

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

Complaint No. HPRERA2023033/C

IN THE MATTERS OF: -

Preeti Mandal, W/O Sh. Ravindra Kumar Dasoundhi, Resident of
131, Suresh Apartment, Flat No. 1/1, Sanjay Road, Sakchi,
Bistupur, Jamshedpur, East Singhbhum, Jharkhand, 831001

.....complainant

Versus

M/s Rajdeep & Company Infrastructure Private Limited, through its
Director Sh. Rajdeep Sharma S/o Sh. Sansar Chand, Resident of H
No. 2694 Sector 22C, Chandigarh, 160022

.....Respondent

**Present: Sh. Ravindra Kumar Dasoundhi on behalf of
complainant Smt. Preeti Mandal**

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

Final date of hearing (through WebEx): 16.02.2024

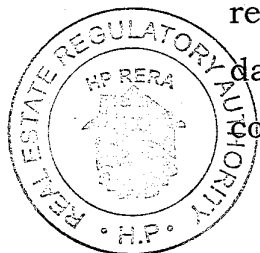
Date of pronouncement of order : 05.03.2024

Order

Coram: - Rajeev Verma (Member)

1. BRIEF FACTS OF THE CASE/COMPLAINT:

The brief facts of the case as transpires from the perusal of office record is that the Complainant has filed an online complaint dated 28.11.2023 before this Authority under "Form-M" bearing complaint No. HPRERA2023033/C as per the HP Real Estate



(Regulation and Development) Rules, 2017, which was diarized in the office of this Authority vide Diary No. 1359. As per the allegations leveled in the present complaint, it has been categorically stated that the complainant had invested a sum of Rs. 10,01,001/- (Rs. Ten Lakh One Thousand and One Hundred) for purchase of an apartment numbered as Unit I-402, in Rajdeep & Co. Housing Project name as "Mashobra Hills" situated at Mashobra, Shimla, H.P. In this concern, the respondent promoter with an intent to sell the aforesaid apartment pursuant to initial discussions and booking of the flat, forwarded one agreement for sale on 2nd Nov, 2023 to the Complainant. However the terms outlined in the aforesaid agreement, there were significant variations noticed by the complainant as against what were discussed and finalized which as per the version in the complaint are evident from the representations made in e-mails as well as the information provided in the brochure. The contesting parties to the present matter after subsequent discussions and exchange of emails agreed upon to settle the matter in issue regarding sale purchase of the apartment in question with a refund of amount advanced by the complainant to the respondent Promoter.

As per the contents of the complaint preferred before this Authority it has been further alleged that the expected refund of the amount advanced by the Complainant as mutually agreed upon was never processed by the respondent promoter. Feeling dissatisfied and aggrieved of the above factum of the matter in issue, the Complaint seeks the following relief from this Authority:-

- a.** Direct the respondent Promoter to refund the amount of Rs. Rs. 10, 01,001/- advanced to the respondent Promoter along with levying of monthly interest rate @ 1%.



b. Any other just and further relief this Authority may deem fit and appropriate in interest of justice, equity and fair play.

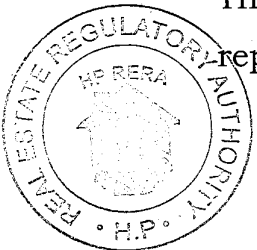
The present complaint is supported by the copies of communication by way of emails, Brochure, agreement for sale and copies of receipts of payments advanced to the respondent/promoter.

2. Reply by the respondent:

The respondent/promoter has filed a detailed reply through email to the complaint on 31.01.2024. It has been submitted in the reply by the respondent that the present complaint is not tenable in view of the express provisions of the From 'M' of the HP Real Estate (Regulation & Development) Rules, 2017 and prima facie suffers from deformity. Further it has been reiterated by the replying respondent that the aforesaid complaint is false and frivolous and there is no cause of action that ever accrued in favour of the Complainant and against the respondent promoter. It was further submitted that the complainant has just made the lame excuses seeking a refund of the booking amount and trying to misconstrue her act of withdrawing from the project as a fault of the respondent but just to evade the deduction of 10% of booking amount. The respondent further submitted that they are ready and willing to refund the amount of Rs 10, 01,001/- which has been advanced by the Complainant subject to a condition that amount of 10% of cost of the apartment for its booking shall be deducted from the amount advanced. In view of the aforesaid submission it has been prayed by the respondent to dismiss the present complaint.

3. Rejoinder to the reply:

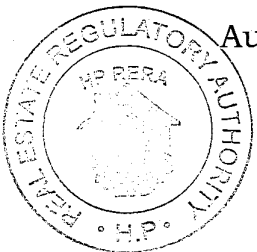
The complainant has preferred not to file the rejoinder to the reply filed by the respondent.



4. Arguments advanced by the complainant

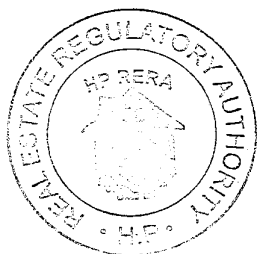
The present matter in issue was heard by this Authority on 16.02.2024 after giving ample opportunities to both the parties to resolve their case amicably. It has been vehemently argued on behalf of the complainant that the first interaction with the respondent promoter Company was initiated through one Sh. Sanjeet, who purportedly happens to be Sales Director of the respondent promoter Company on dated 18.07.2023. It was further submitted on behalf of the complainant before this Authority that initially Sh. Sanjeet, Sales Director of the respondent Promoter was the only and for mostly a primary point of contact with the Complainant, which subsequently led to interactions with other persons associated with the present project.

The complainant further in order to support her claim argued that during the first discussion with Sh. Sanjeet on 18.07.2023 it was stated that the entire housing project is duly approved, legal and is free from all encumbrances which absolutely convinced her as the same appeared to be satisfactory. Thereafter, after multiple levels of conversations over a month time period, both the parties were in '*consensus ad idem*' with express intention to proceed further with a dealing to purchase the apartment/Unit in the project of the respondent Promoter. The Complainant further made a mention before this Authority that the Sales Director of the respondent Promoter Company, Sh. Sanjeet urged the Complainant to deposit advance amount in order to book apartment/Unit in her favour. Though the Complainant intended herself to visit the property in issue by herself but due to intense rain and floods that happened lately in the month of July-August, 2023 in the entire State of Himachal Pradesh, the



complainant could not visit and inspect the unit physically until October. Further, on behalf of the complainant it was submitted that the complainant was willingly interested to purchase the unit and paid initial booking amount of Rs 1,00,001/- (Rs. One Lakh One Rupee) dated 18th August and another amount of Rs 1,01,000/- (Rs. One Lakh One Thousand) dated 20th August 2023 totaling Rs. 2,01,001 (Rs. Two Lakh One Thousand One), with a consent in writing that the respondent promoter will refund the entire amount advanced in event that the Complainant decided not to proceed further for purchase of the Apartment/Unit as conveyed in the mail dated 10th August 2023.

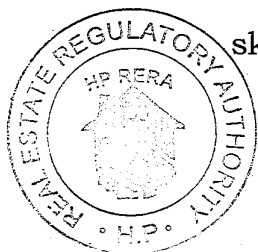
5. Further, on behalf of the complainant it was argued that on dated 17th October, 2023, the site under reference was visited and to her utter dismay and dissatisfaction observed that there were glaring differences with the factual position at the site and what was actually conveyed to her on email. Subsequently, the respondent Promoter Company in order to persuade the Complainant initiated negotiations and the complainant actively participated which led to a conclusion to go ahead with the deal which was agreed upon on a negotiated price. It was argued that she was provided with a project brochure by the respondent Promoter Company and claimed that the same is duly visible as uploaded on the official website of the Authority detailing the description in respect of property/ inventory available in the project, floor plans of the units, specifications to be used etc. It was argued on behalf of the complainant that she got convinced to proceed further and agreed on the final price after re-negotiation. Supporting the contentions made herein before this Authority documentation including detailed email and a



confirmation email from Sh. Shashi, Sales Head M/s Rajdeep and Co. has been attached with the complaint.

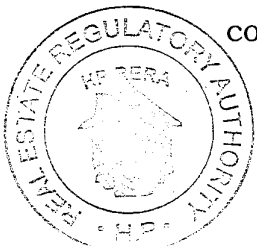
The complainant further made a submission before this Authority that subsequent to confirmation email for the purchase of the apartment/Unit as agreed upon, the respondent Promoter further demanded an amount of Rs. Ten Lakhs. The complainant stated that a sum of Rs. 2,01,000/- (Rs. Two Lakh One Thousand) stood paid to the respondent and the remaining amount was due payable. Further, supporting the contentions, the entire documents available in the matter have been annexed along with the Compliant.

6. Further, on behalf of the complainant it was submitted that before making next payment beyond ten lakhs which were already paid, the complainant asked the respondent for agreement for sale. The respondent after three days sent the agreement for sale to complainant which was significantly different from what was agreed over the email. However, discrepancies in the agreement for sale, specifically in the carpet area of 2BHK Skyvilla being less than 500 sq. ft., were noted and upon notifying the respondent of the error, the complainant sought correction and a reissuance of the agreement for sale. The complainant further stated that the respondent contacted her saying that this is the standard template which is used for 2BHK Skyvilla, and they have received an approval and awaiting an increase in height sanctioned by RERA and by default the carpet area will go up. It was further stated on behalf of the complainant that, despite this verbal explanation, she highlighted the lack of prior communication on these matters. It was pleaded that it was conveyed to her that this is how the agreement for sale will be done which made her skeptical and expressed her discomfort with the terms. It was



further submitted that the complainant requested an amendment to align the agreement for sale with prior agreed terms and further stated that in an email thread, she clearly communicated her willingness to proceed with the deal based on the specified rates for a 2 BHK Skyvilla. The said email has also been attached with complaint. In response, Sh. Sanjeet from Rajdeep & Co. conveyed the rejection and cancellation of the entire transaction/purchase with a confirmation on email. This occurred promptly within two days of receiving the agreement for sale and the complainant further emphasized there was no delay in her communication regarding the same. It was pleaded before the authority that the complainant agreed and expressed the desire to amicably close the matter, seeking refund of the deposited amount which she has already paid. Further the complainant provided her account details to respondent, and respondent verbally assured on phone calls that a refund would be processed but despite her ongoing efforts to communicate for nearly a month, the complainant faced unresponsiveness to calls and messages and eventually she directly tried to contact Sh. Rajdeep Sharma and the person whose details were mentioned in the RERA website but unfortunately it led her to nothing. Consequently, the complainant approached the door of the Court to get the correct outcome.

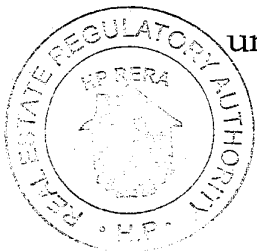
7. On the specific query from the Authority about the application form dated 06.03.23, as mentioned in the provided agreement for sale, the person pleading on behalf of the complainant feigned ignorance about it and submitted that she got into discussions with the respondent only in August 2023 and she was never provided with any application form and that's the reason she could not sign any application form for booking the said flat. The



Authority asked about the documentary evidence, if any, conveying complainant about the area being 1510 sq. ft. of the said unit I 402 in the project as there was no document annexed with the complaint in this reference and in response to the query, an email dated August 10, 2023, was promptly forwarded to the Authority with a copy to the respondent, and the said email was taken on record by the Authority. On another specific query from the Authority about issuance of any allotment letter it was conveyed that no allotment letter has been issued to her by the respondent promoter.

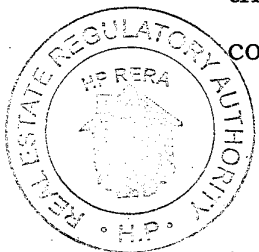
8. Arguments by the respondent

It was argued on behalf of the respondent that the complainant has referenced certain documents and emails that are not part of the official record. Further, it was argued on behalf of the respondent that the email discussions cited by the complainant are not included in the pleadings in any substantive manner. Further it was asserted that the emails are not connected with each other, and the complaint was deemed not maintainable due to the absence of exact proofs in the record. The Ld. Counsel for respondent further argued that the final amount of the flat was clearly conveyed to the complainant vide email dated 30th October 2023 where the unit no and tower no. were clearly mentioned and the complainant in response to this email gave his confirmation on the same day and transferred an amount of Rs. Eight Lakh in two transactions. However, it is emphasized that as these were the initial discussions, there was no specific mention of the area to be provided; only Tower-I and Unit No. 402 were mentioned. The initial communication from Sh. Shashi Kumar of Respondent firm to complainant outlined payment details and specified the unit number and tower no in the email dated 30th October.



Subsequently, complainant's response on October 30 expressed gratitude for the confirmation and signaled intent to expedite payment, accompanied by a request to incorporate specific points in the agreement to avert ambiguity.

9. It was further argued that the email dated October 30, 2023 from the complainant, did not mention about any points and the area has also never been demanded in the said email. The Ld. Counsel emphasized an email on November 5, 2023 sent at 3:23 pm, where the complainant raised a dispute for the first time, referring to a previous agreement. It was stated that neither the discussions nor the agreement is officially recorded. Additionally, on November 5, 2023, the complainant sent another mail at 9.38pm and sought a refund without any prior documented emails, calls, or messages. The counsel for the respondent, on the specific query by the Authority about application form dated 06.03.2023 as mentioned in the provided agreement for sale, feigned his ignorance about the same and on the issue of the allotment letter submitted that he has no information about that either and the same will have to be enquired from the office of the promoter. It was contended that the decisions regarding property deals are typically not made within a brief period solely based on email discussions, especially when the complainant continued making payments during the email exchanges. The respondent's counsel further argued that if there is any dispute regarding the area of the flat the same could have been resolved, considering the project's approval from RERA and the availability of all relevant information on the RERA website and further submitted that the project is almost 60% complete. The counsel submitted that this was essentially a change of mind, incurring significant costs to the respondent in terms of effort and marketing. It is



further argued that the respondent has no intention of engaging in unnecessary litigation and is willing to refund the amount after deducting 10% as a booking amount for the flat.

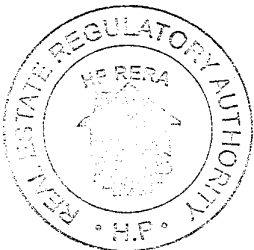
10. Rebuttal arguments by the complainant

It was rebutted on behalf of the complainant by arguing that an email dated 10th Aug, 2023 explicitly mentioned a 2 BHK Duplex (Skyvilla, 1510 sq. ft.) flat no 402 in Tower-I/Block 9 at Mashobra Hills and submitted that the email dated 10th August 2023 has been mailed to the Authority and the respondent. It was further submitted that the email dated 10th Aug, 2023 clears all confusions and other doubts pertaining to the area of the flat which was agreed upon and the consideration price for the flat admeasuring area 1510 sq. ft. as was mentioned in the email dated 10th August which was agreed to by the complainant. It was also pleaded on behalf of the complainant that she received an agreement for sale dated 2nd November 2023 after paying the booking amount and the said agreement for sale differed significantly from the agreed terms. All these documents are on record.

11. Issues and Findings of the Authority:

I have heard the arguments advanced by the complainant & Ld. Counsel for the respondent promoter and perused the record pertaining to the case. I have duly considered the entire submissions and contentions submitted before me during the course of arguments. This Authority is of the view that following are the points of determination that require the consideration and adjudication, namely: -

A. Jurisdiction of the Authority



- B.** Whether the complainant is entitled to get the refund of the money along with interest or not?
- C.** Whether the respondent is entitled to deduct 10% of the booking amount?
- D.** Other issue and directions including imposition of penalty.

12. (A) Jurisdiction of the Authority

Section 31 of the Act prescribes that any aggrieved person can file a Complaint before the Authority or the Adjudicating Officer as the case may be for any violation of the provisions of the Act *ibid*. Thus, this Section provides that a separate Complaint be lodged with the Authority and the Adjudicating Officer, “as the case may be.” Accordingly Rule 23 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 provides the procedure of filing Complaint with the Authority and prescribes ‘Form M’ for filing a Complaint. In this case, the Complainant has filed the Complaint in ‘Form-M’.

The Section 34 (f) of the Act prescribes that the function of Authority shall include

“to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the Rules and regulations made there under”.

Section 11(2),(3),(4),(5), section 12 and section 19(4) of the Act prescribes as follows:

Function and duties of promoter-

11(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been



entered and include the registration number obtained from the Authority and such other matters incidental thereto.

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

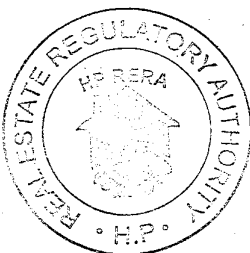
- a) sanctioned plans, layout plans, along with specifications, approve by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority.
- b) the stage wise time schedule of completion of the project, including the provisions for civic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

(4)The promoter shall-

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

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

- b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and make it available to the allottees individually or to the association of allottees, as the case may be;



- c) *be responsible to obtain the lease certificate, where the real estate project is developed on the leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;*
- d) *be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;*
- e) *enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:*

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

- f) *execute a registered conveyance deed of the apartment, plot or building, as the case may be , in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be , as provided under section 17 of this Act;*
- g) *pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings(including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such*



other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

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

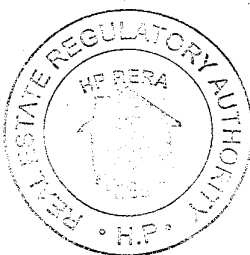
h) after the executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law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

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

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

Section 12 of the Act provides as under:

“Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or



damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

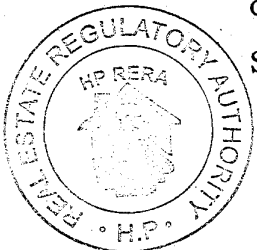
Section 19 (4) of the Act provides as under:

"The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the Rules or regulations made there under."

Further Section 38 (1) of the Act says

"The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the Rules and the regulations made there under."

Thus Section 34(f) of the Act empowers the Authority to ensure compliance of the obligations cast upon the promoters and Section 11 (2) (3) (4) (5) and section 12 cast obligation on the

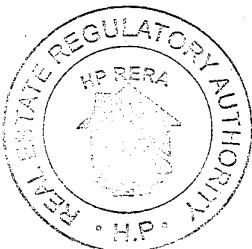


promoter. Further section 19 (4) of the Act entitles the allottees to claim refund of amount paid along with interest from the promoter, if the promoter fails to comply. Further, Section 37 of the Act empowers the Authority to issue directions in discharge of its function provided under the Act. The Authority also has power to impose penalties under Section 59 to 63 for various contraventions of the provisions of the Act. Moreover, Section 38 (1) of the Act in unambiguous terms empowers the Authority to impose penalty or interest.'

In the case of **Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors MANU/SC/ 1056/2021** it was held by the Hon'ble Supreme Court in para 86 of the judgment as under:

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint....”

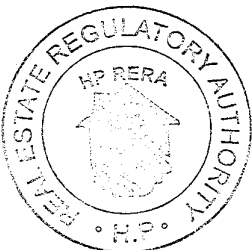
Thus, from the reading of the above provisions of the Act as well as law laid down by the Hon'ble Supreme Court, it is very clear that the Authority has power to adjudicate various matters, including refund and interest under Section 12 and 18 of the Act and imposition of penalty under the Act whereas



the compensation is to be adjudged by the Adjudicating Officer under Section 71 of the Act *ibid*.

13. (B) Whether the complainant is entitled to get the refund of the money along with interest or not?

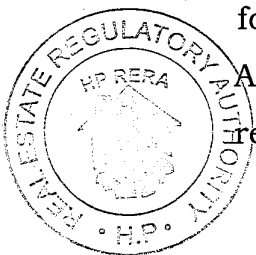
As per the contents of email dated 10.08.2023, it has come to notice that the an offer to hold a 2 BHK Duplex (Sky Villa, 1510 Sq. Ft.) numbered as Flat no 402 in Tower-I/Block 9 was made to the complainant for a consideration of Rs 85,00,000/- (Rs. Eighty Five Lakh) plus Society charges, stamp duty, GST at 5%, and other Government charges. The complainant, in response paid Rs. 2,01,001/- (Rs. Two Lakh One Thousand One) in two installments, first of Rs. 1,00,001/- (Rs. One Lakh One) on 18th August 2023 and second installment of Rs. 1,01,000/- (Rs. One Lakh One Thousand) on 21st August, 2023 as booking/holding charges on refundable basis. The complainant, as per the averments, had not seen the site and due to harsh weather conditions and landslides that took place in Himachal Pradesh in rainy season in 2023, could not visit immediately after receiving the email dated 10th August, 2023 but paid the amount of Rs. 2,01,001/- (Rs. Two Lakh One Thousand One) and visited site sometime in October and after seeing the site and seeing the project brochure provided to him, decided to go ahead with the booking of the flat as was represented to him and as is clear from the email dated 30th August, the price was negotiated to Rs. 80,00,000/- plus Rs. 5,47,000/- for the unit no 402 in Tower I , which is the same unit which was offered/held for him vide email dated 10th August, against which an amount of Rs. 2,01,001/- (Rs. Two Lakh One Thousand One) was paid by the complainant. The email



dated 30th October further made it clear that an upfront payment of Rs. 10,00,000/- (Rs. Ten Lakh) is required to be made, out of which Rs. 2,01,001/- having been received as booking amount and balance amount of Rs. Eight Lakh was required to be paid by the complainant. In the end of the mail, it has been mentioned that all points are agreed and requested to release the payment. This email dated 30th October, 2023 was sent at 3:32 pm. The complainant, immediately after receiving the mail, sent a confirmation mail at 3:35 pm, within 3 minutes, and agreed to process the payment and also requested to incorporate the points of trailing mail in the agreement to avoid any ambiguity. The complainant showing his Bonafide transferred Rs Eight Lakhs, in two transactions, of Rs. Five Lakh and Rs Three Lakh on 1st November.

- 14.** Subsequent to that, the complainant vide email dated November 5 at 3:23 pm, wrote to the respondent about some ambiguity and mentioned about discussion over calls pertaining to area of unit no. 402 in Tower I, further mentioning that the carpet area of the unit being 482 sq. ft. which in terms of built up area cannot be more than 578 sq. ft. and insisted that the per sq. ft. unit area RATE be calculated as per the original settlement of 1510 sq. ft. for Rs. 85,47,000/- (Rs. Eighty Five Lakh Forty Seven Thousand) which works out to Rs.5630/- per sq. ft. and further conveyed that the consideration price of unit no 402 in tower I on the basis of this unit rate would be Rs. 34,54,140.00/- for the offered area.

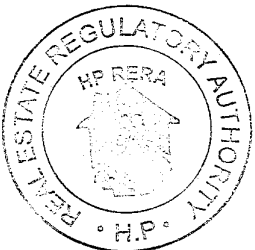
As per arguments of the complainant it is clear that the respondent was right from beginning offering him a duplex



flat, consisting of top floor flat in Tower I ,measuring 482 sq. ft. carpet area along with attic rights, claiming that the area of the duplex will be 1510 sq. ft. but as the same was not part of the approved drawing and as per filled inventory in the project as registered with RERA, it was conveyed to the complainant that agreement will be for an area of flat 482.9 sq. ft. with attic rights initially and after receiving further sanction of attic from the competent Authority the area of the duplex flat will increase to what is agreed upon and the agreement for sale to this effect was sent to the complainant which is on record at page no. 15 of the court file but the complainant refused to accept the same and to avoid any problem in the future insisted on the agreement for approved area only without attic rights and demanded that its consideration price be fixed on the basis of the area being offered at a rate which is to be derived from the total consideration price of Rs. 85,47,000/- of the duplex as was agreed upon between both the parties and confirmed by email dated 30th October, 2023, divisible by total area of duplex, which was 1510 Sq. ft.

15. The consideration price for the unit 402 in Tower I, in this manner of calculation, worked out to Rs. 34,54,140/- as per the calculations done by the complainant, which has some arithmetical mistakes/ ambiguity and it was conveyed to the respondent vide email dated November 5 at 3:23 pm with a request to revise the agreement failing which the refund of the paid amount will be asked for along with interest @1.5% per month.

Subsequently other email was sent by the complainant to the respondent on the same day, November 5, 2023 at 9:38 pm



mentioning about some discussion and requested for the immediate refund of Rs. Ten Lakhs.

In response to this email, the respondent sent the reply email on 5th November at 11:08 pm mentioning cancellation of property deal-Unacceptable discrepancy in pricing in the subject of the email and further elaborated in email that the initial settled and agreed consideration for 2BHK Skyvilla was Rs. Eighty Five Lakhs plus additional charges as applicable but the offer price of Rs 34,54,000/- (Rs. Thirty Four Lakh Fifty Four Thousand) plus other charges for the same unit is neither reasonable nor acceptable and cannot proceed under these revised terms

- 16.** In response to this email, the complainant, within 11 minutes, at 11:19 pm replied to the email mentioning about difference in what was agreed upon during sale process and what was finally in the agreement and requested again for an immediate refund. The complainant sent another reminder email on 6th November and 7th November, 2023 for refund.

Further, on the perusal of the project details as registered with HP RERA, it is seen that there is no tower I but the name of the tower is block 9 and the said unit no 402 as per the filled inventory details is a single floor flat admeasuring 44.88 sq. mt. carpet area which works out to 482.9 sq. ft. and not a duplex. Further there is no unit by the name 2BHK Duplex Skyvilla admeasuring 1510 sq. ft. as has been throughout represented to the complainant by the respondent. The respondent has misrepresented about the area of the approved flat since beginning and also by using different name of the block, as **block I** against the approved name of the block as block 9.



There is no application form, as against the normal practice in the real estate industry, filled by the complainant at the time of booking as mentioned about the one dated 06.03.2023 in the provided agreement for sale to the complainant by the respondent, which again is a misrepresentation. The application form is an important document which details the name of the project, area of the unit, consideration price etc. so that the allottee/prospective buyer knows at the time of booking as to what is being offered to him and the consideration towards the same. Similarly post the discussions and finalization, before the agreement is signed, a proper allotment letter is issued to the allottee by the promoter making it clear as to what has been allotted to him, how much he has paid as booking amount and further payments to be made by him and date of possession of the unit etc. There is no allotment letter issued in this case despite the fact that it is a mandatory document and specimen of which has been uploaded in the project details at the time of registration of the project with HP RERA.

17. Further the brochure provided to the complainant by the respondent promoter during the sale process, is a different document as against what has been uploaded on the website of the Authority at the time of registration of the project. Both the brochures do not mention any flat by the name 2BHK Duplex Skyvilla. It is astonishing that the complainant being a well-educated citizen of the country did not see the brochures carefully or did not make an attempt to check the details of the project on the web portal of the Authority and fell to the false pray of the respondent promoter.

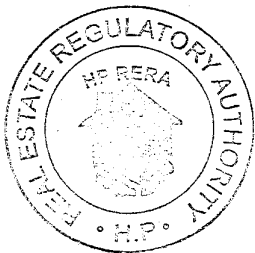


The proviso to Section 12 of the RERD makes it explicitly clear that where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus or on the basis of any model apartment, plot or building, as the case may be and sustains any loss or damage by reason of any incorrect, false statement included therein, intends to withdraw from the proposed project, he shall be returned his full investment along with interest at such rate as may be prescribed.

- 18.** On the basis of the above findings it is amply clear that the complainant was misled throughout about the area of the flat no 402 which was far too less as compared to what was promised to him, there was no approval for attic or attic rights which was included in the initial settlement, there was no flat by the name 2BHK Duplex Skyvilla as was offered to him and the respondent promoter stuck to the same consideration price of Rs 8547000/- (Rs. Eighty Five Lakh Forty Seven Thousand) even when the flat area was considerable reduced to 482.9 sq. ft. as against the initially offered area of 1510 sq. ft. All these acts are fully covered under section 12 and the respondent is guilty of violating the section 12 of the act.

I, on the basis of the findings as detailed above, hold that the complainant is entitled to full refund of his investment along with interest, payable after fifteen days from the date the refund was asked for which is from 20th November, 2023 till the date of payment.

The respondent is also held liable for the violation of section 11(2) for not mentioning all details of the project in the brochure and also having misleading information therein.



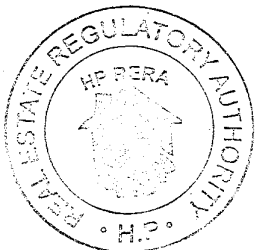
The respondent is also held liable for the violation of section 11(3)(a) for not issuing the allotment letter and not sharing the information about what is sanctioned area in the sanctioned plan of the concerned unit.

The respondent is also held liable for the violation of section 11(4)(a) for not acting in the manner he is expected of under various provisions of the Act .

19. (C)Whether the respondent is entitled to deduct 10% of the booking amount?

The respondent in his reply has submitted that he has no intention of unnecessary litigation and is ready to refund the amount after deducting 10% of the cost of the flat as booking amount. The contention of the respondent is absolutely wrong as there is no provision in the statute for the same and further various emails exchanged between the parties make it clear that the booking amount in this case is Rs. 2,01,001/- (Rs. Two Lakh One Thousand One). The complainant intends to deduct 10% of the cost of the flat which works out to Rs.8,54,700/- (Rs. Eight Lakh Fifty Four Thousand Seven Hundred) which is a staggering amount when compared with the total investment of Rs. 10 Lakhs made by the complainant. This complaint for withdrawal from the project for the reasons stated in para above and seeking refund with interest is covered under section 12 of the Real Estate (Regulation and Development) Act, 2016 and there is no provision that permits deduction of any kind.

It is also noted that this Authority has prescribed the standard allotment letter vide regulation no 6 as notified in the gazette on 8th November 2023.The clause 6 of the said allotment letter prescribes the deductions from the booking



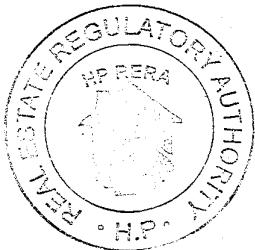
amount in case the allottee intends to withdraw from the project, which are linked to the date of allotment letter. In this case there is no allotment letter and hence the conditions of the allotment letter cannot be applied, moreover the conditions of the deductions from the booking amount for withdrawal from the project come in picture if there is no misrepresentation or concealment of fact on promoters part.

- 20.** More so, the complainant has withdrawn from the project because the respondent has misrepresented to him in terms of the area of the flat and stuck to the consideration amount which the complainant had agreed for the larger area flat, more than the double the size of what was finally offered to him and agreement of sale of that smaller area flat was sent to him, leaving no other choice to the complainant except withdrawing from the project and seeking refund of his invested/paid money which is permissible under section 12 of the Act *ibid* and there is no rider or condition of deduction of any amount for whatsoever reasons.

In view of above I hold that the respondent is not entitled to deduct any amount from the invested amount/paid amount.

- 21. (D) Other issue and directions including imposition of penalty.**

I am not imposing any penalty on the respondent promoter for violations as he has settled almost all complaints amicably in this project and other projects in the state of HP and his conduct in amicable settlement with the complainants has largely been good. However, the office of the Authority is directed to issue him a warning to not mislead the prospective buyers by trying to book/sell any inventory beyond what is approved by the competent

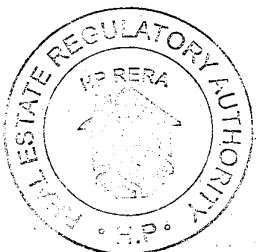


Authority and registered with this Authority and also direct him to issue allotment letter to all prospective buyers on the standard allotment letter as has been prescribed by this Authority. If any such issue of not issuing the allotment letter on the standard format and any endeavor of selling/ booking of any flat by misrepresenting the facts, contrary to the approved and registered documents, comes to the notice of the Authority, in future , the Authority will take necessary action as per the provisions of the Act.

22. RELIEF: -

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

- a. The complaint is allowed.
- b. In the complaint no. Complaint No. HPRERA2023033/C titled as Mrs. Preeti Mandal versus M/s Rajdeep & Company Infrastructure Private Limited, the Respondent promoter is directed to refund of Rs. 10,01001/- (Rs. Ten Lakhs One Thousand One 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% plus 2%, i.e. 10.85%, as per HP Real Estate (Regulation and Development) Rules, 2017, payable after fifteen days from the date the refund was asked for which is from 20th November, 2023 till the date of payment and total amount including the interest component be transferred online in her account The



refund along with interest is to be paid by the respondent promoter to the Complainant within 15 days from the date of passing of this order.

- c. That in case the respondent promoter fails to or does not fully comply with the aforesaid orders with in fifteen days from the date of passing of this order, then exercising powers under Section 63 of the Act ibid the respondent promoter will be liable to pay a per day penalty of Rs 10000/- till compliance of the order.



Rajeev Verma
Member

