

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

Complaint no.HPRERA2023025/C

Amit Rana son of Sh. Ajmer Singh Rana, resident of Flat no.603,
Group Housing Society, Plot no GH3, Sector 23, Panchkula-134109

.....Complainant

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 SCO 124, First Floor, Swastik
Vihar, Sector 5,MDC, Panchkula 134109
- 2 Jagjit Singh Ahlawat, (Partner); Ahlawat Developers and Promoters
House No.46, Sector 10, Panchkula 13409 Haryana
- 3 Parik Ahlawat(son of Jagjit Singh Ahlawat, Ahlawat Developers
and Promoters, House no. 46, Sector 10, Panchkula 13409
Haryana

.....Respondent(s)

**Present: Sh. Mohit Dhiman Ld. Counsel for complainant Sh. Amit
Rana through WebEx**

**Sh. Jagjit Singh Ahlawat respondent promoter for
project Himachal One, Baddi through WebEx.**

Final date of hearing: 02.03.2024

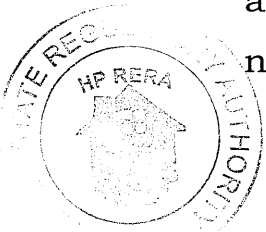
Date of pronouncement of order: 08.04.2024

Order

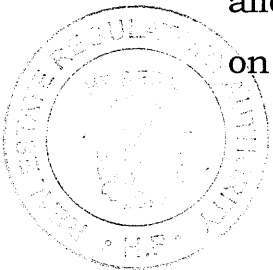
Coram: Chairperson and Member

1. Brief facts of the case:-

A complaint was filed by Sh. Amit Rana (hereinafter referred to
as 'complainant') stating that he had applied for an apartment
no 402 measuring 1575 sq ft. (super area) on 4th floor in Tower



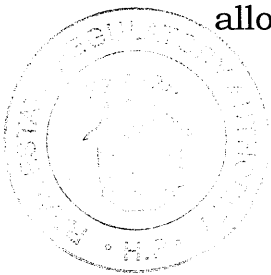
no A-2 on 10.06.2016 in the group housing project 'Himachal One' (here in after referred to as 'project'). The agreement for sale was executed between the parties on 14.06.2016 for a total sale consideration of Rs.25,00,000/- plus service tax, for which Rs.3,96,168/- was paid by the complainant towards the booking on 10.06.2016, which is duly acknowledged by the respondent in clause 1(a) of the said agreement. As per clause 14 of the agreement for sale, the possession of the apartment was to be delivered by the respondent by 30.09.2016, after obtaining completion/occupancy certificate from the competent authority. That the complainant made payments of Rs.1,32,580/- on 18.07.2016, Rs. 1,32,180/- on 17.08.2016, Rs. 3,34,800/- on 20.09.2016, Rs. 1,33,420/- on 15.10.2016, Rs. 1,35,300/- on 15.11.2016 and Rs. 1,35,680/- on 15.12.2016 as confirmed by the respondent in the emails dated 07.10.2016,18.12.2016 and 19.12.2016 in which payments are duly acknowledged by the respondent. Copies of the said emails are attached herewith as Annexure C/II (Colly). Further, the complainant also made payments of Rs.1,35,760/- on 05.01.2017, Rs. 1,33,573/- on 14.02.2017 and Rs. 1,30,231/- on 24.04.2017 which are not acknowledged by the respondents via email but a complete summary of transactions along with statement of account reflecting the above said payments made in respondent no. 1&2 & respondent son's account has been attached herewith as Annexure C/III (Colly). Thus, it was pleaded that the complainant made total payment of Rs. 17,99,692/- till date to the respondents. After the receipts of payment, the respondents issued an allotment letter dated 09.05.2017 confirming the allotted unit in favour of the complainant. The respondents kept on assuring each time that project would be completed soon and



the complainant would be duly compensated for delay in offering possession beyond the committed date, the complainant stopped making further payment till confirmation from the respondents about the likely date of offer of possession. There has been delay of more than 7 years in offering possession of the allotted unit by the respondents and therefore the complainant has decided to withdraw from the project as permitted under section 18(1) of the RERD Act. With these prayers it was prayed that the respondents be directed to refund the paid amount at earliest or to pay interest for the delayed period in offering possession of the unit as per provisions of the RERD Act.

2. Reply-

The respondents admitted that the complainant applied for apartment no. 402 on 4th floor in Tower A-2 on 10.06.2016 in the group housing colony. The respondents have admitted that an amount of Rs.17,99,692/- has been received from the complainant out of total sale consideration of Rs.25,00,000/-. It was further stated that as per para 1(a) of the agreement for sale the complainant was bound to make the complete payment of Rs 25,00,000/- by 30th September 2016 along with service tax. It was pleaded that the complaint so filed for refund is only an afterthought. It was submitted that the complainant herein has failed to make timely payments of the sale consideration amount as agreed between the parties and hence cannot demand offer of possession until and unless he has paid the entire dues as per the agreement for sale. It was pleaded that there is no delay in offer of possession however, the same could be offered only upon payment of the entire sale consideration by the complainant to the promoter respondents. It was further pleaded that the allottee/complainant is still in default of payment of Rs



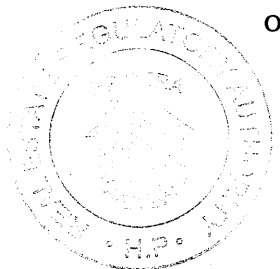
7,00,308/- and hence cannot avail the benefit of possession in terms of Clause 14 of the agreement for sale which states how and when possession was to be given. With these pleadings it was prayed that the present complaint may kindly be dismissed.

3. Rejoinder-

It was pleaded in the rejoinder that the respondents cannot arbitrarily ask for the full consideration of the payment of the allotted unit without informing the status of construction. It was further argued that the respondent has not obtained CC/OC for the project till date as has been observed in other complaint no. HPRERA2022021/C adjudicated by the HP RERA on the basis of report of the competent authority. This fact is very much relevant in the present case as it proves that the respondents are not in a position to offer legal possession of the allotted unit till date. The demand of balance payment without sharing the stage of construction of the apartment and without obtaining OC/CC is not justified on any ground. It was pleaded that complainant has erroneously not included two payments amounting to Rs 5,002 and Rs 1,95,017/-. Thus the total payment made by the complainant against the allotted unit is Rs 19,99,711/-.

4. Arguments on behalf of complainant-

The complainant argued that he had booked a Flat no. 406 on 10 June, 2016 and the agreement for sale of the same was executed on 14th June, 2016. The total consideration of the same was Rs Twenty Five lakhs plus service charges. It was further argued that as per Clause 14 of the agreement for sale the due date of possession was 30 September, 2016. It was further argued that an amount of Rs 19,99,711/- was paid in lieu of the sale consideration. It was argued that there is a delay of seven years in offering possession. It was then argued that



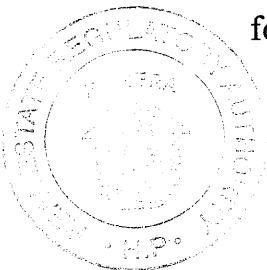
since the possession has not been delivered and OC/CC has not been obtained, the complainant in terms of Section 18 intends to withdraw from the project and prays for refund of the amount paid.

5. Arguments on behalf of the respondent-

It was argued by the respondent that as per agreement for sale the complainant opted for a down payment plan and the complete payment was to be made by the year 2016 but the complainant only paid 3 lakhs till then. It was further argued that as per clause 14 of the agreement for sale the possession was subject to payment by the complainant. It was argued that the last date of payment by the complainant is 24th May, 2017. The total payment received has been admitted to of Rs 19,99,711/-. It was further argued that in terms of judgment of Bombay High Court in Neel kamal Realtors case (2017) SCC Online Bom 9302 the agreement for sale is binding on both the parties. He then submitted that the same has been re iterated in the judgment of New Tech Promoters case by the Hon'ble Supreme Court. Further he also relied on the judgment of the Hon'ble Supreme Court in case titled as Venkatraman Krishnamurthy Vs Lodha Crown Buildmart appeal no. 971 of 2023 dated 22.02.2024. He further relied on the case titled as Kusheshwar Prasad Singh versus State of Bihar and other (7351 of 2000). He also relied on the judgment of the Hon'ble Himachal High Court in case titled as Chander Kamal Baljee vs State Environment Impact Assessment Authority and other in CWP 2807 of 2023.

6. Rebuttal arguments on behalf of the complainant.-

It was argued in rebuttal that as per clause 14 of the agreement for sale it has been mutually agreed by both the parties that the



owner shall offer possession after obtaining occupancy and certificate and completion certificate. It was then argued that around the due date of possession the flat allotted to the complainant was not ready and there was no progress on the site.

7. Conclusion/ Findings of the Authority:-

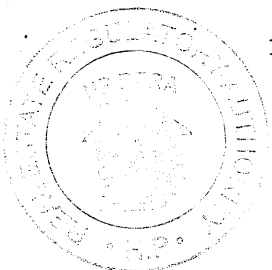
We have heard the arguments advanced by the Ld. Counsels for the complainant & the respondents and also perused the record pertaining to the case. We have duly considered the entire submissions and contentions submitted before us during the course of arguments. This Authority is of the view that the 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. The agreement for sale in this case was executed between the parties on 14th June, 2016 and the complainant was allotted Flat no. 402/ Fourth floor, Tower no. A-2 having area 1,575 sq feet for a total sale consideration of Rs 25,00,000/- in the project. It was pleaded in the rejoinder that a sum of Rs 19,99,711/- has been paid by the complainant to the respondents which fact has been admitted by the respondents during the course of the arguments and therefore the aforesaid amount is not disputed. Further as per clause 14 of the aforementioned agreement for sale, it is mentioned that the



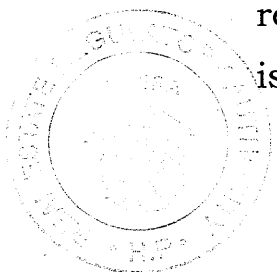
respondents shall handover the possession of the said apartment by 30.09.2016 after obtaining occupation certificate from the competent authority. The relevant clause 14) is as under-

“ 14) That the possession of the said apartment is proposed to be delivered by the owner to the allottee by 30.09.2016, subject to timely payment by the allottee of the sale price, stamp duty etc payable according to the annexed payment plan applicable to him/her or as demanded by owner. Owner on obtaining certificate for occupation and use of competent authorities shall hand over the physical possession of the apartment to the allottee for his/her occupation and use, subject to allottee having complied with all the terms and conditions of the agreement.....”

Thus, the possession as per clause 14 has not been handed over within the time mutually agreed upon between the parties as per the agreement for sale as the respondents do not have requisite occupation and completion certificate to offer the possession in as per clause 14 of the agreement for sale.

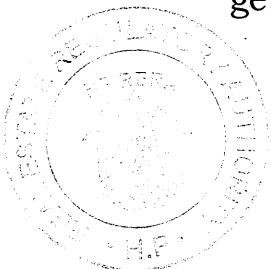
9. The defence of the respondents is that they were and are ready and willing to hand over the possession of the apartment in question and also ready and willing to get the conveyance/sale deed registered in favour of the complainant. It was further the defence of the respondents that the complainant are in default of the payment of money as per payment schedule. It was further the defence of the respondents that they had already applied for completion/ occupation certificate and as per provisions of Town and Country Act the same shall be presumed as deemed completion.

10. In the case titled as **Parul Singhal and another versus Ahlawat Developers and Promoters complaint no. HPRERA2022025/C decided on 07.02.2024** on the basis of reply filed by the BBND, 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.

11. 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.
12. 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. 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 is entitled to claim the remedies as provided under section 18 of the RERD Act 2016. The delay in 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.

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

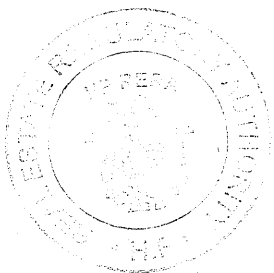
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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 Hon'ble 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*

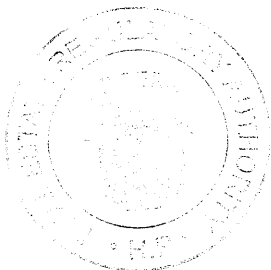


has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed.

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.

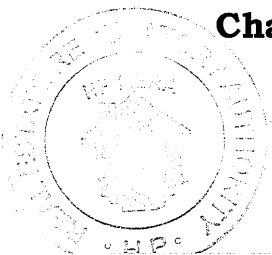
25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right 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.”

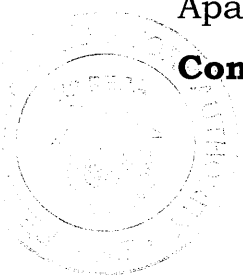
The ratio of the aforesaid judgment is that conjoint reading of Sub-sections (1), (2) and (3) of Section 18 of the RERD Act, 2016, is that the allottee has the liberty, if he intends to withdraw from the project he is entitled to refund along with interest at rate as may be prescribed. Right to seek 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.

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. 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 their 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
16. 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.
17. It was held in case titled as **Laureate Buildwell Pvt. Ltd. Vs Charanjeet Singh (2021)20 SCC 401; 2021 (7) JT 110** that the



builder cannot demand money from the flat purchaser if the construction of the flat is not complete.

18. It was held in case titled as **Lata Construction VS Rameshchandra Ramnikial Shah 2000 1 SCC 586** that the builder cannot demand money from the customer if the construction of the flat is not complete.
19. 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.
20. 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.
21. 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**



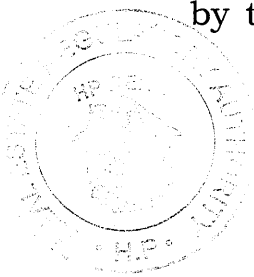
Homes Private Limited & Others (2020) 16 SCC 512 and **Pioneer Urban Land Infrastructure Limited v. Govindan Raghavan (2019) 5 SCC 725** the Hon'ble Apex Court has reprimanded the Promoter/Builder and remarked that the latter has committed a deficiency in service when it fails to obtain an occupancy certificate or abide by its contractual obligations towards the Homebuyers/Allottees.

22. Further it was held in case titled as **Kolkata West International City Pvt Ltd. VS Devasis Rudra 2020 18 SCC 613; 2019 3 HimLR 1840** by the Hon'ble Supreme Court that one-sided clauses in a buyer's agreement that are unfair to the buyer are not binding on the buyer under RERA (the Real Estate (Regulation and Development) Act, 2016).
23. In our view also, the one-sided nature of real estate agreements, drafted solely to protect the interests of the developer, cannot be allowed to override the legitimate expectations and rights of the flat purchasers. While developers may argue that the agreements were mutually accepted, the reality is that flat purchasers often have no choice but to sign on the dotted line. The courts have recognized this imbalance of bargaining power and have stepped in to ensure that the developers are held accountable for their failures and delays. Overall, the judicial approach reflects a balanced and equitable interpretation of the law, prioritizing the protection of consumer interests over the sanctity of one-sided contractual terms. Therefore it does not lie for the builder to say that he had not offered possession because the allottee did not make complete payment, when he has failed to show that the construction of the building was complete and no OC/CC was taken. Further as per sub clause (ii) of the clause 9.3 of the model agreement for sale given in Form L to the HP Real Estate (Regulation and



Development) Rules, 2017 which is applicable to the State of H P, the remedy for the builder was to cancel the allotment letter there and then and refund the amount paid by the allottee by deducting the booking amount. The builder has not taken recourse to the aforesaid and the defense that the allottee has not paid the entire amount is liable to be rejected.

24. 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.
25. In our opinion, the project developer cannot demand full money from the customer if OC/CC is not obtained and the construction of the flat is not complete within the time agreed for delivery of possession, as it amounts to a deficiency in service. The home buyer is entitled to seek refund of the amount paid if the builder fails to obtain the Occupancy Certificate and hand over possession of the flat within the stipulated time. The builder's conduct in this case appears to be unfair and in violation of the RERA Act, 2016.
26. Therefore to conclude the respondents have failed to obtain the OC/CC and deliver the possession of the flat and execute registered conveyance deed in terms of Section 11(4)(f) read with Section 17 of the RERA 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 RERA 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 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. The judgments relied upon by the respondents are not relevant to the facts and circumstances of the present case.

27. 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-

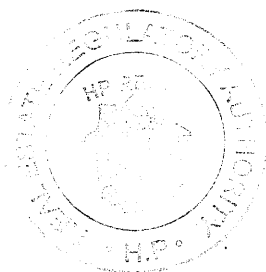
The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent as mentioned under Section 12,18 and 19 of the Act:

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

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 .

28. 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.



29. **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. 19,99,711/- (**Nineteen Lakhs, Ninety Nine Thousand, Seven 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 8.85 % 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.

B.C. Badalia
B.C. Badalia
MEMBER

skant
Dr. Shrikant Baldi
CHAIRPERSON

