

**BEFORE THE REAL ESTATE REGULATORY AUTHORITY  
HIMACHAL PRADESH AT SHIMLA**

**Complaint no. HPRERA2025021/C**

**In the matter of:-**

Ms. Vimal Sana, Daughter of Sh. D.D. Sana, Resident of the  
Palace Fingask Estate Shimla Himachal Pradesh, 171003

..... Complainant

Versus

M/s Rajdeep and Company Infrastructure Private Limited,  
office at SCO 12, First Floor, Hollywood Plaza, VIP Road  
Zirakpur, Mohali 140603

..... Respondent

**Present:- Smt. Vimal Sana complainant**

**Sh. Ajay Sipahiya Ld. Counsels for respondent  
promoter M/s Rajdeep and Co.**

**Date of hearing:** 02.05.2026

**Date of pronouncement of order:** 06.06.2026

**Order**

**Coram: Chairperson and Member**

**1. FACTS OF THE CASE:-**

That the complainant is citizen of Shimla, resident of The Palace, Fingask Estate Shimla and a purchaser of a flat in the residential project known as "MASHOBRA HILLS" from respondent Rajdeep Sharma being of Developer of "MASHOBRA HILLS". The complainant came across an

advertisement of 99 acres.com that the builder Rajdeep & co developing the residential building/towers under the name of Mashobra Hills Shimla HP and relying upon the trustworthiness of the 99 acres.com which is a reputed Real Estate on online portal, she approached the Rajdeep company officials who thereafter described her the salient features of the project which is providing fully furnished apartments/ flats including plethora of services and amenities viz all modern amenities, gated community/society with state-of-the-art security, common facilities, club house, house-keeping, catering facilities etc. beside one dedicated car parking and 24/7 operational lift for every apartment/ flat owners/allottees. The respondent company had also assured the prospective buyers and allottees' that they have got all the necessary approvals to develop the aforesaid housing project from the concerned authorities and they would not get any complications qua the registration of sale deed and would get all relevant papers which would secure the rights of each allottees and shall provide NOC and completion certificate from the Municipal Corporation on completion of the aforesaid project. The respondent company had also assured the prospective buyers that they shall procure the completion certificate of the building before the transfer of the possession to the allottees to which it has already filed the affidavit with respect to that before the concerned authorities. Thereafter the complainant got ready to book a flat No.-203, 1st Floor, consisting of one bed room, Studio apartment in tower called Tower-A, in project 'Mashobra Hills Shimla", at a total of basic selling price (BSP) of Rs. 58,00,000/- (Fifty Eight Lakhs Only) for which the payments was to be made, on completion of

certain milestone basis, plus extra charges for other services/amenities. The complainant on 06.11.2023, paid a booking amount of Rs. 1,01,000/ (one lakh one thousand) with respect to the abovementioned flat duly acknowledged by the Rajdeep & Co. The receipt of the payment has been annexed with the complaint. Thereafter, complainant cancelled the aforesaid studio apartment within 28 days of the payment made on which Rajdeep & co. promised the complainant to refund, the booking amount. After repeated request of the complainant for refund the Rajdeep & co. has failed to refund the booking amount. The emails are annexed with the complaint regarding refund of amount with interest.

**2. REPLY FILED BY RESPONDENT TO THE COMPLAINT:-**

That at the very threshold, the present complaint is liable to be rejected being vague, self-contradictory, materially defective and legally misconceived as the complaint is bad for misdescription, non-joinder of the necessary party and misdirected relief. The complainant seeks "refund of amount with interest", but the statutory foundation for such relief is conspicuously absent. Section 18 of the Act contemplates return of amount and compensation where the promoter fails to complete or is unable to give possession in accordance with the terms of the agreement for sale, or where the business is discontinued on account of suspension/revocation or for comparable reasons. Likewise, section 19(4) speaks of refund where the promoter fails to comply or is unable to give possession in accordance with the terms of the agreement for sale. The complainant has not filed agreement for sale at all. The case of the complainant is not one of promoter default

leading to inability to hand over possession, it is one of her own unilateral withdrawal due to her own unavoidable circumstances. Section 18 cannot be stretched into a universal exit and-refund provision whenever an intending purchaser changes course. Section 13 of the Act provides that a promoter shall not accept more than ten per cent of the cost of the apartment as advance/application money without first entering into a written and registered agreement for sale. The complainant herself pleads that the proposed basic sale price was Rs.58,00,000/- and only Rs.1,01,000/- was paid as booking amount. Thus, on the complainant's own showing, the amount allegedly paid was far below ten per cent of the stated basic sale price. Therefore, the mere absence of an agreement for sale does not, by itself, convert the booking into an automatic statutory refund claim. The complainant's alleged cancellation communication is denied by the respondent for want of proof, admissibility, and legal efficacy. The screenshot annexed by the complainant does not disclose the mobile number to which the message was sent, does not establish that it was addressed to any authorised representative of the legally liable entity, and does not show acceptance by the proper contracting party. There is also no pleading or proof that such informal mode of communication was contractually recognised as a legally valid mode of cancellation. The message, addressed to "Sanjit Ji," expressly states that the complainant would not be able to buy the studio apartment "right now" because she was "truly exhausted of funds" and expected refund of the cheque amount. The receipt relied upon by the complainant only evidences receipt of a certain sum toward a proposed unit, it does not record any unconditional obligation to refund the

same upon unilateral withdrawal. It is also pleaded by the respondent that the present complaint is also liable to be rejected on account gross of delay, laches, and waiver by conduct. According to the complainant's own case, the booking amount was paid on 06.11.2023 and the proposed cancellation was made within about 28 days therefrom. Yet the complaint has been instituted only on 05.09.2025, i.e. after an unexplained lapse of nearly two years. No satisfactory explanation has been offered for this extraordinary silence. In the absence of the governing contractual instrument, the complainant's assertion of being a purchaser/allottee is at best incomplete and at worst self-assumed. Such an uncertain status cannot be used as a springboard to claim statutory refund with interest against a respondent who is himself improperly described.

That in reply, on merits of the case, averments of the complaint are denied by the respondent. It is pleaded by the respondent that jurisdiction, if any, is subject to the Respondent's preliminary   objections on locus, misjoinder/non-joinder, and limitation/staleness, and maintainability. The Respondent deny each and every averment to the extent it suggests automatic maintainability of the present complaint in its present form. The respondent does not dispute that the complainant had shown interest in a proposed studio apartment in the project; however, the averment that complainant had attained the legal status of a completed purchaser is incorrect, premature, and unsupported by any executed contractual document. No agreement for sale, no registered instrument, and no finalized allotment document has been placed on record by the

complainant. The complaint is conspicuously silent on the terms governing booking, cancellation, forfeiture, refund, timelines, reciprocal obligations, and conditions precedent. Such silence is fatal, because legal rights do not arise from aspiration alone. A provisional booking, without more, cannot be equated with a consummated purchase so as to attract every remedial consequence claimed by the complainant. The respondent denied that the complainant has again resorted to a legally impermissible conflation of identities by stating that "the respondent Rajdeep Sharma" is the developer of Mashobra Hills. The project, insofar as the complaint itself discloses, is associated with M/s Rajdeep & Company Infrastructure Pvt. Ltd., and not with an undefined personal capacity of any individual. Filing such a complaint is not a minor defect but a substantive infirmity, because legal responsibility must attach to a determinable person recognized by law. If the complainant seeks relief against the company, she must proceed against the company in a legally proper manner. It is further pleaded by the respondent that the complainant makes a vague reference to an advertisement allegedly seen on "99 acres.com", yet has not annexed the specific advertisement, its date, contents, screenshot, URL details, or the exact representation on the strength whereof she claims to have acted. A bald reference to a reputed online portal does not discharge the burden of pleading material facts. It is further submitted that the complaint is conspicuously vague on the identity of the official(s), date(s), and mode of communication, terms/conditions and the exact subject to which any amenities were discussed. Having thus attributed cancellation to personal inability, complainant cannot seek refund claim. A

party who voluntarily exits the transaction at the threshold cannot predicate her refund claim upon future-stage compliances that had not yet fallen due inter se the parties. The complaint thus mixes pre-possession allegations with a self-cancellation claim in a manner that is conceptually confused and legally unsustainable. The respondent admitted that the complainant appears to have shown interest in booking a proposed studio apartment described as Flat No. 203 in the project in question. The Respondent further pleaded that the complainant's framing-proceeding against an individual while levelling allegations against a company suffers with maintainability defects. Therefore, Para 7 cannot be read in isolation, it must be tested against privity, proper parties, and the documents as relied upon. The receipt, as annexed by the complainant, is not shown to have been issued in the personal name of Rajdeep Sharma, it bears the name of Rajdeep & Co. Infrastructure Pvt. Ltd. This single annexure therefore demolishes the complainant's own attempt to personalize liability against an individual while simultaneously relying upon a corporate receipt. Furthermore, a payment receipt is merely evidence of receipt of money; it is not an agreement for sale, not a possession promise, not an allotment instrument containing cancellation terms, and not an admission of an unconditional refund liability. The complainant cannot enlarge the legal effect of this document. The alleged repeated requests to refund are likewise unproved and wholly insufficient in law. Refund with interest is not a free-floating remedy detached from the statutory contingencies that trigger it. As per respondent in the present case, there is no executed agreement for sale placed on record, no pleaded

breach of an agreed possession timeline, no pleading of discontinuance of business, no properly particularized plea of false advertisement causing actionable loss and no documentary acknowledgment from the promoter Company promising unconditional refund. On the contrary, the complainant's own annexed message attributes the withdrawal to shortage of funds. That is a personal circumstance, not a promoter default. The complaint is thus an attempt to convert a private change of intention into a statutory claim for refund with interest. Such relief, being unsupported by law and record, is liable to be declined with exemplary costs. The complaint is built on an evidentiary vacuum and deserves outright rejection.

In background of the above pleadings, the respondent most respectfully prayed that this Hon'ble Authority may be pleased to:

- (i.) Dismiss the Complaint with heavy cost as being false, vexatious, vague, defective, misconceived, delayed, and not maintainable in its present form;
- (ii.) Hold that no case for refund with interest is made out against the present Respondent under the Real Estate (Regulation and Development) Act, 2016;
- (iii.) Dismiss the Complaint for suppression of material facts/documents and want of bona fides and for non-impleadment of necessary parties;
- (iv.) Reject the relief of refund with interest as claimed by the complainant; and
- (v.) Pass any other order(s) as this Hon'ble Authority may deem fit in the interest of justice.

**3. REJOINDER BY THE COMPLAINANT:-**

The complainant denied the preliminary objection being wrong. It is pleaded by the complainant that the complainant is not required to know the legal formulation of Rajdeep and Co Infrastructure Pvt. Ltd. as the petitioner was projected Rajdeep Sharma owner and developer of the Mashobra Hills Project and so has made complaint against Sh. Rajdeep Sharma. The respondent have not denied that Sh. Rajdeep Sharma is not the Director or the person in charge of the affairs of Rajdeep and Co Infrastructure Pvt. Ltd. The receipt of payment referred to is also not descriptive or contains the details of the Rajdeep and Co Infrastructure Pvt. Ltd except the name. The respondent failed to enter into agreement or issue sanction letter to the complainant. Under the Real Estate (Regulation and Development) Act, 2016 Section 2 (c) defines the agreement to sell and 2 (d) defines the allottee. Neither the agreement to sell has been entered nor the allotment letter been issued to the complainant. Section 11 (4) provides the details the duty of the promotor. Section 12 specifically provides that if an advance or deposit on the basis of information contained in the notice, advertisement or prospectus is received by the promotor in case of false statement or failure to complete its obligation under the Act, the affected person can seek withdrawal from the proposed project and same shall be returned along with interest. Section 13 prohibits the promotor to receive any deposit or any advance without first entering into agreement of sale. In the present case the promotor has committed violation of the Act as he has received the deposit/advance without first entering into agreement. That neither the signed agreement nor attested copy thereof has been supplied to the complainant nor any

sanction letter has been issued to the complainant. Thus the reliance on Section 18 and 19 is not applicable in the present case as the promotor has failed to fulfil its obligations provided in Section 11 to Section 13 of the Act. It is further pleaded by the complainant that Section 13 does not state that 10% amount is to be taken as advance, it only provides for the upper limit of advance and in no way restricts the lower limit for the advance rather it obligates the promotor to enter into agreement to sell at the time of receiving any amount towards advance which in the present case the promotor has failed to do. Failure on part of the promotor is covered under the refund provided under the Act. The Act does not prohibit the purchaser to withdraw from the project at any time that restriction could only be agreed upon in agreement of sale.

Since respondent has failed to enter into the agreement of sale and committed breach under the provisions of Act is liable to refund the advance with interest. The communication with respect to WhatsApp message is available on the mobile of the complainant and can be ascertained by physical inspection. It is the further case of the complainant that once the respondent have received the advance it is for the respondent to demonstrate as to for what purpose and under which agreement the amount was taken. As already pointed out above, the Act obligates the promotor to enter in the agreement of sale while receiving any amount. Once agreement of sale has not been entered by the promotor, it constitutes the violation of its obligation and the amount of advance is refundable. It is also pleaded by the complainant that the Act does not restrict any time frame for making the complaint which otherwise is within the reasonable time and it is not for the complainant to

explain to the defaulter respondent regarding the time frame for making the complaint. As already pointed out above Section 13 prohibits the promotor to receive any deposit or any advance without first entering into agreement of sale. In the present case the promotor has committed violation of the Act as he has received the deposit/advance without first entering into agreement. That neither the signed agreement nor attested copy thereof has been supplied to the complainant nor any sanction letter has been issued to the complainant.

As per complainant, the reply on merits by the respondent is disputed and denied by the complainant. That unnecessary and lengthy pleadings have been made with malafide intent to complicate the issue in dispute. It is admitted case that amount of Rs.1,01,000/- was received by respondent on 06.11.2023. It is further admitted case that the respondent failed to enter into agreement of sale at the time of receiving the advance/deposit, statutorily required under Section 13. It is also admitted case that refund was sought by the complainant. The respondent in the reply has not made a single averment as to any law or any stipulation in its advertisement that the amount claimed by the claimant cannot be refunded. That a reply without any head and tail has been unnecessarily detailed by pleading useless averments which has no connection or in any way is relevant to the dispute.

#### **4. ARGUMENTS BY COMPLAINANT:-**

Complainant submitted that her pleadings/ rejoinder may kindly be treated as her arguments. After the arguments advanced by the Ld. Counsel for the respondent, complainant submitted that all the pleas raised on behalf of respondent are

wrong. Complainant submitted that she made the communication for cancellation of the unit within 27 days to Sh. Sanjeet Singh, authorized person of the respondent. The payment has gone in the RERA account through respondent. Complainant further submitted that as and when she made communication to the respondent, the refund was not denied but the payment is not made so far and the respondent is trying to delay the payment by making excuses. Complainant further submitted that she communicated to respondent within one month for cancellation of booking hence, entitled for the refund of Rs. 1,01,000/- which was paid by her on account of booking amount.

**5. ARGUMENTS ON BEHALF OF RESPONDENT:-**

Ld. Counsel for the respondent raised the objection of maintainability of the complaint on ground of non-joinder of necessary party. It is submitted on behalf of respondent that complainant has not made company as respondent/promoter. The plaint against an individual person, who is not party in the proceedings, is liable to be dismissed. The Ld. Counsel further submitted that no intimation/communication has been made by the complainant to the respondent within one month hence, complainant is not entitled for refund. It is not clear that on which number whats app message was sent by the complainant. It is not clear that to whom the whats app message was made. It is also submitted that the complainant herself said in the communication that she is exhausted of funds. Hence, there is no lapse on the part of respondent. As per respondent, complainant is saying that Section 18 and 19 are not applicable in the case, so refund is not applicable in the present case. Complainant has pleaded that selling price

was Rs. 58,00,000/- and booking amount was Rs. 1,01,000/- . No agreement for sale is placed with the complainant. No allotment letter is issued in favour of complainant as no application was moved by her. Ld. Counsel for the respondent also referred Section 19(4) of the RERA Act, 2016 by submitted that if there is no fault on the part of promoter then complainant is not entitled for refund. He also submitted that for refund of booking amount, application was to be made within one month and prayed for the dismissal of the complaint.

#### **6. ANALYSIS:-**

From the above discussion, the case of the complainant, in brief, is that she had shown interest in purchasing a studio apartment bearing Flat No. 203 situated in Tower-A of the project namely "Mashobra Hills", being developed at Shimla, Himachal Pradesh. She came across advertisements issued through 99acres.com and thereafter approached the representatives of the respondent regarding the project where various assurances were extended to her by the respondent regarding development of the project, provision of amenities, approvals and execution of documentation. By relying upon such representations, the complainant paid an amount of Rs.1, 01,000/- on 06.11.2023 towards booking of the said studio apartment but later on complainant cancelled the booking of the unit on 2<sup>nd</sup> December, 2023 within approximately 27-28 days. When respondent did not make the refund of the booking amount complaint has been filed by the complainant seeking refund of booking amount of Rs.1,01,000/- along with interest under the provisions of the

Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "RERD Act, 2016").

The stand of the respondent is that the complaint suffers from non-joinder/misdescription of parties as the amount was allegedly received by M/s Rajdeep & Company Infrastructure Pvt. Ltd., whereas the complaint has been filed against Rajdeep Sharma individually. Since, no agreement for sale was executed and therefore Sections 18 and 19 of the Act are not attracted. The complainant herself withdrew from the transaction due to financial inability and there was no default on the part of the promoter. Hence, complainant is not entitled to refund with interest. Respondent has also raised the plea that the complaint is barred by delay and laches. On the basis of aforesaid facts and submissions following issues have been emerged for the determination of the instant complaint.

#### **7. ISSUES FOR DETERMINATION**

From the pleadings and submissions of the parties, the following issues arise for determination:

1. Whether the complaint is maintainable in its present form?
2. Whether acceptance of booking amount by the promoter without execution of agreement for sale amounts to violation of Section 13 of the RERD Act, 2016?
3. Whether the Respondent violated Section 11 (3) RERA Act?
4. Whether the complainant is entitled to refund of the booking amount?
5. Whether the complainant is entitled to interest on the refundable amount?
6. Relief.

## 8. FINDINGS AND REASONS

### i. Whether the complaint is maintainable in its present form?

The respondent has raised a preliminary objection that the complaint is not maintainable as the amount was allegedly received by M/s Rajdeep & Company Infrastructure Pvt. Ltd., whereas the complaint has been filed against Rajdeep Sharma in his individual capacity. This objection does not merit acceptance for the following reasons.

**Firstly**, the respondent has not disputed the existence of the project "Mashobra Hills" nor denied receipt of the amount of Rs.1,01,000/- from the complainant on behalf of the M/s Rajdeep and Co. Infrastructure Private Limited on account of the flat mentioned in the complaint. The respondent has also not denied that Rajdeep Sharma is associated with the project and the company concerned with development thereof. The booking was cancelled on 2<sup>nd</sup> December, 2023 i.e. within one month.

**Secondly**, proceedings under the RERA Act, 2016 are regulatory and beneficial in nature intended to protect homebuyers and allottees from arbitrary conduct of promoters/developers. Hyper-technical objections relating to nomenclature or description of parties cannot defeat substantive justice, particularly when the transaction itself is admitted.

**Thirdly**, the Hon'ble Supreme Court in case titled as **"Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh", "Supreme Court of India, 2021"** held that the provisions of the RERA Act are consumer beneficial and

must receive purposive interpretation so as to advance the object of the legislation.

The objections raised by the respondent regarding delay, absence of allotment letter and non-applicability of Sections 18 and 19 are considered. The plea of delay is also not sustainable. The complaint pertains to refund of money retained by the promoter. The cause of action continued so long as refund was not made. The respondent also failed to produce any policy, brochure or signed terms governing forfeiture. In case of Wadhwa Group Housing Pvt. Ltd Vs Vijay Choksi , The Bombay High Court has held that Privity of contract is not required, under RERA, and all promoters listed or associated with a real estate project are jointly liable. A promoter cannot escape liability under the specious plea that another entity or individual account received the money.

The respondent has participated in the proceedings, filed detailed reply on merits and admitted receipt of the amount. No prejudice has been shown to have been caused on account of description of the respondent. Accordingly, the objection regarding maintainability on account of non-joinder/misdescription is rejected.

Issue No.1 is decided in favour of the complainant.

**ii. Whether acceptance of booking amount without execution of agreement for sale amounts to violation of Section 13 of the RERA Act, 2016?**

The complainant has specifically pleaded that the respondent accepted booking amount of Rs.1, 01,000/- without executing

any agreement for sale or issuing allotment letter. The respondent has not disputed that no agreement for sale was executed.

Section 13 of the RERD Act, 2016 reads as under:

*No deposit or advance to be taken by promoter without first entering, into agreement for sale.- (1) A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.*

No promoter shall accept more than 10% of the cost of apartment without first entering into a written agreement for sale. The respondent has argued that since the amount received was less than 10% of the total sale consideration, there was no obligation to execute agreement for sale.

This Authority is unable to accept such interpretation. The legislative intent behind Section 13 is to prevent arbitrary collection of money from prospective purchasers without formalizing the rights and obligations of parties. The provision places an upper ceiling upon the promoter from receiving more than 10% without agreement however, once the promoter receives advance/booking amount and proceeds with allotment process, the promoter cannot avoid execution of documentation and simultaneously deny accountability.

The respondent admittedly accepted the money from complainant and retained the same despite cancellation having been communicated within a short duration. No agreement containing forfeiture clause, cancellation charges, lock-in period or non-refundable condition has been produced before this Authority. In absence of any agreement governing forfeiture, the promoter cannot retain the money of the complainant merely on the ground that the complainant withdrew from the proposed transaction.

The Hon<sup>ble</sup> Supreme Court in case titled as, "**Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan**", "**Supreme Court of India, 2019**" observed that a builder cannot impose one-sided and unfair contractual conditions upon homebuyers and that contractual fairness is integral to real estate transactions. Similarly, various authorities under RERA have consistently held that in absence of executed agreement for sale and specific forfeiture clause, retention of booking amount becomes arbitrary and unjustified. Thus, this Authority is of considered view that acceptance and retention of booking amount without formal agreement and without any disclosed cancellation terms is contrary to the spirit and object of the RERD Act, 2016.

Issue No.2 is accordingly decided in favour of the complainant.

**iii. Whether the Respondent violated Section 11 (3) of RERD Act?**

In order to consider and decide this issue, the Act mandates that the promoter, at the time of booking and issue of allotment

letter shall be responsible to make available to the allottee, certain informations such as sanctioned plan, layout plans along with specification, the stage wise time schedule of completion of the project etc. as may be prescribed by the regulations made by this Authority. The Authority, after having gone through the relevant provision contained under section 11(3) of the Act, 2016, is of considered view that the respondent/promoter has violated the mandate of the said section which prescribes as under: -

1. . "**Section 11: Functions and duties of promoter –**

*(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 information, namely:-*

*(a) sanctioned plans, layout plans, along with specifications, approved 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."*

2. The promoter at the time of booking of flat in favour of complainant was bound to issue 'allotment letter' as per the HP RERA (Allotment letter) Regulation no. 6 of 2023. Clause of the regulation makes it clear that it shall be mandatory for the promoter to issue allotment letter to the allottee. Further, the regulation framed by the Authority have full force of law and violation thereof attracts penalty under Section 61 of RERD Act, 2016.

Section 61 of the RERD Act, 2016 is reproduced as under:

*If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project as determined by the Authority.*

Rule 1(3) of the Himachal Pradesh Real Estate Regulatory Authority (Allotment Letter), Regulation no. 6 of 2023 is reproduced as under:

*3) This Regulations is meant for compliance of the provision of clause (g) of sub-section (2) of Section 4 read with Section 11(3) of the Real Estate (Regulation and Development) Act, 2016. The proforma of the allotment letter to be uploaded alongwith application for registration of the real estate project shall be as per this regulation. It shall be mandatory to issue allotment letter in the prescribed format*

Perusal of pleadings as well as arguments submitted by the respondent reveals that he failed to substantiate this very fact that at the time of booking, aforesaid conditions were adhered to and on the contrary the complainant succeeded in establishing that apart from charging booking amount no other documentation was entered into by the respondent. It is clear that the respondent has not issued allotment letter to the complainant. Moreover, clause 6 of the allotment letter makes it mandatory for the promoter to refund full amount within 30 days. In the instant matter, the complainant tendered the booking amount of Rs. 1,01,000/- on 06.11.2023 through receipt No.1842 in the Project Name MASHOBRA HILLS. The booking of the flat was cancelled on 2<sup>nd</sup> December, 2023, which is within a period of 30 days from the date of booking the flat.. Hence, this Authority concludes that the respondent has clearly violated the provision contained under Section 11(3) by

withholding Rs.1,01,000/- which is punishable under Section 61 of the Act.

**iv. Whether the complainant is entitled to refund of the booking amount?**

It is an admitted position that the complainant paid Rs.1,01,000/- on 06.11.2023 and cancellation of booking of flat was communicated on 2<sup>nd</sup> December, 2023 No agreement for sale was executed between the complainant and promoter. Similarly no allotment letter containing cancellation conditions was issued under the Rule 6 of Himachal Pradesh Real Estate Regulatory Authority (Allotment Letter), Regulation no. 6 of 2023. The complainant communicated withdrawal/cancellation within about one month but, the respondent has retained the amount till date.

The principal defence of the respondent is that the complainant herself withdrew from the transaction due to financial inability and therefore refund is not payable. This contention cannot be accepted in the facts of the present case. As per regulation person may choose to withdraw from a proposed booking for personal reasons. However, in absence of a contractual clause authorizing forfeiture, the promoter cannot retain the money deposited by the prospective allottee. The respondent has failed to produce any booking application form, any allotment letter, any agreement for sale, any clause providing forfeiture of booking amount, any condition stipulating that refund request must be made within one month, any written communication refusing refund at the relevant time. On the contrary, the complainant has consistently demanded refund.

The contention of the respondent that WhatsApp communication is not proved also deserves rejection. Proceedings under the RERD Act are summary and regulatory in nature. Technical rules of evidence are not to be applied with rigidity. The respondent has not specifically denied the existence of communication with the complainant nor denied that Sanjeet Singh was associated with the project. Further, the respondent nowhere pleaded that the amount stood forfeited under any contractual term.

This Authority is guided by the decision of The Hon'ble Supreme Court in case titled as "**Imperia Structures Ltd. v. Anil Patni**" in which it is reiterated that the RERD Act is a welfare legislation intended to ensure accountability and transparency in real estate transactions. The respondent's conduct in retaining the amount without any contractual authority cannot be sustained. Accordingly, the complainant is held entitled to refund of Rs.1,01,000/-.

Issue No.4 is decided in favour of the complainant.

**v. Whether the complainant is entitled to interest on the refundable amount?**

The complainant has sought refund along with interest. The respondent has retained the amount of the complainant since November 2023 without any legal justification. Once the promoter retained the amount despite cancellation and without existence of any forfeiture clause, the complainant was deprived of use of her money. Rule 15 of Himachal Pradesh Real Estate Regulatory Authority Rules 2017 provides as under:-

*15. 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 per cent 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.*

Though the present matter does not strictly arise from delayed possession, the equitable principles underlying the Act require that a promoter should not unjustly enrich itself by retaining money belonging to a purchaser.

This Authority is also guided by the decision of The Hon'ble Supreme Court in case titled as "**Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroom**", "**Supreme Court of India, 2022**" in which it is recognized that homebuyers cannot be compelled to suffer financial prejudice due to arbitrary conduct of builders.

At the same time, considering that the complainant herself withdrew from the proposed transaction and no formal agreement for sale and allotment letter had been executed, this Authority is of the considered view that ends of justice would be met by awarding reasonable interest and not penal interest. Accordingly, the complainant is held entitled to interest on the


refundable amount from the date of filing of complaint till realization.

Issue No.5 is decided accordingly.

**vi. RELIEF**

Keeping in view the above-mentioned observations, 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 and the Respondent is directed to refund the amount of Rs. 1,01,000/- to the complainant 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 and Development) Rules, 2017 to the complainants. The present highest MCLR of SBI is 8.80%. Hence the rate of interest would be 8.80 %+2% i.e. 10.80% per annum on the amount paid by the complainant in her account, with in a period of sixty days, from the issuance of this order.

  
**(R.D. Dhiman)**  
**CHAIRPERSON**

  
**(Vidur Mehta)**  
**MEMBER**