REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH

Complaint no.HPRERA2024004/C

In the matter of:-

1 Sh. Dalip Kalra son of Late Sh. Madan Mohan Kalra, resident of House no.1139, sector 7 Karnal, Haryana.

2 Smt. Karuna S Kalra wife of Sh. Dalip Kalra, resident of House no.1139, sector 7 Karnal, Haryana.

.....Complainant(s)

Versus

1 Ahlawat Developers and Promoters, Khasra no. 602-608,610-611, Malku Majra(Opposite Dr. Reddy Laboratories) Tehsil Baddi, Solan, Himachal Pradesh 173205 and also office at DSS 320, 1st floor, Sector-9, Panchkula-134109

2 Jagjit Singh Ahlawat,(Partner), Ahlawat Developers and Promoter, resident of house no. 46, sector 10, Panchkula 13409 Haryana

..... Respondent(s)

Present:- Ms. Manisha Maggu Ld. Counsel for complainant(s)
Ms. Neha Gupta, Ld. Counsel along with Sh. Jagjit Singh Ahlawat respondent Promoter Himachal One Baddi

Date of hearing:15.05.2024
Date of pronouncement of order:14.06.2024

Order
Coram: Chairperson and Member

Facts of the complaint-

1 Facts in brief giving rise to the present petition are that the complainants applied for an apartment in the project "Himachal One" for apartment no 203, measuring 1575 sq ft. (super area) on 2nd floor in tower no A-3, situated within revenue estate of

village Malku Majra, Pinjore, Nalagarh NH 21 A, Tehsil Nalagarh, Distt Solan (Himachal Pradesh) developed and promoted by Ms Ahlawat Developers and Promoters (hereinafter referred to as respondent). The complainants made a payment of Rs.1,85,000/- and Rs. 1,87,500/- vide cheque no. 229247 dated 06.04.2006 as booking amount and the respondent issued receipt dated 17.07.2008 confirming the said amounts. Further as demanded by the respondent, the complainant made further payments of Rs.5,09,026/- vide cheque no. 950286 dated 28.07.2008, Rs.2,50,000/- vide cheque no. 118044 dated 15.07.2008 totalling to Rs. 10,09,026/-. Copies of the above said payment details made by the complainant and a copy of receipt No.147 dt.10.09.2008 issued by the respondent is attached with the complaint. The respondent shared a draft of agreement for sale mentioning the unit number 303 in tower no A-2 and thereafter, the respondent shared another draft of the agreement for sale dated 18.08.2008 in which allotted unit number has been changed to 203 in tower no A-1 and also admitted the receipt of Rs.13,81,526/- from the complainant towards the allotted unit. Both these agreements were alleged to have been duly signed by the complainants and handed over to the respondent, but the respondent never shared the signed copy of the apartment buyer agreement with the complainants. On the receipt of the payments as mentioned above, the respondent sent an email dated 09.09.2008 confirming that the possession would be offered by June 2009 for the flat no. 203. The complainant further made a payment of Rs.3,50,000/- to the respondent. A copy of the receipt dated 24.12.2008 issued by the respondent is attached with the complaint. The complainants followed up for knowing about the status of

project development works time to time. The respondents in revert sent various emails confirming the status of the project and date of handing over the possession by August/ September 2009 of the allotted unit. Respondent also acknowledged the receipt of Rs.17.31 Lakh in one of his emails. Copies of the email dt.09.02.2009, 09.05.2009 and 18.06.2009 are attached herewith with the complaint. The complainant made additional payment of Rs.2,05,000/- towards the allotted unit and the same is duly acknowledged by the respondent vide email dated 19.10.2010, copy of which is on record and further the complainant made a payment of Rs. 2,88,037/- to the respondent by writing a letter dated11.12.2012 to the bank concerned. A copy of the said letter & account Ledger reflecting that payment made to the respondent is attached with the complaint. In the year 2020, the respondent purposed to sign another agreement for sale dated 15.01.2020 which was sent in original duly signed and stamped by the respondent. In the aforesaid agreement for sale in clause 6 of the said agreement it was mentioned that additional payment of Rs.50,000/- is to be made by the allottees for the completion of pending work to their respective flats and the same will be returned by the builder within 2 years. The complainant never signed the said agreement because of respondent's malafide intention to avoid the legal liability for delay and not making offer of possession of the allotted unit. Accordingly, the complainant made further payment of Rs.20,000/- and Rs.30,000/- vide cheque(s) no.463549 dt.24.12.2019 and 463550 dt.10.01.2020 to the respondent as demanded by the respondent for the completion of pending works. A copy of the same is attached as Annexure C 10 with the complaint. In the year 2020,in order to buy more

time and to mislead the complainants, the respondent sent two letters dated 09.01.2022 & 14.04.2022 stating that in order to execute conveyance deed, permission U/ Sec 118 of the Himachal Pradesh Tenancy and Land Reforms Act,1972 is to applied and submitted to them. It is important to highlight that this documentation requirement were never asked by the respondents till the dates of these letters. In fact, this requirement must have been completed by the due date of offer of possession i.e.2009. Also, the respondent didn't have Occupancy Certificate/ Completion Certificate till today. The complainant made a total amount of Rs. 22,74,563/- to the respondent till date towards the allotted unit. In one of the recent complaint no. HPRERA2022021/C, the Authority has also observed that the completion/occupancy certificate is yet to be issued by the Competent Authority for the project. The said observation has been made by the Authority on the basis of report submitted by the Competent Authority. Now, that there has been delay of more than 15 years in offering possession of the allotted unit by the respondent, the complainants have lost all faith on the respondent's capabilities to deliver the possession of the apartment in near future and the complainant has decided to withdraw from the project as per provisions U/Sec 18(1) of the RERD Act, 2016. With these pleadings it was prayed that the respondents may be directed to refund the paid amount at earliest along with interest. It was further prayed that the respondent may be directed to pay an amount of Rs. 5 lakh as compensation as the complainants had to come from United States number of times for follow up and also on account of mental harassment caused to the complainants.

2 **Reply on behalf of the respondents-**

The complainant who is based in USA, is in possession of the property in question since 15.01.2020. The Complainant No.1 – Mr. Dalip Kalra had approached the Respondent No.2 in the year 2006 and showed his interest in purchasing a property in the project "Himachal One" at Pinjore Nalagarh Road, Malku Majra, Tehsil Baddi, District Solan, Himachal Pradesh of the Respondent No.1 Firm. An agreement for sale was prepared and sent to the Complainant who is based in USA. As per the agreement, the Complainant No.1 was the only intending purchaser / allottee and he was allotted Flat No 303 in Tower A-2 comprising of super area 1,575 sq. feet approximately. That thereafter, another agreement for sale dated 18.08.2008 whereby the name of the wife of the Complainant was added and the flat number was also changed from 303, Tower A-2 to Flat No 203, Tower A-3 of the housing project. The Complainant No.1 between the period 04.06.2006 to 10.01.2020 has paid a total amount of Rs 22,74,563/- to the respondents towards the price of the said unit in question. The complainant No.1 has made the above payments in 10 different transactions over a period of 14-15 years to the respondents. The complainant is in possession of the unit no 203 in tower A-3 since 15.01.2020. The complainant No.1 had reached out to the son of the respondent No.2 and sought certain alterations and modifications in the allotment of the unit allotted. The Complainant was sent two drafts of agreement for sale but for the reasons best known to him he had not signed any of the two agreements. The Complainant was allotted Unit No. 203 in Tower A-3 instead of Unit No 303 in Tower A-2 allotted by the Respondent No.1. The complainant No.1 requested the son of

the respondent No.2 to prepare a new agreement for sale mentioning that the previous agreements were old contracts made by the respondent No 1 and whatsapp chat is also appended. The Complainant also asked the son of respondent to mention the sum of Rs 50,000/- given by the complainant to complete pending work in the Flat No 203, Tower A-3 in the new agreement for pending work - electrical, sanitary, whitewash, windows etc. The new agreement for sale dated 15th January 2020 was prepared at the behest of Complainant No 1 and the Clause (d) as above was incorporated in the said agreement dated 15.01.2020. The Respondent gave possession of the flat No 203, Tower A-3 to the Complainant on 15.01.2020 along with the keys of the flat after completing the pending work as mentioned in the agreement for sale dated 15.01.2020. Apart from the payment of Rs 50,000/- made by the complainant, he also paid an additional amount of Rs 2,50,000/- to the carpenter / contractor for the woodwork and other interiors after taking possession of the flat No 203, Tower A-3 on 15.01.2020. As per the own statement of the Complainant through Whats App ' I bought 2.5 lac worth of wooden sheet stuff. That guy ran away. Sushil is stealing the stuff and selling', the whatsApp chat is appended with the reply. The Complainant has not signed any agreement for sale despite the fact that 3 agreements were sent to them as also reflected in the complaint filed by the Complainant with the Hon'ble Authority at Page 15, Page 31 and Page 54 of the Complaint. The Complainant No.1 is in possession of the property since 15.01.2020 which is evident from the fact that he spent an additional amount of Rs 2,50,000/- on the woodwork, paint of his choice on the doors etc which could have commenced only after he had taken

possession of the Flat No 203, Tower A-3. The Complainant was following up with the son of the Respondent No.2 to get the progress of the wood work and paint in flat No 203, Tower A-2. Further the complainant despite taking possession has failed to give requisite documents for seeking permission in terms of section 118 of HP Tenancy and Land Reforms Act, 1972. The Respondent No 2 vide letter dated 09.01.2022 had called upon the Complainant No.1 to provide all the necessary documents required for individuals/ allottees who do not have a agriculturist certificate of the State of Himachal Pradesh to seek permission under Section 118 of the Act ibid. The reminder for the same was again sent on 14th April 2022 through speed post and the copies of these letters have been appended. The complainant wilfully has failed to pay the electricity dues to HPSEB despite repeated reminders. The Respondent No.2 vide his letter dated 21.07.2022 had informed the Complainant that he is required to obtain electricity connection on his name directly from the HP State Electricity Board after clearing all the pending dues and obtaining No Dues Certificate from the builder/developer in respect of Maintenance Charges/Electricity Charges after taking possession. The Complainant No.1 was also informed that he is required to make payment of the outstanding amount @ Rs 1000/- per month from the date of possession as the total outstanding dues of Rs 12,42,664/- (Rupees Twelve Lacs Forty Two Thousand Six Hundred and Sixty Four Only) are payable by 27.07.2022 to HPSEB towards electricity consumption by the allottees. It was further alleged that the complainant has wilfully failed to clear the maintenance and electricity charges despite repeated reminders. The respondent no.2 vide letters dated 21.08.2022. 27.07 2023.

19.09.2023 and 02.11.2023 had informed the Complainant that in terms of Clause 19(6) of the HP RERA Act, 2016 every allottee who has entered into an agreement for sale to take an apartment, plot or building shall be responsible to make necessary payments in the manner and within time frame as specified and shall pay at the proper time and place, the share of registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges if any. Accordingly, requests were made by the respondents through the above mentioned letters calling upon the complainants to pay the pending dues towards maintenance / electricity charges at the earliest. The complainants have received an amount of Rs 8,00,000/- from the respondent no 2 which he is liable to refund as the same has been received illegally. The Respondent No 2 has paid an amount of Rs 6,50,000/- to the Complainant No. 1 on 10.07.2017 through RTGS. An amount of Rs. 1,50,000/- was again paid through Demand Draft No 00000176 dated 14.07.2017 drawn on HDFC Bank. The respondents are entitled to recover this amount from the Complainant. Further it was alleged that it is well known fact that there is no requirement of CC/OC for applying for permission under Section 118 of the HP Tenancy and Land Reforms Act. It was further alleged that the CC/OC dates are never linked to the validity of the RERA registration of the Project and the same is valid up to 03.03.2025.The Complainant has been given possession on 15.01.2020 and he has started the woodwork/other interior jobs only after taking the possession of the flat for which he paid/spent and additional amount of Rs 2,50,000/- for the wood work/other interiors. With these facts it was prayed that the Hon'ble Authority may

dismiss the present complaint with exemplary costs and to pass an order directing the Complainant to refund the amount of Rs.8,00,000/- with interest @ 10.85 % from the date of receipt of the payments.

3 **Rejoinder on behalf of the complainants-**

It is admitted that the complainants had booked a residential flat in the year 2006 in the project Himachal One. However, it is denied that they booked flat No.303 in Tower A-2, which was later on changed to Flat No.203 Tower A3. The payment of amount of Rs.22,74,563/- has been admitted by the respondents and otherwise it is also a matter of record. It was denied that the Complainants are in possession of flat No.203 in Tower A3 since 15.01.2020 and it is also denied that any agreement was executed on 15.01.2020 at the instance of the complainant No.1. Even the perusal of the Whats-app chat relied upon by the respondents nowhere shows that the possession was ever delivered to the complainants. Rather, it is clear that the complainant no. 1 is time and again inquiring about the status of the flat and even on 26.11.2021, the complainant requested to give update of his flat and also for sending of pictures. The respondents cannot take benefit of their own wrong in not delivering the possession despite of the fact that the complainants paid sum of Rs.50,000/- and Rs.2,50,000/- for completing the pending work on request of the respondents, who were in dire need of money as is apparent from the whats app chat relied upon by the respondents themselves. Otherwise also, the respondents have not obtained CC/OC for the project till date as has been observed in other complaint no.HPRERA2022021/C adjudicated by this authority on basis of report of the competent authority. This fact is very

much relevant in the present case as it proves that the respondent is not in a position to offer possession of the allotted unit till date. The alleged allotment-cum-possession letter is a forged and fabricated document prepared by the respondents of their own as it does not bear the signatures of any of the complainant. Had the possession been delivered to the complainants as alleged by the respondents, it should have signatures of any of the complainants therein as physical possession is delivered in person and not otherwise. Otherwise also, without CC/OC no valid and legal possession of the flat could be offered to the complainants by the respondents. The complainants were not bound to furnish any such documents when the respondents had failed to deliver possession to the complainants and the unit in question has not been completed till date. Rather, under such circumstances, the complainants were entitled to withdraw from the project and to seek refund of the sum paid along with interest under the provisions of the RERD Act and rules framed there under. The complainants were not bound to pay any electricity and maintenance charges when possession was never delivered to them. The complainants deny the receipt of amount of Rs.8,00,000/- as alleged by the respondents. The respondents have not mentioned as to why this amount was paid by them to the complainants. Even the document relied upon by them in this respect is also not legible.

4 **Arguments on behalf of the complainant**-

It was argued that the booking amount for buying the flat in question was paid on 6th April,2006. It was then argued that Rs. 22,74,563/- is the total sale consideration paid by the complainant to the respondent which is admitted by the respondent. The first agreement for sale appended with the

complaint is undated and the second agreement is of dated 18.08.2008. It was further argued that the signed copies were submitted with the respondent and therefore the copies of the agreement are not available with the complainant. The third agreement that was shared with us was on 15th January, 2020 and this third agreement is not signed by the complainant. However, it has been signed by the respondent. As per the Annexure C-4 page 46 an email dated 9.9.2008 whereby the respondent has stated that they were to deliver the possession by June 2009. It was further argued that no occupation and completion certificate has been issued and therefore the possession has not been delivered till this date. It was further argued that in similar matters decided by this Authority in Baljit Singh Sidhu vs Ahlawat Developers and Manisha Chadha vs Ahlawat Developers in which it has been clearly mentioned that the respondent/promoter has not obtained any completion or occupation certificate as common services are still in complete. It was further argued that in a case decided by this Authority i.e. Parul Singal vs Ahlawat Developers and Promoters limited it was decided by this Authority that where the builder has not obtained occupancy and completion certificate he cannot claim the project to be completed. It was further argued that the respondent has failed to deliver the possession even after lapse of the more than seventeen years. It was prayed that the total amount paid by the complainant may be refunded along with statutory interest. It was further argued that the actual date of delivery of possession has not been mentioned anywhere. However, as per Annexure C -4 an email dated 9.9.2019 the respondent had agreed to deliver the possession by June, 2019. It was further argued that as per the Section 18 the

complainant is withdrawing from the project and is entitled for refund of the entire amount along with statutory interest.

5 Arguments on behalf of the respondent-

It was argued that the complainant is in possession of the property which fact is apparent from the photographs appended with the court file which clearly show that complete wood work in the flat has been done and the respondent has also placed on record whats app chat of the parties which took place between the son of the respondent no. 2 and the complainant which clearly shows that the complainant is in the possession of the flat since the 15th January,2020. It was further argued that the complainant has paid an additional amount of Rs. 50,000/- to the respondent and also another sum of Rs. 2,50,000/- to the carpenter to get the interior wood work done of the flat 203. The receipt of Rs. 22,74,563/- has been admitted. It was further argued that if the keys have been taken by the complainant and the builder has permitted him to do the woodwork that itself means that he is in the possession of the flat. It was further argued that the promoter had been calling upon the complainants to get executed the conveyance deed after availing permission under Section 118 of the H.P Tenancy and Land Reforms Act, 1972. However, the complainants did not come forward to do so. It was further argued that the best possible solution for this case is that the complainant should be called for to sign a final agreement for sale and also apply for permission under Section 118 of the Act ibid and also start paying maintenance and electricity charges. It was further argued that the case of Himachal One Project comes under the deemed completion concept.

6 Rebuttal Arguments-

In the rebuttal Ms. Manisha Maggu Ld. Counsel has submitted that as per Annexure C-9 agreement for sale dated 15th January, 2020 clause 14 wherein it has been clearly mentioned that the possession shall be handed over after obtaining certificate of occupation from the competent Authority. It was further argued that with regard to whats app chat on dated 25.11.2021 the complainant has asked what is the status of the my flat which goes to show that the possession is yet not delivered. It was further argued that the photographs appended with the reply are much belated and no such photographs of the time when possession was due showing that flat was ready were ever appended with the reply. It was further argued that on the basis of the judgment of Fortune Infrastructure passed by the Hon'ble Supreme Court the possession was required to be given within three years from the date of allotment and in the present case the booking of the flat and its allotment to the complainant took place in the year 2006 and therefore the last date for delivery of possession was up to the year 2009.

7 **Conclusion/ Findings of the Authority:-**

We have heard the arguments advanced by both the Ld. Counsels for the complainants & the respondents 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 point of determination that requires the consideration and adjudication, namely:-

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

8 **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. It is admitted fact that complainants booked a residential flat in the year 2006 in the project "Himachal One'. It is disputed question as to whether initially the complainant booked Flat no. 303 in Tower A3 and the same was later on changed to Flat no. 203 in Tower no. A-3. There are three agreement for sale(s) in the present file. The first agreement is unsigned and does not bear any date. However the perusal of the same shows that the respondent is the same but the allottee in this agreement was only Dalip Kalra and the Flat allotted was Flat no. 303 in 3rd Floor in Tower A2. Thereafter there is another agreement which is dated 18th August, 2008. However in this agreement both the complainants herein are the allottees but the Flat no. is 203 in Second floor in Tower A-2. Thereafter there is another agreement dated 15th January, 2020 which is signed by the respondent. There are no signatures of the complainants therein but they have filed these documents along with their complaint. In this agreement the complainants are the allottees and flat details are same as given in the second agreement discussed earlier i.e. flat no. is 203 in second floor in Tower A-2. Therefore it can safely be concluded that the complainants were finally allotted flat no. 203 in second floor in Tower A-2 in project Himachal One.

9 The total sale consideration paid by the complainant to the respondent in lieu of the flat in question is Rs 22,74,563/- which fact has been admitted by the respondent in para one of their reply. It is settled law that fact admitted need not be proved and it can safely be concluded that total sale consideration paid in lieu of flat no. 203 was Rs 22,74,563/-.

10 The due date of possession as per clause 14 of the first agreement which is undated and unsigned as discussed herein above is 30 months or two and half years from the date sanction of building plan or date of start of construction in particular tower on taking occupation certificate from competent authority as mentioned in the clause supra. The due date of possession as per clause 14 of the second agreement dated 18th August, 2008 which is also undated and unsigned as discussed herein above is 30 months or two and half years from the date sanction of building plan or date of start of construction in particular tower on taking occupation certificate from competent authority as mentioned in the clause supra. Further as per third agreement dated 15th January, 2020 in clause 14 of the same no time period for delivery of possession has been mentioned but it has been stated in the clause that respondent promoter shall deliver possession of flat on obtaining occupation certificate of the same. The factum of possession having been received has been denied by the complainant but the respondent has relied on allotment cum possession letter dated 15.1.2020 to say that possession was offered to the complainant on this date. No substantive and conclusive proof has been appended by the respondent to prove that this letter was ever delivered to the complainants when he denies it completely.

Section 103 of the Indian Evidence Act, 1972 is as under

> *Burden of proof as to particular fact. —The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.*

11 Since the respondent relied on this offer of possession therefore onus lies on him to prove that this letter was delivered and communicated to the complainants at the relevant time.

However the respondent has relied upon whats app chat to prove the factum of possession having been taken which has been perused by this Authority and is of the considered view that the same does not reflect the name of sender and receiver and it is further not clear what are the whats app number(s) and whether those numbers belonged to the persons concerned as alleged. In the absence of proper proof and authenticity this whats app chat cannot be relied upon by the Authority to base its finding on the same. Further this averment of delivery of possession of the respondent is further belied/contradicted from the letter dated 27th July, 2023 issued by the respondent himself to the complainant Sh. Dalip Kalra where in this letter it has been mentioned that Dalip Kalra had taken possession in March, 2021 whereas in the reply the respondent has maintained a categorical stand that possession was delivered on 15.1.2020. Therefore to conclude the respondent himself is not clear and is making contradictory version qua the factum of possession having been delivered and has failed to lead any substantive and conclusive evidence to prove as to when and how possession was delivered. Further since the respondent undertook to deliver possession after receiving occupation certificate in all the three agreement discussed above and no occupation certificate has been appended on record therefore it is safe to conclude that occupation certificate was never obtained. Although it is confusing that which agreement is finally being relied upon by the parties but one thing is clear and admitted by both the parties that allotment initially was done in the year 2006. 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. 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. It was further held that the flat buyer cannot be compelled to take possession of the flat even if it is offered, if the builder fails to fulfill his contractual obligation of obtaining the Occupancy Certificate and handing over possession within the stipulated time or a reasonable time thereafter. The flat buyer is entitled to seek a refund of the amount paid, along with appropriate compensation. Therefore it is safe to conclude that the possession has to be delivered within three years from the date of the allotment. In this case it has been almost eighteen years but the possession has not been delivered.

12 In case titled as **MANISH KUMAR VS UNION OF INDIA 2021 1 Scale 646 ; 2021 5 SCC 1 ; 2021 3 SCC(Civ) 50 ; 2021 0 Supreme(SC) 23** the Hon'ble Supreme Court held that if the common areas and facilities are not developed as per the sanctioned plan, the builder cannot claim deemed completion of the project. The allottee may refuse to accept delivery until the project is fully completed with all promised facilities. In case titled as **Esha Ekta Apartments Co-operative Housing Society Limited VS Municipal Corporation of Mumbai** 2013 3 Scale 63 ; 2013 5 SCC 357 the Hon'ble Supreme Court held that

the builder is not entitled to deemed completion of the project if the common areas have not been developed as per the sanctioned plan.

13 It was held in case titled as **Venkataraman Krishnamurthy VS Lodha Crown Buildmart Pvt. Ltd. 2024 0 AIR(SC) 1218 ; 2024 0 INSC 132 ; 2024 2 Supreme 584 ; 2024 0 Supreme(SC) 152** by the Hon'ble Supreme Court that under the Real Estate (Regulation and Development) Act (RERA), a developer cannot offer possession of a property without obtaining an occupancy certificate and completion certificate.

14 Further it was held in case titled as **Imperia Structures Ltd. VS Anil Patni (2020)10 SCC 783** by the Hon'ble Supreme Court The developer does not have the right to offer possession if they do not have the occupation and completion certificate under RERA. The developer is required to return the amount received from the allottee if they fail to complete or are unable to give possession of the apartment by the specified date. The allottee has the unqualified right to withdraw from the project and get a refund with interest.

15 The **Hon'ble Supreme Court in the landmark case titled Samruddhi Co-operative Housing Society Ltd v. Mumbai Mahalaxmi Construction Pvt. Ltd. 2022 SCC OnLine SC 35** has held that a developer cannot offer possession to the Homebuyers/Allottees without obtaining a proper Completion Certificate or Occupancy Certificate from the Competent Authority. Apart from this, in some other pertinent verdicts namely **Wing Commander Arifur Rahman Khan & Others v. DLF Southern Homes Private Limited & Others (2020) 16 SCC 512** and **Pioneer Urban Land Infrastructure Limited v. Govindan Raghavan (2019) 5 SCC 725** the Hon'ble Apex Court

has reprimanded the Promoter/Builder and remarked that the latter has committed a deficiency in service when it fails to obtain an occupancy certificate or abide by its contractual obligations towards the Homebuyers/Allottees.

16 Thus, it can be concluded that the possession has not been handed over within the time mutually agreed upon or within the reasonable time as per the law laid down by the Hon'ble Apex Court and the respondent do not have requisite occupation and completion certificate to offer the possession as per clause 14 of the agreement for sale.

17 In the case titled as **Parul Singhal and another versus Ahlawat Developers and Promoters complaint no. HPRERA2022025/C decided on 07.02.2024** and on the basis of reply filed by the BBNDA, which is the competent authority to issue OC and CC, it was held by this Authority that the common areas and basic amenities of the project are not yet complete and the project has not been developed as per the approved sanctioned plan and therefore no occupation and completion certificate has been granted by the competent authority and therefore there can be no deemed completion and occupation. This Authority placing reliance on the reply filed and reasoning of this Authority in the afore mentioned judgment is of the considered view that there can be no deemed completion if the common areas and basic amenities are not completed/developed in the project. This judgment on this issue was further relied by this Authority while passing judgment in **Amit Rana versus Ahlawat Developers and Promoters and others in Complaint no. HPRERA2023025/C decided on 8.4.2024**.

18 Thus, what emanates from the record is that the respondent was required to offer the possession of the Flat to the complainant as per the terms and conditions of the agreement, failing which the complainant is entitled to claim the remedies as provided under section 18 of the RERD Act 2016. The delay in delivery of possession and getting CC/OC in this project is writ large and the respondent is rather callous in its approach to complete the common facilities in the Project.

19 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 Ors MANU/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.

20 The RERA Act was introduced to protect the interests of homebuyers and ensure transparency in the real estate sector. The requirement of obtaining an occupancy certificate and completion certificate before offering possession is a crucial aspect of this legislation, as it ensures that the property is fit for habitation and the necessary infrastructure is in place.

21 Therefore to conclude the respondents have failed to obtain the OC/CC and deliver the possession of the flat in terms of Section 11(4)(b) within the time agreed upon and stipulated in the agreement for sale or within the reasonable time as per the law laid down by the Hon'ble Supreme court. 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 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. Further RERD Act, 2016 is a 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

22 The SBI marginal cost of lending (in short MCLR) as on date of passing of this order is 8.85 %. Hence the rate of interest would be 8.85% + 2% i.e.10.85% per annum. Therefore, interest on the return of the amount received by respondent qua the flat in question shall be charged at 10.85% per annum at simple rate of interest.

23 **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 22,74,563/- (**Twenty Two Lakhs, Seventy Four Thousand, Five Hundred and Sixty Three 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 8.85 % hence the rate of interest would be 8.85 %+ 2% i.e. 10.85 %. It is clarified that the interest shall be payable by the

respondents from the dates on which different payments were made by the complainant to the respondents till date the amount and interest thereon is refunded by the respondents.

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

iii. For seeking compensation the complainant is at liberty to approach the Adjudicating Officer under Section 71 and 72 of the Act Ibid.

Badalia
B.C. Badalia
MEMBER

SKant
Dr. Shrikant Baldi
CHAIRPERSON

REAL ESTATE REGULATORY AUTHORITY HP RERA H.P.