E) Mumbai-400051 against flat no. -301, 3<sup>rd</sup> Floor, Tower H in the name of Mrs. Rajlaxmee Rohitaksha Bolar in Residency Himalayas, Bharari Shimla (HP)”

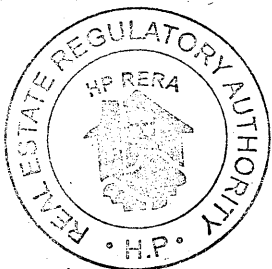
The said document is dated 21.01.2018 mentioned on top right corner of the document and does not mention about the mode of payment as no term like cash has been mentioned and this document is signed by an authorised signatory for Rajdeep Infrastructure Pvt Ltd and round seal of the respondent firm has been affixed. The said document is notarized by Umesh Chandra Shukla dated 28 Dec 2022 and was provided in response to the direction of the Authority to appear in person before the Authority along with the original receipt of this Rs. 3,00,000/- and other original documents of the flat to ascertain the sanctity/ physical verification of the submitted



photocopies. The complainant did not appear in person and sent an email dated 05.01.2023 conveying her inability to attend the hearing in person and further stating that the notarized documents attached with the email, be treated as original documents. The said email was taken on record and was diarized as Misc. application no 28 of 2023. The authority in its hearing dated 05.01.2023 directed the complainant to send the original notarized documents by post before the next date of hearing and further dispensed with the personal appearance making it clear that the direction to physically appear before this Authority was in the interest of the complainant as the onus under section 101 of the Indian Evidence Act is on the complainant to prove her case and the payment made. The physical hearing was fixed with a specific purpose of seeing the original receipt of Rs. 3,00,000/- payment that is claimed to have been paid in cash as without verifying and seeing the original document in presence of the respondent who allegedly has issued the acknowledgement, the copy of acknowledgement could not have been considered to be a true copy. During the course of hearing on this MA no 28 of 2023, the submitted

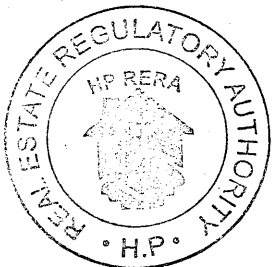


notarized documents were taken on record with a direction that the original notarized documents be provided in original before the next date of hearing and the same were received by the office of the Authority on 09.01.2023 which were taken on record as part of MA 28 of 2023 and it was decided to adjudicate this MA along with main case. In the absence of the original document "Acknowledgement" which is claimed to be the receipt of Rs. 3,00,000 paid in cash by the complainant to the respondent since denied by the respondent, cannot be considered a valid document as the sanctity of the same cannot be verified by this Authority in any manner. It is also important to note that the complainant has not produced any document, letter or email by way of which she objected to the total payment of Rs. 18,00,000/- shown to have been received by the respondent as against paid amount of Rs. 22,00,000 claimed to have been paid by her against her initial apartment at Bharari and then transferred apartment in Mashobra Hills as it was mentioned in the final allotment letter dated 01.02.2018 for apartment at Bharari that the total received amount by the promoter is Rs 18,00,000/- and as also mentioned in the allotment letter dated



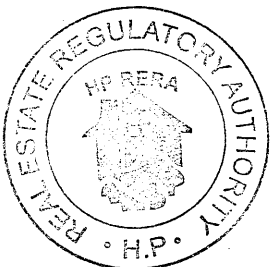
21.03.2018 for apartment in Mashobra Hills that the total received amount by the promoter is Rs. 18,00,000/-. Both these documents were duly provided to her by the respondent promoter and her claim that she did not accept those documents for the same reason that the additional amount of Rs 1,00,000/- dated 27sept, 2017 and payment of Rs 3,00,000/- dated 21.01.2018 paid by her were not shown in the allotment letters and that was also the reason for her not signing the agreement for sale. The argument advanced by her cannot be accepted as she never brought it to the notice of the promoter that she had paid Rs. 22,00,000 and not Rs. 18,00,000 as shown in the allotment letters, by way of any letter or email and could not provide any evidence before the Authority to prove her case. In light of above this Authority, on the basis of the records produced, arguments advanced and sequence of events concludes that this payment of Rs. 3,00,000/- claimed to have been paid by the complainant cannot be considered as a payment for want of legally admissible conclusive evidence.

**27. (vi) The issue of total payment paid by the complainant for the flat / apartment in Residency**



**Himalayas Project Bharari Shimla and consideration of the same for flat/ apartment in Mashobra Hills:**

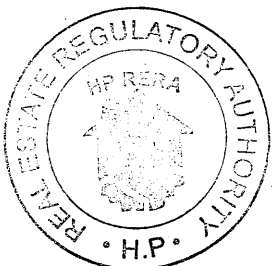
The final allotment letter dated 01.02.2018 for flat in Residency Himalayas Bharari mentions about total payment received by the promoter to be Rs. 18,00,000/- and also the allotment letter dated 21.03.2020 for the flat in Mashobra Hills mentions the same amount of Rs. 18,00,000/- and there is no contradiction about received payment in both the allotment letters. However, the complainant, as per the averments in the complaint and **as per enclosure 10 of the** rejoinder, which is a handwritten statement, claimed to have paid Rs. 22,00,000/- to the contractor and this additional amount of Rs. 4,00,000/- is the same total amount of two payments, of Rs. 1,00,00 and Rs. 3,00,000, which have not been found to be the valid payments as held in above para (iii) and (iv). Hence it is concluded that the complainant has paid only Rs. 18,00,000/- to the respondent which has been duly acknowledged by the respondent in the allotment letter dated 01.02.2018 for the apartment in Residency Himalayas and then again in the allotment letter dated 21.03.2020 for the apartment/flat in Mashobra Hills



**28. (vii) The issues of payment plan, Suo motto cognizance of parking charges for open parking, services & facilities and specifications in the new allotted flat and issue of sharing of payment of 50% of Goods and Service tax, GST between the allottee and the respondent promoter:**

**a. The issue of payment plan:**

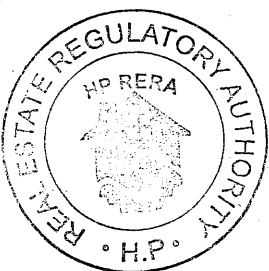
The complainant signed the application form dated 23.10.2017 for the originally booked flat in Residency Himalayas, on the third page of which it is clearly mentioned in the last row of the form that the opted plan is a “construction linked payment plan”. Further the complainant received allotment letter for the new flat in Mashobra Hills on 21.03.2020 mentioning the total BSP, basic sale price of Rs. 25,21,500/- plus society charges and provided the details of payments received and balance payments in accordance with the progress of work as mentioned therein, which clearly shows that it is a construction linked payment plan and not a



down payment plan as claimed by the complainant.

**b. Suo Motto cognizance of parking charges:**

The Authority during the course of hearing noted that the respondent promoter has registered the project on 04.03.2022 vide regn no. HPRERASHI2022001/P as granted by the Authority and the details of which are on the web portal of the Authority and are in public domain. As per the registration details, it was noted by the Authority, that there is no parking for sale as only common parking has been approved in the project and as such there is no inventory of parking or garage which is available for sale whereas the respondent promoter, in the draft of Agreement for sale, as was provided to the complainant and this Authority clearly gave a break up of the total society charges of 3,15,466/-, out of which Rs. 1,00,000/- was towards the parking charges. On the questioning about the same, the respondent

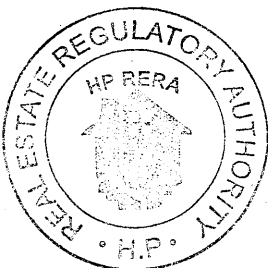




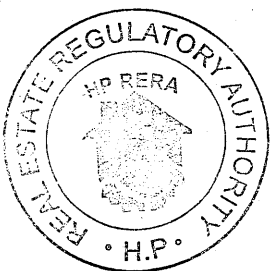
promoter agreed that he has wrongly charged for the parking which he is not allowed as per his registered project details and withdrew the charges of Rs. 1,00,000/- towards the parking thus effectively bringing the society charges down to Rs. 2,15,466/-.

**c. services & facilities and specifications in the new allotted flat:**

The complainant provided the brochure and emails as received by her from the respondent confirming about the services and facilities that were to be provided in her flat in Residency Himalayas at Bharari Shimla, which has not been denied by the respondent promoter. The complainant pleaded that she is not being provided all these facilities and services including furniture and LED etc. in her new flat at Mashobra Hills Shimla as were promised to her in the previous flat. The respondent promoter countered that these facilities and services were for the previous flat and at the



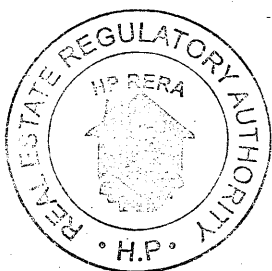
time of shifting of her flat from previous to the current project, it was made clear to her that she is being allotted the flat in this project at the same rate on which she was allotted the previous flat despite of the fact that the BSP and other charges in this new project is much higher than the previous one and additionally she has also been given discount in the name of compensation at that time and those facilities and services as were there in the previous project, which has since been discontinued, are not being provided in the new project. It was pleaded on behalf of the respondent that the new project is a RERA registered project and all those facilities, services and specifications as have been shown in the project and are in the public domain on the web portal of the Authority, will be provided to all the allottees of the project. The ld counsel also pleaded that no such assurance or commitment was ever given to her and relied on the allotment letter dated 21.03.2020 issued to her, in which no such



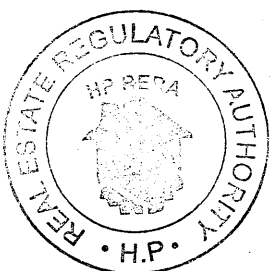
conditions/ commitments have been mentioned. The complainant, on the other hand, could not produce any document where such services and facilities as were promised to her in the previous project have been extended to her in the new project. In the light of above this Authority concludes that the complainant could not prove her point and could not show any document or evidence by which it could be deduced that she was extended the previously agreed services and facilities in her flat in the new project allotted to her. Further all such services, facilities and specifications which have been shown by the promoter in the registered project of Mashobra Hills Shimla, which are in the public domain on the web portal of the Authority, will be provided in the flat of the allottee also.

**d. Issue of sharing of payment of 50% of Goods and Service tax, GST between the allottee and the respondent promoter:**

The complainant pleaded that, at that time of booking, she was assured that the payable GST



will be equally shared by the allottee and the promoter and in her support, she has produced an email dated 16 September 2017, which is annexed at **page no 169** in the court file by which the respondent promoter agreed to the sharing of fifty percent of the payable GST towards her flat in Residency Himalayas Bharari Shimla. The respondent promoter countered that this offer was given to her initially at the time of booking but while negotiating the discount on BSP from Rs. 30,00,000/- as per application form dated 23.10.2017 to Rs. 27,00,000/- as was agreed upon, the said offer of sharing of GST was withdrawn and discounted BSP, basic selling price of Rs. 27,00,000/- was conveyed to her vide allotment letter dated 23.01.2018 and final allotment letter dated 01.02.2018 along with terms as mentioned under Title "Important" where the last line clearly states that Govt taxes as applicable. Further to this, the ld counsel for the respondent pleaded that at the time of



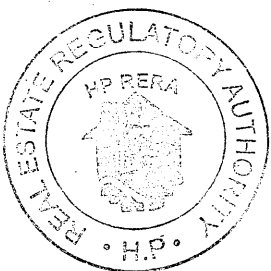
shifting of her flat to the new project, a new allotment letter dated 21.03.2020 was issued to her which also clearly showed the same terms and conditions that Govt taxes as applicable. The ld counsel for the respondent vehemently denied that they ever gave her this offer except at that time of booking which also was withdrawn when the negotiations on discount were being held and BSP was discounted from Rs. 30,00,00/- to Rs. 27,00,000/-. In the light of above this Authority concludes that the complainant could not prove her point and could not show any document or evidence by which it could be deduced that she was offered that the taxes will be shared equally. Further, this authority, during the course of hearing, asked the promoter to provide the complainant, a complete break up of payable amount and received amount along with breakup of taxes which was provided to her on 18.02.2023 by way of email and a copy of the same was



marked to this Authority also which is annexed  
**on page no. 132 of the court file.**

**29.(viii)The issue of balance payment towards the flat in  
Mashobra Hills Project.**

The allotment letter dated 21.03.2020 for the new flat in Mashobra Hills project clearly shows the total BSP of the project at Rs. 25,21,500/- plus society charges of Rs. 3,15,466.00. The said society charges, as per para **vii(b)** stand reduced by Rs. 1,00,000 charged wrongly towards parking charges thus bringing the total society charges to Rs. 2,15,466/-, which has been duly accepted by the promoter. The promoter on the directions of this Authority provided a complete break up of payable amount and received amount along with breakup of taxes which was provided to her on 18.02.2023 by way of email and a copy of the same was marked to this Authority also which is annexed **on page no. 132 of the court** file according to which the BSP of Rs. 25,21,500/- will attract a GST of 1%, being covered under affordable housing and after the exclusion of parking charge the total amount towards society charges of Rs. 2,15,466/-, , is **inclusive** of GST of 18%. The respondent promoter is required to raise the



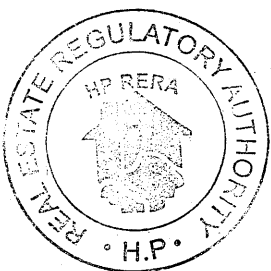
further demand in accordance with the payment schedule but the total amount not exceeding 25,21,500/- + 1% GST plus society charges of Rs. 2,15,466/- which is inclusive of 18% GST charges and duly adjusting the payment of Rs. 18,00,000/- as already received by the respondent promoter.

**30. (ix) Date of possession of flat in Mashobra Hills Project:**

The complainant sought the possession of her flat as per the hand written possession date in the allotment letter dated 21.03.2020 which is August 2020 plus three months of grace period which makes the possession date to be 30<sup>th</sup> November, 2020. The respondent in his reply denied having written any note on the allotment letter dated 21.03.2020 and alleged that the said hand written note has been added at her own level and mentioned that the possession will be given as per declared date of possession in the said project in 2025 but later retracted the same citing a mistake and making it clear in the email dated 30<sup>th</sup> May, 2023 which is annexed **on page no 206 of the court file** saying that the possession date is up to 2027 and not 2025 as given in reply, the said email was sent to the complainant with a copy to the Authority clarifying all

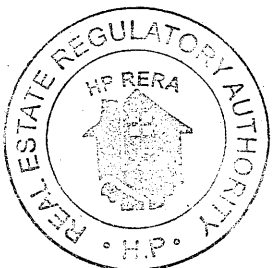


disputed issues and along with the draft of Agreement for sale which is annexed **on page nos 207 -226 in the court file**, on the directions of the Authority as per order dated 26.04.2023. According to the clause no 7.1 of the said draft of Agreement for sale, the promoter has mentioned the date of possession to be 30<sup>th</sup> December, 2027. However, it is noted that the completion period of the project as per the registered project Mashobra Hills as registered vide no HPRERASHI2022001/P dated 04.03.2022 with HP RERA, the details of which are in public domain , is five years which makes the completion date of the project to be 04.03.2027 and in accordance with section 17(1) of the RERD act, the respondent promoter is required to execute the conveyance deed in favour of the allottee and hand over the possession of the same within three months from the date of issue of occupancy certificates. There is no provision now in Appendix-7 of HP Town and country Planning Rules, 1978 as amended up to date to issue any occupancy certificate and the promoter is required to take the approval of completion plan and completion certificate of the real estate project. The completion period of the project as





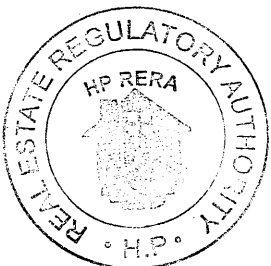
mentioned in the project is Five years and thus the promoter is required to take the approval of completion certificate well in time to be enable to execute the conveyance deed and hand over the possession before the completion date which is 04.03.2027. Since the project is situated in the rural area, and every non-agriculturist whether Himachali or non-Himachali requires specific permission from Govt of HP under section 118 of the HP Tenancy and Land reforms Act to buy such flat/ apartment, the application of which is entertained only after the approval of the completion plan. In view of above reasons this Authority concludes that the possession date as mentioned in the hand written note in the allotment letter dated 21.03.2020 cannot be accepted as the complainant could not prove her case, the onus of which is solely on her, that the hand written note was mentioned by the respondent and she could not produce any other evidence or document which proves that the date of possession of flat was August 2020 plus three months of grace period. It is further concluded that that the completion date of the project as mentioned by the promoter in the draft agreement for sale being 30<sup>th</sup>



December, 2027 also is not correct and can not be accepted and the actual date of completion as per the approved project detail is 04.03.2027 and promoter being a regular promoter who is developing many real estate projects in the state of Himachal Pradesh and is well versed with the TCP laws and HP tenancy and land reforms Laws and knows fully well about the time taken in taking permission by a non-agriculturist Himachali before the execution of sale deed, should endeavor to complete the project at the earliest so that all the formalities pertaining to completion plan and then the for the permission under HP Tenancy and land reforms Act could be completed expeditiously so that the completion date which is the possession date, of 04.03.2027 is honored in letter and spirit.

**31.(x) Issue of the adjudication of compensation:**

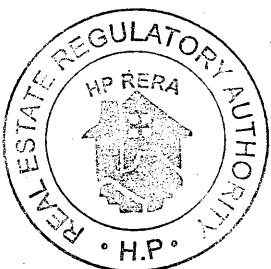
Section 71 and 72 of the RERD act lays down the power to adjudicate the compensation and factors to be considered by adjudicating officer. The complainant in her complaint has time and again raised the issue of the compensation and mentioned that the promoter has not paid her per month compensation and accumulated compensation as



was discussed and mutually agreed between them. This Authority during the course of hearing made it clear to her in no uncertain terms that the power to adjudicate for compensation lies with the adjudicating officer of the Authority and this Authority has no power to adjudicate the compensation issue, who, in case of HP RERA is the Distt and session Judge Shimla, as appointed by the Govt after the recommendation of the Authority. Further, the Hon'ble Supreme Court of India has held in para 55 to 86, in the case titled, **M/s Newtech promoters and developers Pvt Ltd versus State of Up and others** as decided on November 11, 2021, that the compensation is to be adjudicated by the Adjudicating officer in accordance with the section 71 and 72 of the Real estate(Regulation and Development) Act 2016. Thus this authority concludes that the adjudication of the compensation as claimed in the complaint is beyond the jurisdiction of this Authority .

**32. RELIEF:** - Keeping in view the above-mentioned facts, this Authority, in exercise of the powers vested in it under various provisions of the Act, issues the following orders/ directions: -

- i. The complaint is partly allowed.



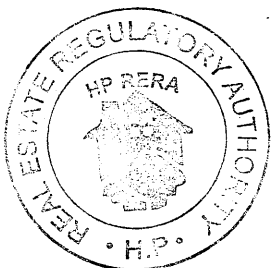
**ii.** The respondent is directed to send allottee two signed copies of "Agreement for sale" by amending the date of possession in clause 7.1 as 04.03.2027 in the draft agreement for sale as was sent to allottee on 30.05.2023, which clearly mentions the total consideration amount of flat to be Rs. 25,21,500 +1% GST plus society charges of Rs. 2,15,466 including GST, within 15 days of this order by speed post/ courier and the complainant is directed to sign the same and return one signed copy to the respondent within fifteen days of the receipt of the same with a photocopy of the same to this authority as well. The respondent on the receipt of the signed copy of the Agreement for Sale, to convey the acknowledgement to the complainant/allottee on email with a copy to the office of the Authority for information.

**iii.** In case the complainant, for whatever reason(s), does not wish to continue in the project, she is at liberty to seek refund of her invested amount within one month of this order and convey her decision seeking refund on email to the respondent with a copy to the Authority for information and in such case, the respondent is directed to refund her full amount of Rs. 18.0 Lakhs with interest

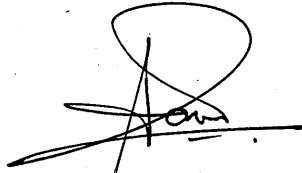


calculated at state bank of India highest cost of lending rate which presently is 8.75% plus 2%, i.e. 10.75%, as per HP Real estate(Regulation and Development)Rules, 2017, from the date of respective payments till the date of order, within one month from the date of receipt of refund request and to be transferred online in her account.

- iv.** The respondent is directed to pay a penalty of Rs. 1,00,000/- (Rs. One lakh) under section 59 of the Act, for not registering the project before booking the flat and under section 61 for accepting more than 10% of the total consideration amount before signing the Agreement for sale. 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.
- v.** The complainant shall be at liberty to approach the Adjudicating Officer for compensation under Section- 71 of the Act *ibid.*



vi. All pending applications are disposed off in  
aforementioned terms.



**Rajeev Verma**  
**Member**

