

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

Complaint no.HPRERA2022023/C

Sh. Gagan Raj Singh, Son of Sh. Gajinder Singh, Resident of
5200/1 Modern Housing Complex Manimajra –Chandigarh

.....Complainant(s)

Versus

1. Jagjit Singh Ahlawat, Son of Sh. Umed Singh, Resident of House
No. 46, Sector 10, Panchkula, Haryana, 134109
2. Ahlawat Developers and Promoters (Partnership Firm), SCO 365,
First Floor, Swastik Vihar, Sector 8, Panchkula 134109

.....Respondent(s)

Complaint no.HPRERA2022028/C

Sh. Debgopal Bhar, Son of Sh. Panchugopal Bhar, Resident of 04, M
Block, Arishtspinning mills, Sai Road, Baddi, Distt Solan-(HP)-
173205

.....Complainant

Versus

1. Jagjit Singh Ahlawat, Son of Sh. Umed Singh, Resident of House
No. 46, Sector 10, Panchkula, Haryana, 134109
2. Ahlawat Developers and Promoters (Partnership Firm), SCO 124,
First Floor, Swastik Vihar, Sector 5, MDC, Panchkula 134109

.....Respondent(s)

Complaint no.HPRERA2022001/C

- 1 Sh.Jagan Nath Prasad, Son of Sh. Gopal Prasad, Resident of
2101, Top Floor, Sector 15 C, Chandigarh-160015
- 2 Smt. Seema Rathour, Wife of Sh. Jagan nath Prasad , Resident of
2101,Top Floor, Sector 15 C, Chandigarh 160015

.....Complainant(s)

Versus

1. Jagjit Singh Ahlawat, Son of Sh. Umed Singh, Resident of House No. 46, Sector 10, Panchkula, Haryana, 134109
2. Ahlawat Developers and Promoters (Partnership Firm), SCO 124, First Floor, Swastik Vihar, Sector 5, Panchkula

.....Respondent(s)

Complaint no.HPRERA2022002/C

Sh. Rajinder Singh, Son of Sh. Ajit Singh, Resident of 918, Sector-7B Chandigarh

.....Complainant

Versus

1. Jagjit Singh Ahlawat, Son of Sh. Umed Singh, Resident of House No. 46, Sector 10, Panchkula, Haryana, 134109
2. Ahlawat Developers and Promoters (Partnership Firm), DSS 320, First Floor, Sector 9, Panchkula

.....Respondent(s)

Date of hearing (through Webex)- 06.01.2024

Date of pronouncement of order- 09.02.2024

Coram: Chairperson and Member

1. Relevant facts in following complaints

a. Facts in Gagan Raj Singh and Avtar Singh's case.

Complainant(s) Sh.Gagan Raj Singh and Avtar Singh in their complaint have stated that a flat no.201,2nd Floor A- 3 Tower, Himachal One Baddi, Tehsil Nalagarh, District Solan, Himachal Pradesh was booked on 30.01.2008 for Rs.19,01,400/- out of which Rs.17,51,400/- was basic sale price and Rs.1,50,000/- were parking charges for 1575 sq. feet of the area as per revised agreement for sale. The complainant stated that entire payment of Rs.19,01,400/- stands cleared by the complainant long time back. Thereafter another agreement dated 23rd November, 2019

was executed between the parties. In both the aforesaid agreements the promoter proposed to deliver the possession of Flat within 30 months from the sanction of building plans by the competent authority or date of start of construction of particular tower. During the course of proceedings before this Authority an application for deletion of the name of Avtar Singh from the array of complainants was received. Along with the said application an affidavit was filed wherein it was stated that he has relinquished his share in favour of the complainant Gagan Raj. Thereafter another agreement dated 14th November, 2022 was executed between the promoter and Gagan Raj whereby the earlier agreement of the year 2008 was superseded. This agreement was in accordance with format as prescribed by HP RERA Rules 2017. In the said agreement it was mutually agreed by both the parties that the promoter shall deliver the possession on 15.12.2022. With these relevant facts it was prayed that the respondent may be directed to execute conveyance deed in favour of the complainant or in the alternative refund the amount received along with interest @ 12 %.

b. Facts in Debgopal Bhar's case:

The complainant booked flat no.301, 3rd Floor, Tower -A3, Himachal one Baddi, Tehsil Nalagarh, District Solan, Himachal Pradesh on 30th November, 2015 for Rs. 25,00,000/- as basic sale consideration. Thereafter another agreement for sale dated 23.11.2019 was executed inter se the parties. It was alleged that an additional sum of Rs.1,50,000/- was also paid to the respondent as he was unable to complete the flats. This fact finds mentioned in the aforesaid agreement in which 9 months time period was mentioned for the completion of the flat in dispute and the amount of Rs.1,50,000/- was to be returned by

the respondent within 2 years as per clause 5 of the revised agreement but the same has not been returned till date. It was stated that entire payment of Rs.25,00,000/- stands made by the applicant/complainant to the respondent. With these pleadings it was prayed that the respondent may be directed to execute conveyance deed in favour of the complainant or in the alternative refund the amount of Rs 25 Lakhs.

c. Facts in Jagan Nath Prasad and Seema Rathour's case:-

The complainant(s) purchased a 3 bedroom flat no.502, Tower A 3, Himachal One Baddi, Tehsil Nalagarh, District Solan, Himachal Pradesh in the year 2013 for Rs.31,82,000/-. The agreement for sale was dated 23.03.2013. The full amount of Rs. 31,82,000/- was paid on 30.03.2013. It was further stated that the respondent has failed to execute the sale deed till now. With these pleadings it was prayed that the respondent may be directed to execute conveyance deed or in the alternative refund the amount received.

d. Facts in Rajinder Singh's case

That complainant purchased a 3 bedroom flat no.503, Himachal One Baddi, Tehsil Nalagarh, District Solan, Himachal Pradesh in the year 2009 for Rs.16,82,100/-basic price plus Rs.1,50,000/- car Parking i.e. total amount Rs.18,32,100/- vide agreement for sale dated 09.09.2009. The full payment of Rs.18,32,100/- was made on 31.07.2011 and No Dues Certificate in this regard was issued by Ahlawat Developers & Promoter. It was further stated that additional payment was made for Electricity Charges, EDC, Service Tax and Maintenance Security to the amount of Rs.2,00,000/- as demanded by the respondent vide Letter No. ADP/2012 dated 05.01.2012. With these pleadings it was prayed

that the respondent may be directed to execute conveyance deed or in the alternative refund of the amount was sought.

2. Reply by the respondent-

In all the cases primarily the reply is on the issue of non-execution of sale deed and it was stated that the list of documents required for approval under Section 118 of the H.P. Tenancy and Land Reforms Act, 1972 was circulated to all the complainants even before the filing of the complaints, however the documents were not supplied to the respondent till then. Further, it was stated in the replies that the respondent is the lawful owner of a piece and parcel of land measuring 27 bighas within the Revenue Estate of Village Malku Majra Tehsil Baddi, District Solan Himachal Pradesh, registered in the name of the respondent vide Sale Deed No. 894 and 897 dated 16.05.2007 in the Office of Sub-Registrar, Nalagarh Distt. Solan, Himachal Pradesh. It was further stated that the permission under Section 118 of Himachal Land Reforms and Tenancy Act and change of land use (CLU) has been duly obtained by the respondent vide letter dated 17.04.2007. With these pleadings the respondent prayed that the concerned competent authorities may be directed to execute the sale deed, after grant of permission under Section 118 of the Act *ibid*.

3. Arguments on behalf of complainants-

It was argued on behalf of the complainants in all the four cases that either the respondent be directed to execute sale deed(s) in each case or the amount paid by the complainant(s) be refunded. It was further their case that false representation was given by the respondent at the time of booking of the apartments that non himachalis can buy. It was further their case that except for the case of Gagan Raj in all the other three cases the complainants

are in physical possession but the possession in accordance with law has not yet been delivered for want of CC and execution of sale deed. It was their case that despite directions by the authority dated 12.09.2023 the permission under Section 118 of the H.P. Tenancy and Land Reforms Act, 1972 has not yet been granted.

4. Arguments on behalf of respondents-

The respondent admitted that agreement(s) have been executed inter se the parties in all the four cases. It was further argued that except for the case of Gagan Raj in all the other cases the physical possession of the apartments have been delivered. It was further argued that the complainants are not entitled for refund as according to section 18 of the RERD Act, 2016 an allottee can claim refund only if the promoter fails or is unable to give possession. Therefore no refund can be granted in these cases. It was further argued that in Deb Gopal Bhar case, Jagan Nath Prasad and Seema Rathour's case and Rajinder Singh's case the complainants have been enjoying the possession by renting out the same. It was further argued that none of the Authorities have rejected the cases of the parties for grant of permission under Section 118 of the Act ibid and there is no fault of the promoter if the permission is not being granted by the authorities. It was argued that as per the agreement for sale the allottee has undertaken to abide by all the laws, rules, regulations as applicable in the State of H.P. and therefore whatever requirement has to be complied by the allottees shall be binding on them and the allottees are required to obtain requisite permission u/s 118 of the HP Tenancy and Land Reforms Act. It was further argued that the advertisement of the promoter that non-himachali(s) can buy only states that they are

permitted to buy but they have to seek permission under the relevant laws applicable to the State of H.P. It was further argued that the promoter, has in all the cases where the allottee has submitted their document(s) complete in all respects submitted the cases further to the competent Authority and it is not the fault of the promoter if the competent Authority has not yet granted permission. It was further argued that the D.P Sood committee was formed to look into the Benami transactions. There is no Benami Land transaction in the present project. The present land is exclusively of the promoter and he after getting requisite approval has developed the project. It was further argued that in the D.P Sood Committee report there is no conclusion that the present promoter is a violator. Further, it was argued that there are no conclusive findings by any of the authorities that the promoter has violated the provisions of Section 118 while developing the aforesaid project in question.

5. Rebuttal arguments on behalf of complainant(s)-

It was argued that since no sale deed has been executed the complainant(s) are entitled for refund in all the aforesaid cases as it is their unqualified right.

6. Hearing in the cases and interim orders by the Authority

In the cases of Rajinder Singh and Jagannath Prasad, the authority directed on 03.09.2022, in the case of Debgopal Bhar on 22.03.2023, in the case of Gagan Raj on 29.10.2022 that the parties submitted their documents for seeking permission under section 118 of the HP Tenancy and Land Reforms Act, 1972. Subsequently, on 3 January 2023, 10 March 2023, and 29 March 2023, this Authority sent letter(s) to the District Collector Solan and a copy to the Principal Secretary (Revenue) requesting them to take necessary action for the grant of

permission under Section 118 of the Act *ibid*. On 11 April 2023, a second letter was sent to the Principal Secretary (Revenue) requesting that he may direct the District Collector Solan to expeditiously process Section 118 cases and submit them to the State Government for approval. On 1 June 2023, a second reminder was sent to the Principal Secretary (Revenue) regarding this matter. On 11 July 2023, an additional letter was sent to the concerned District Collector, instructing him to forward the Section 118 cases to the Principal Secretary (Revenue). In the case of Debgopal Bhar, a separate letter was sent to the District Collector on July 13, 2023. Despite these letters from the Authority, permissions U/s 118 have not yet been granted, and the cases are still pending with the District Collector/Principal secretary Revenue. Further vide interim order dated 12.09.2023 in all the aforesaid cases a request was made to the Principal Secretary (Revenue) to the Government of HP to grant permission under Section 118 of the HP Tenancy and Land Reforms Act, 1972 within two months and thereafter the promoter was directed to get sale deed executed within a period of one month. No development took place even after passing of the aforementioned interim order.

7. Findings of the Authority-

We have heard the parties and also perused the record pertaining to these cases. After going through the record this Authority is of the view that following are the points of consideration that require adjudication namely:-

- a. What is the total amount paid by complainant(s) to the respondent in lieu of sale consideration for the respective flat(s) in question?

- b. Whether the respondent is under obligation to get the sale deed executed in favour of the complainant(s) under Section 11(4)(f) of the RERD Act and the effect of non grant of permission under the provisions of Section 118 of the HP Tenancy Land Reforms Act, 1972 on the performance of this obligation?
- c. Whether in case, no sale deed is executed, the complainant(s) are entitled to refund of the amount paid in lieu of sale consideration along with interest and from what date?

8.a What is the total amount paid by complainant(s) to the respondent in lieu of sale consideration for the respective flat(s) in question ?

(i) In **Gagan Raj's case** the total sale consideration as per the agreement for sale dated 30th January, 2008 was Rs.17,51,400/- out of which a sum of Rs. 3,00,000/- was paid on or before the date of signing of this agreement. The agreement for sale dated 30th January,2008 was superseded by agreement for sale dated 14th November,2022 wherein the total of sale price of the apartment was mentioned as Rs.19,01,400/- instead of the earlier price and vide clause 1.10 of this agreement the respondent acknowledged the receipt of amount of Rs.19,01,400/- from the complainant. Therefore it can safely be concluded that the aforesaid amount of **Rs.19,01,400/-** was paid by the complainant to the respondent against the sale price of the flat in question. During the course of proceedings before this Authority an application for deletion of the name of Sh. Avtar Singh from the array of parties in the complaint was made. Along with the said application an affidavit was filed wherein it was stated that he has relinquished his share in favour of the

complainant Gagan Raj. The application is allowed and the name of Sh. Avtar Singh is hereby deleted.

(ii) In **Deb Gopal Bhar's** case total sale consideration for the flat in question was Rs.25,00,000/- as per the agreement for sale dated 30th September, 2015 and Rs.5,00,000/- was paid as advance on the date of execution of the aforesaid agreement. Further a sum of Rs 20 Lakhs was raised through loan from PNB by the complainant. The copy of the bank statement of PNB dated 30th July, 2022 is appended with the reply. In view of para 13 of the preliminary submissions and para 2 of the reply on merits of the reply dated 12.09.2022 filed by the respondent coupled with the receipt dated 12.01.2016 and statement of accounts dated 30th July, 2022 it is sufficiently clear that the complainant had paid an amount of Rs.25,00,000/- to the respondent as sale consideration for the flat in question. This fact is further also evident from the settlement agreement executed on 19.04.2023 wherein both the parties have undertaken that all payments qua consideration of the Flat have already been made and nothing is due or payable from either side. The case of the respondent is that he has paid EMI's for the complainant to the bank total amounting to Rs 7,83,143/-. From the bank statement of the loan account appended by the respondent himself only an amount of Rs 1,47,230/- stands proved to be paid by respondent in the loan account of the complainant. But on the other hand as per clause 34 of the agreement for sale dated 23rd November, 2019 the promoter had assured rentals of Rs 15,000/- up to the date of possession. After taking the possession it was agreed that the rentals shall be Rs12,000/- to Rs 15,000/- per month by leasing out the apartment. Both the parties are silent as to whether this amount

of assured rentals were paid or not till the date of possession. No prayer for the same has been made in the complaint as well. Even if the respondent has paid an amount of Rs 1,47,230/- in the loan account of the complainant this amount cannot be set off from the total sale consideration because the owner had also undertaken assured returns to be paid to the complainant. To balance the interest of both the parties and also in view of the settlement whereby both parties agreed that nothing is due and payable from either side, this Authority comes to the conclusion that the amount that is required to be refunded comes out to **Rs 25,00,000/-**.

(iii) In **Jagannath's case** the total sale consideration was Rs.31,82,000/- and the allottee had paid a sum of Rs.6,76,400/- at the time of signing of the agreement for sale dated 23rd March, 2013. Further, the tripartite agreement dated 30thMarch,2013 was executed between the complainant, respondent and the PNB wherein it was mentioned that sum of Rs. 8,07,000/- has already been deposited by the complainant with the respondent as initial payment and a sum of Rs. 23,75,000/- is to be paid directly by the bank to the respondent builder. This agreement has been signed by all the parties and is therefore binding on all of them. This fact of total payment of Rs 31,82,000/- having been paid to the respondent promoter is also evident for annexure A-4 a letter from PNB regarding housing loan. Further the receipt of this payment has also been admitted by the respondent in para 6 of the reply. Therefore, there is sufficient conclusive evidence to hold that the complainant had paid an amount of **Rs.31, 82,000/-** as sale consideration for the purchase of flat in question.

(vi) In **Rajinder Singh's case** the total sale consideration as per the agreement for sale dated 9thSeptember,2009 was Rs.16,82,100/- out of which the complainant had paid a sum of Rs.2,00,000/- at the time of signing of the agreement for sale. The receipt of this Rs.2,00,000/- is issued dated 12.10.2009 and has been appended in the case file as annexure -2 with the reply filed by the respondent. A sum of Rs.1,50,000/- was charged for car parking i.e. total amounting to Rs.18,32,100/- vide agreement for sale dated 09.09.2009. The respondent has issued receipt A-6 of full and final payment of Rs.18,32,100/- in respect of the flat in question. Further it was the case of complainant that for additional payment for Electricity Charges, EDC, Service Tax and Maintenance Security an amount of Rs.2,00,000/- as demanded by the respondent vide Letter No. ADP/2012 dated 05.01.2012 was also paid. No receipt of any sort qua this amount of Rs Two Lakhs has been placed on record. However an affidavit dated 22.05.2016 has been placed on record which has been signed by both the respondent as well as complainant wherein the respondent has undertaken that he has sold the Flat in question to the complainant for Rs 20 Lakhs and has received the full and final payment. Therefore there is adequate and substantial evidence on record that the respondent has admitted payment of **Rs 20 Lakhs**.

9.b Whether the respondent is under obligation to get the sale deed executed in favour of the complainant(s) under Section 11(4)(f) of the RERD Act and the effect of non grant of permission under the provisions of Section 118 of the HP Tenancy Land Reforms Act, 1972 on the performance of this obligation?

Primarily the main grievance raised by the complainant(s) is with respect to execution of sale deed. Section 11 of the RERD Act, 2016 enumerates the functions and duties of promoter. **Section 11(4) (f)** of the Act which reads as under:

Section 11 (4) (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;”

Further as per **Section 17(1)** which reads as under-

(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

As per **Section 19 (11)** which reads as under

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

Therefore in view of the provisions quoted herein above

the execution of conveyance deed of the apartments, plots or buildings is one of essential duties or obligations of the promoter and correspondingly it is the duty of the allottee also to participate in the registration of conveyance deed

Further as per **Section 34(f) & (g) of the RERD Act, 2016** which reads as under-

34. The functions of the Authority shall include—

(f) 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 thereunder;

(g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;

Under Section 34 (f) of the RERD Act, 2016 the Authority is duty bound to ensure compliance of the obligations cast upon the promoter under the RERD Act, 2016. Further the Authority as recorded in para supra has already in all the above cases passed interim directions to the parties directing them to apply for permission under Section 118 of the Act *ibid* to the concerned competent authority

10. In the present cases, the complainant(s)/allottee(s) and respondent/ promoter all are non- agriculturist(s). In that case the provisions of section 118 of the HP Tenancy and Land Reforms Act, 1972 are applicable to them. Section 118 of the HP Tenancy and Land Reforms Act, 1972 is as under-

Section 118. Transfer of land to non-agriculturists barred.-

(1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the time being in force, but save as otherwise provided in this Chapter, no transfer of land (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue) by way of sale, gift, will, exchange, lease, mortgage with possession, creation of a tenancy or in any other manner shall be valid in favour of a person who is not an agriculturist.

Explanation. For the purpose of this sub-section, the expression —transfer of land shall not include-

- (i) transfer by way of inheritance;
- (ii) transfer by way of gift made or will executed, in favour of any or all legal heirs of the donor or the testator, as the case may be;
- (iii) transfer by way of lease of land or building in a municipal area;

but shall include-

- (a) a benami transaction in which land is transferred to an agriculturist for a consideration paid or provided by a non agriculturist; and
- (b) an authorisation made by the owner by way of special or general power of attorney or by an agreement with the intention to put a non-agriculturist in possession of the land and allow him to deal with the land in the like manner as if he is a real owner of that land.

(2) Nothing in sub-section (1) shall be deemed to prohibit the transfer of land by any person in favour of,-

- (a) a landless labourer; or

(b) a landless person belonging to a scheduled caste or scheduled

tribe; or

(c) a village artisan; or

(d) a landless person carrying on an allied pursuit; or

(dd) a person who, on commencement of this Act, worked and continues to work for gain in a estate situated in Himachal Pradesh; for the construction of a dwelling house, shop or commercial establishment in a municipal area, subject to the condition that the land to be transferred does not exceed-

(i) in case of a dwelling house -500 square Meters; and

(ii) in the case of a shop or -300square meters: commercial establishment

Provided that such person does not own any vacant land or a dwelling house in a municipal area in the State.

(e) the State Government or Central Government, or a Government Company as defined in section 617 of the Companies Act, 1956, or a Company incorporated under the Companies Act, 1956, for which land is acquired through the State Government under the Land Acquisition Act, 1894 or a statutory body or a corporation or a board established by or under a statute and owned and controlled by the State of Central Government; or

(f) a person who has become non-agriculturist on account of-

(i) acquisition of his land for any public purpose under the

Land Acquisition Act, 1894 (1 of 1894); or

(ii) vestment of his land in the tenants under this Act; or

(g) a person who has become non-agriculturist on account of the acquisition of his land for any public purpose under the Land Acquisition Act, 1894 (1 of 1894); or

(h) a non-agriculturist who purchases or intends to purchase land for the construction of a house or shop, or purchases a built up house or shop, from the Himachal Pradesh Housing and Urban Development Authority, established under the Himachal Pradesh Housing and Urban Development Authority Act 2004, or from the Development Authority constituted under the Himachal Pradesh Town and Country Planning Act, 1977 or from any other statutory corporation set up any State or Central enactment; or

(h) a non-agriculturist with the permission of the State Government for the purposes that may be prescribed:

Provided that a person who is non-agriculturist but purchase land either under clause (dd) or clause (g)] or with the permission granted under clause (h) of this sub-section shall, irrespective of such purchase of land, continue to be a non-agriculturist for the purpose of the Act:

Provided further that a non-agriculturist who purchases land under clause (dd) or in whose case permission to purchase land is granted under clause (h) of this sub-section, shall put the land to such use for which the permission has been granted within a period of two years or a further such period not exceeding one year, as may be allowed by the State Government for the reasons to be recorded in writing to be counted from the day on which the sale deed of land is registered and if he fails to do so

or diverts, without the permission of the State Government, the said user for any other purpose or transfer by way sale, gift or otherwise, the land so purchased by him shall, in the prescribed manner, vest in the State Government free from all encumbrances.

(2).....

11. Therefore, as per clause 2(h) of Section 118 of the Act *ibid* a non- agriculturist has to apply for permission from the State Government. In the present cases, the apartment purchasers as well as the seller have applied for permission under section 118 of the HP Tenancy and Land Reforms Act, 1972 and this Authority has also requested the District Collector as well as to the Principal Secretary Revenue to grant permission expeditiously in the interest of all the parties i.e. allottees/ complainant(s) and the promoter. However, till today the permission under section 118 of the Act *ibid* as mentioned above has not been granted to the parties by the State Government. The allottees who have invested hard earned money to buy their home(s) are made to wait indefinitely for the grant of permission. The acquisition of title to the property is the most important and invaluable right in favour of the allottee(s). It is also one of the obligations cast upon the promoter, but grant of this permission is not in the domain of the promoter, therefore he cannot perform the said obligation till the permission under section 118 of the Act *ibid* is accorded in favour of the parties. If the

permission in the aforementioned cases is not granted then it is neither the fault of the promoter nor the allottee. The promoter got the project license from the competent authorities, after obtaining permission under Section 118 of the Act *ibid* at the time of purchase of the land, to develop a Real Estate Project. Only thereafter, the promoter constructed the said real estate project i.e. Himachal One. The respondent promoter has sold residential flats/ built up structure(s) to the non-agriculturist complainants. All the allottees herein have filed these complaints for execution of sale deeds, which are pending as the necessary permission under Section 118 of the Act *ibid* has not been granted. The allottees have to get ownership of their respective flats in spite of sale consideration already made by them to the promoter. Without getting the title, the said property is of no use to the complainant(s). The promoter cannot execute sale deed in favour of the allottees, till the permission under Section 118 of the Act *ibid* is granted by the competent authority. The administrative power vested with the State Government under Section 118 of the Act *ibid* has to be exercised in a time bound manner, in the interest of the home buyers. The delay being caused in the grant of permission is causing mental agony and injustice with the allottee(s). The State Government granted various permissions to the promoter like permission under Section 118 of the Act *ibid* and BBND A approved the building plans and

thereby permitted the project to be constructed/ executed and now at this stage by delaying the permissions u/s 118 in favour of home-buyers would cause grave injustice to the allottees/complainants. This Authority has already written letters to the Principal Secretary (Revenue) and the concerned District Collector for expediting the cases in the interest of the parties but nothing has happened so far and much time has passed by.

12. Therefore vide interim order dated 12.09.2023 again a request was made to the Principal Secretary to the Government of HP to grant permission under Section 118 of the HP Tenancy and Land Reforms Act, 1972 within two months and thereafter the promoter was directed to get executed sale deed within a period of one month.
13. No development took place even after passing of this order. What transpires during the course of hearing is that a Justice D.P Sood (Retd.) committee was formed to look into the violation if any committed by the promoters which basically was to find out the Benami transaction(s) and a report in the year 2012 was given but in the report there are no conclusive findings as to whether the present promoter is also a violator. The conclusive findings on this issue have not been passed by the competent authority exercising powers under Section 118 despite lapse of so many years. The result is that the allottees who have invested their hard earned

money have been left in lurch.

14. In these cases, the main prayer of the complainants is to get the sale deed executed in their favour. This can happen only if the permission is accorded u/s 118 of the HPT&LR Act by the state government. Therefore we feel that these are fit cases to further grant an opportunity to the parties to pursue their cases for grant of permission under Section 118 of the Act *ibid* and a period of three months is granted for the same. The period of three months shall commence from the date when the complainant submits his documents complete in all respects as per the queries raised/ document asked by the District Collector under Section 118 of the HP Tenancy and Land Reforms Act, 1972 to the promoter. If the complainant has already submitted documents pertaining to him/her then period of three months will start from date of this order. If no decision is taken by the State Government on this issue then the promoter is at liberty to approach any competent court to seek legal remedy for which a reasonable period of further three months is granted.

15.c. Whether in case no sale deed is executed the complainant(s) are entitled to refund of the amount paid in lieu of sale consideration along with interest and from what date?

Despite of the above if still no permission is accorded in that case this Authority is left with no other option but to order refund of the amount received which has been decided

individually in all the four cases as discussed above. The right of the allottee to seek refund is unqualified and unconditional as decided by the Hon'ble Supreme Court in the judgment of New Tech Promoter's case. However the complainants have to hand over the possession immediately when the refund is paid. The Honb'le Supreme Court in the case of **Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors MANU/SC/1056/2021** has held that

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

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

*24. **Section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both these provisions recognize right of an allottee two distinct remedies, viz., refund of the amount together with***

interest or interest for delayed handing over of possession and compensation.

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

The ratio of the aforesaid judgment is that conjoint reading of Sub-sections (1), (2) and (3) of Section 18 of the RERD Act, 2016, is that the allottee has the liberty, if he intends to withdraw from the project he is entitled to refund along with interest at rate as may be prescribed. Right to seek refund in terms of the aforesaid judgment is unqualified and is not dependent on any contingencies or stipulations thereof and is also regardless of unforeseen events or stay orders of the Court/Tribunal, which in either way is or are not attributable to the allottees. The circumstances because of which permission cannot be accorded for execution of sale deed in favour of the allottee can in no manner be attributable to the allottee therefore in terms of the judgment of New Tech Promoter no benefit of the same can be drawn by respondent in their favour.

16. In the **Gagan Raj's case** admittedly no possession has been delivered so far to the complainant. Therefore, the respondent is liable to refund of amount paid along with interest from the date various payments were made to him by Gagan Raj.
17. In the **Deb Gopal Bhar's case** it is surprising that no due date of possession or time for delivery of possession has been mentioned in the agreement for sale. However the reasonable time for delivery of possession is three years in view of the judgment of the **Hon'ble Supreme Court in Fortune Infrastructure versus Trevor D'Lima (2018) 5 SCC 442**. In para 15 of the preliminary submissions of the reply it has been claimed by the respondent that the complainant took possession of the unit in question in January, 2020 and the Flat was subsequently rented out by the complainant. The complainant has not rebutted the same by filing any rejoinder. However, we cannot take the bare statement of the respondent in his reply to be gospel truth in view of absence of any substantiating evidence and cannot comment on the actual date of taking the possession in view of lack of conclusive evidence. However it appears that the possession stands already taken. This Authority is of the view that a person who has taken possession without any protest and is enjoying the fruits of the same should be granted interest on refund only from the date this complaint was filed.
18. In **Jagannath's case** the possession was agreed to be delivered to the complainant within 10 days from the receipt of full payment. However, a possession letter dated 30th March, 2013 is appended with the complaint. But during the course of arguments it was admitted by the complainant that they have received possession in the year 2019. Further, minutes of meeting dated 13.11.2022 have been appended in the case file, which have been signed by both the

parties where in a settlement has been recorded and the complainant has admitted that possession of the Flat has been handed over to him on 7th September, 2021 and there are no dues pending towards the cost of the said Flat. This complaint was filed by the complainants on 11.01.2022. This Authority is of the view that a person who has taken possession without any protest and is enjoying the fruits of the same should be granted interest on amount to be refunded from the date the complaint was filed.

19. In **Rajinder Singh's case** the possession as per clause 14 of the aforesaid agreement was to be delivered within 30 months from the date of sanction of building plans or start of construction of tower in which booking was made. It was further undertaken in the said clause that the physical possession will be delivered after obtaining occupation certificate. Further vide annexure A- 8 a letter dated 5th January, 2012 possession was offered to the complainant by the respondent. Further another allotment cum possession letter dated 25th December, 2012 is on record wherein it was mentioned that possession of the apartment in question has been handed over to the complainant on 25th December, 2012. Further the fact of complainant taking the possession on 25th December, 2012 has also been admitted by the complainant in minutes of meeting held on 13.11.2022 which are on record and signed by the complainant as well as respondent. There are communications of the parties inter se in the case file which go to show that the Flat was rented out for a considerable period. This Authority is of the view that a person who has taken possession without any protest and is enjoying the fruits of the same should be granted interest on amount to be refunded from the date the complaint was filed.

20. Apart from the case of Gagan Raj in all the other cases possession has been delivered. Although the physical possession has been

handed over but the same is not in accordance with law, as it has been given before obtaining completion and occupation certificate. Further, if sale deed is not executed then this is a mere paper possession without any legal title. Therefore, Authority feels that if sale deed is not executed even after providing sufficient time to the promoter, then the promoter is not fulfilling its duty under section 17 of the RERD Act and has to refund money along with interest

21. Further on the issue of what interest is applicable in the present case. The RERD Act, 2016 is special Act and the rate of interest has been prescribed in the rules formulated therein as under:

***Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017-
Interest payable by promoter and allottee-***

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

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

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

The legislature in its wisdom under rule 15 of the rules, has determined the prescribed rates of interest. The definition of term 'interest' as defined under Section 2 (za) of the RERD Act, 2016 provides that rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation.—For the purpose of this clause—

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

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

The SBI marginal cost of lending rate (in short MCLR) as on date of passing of this order is 8.85 % hence the rate of interest would be 8.85 %+ 2 % [as per HP Real Estate (Regulation and Development) Rules, 2017] i.e. 10.85% per annum. Therefore, interest on the amount to be refunded shall be charged at 10.85% per annum at simple rate of interest. In each case the due date of accruing interest has been individually discussed.

22. Relief-

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

- a. A period of three months is granted to the promoter/allottees to pursue the cases for grant of approval under Section 118 of the HP Tenancy and Land Reforms Act, 1972 for the purpose of execution of conveyance deed. The period of three months shall commence from the date when the complainant submits his documents complete in all respects

as per the queries raised/ document asked by the District Collector under Section 118 of the HP Tenancy and Land Reforms Act, 1972 to the promoter or to the District Collector. If the complainant has already submitted documents pertaining to him/her then period of three months will start from date of this order.

- b. In case the competent authority does not grant permission under section 118 of the Act ibid within aforesaid three months then the promoter is at liberty to approach appropriate court of law for which a further period of three months is granted.
- c. The promoter is directed to get the sale deed executed in favour of the complainant within one month in case the permission under Section 118 is granted as per directions no. (a) or (b).
- d. If the permission is not obtained in terms of the directions within the period as mentioned above as per direction(s) no. (a) & (b) then the respondent promoter is directed to refund amount in all the above four cases in terms of the direction as mentioned below

(i) Sh. **Gagan Raj** is held entitled to refund of Rs Rs.19,01,400/- along with interest at the SBI highest marginal cost of lending rate plus 2 % i.e.10.85% p.a. from the date various payments were made by him to the respondent on the amount paid by him.

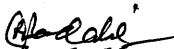
(ii) Sh. **Deb Gopal Bhar** is held entitled to refund of Rs 25,00,000/- along with interest at the SBI highest

marginal cost of lending rate plus 2 % i.e. 10.85% p.a. from the date of filing of this complaint.

(iii) Sh. **Jagan Nath Prasad and Smt. Seema Rathour** are held entitled to refund of Rs 31,82,000/- along with interest at the SBI highest marginal cost of lending rate plus 2 % i.e. 10.85% p.a. from the date of filing of this complaint.

(iv) Sh. **Rajinder Singh** is held entitled to refund of Rs 20,00,000/- along with interest at the SBI highest marginal cost of lending rate plus 2 % i.e. 10.85% p.a. from the date of filing of this complaint.

e. The refund along with interest is to be paid by the respondent promoter to the complainant within 60 days as per direction supra (d)


B. C. Badalia
MEMBER


Dr. Shrikant Baldi
CHAIRPERSON