REAL ESTATE REGULATORY AUTHORITY

HIMACHAL PRADESH

Complaint no. HPRERA2023013/C

In the matter of:

1. Vikram Vohra son of Madan Mohan Vohra, Resident of House No. AG/110, Nirvana Country, Village Tikri , Tehsil. Gurgaon, Haryana
2. Madhu Vohra Wife of Vikram Vohra, Resident of House no. AG/110,Nirvana Country , Village Tikri , Tehsil. Gurgaon, Haryana

.....Complainants

Versus

M/s Delanco Realtors Pvt. Ltd., 1E, Jhandewalan Extension, Naaz Cinema Complex, New Delhi, Delhi (110057), New Delhi, Delhi,110057

.....Respondent

Final date of hearing (Through Webex): 07.10.2023
Date of pronouncement of order: 09.11.2023

Present: Sh. Ravi Tanta Ld. Advocate along with Vikram Vohra for the complainant

Sh. Gautam Sood Ld. Advocate for the respondent

ORDER

CORAM: - Chairperson and Member

1. Brief facts of the Complaint:

The complainant(s) have booked a plot at Samavana-1, at Shakrila, Kuthar, Solan which is a DLF project under its subsidiary namely Delanco Realtors DLF Homes Panchkula Private Limited. The agreement for sale was executed on dated 21.09.2012 being

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agreement no.0073 vide which a sum of Rs.47,96,611/- stands paid to the respondent/ promoter by the complainant and his wife Smt. Madhu Vohra with scheduled date of delivery as alleged was 18 months. It was alleged that more than 9 years have passed from the due date of possession but the same has not been delivered. With these averments it was prayed that a refund of the amount i.e. Rs.47,96,611/- paid to the respondent along with statutory interest be paid to the complainant(s) from the date of the making of first payment by the complainant(s) to the respondent along with costs of Rs. 2 Lakhs as well as Rs. 10 Lakhs as compensation for mental & physical harassment suffered by the complainant(s) due to the in actions of the realtor.

2. **Reply:-**

In reply to the complaint, it was submitted that the respondent was and is still ready and willing to hand over the possession of the plot identified as Plot No.SK-HC4 to the complainant(s) strictly as per the terms and conditions of the agreement for sale and further are also ready and willing to the get the conveyance/sale deed registered in favour of the complainant(s). It was further submitted that it is the complainants who for the reasons best known to them are not coming forward to take the possession of the demised plot and are not getting the sale/conveyance deed registered in their favour, in spite of several requests and reminders having been made to the complainants in this regard by the respondents. It was further stated in the reply that respondent has already issued a letter of possession (Annexure R-1 with the reply) in favour of the complainant(s) on dated 10.04.2019 and the complainant(s) have not come forward to take the possession. It was further stated that there is no violation of any of the terms and

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conditions on the part of respondent and the company has strictly adhered and complied with the terms and conditions of the agreement for sale dated 21.9.2012. It was further stated that the present complaint is also not maintainable in view of Clause 44 of the agreement for sale which prescribes for settlement of disputes through arbitration. It was further stated that the respondent due to 'Force Majeure' circumstances could not deliver the possession to the complainants as per Clause 10 (a) of the agreement. It was further stated that the complaint is barred in view of Clause 9(a), 10 (d) read with Clause 33 and Clause 44 of the agreement for sale dated 21.9.2012. It was further stated that the present petition is time barred and has been filed and preferred beyond the prescribed period of limitation as the agreement vide which the rights of the parties are emanating was executed and entered into between the parties on 21.9.2012 and same could only have been enforced within 3 years from the date of execution of the same under Article 54 of the Limitation Act.

3. It was further stated that the respondent had purchased land for their project Samavana-I at Shakrila, Kuthar, P.O. Kuthar, Tehsil & District Solan, Himachal Pradesh. The respondent was registered with Himachal Pradesh Housing & Urban Development Authority (HIMUDA) as promoter and obtained permission from the State Government under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 vide sanction letter dated 02.04.2008 and got the License to develop the land on the terms and conditions mentioned therein. The permission has been granted to respondent vide the said letter for setting up 'Residential Colony' on the land purchased by the respondent. Extension period was also granted in

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favour of the respondent vide letter dated 20.10.2010. As per terms and conditions of License No. HIMUDA/LIC-36/2008 dated 20.12.2008 the respondent has been granted permission under the H.P. Apartment and Property Regulation Act, 2005 to set up a residential colony on the land measuring 123-17-08 bighas of land. It was further stated that the sale of land/plots or Villas or Apartments on the land purchased by respondent is concerned the same must be done strictly in accordance with the provisions of Section 118 of the H.P. Tenancy and Land Reforms Act, 1972 and the HP Tenancy and Land Reforms Rules 1975. In view of the above, it was stated that the complainants had personally undertaken in terms of the agreement for sale to obtain permissions and approvals from competent authority under applicable laws in force, at the time of execution of conveyance deed of the plot. It was further stated that as per clause 10(a) of the agreement for sale possession was to be delivered within 24 months from the date of application. On 30.01.2018 the respondent sent an offer of possession to the complainants and asked him to pay the balance amount and take possession of the plot. It was further stated that after development of the project and receiving of occupancy certificate qua the project, due to bar created by prevalent byelaws under the H.P. Tenancy and Land Reforms Act, 1972 the permission is not accorded and granted under the provisions of 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 to the allottees. As per the terms of the agreement for sale, the respondent company made an endeavour to complete the project subject to the permissions under local laws. However it was stated that as per clause 9 (a) of the agreement for sale if the respondent fails to handover possession and get the conveyance deed executed, the company will

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cancel the allotment and refund the amount paid by Applicant/ Petitioner. It was further stated that since the permission is not being accorded under the provisions of the HP Tenancy and Land Reforms Act, 1972 for execution of Conveyance deed in favour of Complainants, therefore under Clause 33 (g) of agreement for sale, respondent decided to terminate the agreement for sale and refund the amount paid by the complainant or adjust it in some other project.

4. It was further stated in the reply that the respondent had sent an email dated 16.06.2022 (Annexure R-4 with the reply) asking the complainants to give consent as to whether the amount of Rs. 47,96,611/- paid by the complainant(s) for the plot, be adjusted in some other project of their choice, subject to availability of plot/ Floor / unit or the same be refunded. It was further stated that the Hon'ble Supreme Court in a similar case between one of the allottees of the same project akin to that of the complainants and the respondent in Civil Appeal bearing no. 7260/2022 (Annexure R-5 with reply) accepted the settlement of the dispute on refund of the amount along with 7% interest. It was further stated that the present respondent is ready and willing to pay the remaining principal amount along with 7% interest to the complainants. It was further stated that the respondent had sent an email dated 16.06.2022 asking the complainant(s) to give consent as to whether the amount of Rs. 47,96,611/- paid by the complainant for the plot, be adjusted in some other project of their choice, subject to availability of plot / floor / unit or the same be refunded. With these pleadings it was therefore prayed that the present complaint may very kindly be dismissed with exemplary costs.

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5. **Rejoinder**

The contents of the reply were primarily denied. It was further stated the complainant(s) have never refused to take the possession of the demised plot rather were trying to contact and consult with the respondent to either deliver the possession or to refund the advance amount with interest at prevailing bank rate of interest, yet no relevant response was given to the complainants. It was further stated that as per the agreement for sale and payment plan the scheduled date of delivery of possession was in 24 months and the respondents have issued a letter of possession in favour of the complainant dated 10.04.2019 which is about 5-6 years later. It was further stated that there is inadvertent delay in issuance of letter of possession. It was further stated that the complainants are ready to put quietus to the matter only if the respondent will refund the amount i.e. Rs. 47,96,611/- paid by the complainants along with statutory interest to from the date of making of first payment to the respondents along with costs of Rs. 2 Lakhs as well as Rs. 10 Lakhs as compensation for mental & physical harassment suffered by the complainants due to the in action of the respondent.

6. **Arguments on behalf of complainant**-

It was argued on behalf of the complainant that the Supreme Court order being relied upon by the respondent is a settlement between the parties before the Apex Court and is binding, as a precedent on the Authority as well as the parties. It was further argued that the reply of the respondent is preliminary on two different aspects. First was that the possession of the flat was offered in the year of 2019 but the complainant never came forward to take the possession. Second aspect of the reply was that the complainant was required to take the

permission for getting the sale deed registered under Section 118 of the H.P. Tenancy and Land Reforms Act, 1972 which did not happen therefore there was delay in the delivery of the possession. Thirdly the respondent is ready to refund the amount received but on the interest @ 7%. It was further argued on the behalf of the complainant that whenever there is any default on the part of the allottees the respondent is charging exorbitant rate of interest however, when it comes to interest to be paid to the allottees the respondent does not want to give reasonable interest. It was further argued that the possession as per agreement for sale was to be delivered within twenty four months from the date of execution of the agreement. The respondent has failed to deliver the possession and has been sitting over the money paid by the complainant by paying nothing in return. It was further argued that by 21.09.2014 the respondent was to deliver the possession in accordance with agreement for sale. It was further agued on behalf of the complainant that respondent has virtually admitted that they have failed to deliver the possession as per the date mentioned. It was argued that the since there has been gross delay in delivery of plot therefore the claim of the complainant that respondent be directed to pay an interest @ 11 % is justifiable in present facts .

7. **Arguments on behalf of respondent-**

It was argued on behalf of the respondent that numerous settlements in similar matters have taken place before the Hon'ble Supreme Court. One such settlement is appended as Annexure R-5 with the reply. It was further argued on behalf of the respondent that they are ready and willing to return the amount received in lieu of the plot in question to the complainant along with the interest @ 7%. It was

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further argued on behalf of the respondent that on the similar line a settlement was arrived at by the Hon'ble Supreme Court. It was further argued that the interest @ 11% on the amount received claimed by the complainant is on a very high side. It was argued on behalf of the respondent that the amount being paid by the complainant is not disputed. It was further argued that as per section 35(2) of RERD Act, 2016 this Authority has been vested with the power of the Civil Court. In this background it was argued that as per section 34 of CPC, rate of interest @ 6% has been laid down by the Legislature, which is also applicable to the present fact. It was further argued that there is an 'Act' operating in the State of HP which is the HP Tenancy and Land Reforms Act, 1972, which regulates execution of sale deeds in favour of non agriculturist. It was further argued that as per the clause 10(a) of the Agreement for Sale if the allottee failed to take the possession within 6 months from the offer the respondent is competent to cancel the Agreement for Sale and refund all the money paid after deducting the earnest amount. It was further argued that as per clause 33 of the agreement for sale force majeure clause was applicable in the present fact and due to legislative statute, rule and regulations made by the Government or any Authority because of which the respondent was not able to deliver the possession. The permission of section 118 of the HP Tenancy and Land Reforms Act, 1972 was not accorded in order to get the sale deed executed and for transfer of the possession. It was further argued that as per the clause 44 of the Agreement for Sale any dispute between the parties have to be resolved by way of initiation of the Arbitration proceedings.

8. **Rebuttal argument on behalf of complainant**-

It was argued of the complainants that if the contention of the respondent i.e. interest paid on the invested amount @ 6% as per Section 34 of the Court Civil Procedure is to be believed then it is not understandable as to why the respondent paid 7% interest before the Hon'ble Supreme Court that too in a settlement when the statute itself prescribed the rate of 6 %. Further it was also argued that in the agreement for sale executed between the parties it was mentioned and also it was represented to the complainant that the respondent has necessary approvals and permissions under Section 118 of the HP Tenancy and Land Reforms Act, 1972.

9. Conclusion/ Findings Of The Authority:-

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

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

10. Findings of the Authority-

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

The present project is a RERA registered project. The Authority has gone through the record of the case and heard the arguments and is of the considered view that an agreement for sale was executed between the parties on 21st September, 2012 and the complainant(s) were allotted plot no. 4 Block no, SK-HC4 having area 278.51 sq mts

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for a total sale consideration of Rs 66,61,959.2/- at Samavana-I at Shakrila, Kuthar, P.O. Kuthar, Tehsil & District Solan, Himachal Pradesh. A sum of **Rs.47,96,611/-** has been paid by the complainants to the respondent company. The **receipts** qua the aforesaid payments have been appended with complainant as annexure C-III (5 pages). Further the customer ledger has also been appended by the complainants which further proves the receipt of the aforesaid money in lieu of sale consideration by the respondent. The receipt of the aforesaid amount has also been admitted on behalf of the respondent during the course of arguments. Further as per clause 10(a) of the afore mentioned agreement for sale execution of which is admitted by both the parties it is mentioned that the respondent shall handover the possession of the said plot with in twenty four months from the date of application. The relevant clause 10(a) is as under-

> *" 10(a) Schedule for possession*
> *The company shall endeavour to offer possession of the said plot, within Twenty four (24) months from the date of the application subject to timely payment by the allottee of Total Price, Stamp Duty, Govt. charges and any other charges due and payable according to the payment plan/ this agreement."*

Admittedly the possession as per clause 10(a) was not handed within the time mutually agreed upon between the parties as per the agreement for sale.

11. The defence of the respondent is that they were and are ready and willing to hand over the possession of the demised plot to the complainants and are also ready and willing to the get the conveyance/sale deed registered in favour of the complainant. It was further the defence of the respondents that they have already issued a letter of possession (Annexure R-1 with the reply) in favour of the complainant on dated 10.04.2019 yet the complainants did not take

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possession. It was further the defence of the respondents that due to 'Force Majeure' circumstances possession of plot could not be delivered as per Clause 10 (a) of the agreement. It was further the contention that since the permission is not being accorded under the provisions of the HP Tenancy and Land Reforms Act, 1972 for execution of Conveyance deed in favour of Complainants, therefore under Clause 33 (g) of agreement for sale, respondent decided to terminate the agreement for sale and refund the amount paid by the complainants or adjust it in some other project. It was further stated that the Hon'ble Supreme Court in a similar case between one of the allottees of the same project akin to that of the complainants and the respondent in Civil Appeal bearing no. 7260/2022 (Annexure R-5 with reply) accepted the settlement of the dispute on refund of the amount along with 7% interest and the present respondent is ready and willing to pay back the principal amount along with 7% interest to the Complainants.

12. From the version of the respondent what transpires is that since the permission under Section 118 of the H.P. Tenancy and Land Reforms Act, 1972 is not accorded by the competent authorities then as per Clause 9 (a) of the agreement for sale the respondent is willing to refund the amount received at the rate of 7%. Further as per letter dated 14th June, 2022 sent by respondents to the complainant it transpires that the respondent has admitted that due to bar created by byelaws under H.P. Tenancy and Land Reforms Act, 1972 the permission in the said project is not being accorded to the allottees to get executed conveyance deed in their favour and the respondents are ready and willing to refund the amount received. Thus the respondent has admitted that he is ready and willing to refund and the only issue

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left is qua the rate of interest. The arguments of the respondent are that in a similar case the matter was settled in the Hon'ble Supreme Court at 7% interest. However, this settlement before the Hon'ble Supreme Court cannot be taken as a precedent. Here we would like to clarify that as per the HP Tenancy and Land Reforms Act 1972, both the parties were required to apply for getting the permission accorded u/s 118 of the Act. It appears that the government did not accord the permission. There is no fault of the respondent, if the State Government did not accord the permission. Therefore, up to some extent the condition of the force majeure do apply in this case. However, the respondent has not given conclusive details about not getting the permissions and reasons behind that. Further he has already shown his willingness to refund the amount with an interest @ 7% to the complainant.

13. Thus, what emanates from the record is that the respondent was required to offer the possession of the plot to the complainant as per the terms and conditions of the agreement, failing which the complainant will be entitled to claim the remedies as provided under section 18 of the RERD Act 2016. The delay is writ large and the respondent is rather callous in its approach to complete the project or deliver the possession of the plot with in the time agreed.

14. Section 18 (1) of the RERD Act, 2016 reads as under

Section 18 Return of amount and compensation.

(1) If the **promoter fails to complete or is unable to give possession of an apartment, plot or building**,—

(a) **in accordance with the terms of the agreement for sale** or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the **allottee wishes to withdraw** from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building,** as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Further the Honb'le Supreme Court in the case of **Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and OrsMANU/SC/1056/2021**

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

23. Correspondingly, Section 19 of the Act spells out "Rights and duties of allottees". Section 19(3) makes the allottee entitled to claim possession of the apartment, plot or building, as the case may be. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of

the agreement, it makes the allottees entitled to claim the refund of amount paid along with interest and compensation in the manner prescribed under the Act.

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

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

The ratio of the aforesaid judgment is that conjoint reading of Sub-sections (1), (2) and (3) of Section 18 of the RERD Act, 2016, is that the allottee has the liberty, if he 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 allottee. The circumstances because of which permission cannot be accorded for execution of sale 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. The respondent otherwise have grossly delayed in the delivery of possession as the due date was in 21.09.2014.

15. The Hon'ble Supreme Court in case ***"Pioneer Urban Land and Infrastructure Ltd. versus Govindan Raghavan, 2019 SCC Online SC 458,*** has held that the **inordinate delay in handing of the flat clearly amounts to deficiency of service**. The Apex Court further held that a person cannot be made to wait indefinitely for possession of the flat allotted to him and is entitled to seek refund of the amount paid by him."

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

> "10.The facts on record clearly indicate that as against the total consideration of Rs.8.31 crores, the Respondents had paid Rs.8.14 crores by November, 2013. Though the Appellants had undertaken to complete the villa by 31.12.2014, they failed to discharge the obligation. As late as on 28.05.2014, the Revised Construction Schedule had shown the date of delivery of possession to be October, 2014. There was, thus, total failure on part of the Appellants and they were deficient in rendering service in terms of the obligations that they had undertaken. Even assuming that the villa is now ready for occupation (as

asserted by the Appellants), the delay of almost five years is a crucial factor and the bargain cannot now be imposed upon the Respondents. **The Respondents were, therefore, justified in seeking refund of the amounts that they had deposited with reasonable interest on said deposited amount. The findings rendered by the Commission cannot therefore be said to be incorrect or unreasonable on any count.**"

17. As per law laid down by the **Hon'ble Supreme Court in Fortune Infrastructure versus Travor Dlima (2018) 5 SCC 442** wherein it was held that a person cannot be made to wait indefinitely for the delivery of possession of Flat and possession of the Flat should have been given within a reasonable time period of three years. It was further held that:

> "when no time of possession is mentioned in the agreement the promoter is expected to hand over the possession within reasonable time and the period of three years is held to be reasonable time."

18. Further on the contention of the respondent that the dispute is to resolve taking recourse to arbitration by placing reliance on Clause 44 of the agreement for sale is concerned. As per Law laid down in **Emaar MGF Land Limited vs. Aftab Singh (10.12.2018 - SC) : MANU/SC/1458/2018** it was held that complaints filed under Consumer Protection Act and other special laws could also be proceeded with despite there being any arbitration agreement between parties. Therefore RERD Act, 2016 being special law the complaint on the basis of the same is held to be maintainable.

19. Therefore to conclude the respondents have failed to deliver the possession of the plot and execute registered conveyance deed in terms of Section 11(4)(f) read with Section 17 of the RERD Act, 2016 within the time agreed upon and stipulated in the agreement for sale

and are in default even till today. Respondents by doing so have violated the provisions of Section 11(4)(a), 14, 17, 18 and 19 of the RERD Act, 2016.The complainant is seeking refund and section 18 provides that where an allottee intends to withdraw from the project, he shall be paid by the promoter, return of amount received in respect of the said unit along with interest at as may be prescribed. This analogy of the section has been upheld by the Hon'ble Supreme Court in the case of New Tech Promoter.

20. Further on the argument of the respondent that interest @ 6% as prescribed under Section 34 of the Code of Civil Procedure, 1908 shall be payable in the present case. 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 rate of interest so determined by the legislature, is reasonable and if said rule is

followed to award interest, it will ensure uniform practice in all the cases. The definition of term 'interest' as defined under Section 2 (za) of the RERD Act, 2016 provides that rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *Section 2 (za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation.—For the purpose of this clause—*
>
> (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

21. The SBI marginal cost of lending (in short MCLR) as on date of passing of this order is 8.7 % hence the rate of interest would be 8.7 %+2 % i.e.10.7% per annum. Therefore, interest on the return of the amount received by respondent qua the plot in question shall be charged at 10.7% per annum at simple rate of interest.

22. **RELIEF:-**

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

i. The Complaint is allowed. The respondent promoter is directed to a refund of Rs. 47,96,611/- (Forty Seven Lakhs Ninety six Thousand Six Hundred and Eleven only) along with interest at the SBI highest marginal cost of lending rate plus 2 % as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules, 2017. The present highest MCLR of SBI is 8.7 % hence the rate of interest would be 8.7 %+2 % i.e. 10.7%. It is clarified that the interest shall be payable by the respondent from the dates on which different payments were made by the complainant(s) to the respondent till date the amount and interest thereon is refunded by the respondent.

ii. The refund along with interest is to be paid by the respondent promoter to the complainant within 60 days from the date of passing of this order.

iii. For seeking compensation the complainants are at liberty to approach the Adjudicating Officer under Section 71 of the Act Ibid.

B.C. Badalia
MEMBER

Dr. Shrikant Baldi
CHAIRPERSON