



Real Estate Regulatory Authority- Punjab

First Floor, Block-B, Plot No. 3, Sector-18 A, Madhya Marg, Chandigarh – 160018
Phone No. 0172-5139800, email id: pschairrera@punjab.gov.in & pachairrera@punjab.gov.in

Before the Bench of Sh. Rakesh Kumar Goyal, Chairman.

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| 1. Complaint No. | :- AdC No. 00382024TR-AUTH00612024 |
| 2. Name & Address of the complainant (s)/ Allottee | :- Sh. Balbir Singh s/o Ratan Chand Jat
Village Bagkuljan Tehsil ST-Jaisinghpur, Kangra,
Himachal Pradesh - 176095 |
| 3. Name & Address of the respondent (s)/ Promoter | :- M/s. Phenomenal Construction Pvt. Ltd..
Office at Shop No. 4, Rosewood Estate Gulabgarh
Road, SAS Nagar (Mohali), Punjab – 140507. |
| 4. Date of filing of complaint | :- 06.03.2024 |
| 5. Name of the Project | :- Bella Vista -1 |
| 6. RERA Registration No. | :- PBRERA-SAS79-PR0413 |
| 7. Name of Counsel for the complainant, if any. | :- Sh. Virender Sankhyan, Son of the complainant |
| 8. Name of Counsel for the respondent, if any. | :- Ms. Manisha Maggu, Advocate. |
| 9. Section and Rules under which order is passed | :- Section 31 of the RERD Act, 2016 r.w. Rule 36 of
Pb. State RERD Rules, 2017. |
| 10. Date of Order | :- 02.02.2026 |

Order u/s. 31 read with Section 40(1) of Real Estate (Regulation & Development) Act, 2016 r/w Rules 16, 24 and 36 of Pb. State Real Estate (Regulation & Development) Rules, 2017

The present complaint has been filed by the complainant **seeking refund of an amount of Rs.2,84,500/- paid towards booking of a residential plot along with interest**, on the ground that the respondent has illegally withheld the said amount despite cancellation of the allotment and repeated requests for refund.

2. The case of the complainant, as set out in the complaint, is that the complainant was provisionally allotted **Plot No. A-126** measuring **100 square yards** in a project namely “Suraksha Enclave Township” situated at Zirakpur vide Builder Buyer’s Agreement dated **25.07.2017** for serving/retired para-military forces personnel under Akhil Bhartiya Suraksha Awaas Yojna. It is pleaded that the complainant deposited 25% of the total cost of the said plot amounting to Rs.2,84,500/-, which was duly acknowledged by the respondent company. For ready reference, payment details are as under:-



bodies / departments and their requirements if any.

D. The Buyer had made the Application (defined hereinafter) to the Company for provisional allotment of Plot No. A126 measuring 100 sq. yd. in the Said Township (defined hereinafter), on Sunday March 26, 2017. A letter for provisional allotment of the Said Plot was issued in favour of the Buyer by the Company ("Provisional Allotment Letter").

The buyer is to pay,

Earnest Money (defined hereinafter) to the Company as the booking amount for the Said Plot i.e. Rs.113800/- (ONE LAKH THIRTEEN THOUSANDS EIGHT HUNDRED RUPEES) and Allotment Money (defined hereinafter) to the Company as the allotment amount for the Said Plot i.e. Rs. 170700/- (ONE LAKH SEVENTY THOUSANDS SEVEN HUNDRED RUPEES),

which the buyer has paid as per the following details :

Mode of payment	Cheque/Transaction Details	Drawn On	Cheque/Transaction Date	Amount
Online	001-BA569E28BA0DB3E-1848		26-Mar-2017	Rs.5000/-
CHQ/NEFT/RTGS/CASH	542379	STATE BANK OF INDIA	17-Apr-2017	Rs.108800/-
CHQ/NEFT/RTGS/CASH	542489	STATE BANK OF INDIA	23-Jun-2017	Rs.170700/-

E. The Buyer has represented that it has specifically understood and agreed that:

- the performance by the Company of its obligations under these presents is contingent upon approvals to be granted by the Authorities from time to time, and subject to all applicable Laws/ notifications/ conditions as imposed by these Authorities while granting approvals to the Company, including the provisions of Government Master Plan, Zonal Regulations, Municipal Bye-laws;
- the Company has readily provided all information, clarifications as required by

Balbir Singh
Director

Balbir Singh
ALLOTTEE(S)

2.1 It is further pleaded that on 06.05.2019, another Builder Buyer's Agreement was executed between the complainant and the respondent company in respect of Plot No. A-138, measuring 100 square yards, in the same project; however, the said subsequent agreement bears the same date i.e. 25.07.2017, as mentioned in the earlier Builder Buyer's Agreement. The aforesaid fact has not been disputed by the respondent in its reply:-

D. The Buyer had made the Application (defined hereinafter) to the Company for provisional allotment of Plot No. A138 measuring 100 sq. yd. in the Said Township (defined hereinafter), on Sunday March 26, 2017. A letter for provisional allotment of the Said Plot was issued in favour of the Buyer by the Company ("Provisional Allotment Letter").

The buyer is to pay,

Earnest Money (defined hereinafter) to the Company as the booking amount for the Said Plot i.e. Rs.113800/- (ONE LAKH THIRTEEN THOUSANDS EIGHT HUNDRED RUPEES) and Allotment Money (defined hereinafter) to the Company as the allotment amount for the Said Plot i.e. Rs. 170700/- (ONE LAKH SEVENTY THOUSANDS SEVEN HUNDRED RUPEES),

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- the performance by the Company of its obligations under these presents is contingent upon approvals to be granted by the Authorities from time to time, and subject to all applicable Laws/ notifications/ conditions as imposed by these Authorities while granting approvals to the Company, including the provisions of Government Master Plan, Zonal Regulations, Municipal Bye-laws;
- the Company has readily provided all information, clarifications as required by the Buyer and that no oral or written representations or statements shall be considered to be part of this Agreement and that this Agreement is self-contained and complete in itself in all respects; and



For Phenomenal Construction Pvt. Ltd.
Balbir Singh
Authorised Signatory

Balbir Singh
ALLOTTEE(S)

2.1 The complainant has averred that subsequent to execution of the agreement for **Plot No. A-138**, he suffered from serious gastro-intestinal and hepatic ailments and his mother was also diagnosed with cancer, requiring immediate and prolonged medical treatment. It is pleaded that due to these unavoidable and compelling circumstances, the complainant incurred huge medical expenses and was rendered financially incapable of paying further instalments as per the payment plan. It is stated that owing to paucity of funds, the complainant was constrained to discontinue the agreement and requested the respondent company through email to cancel the allotment and refund the amount already paid, as per the terms and conditions of the agreement.

2.2. It is further pleaded that the respondent company sought bank account details of the complainant for refund purposes, which were duly provided, but despite repeated follow-ups and requests, including personal communications with the senior officials of the respondent company, the refund amount has not been released till date. The complainant has alleged that the respondent has illegally withheld his hard-earned money for a considerable period, causing him financial hardship and mental agony, and has prayed for refund of the deposited amount along with interest and litigation costs.

3. In response, the respondent has filed a written reply contesting the complaint. At the outset, the respondent has denied all allegations made in the complaint except those specifically admitted. It is pleaded that the complainant does not fall within the definition of an "allottee" and has no *locus standi* or cause of action to maintain the present complaint. It is further alleged that the complainant has concealed material facts and has not approached this Authority with clean hands.



3.1 The respondent has admitted that **Plot No. A-138 measuring 100 square yards** was allotted to the complainant vide allotment letter dated 06.05.2019 under the Akhil Bhartiya Awas Yojna scheme. The receipt of an

amount of Rs.2,84,500/- from the complainant is also not disputed. The respondent has further admitted that an agreement was executed between the parties governing the terms and conditions of allotment.

3.2 The respondent has contended that as per the agreement as well as the provisions of the Real Estate (Regulation and Development) Act, 2016, the complainant was obligated to make further payments as per the agreed payment schedule. It is alleged that the complainant failed to honour his contractual obligations and defaulted in payment of subsequent instalments, thereby committing breach of the agreement.

3.3 The respondent has placed reliance on Clause 25 of the agreement, which provides for forfeiture of earnest money and non-refundable amounts in the event of breach or withdrawal by the buyer. It is contended that in case of cancellation due to default by the buyer, refund, if any, is subject to resale of the plot and is to be made without interest. The respondent has further relied upon judicial precedents including *Kailash Nath Associates v. DDA* and *DDA v. Bholu Nath Sharma* to justify forfeiture of earnest money upon default by the allottee.

3.4 The respondent has further pleaded that the complainant voluntarily sought cancellation of the allotment on personal grounds, which do not absolve him from contractual liability. It is stated that the respondent has already communicated to the complainant that refund, after lawful deductions, shall be processed in accordance with the agreement and applicable law. It is asserted that after deduction of 10% of the total cost of the unit, the balance amount shall be refunded within the stipulated period as per RERA norms, and therefore the complainant is not entitled to any further relief.



4. It is an admitted and undisputed position between the parties that the complainant was allotted **Plot No. A-138 measuring 100 square yards** in the project "*Suraksha Enclave Township*" situated at **Zirakpur**, under the *Akhil*

Bhartiya Suraksha Awaas Yojna; that a **Builder Buyer's Agreement**, bearing the date **25.07.2017** but admittedly executed on **06.05.2019**, governing the terms and conditions of the allotment, was entered into between the complainant and the respondent; that pursuant thereto, the complainant deposited an amount of **₹2,84,500/-**, being **25% of the total sale consideration**, towards the said plot, which amount was duly received and acknowledged by the respondent; that the complainant failed to make further payments as per the agreed payment plan and thereafter sought **cancellation of the allotment**; that the respondent has not disputed either the receipt of the said amount or the request for cancellation; and that the respondent has retained the amount deposited by the complainant on the ground that any refund, after permissible deductions, is required to be made strictly in accordance with the terms of the agreement and the applicable provisions of law.

5. The learned counsel for the complainant argued that the complainant had deposited an amount of ₹2,84,500/- towards the allotted plot, which receipt is admitted by the respondent, and that due to unavoidable and compelling circumstances, including serious medical ailments suffered by the complainant and his mother, the complainant became financially incapable of making further payments and, therefore, sought cancellation of the allotment. It was contended that despite the respondent having sought and obtained the complainant's bank account details for refund, the amount has not been refunded despite repeated follow-ups, amounting to illegal and arbitrary retention of the complainant's money. It was further argued that the respondent has not suffered any loss so as to justify forfeiture of the amount and that the complainant is entitled to refund in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016.

6. Per contra, the learned counsel for the respondent submitted that the complainant failed to adhere to the agreed payment schedule and voluntarily



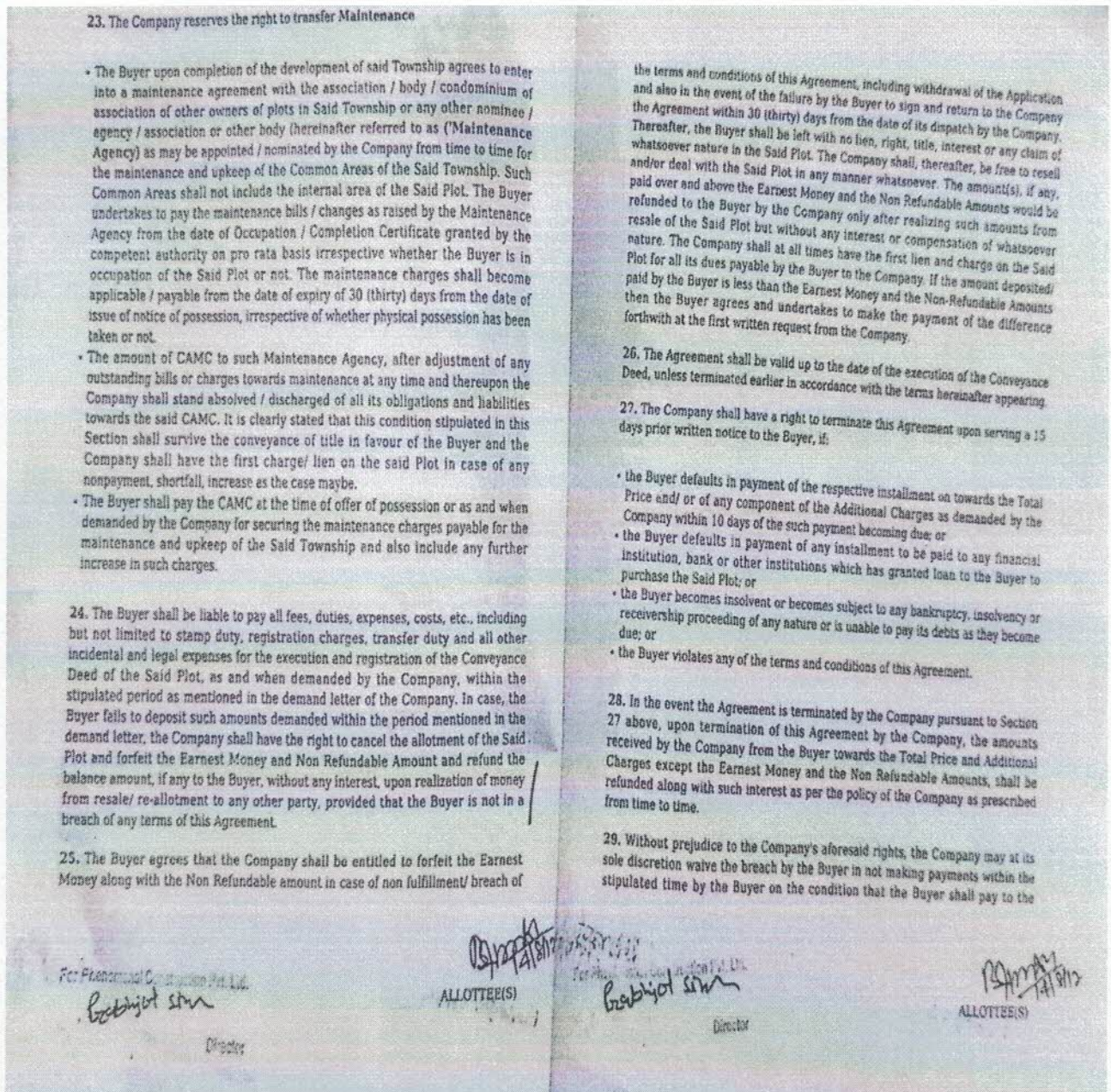
sought cancellation of the allotment, thereby committing breach of the Builder Buyer's Agreement. It was contended that as per the terms of the agreement, particularly the clause relating to cancellation, the respondent is entitled to deduct the earnest money and process refund, if any, only in accordance with the contractual stipulations and applicable law. Reliance was placed upon judicial precedents to contend that forfeiture of earnest money upon default by the allottee is legally permissible and that the complainant is not entitled to refund with interest.

7. This Bench of Authority has carefully considered the pleadings, documents on record, and the submissions advanced by the learned counsel for both the parties. It is an admitted position that the complainant deposited an amount of ₹2,84,500/- towards the allotment of the plot and that the allotment was subsequently cancelled at the request of the complainant. However, there is no cancellation letter available in record to endorse this fact. While the complainant admittedly failed to make further payments as per the agreed payment plan, it is also undisputed that the respondent has retained the deposited amount for a considerable period. The respondent has not placed any material on record to establish that any actual loss has been suffered so as to justify retention of the entire amount. The Authority is of the considered view that although the respondent is entitled to make deductions strictly in accordance with the terms of the agreement and the provisions of the Act, indefinite withholding of the complainant's money is not justified.

7.1 The respondent has placed reliance upon Clauses **24 to 28** of the Builder Buyer Agreement to justify forfeiture of the amount deposited by the complainant. It is, therefore, necessary to reproduce and examine the relevant contractual provisions in order to determine the extent to which the respondent is entitled to forfeit the amount and whether retention of the entire deposited sum is legally sustainable. Clause 24 of the Builder Buyer Agreement provides that the



buyer shall be liable to pay all statutory fees, duties and charges for execution and registration of the conveyance deed and, in the event of failure, the company shall have the right to cancel the allotment and forfeit the earnest money and non-refundable amount, while refunding the balance amount, if any, without interest, upon realization of money from resale or re-allotment of the plot, subject to the buyer not being in breach of the agreement. For ready reference relevant extract of the same is attached hereunder:-



7.2 From a conjoint reading of the aforesaid clauses, it is evident that the agreement permits forfeiture only to the extent of **earnest money and non-refundable amounts**, and mandates refund of the balance amount paid by the buyer, subject to the conditions stipulated therein. In the present case, it is an admitted position that the complainant deposited a total amount of ₹2,84,500/- and



that the **earnest money as per the agreement is ₹1,13,800/-**. It is also undisputed that the complainant sought cancellation of the allotment and that the respondent has retained the entire deposited amount.

7.3 While the complainant admittedly failed to make further payments as per the agreed payment plan and sought cancellation of the allotment, the contractual provisions do not authorize the respondent to retain the entire amount deposited. Even as per the respondent's own agreement, forfeiture is restricted to the earnest money and non-refundable amount, and the balance amount is required to be refunded, albeit without interest and subject to resale conditions. No material has been placed on record by the respondent to show that the entire amount of ₹2,84,500/- constitutes earnest money or non-refundable charges, nor has any justification been shown for withholding the amount in excess of the stipulated earnest money of ₹1,13,800/-.

8. Accordingly, this Bench holds that the respondent is entitled to forfeit only the earnest money of ₹1,13,800/- under the Builder Buyer Agreement and is contractually and statutorily obliged to refund the remaining ₹1,70,700/- to the complainant. A conjoint reading of Clauses 24 to 28 of the Agreement makes it clear that, even in the event of default or withdrawal by the allottee, the respondent may forfeit only the earnest money and any expressly non-refundable amounts, while the balance must be refunded. The Agreement does not confer any right on the respondent to retain the entire deposited sum. Retention beyond the earnest money is therefore contrary to the express contractual terms and cannot be sustained in law.

8.1 Regarding the question of interest, it is noted that 24.01.2020 was the promised date of possession under the Agreement. After this date, the respondent was obliged either to offer possession or lawfully terminate the allotment and settle the complainant's account in accordance with the Agreement. However, no evidence has been produced by the respondent to show that the allotment was



formally cancelled, or that a valid withdrawal or termination was executed at the complainant's instance. In the absence of such evidence, the respondent continued to retain the complainant's money without lawful justification beyond the promised possession date.

8.2 This Bench finds that once the respondent failed to offer possession or effectuate a lawful cancellation and refund, the continued retention of the complainant's money constitutes unjust enrichment and violates the statutory obligations imposed on the promoter under the Act. The complainant cannot be made to suffer for the respondent's inaction. Accordingly, interest is payable on the refundable amount from 24.01.2020, the date when the respondent's obligation to deliver possession or settle the claim crystallized.

8.3 Consequently, the respondent is directed to refund ₹1,70,700/- to the complainant, along with interest from 24.01.2020 until the date of actual realization, at the rate prescribed under the Act and the Rules framed thereunder.

9. In view of the above, the complaint is **Partly Allowed** and complainant is entitled to refund due amount of Rs.1,70,700/- alongwith interest w.e.f. 24.01.2020 applicable @ 10.80% (i.e. 8.80% SBI's Highest MCLR Rate applicable as on 15.12.2025 + 2%) as per Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017. The period for payment of interest will be considered from the next month in which payment was effected by the allottee to the previous month of the date in which payment has been effected by the promoter. Therefore, the calculation of refunds and interest upto 31.01.2026 is calculated as follows:-



Interest payable from	Principal Amount paid	Interest calculated till	Delay in months	Interest payable
01.02.2020	1,70,700/-	31.01.2026	72	1,10,592/-
Grand Total (Principal Amount + Interest)				2,81,292/-

10. The Hon'ble Supreme Court, in its judgment in the matter of *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Others* (Civil

Appeal Nos. 6745-6749 of 2021), has upheld that the refund to be granted u/s. 18 read with Section 40(1) of the Real Estate (Regulation & Development) Act, 2016 is to be recovered as Land Revenue alongwith interest and/or penalty and/or compensation.

11. In view of the aforesaid legal provisions and judicial pronouncement, it is hereby directed that the refund amount along with the accrued interest shall be recovered as Land Revenue as provided u/s. 40(1) of the RERD Act, 2016. Accordingly, the Secretary is instructed to issue the requisite Debt Recovery Certificate and send it after 90 days as per Rule 17 of the Punjab Real Estate (Regulation & Development) Rules, 2016 to the relevant Competent Authorities under the Punjab Land Revenue Act, 1887 for due collection and enforcement in accordance with law.

12. Further the principal amount is determined at Rs.1,70,700/- and interest of Rs.1,10,592/- (upto 31.01.2026) the rate of interest has been applied @ 10.80% (i.e. 8.80% SBI's Highest MCLR Rate applicable as on 15.12.2025 + 2%) as per Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017. Hence, the promoter is liable to pay a **total amount of Rs.2,81,292/-** upto 31.01.2026 (i.e. principal amount of Rs.1,70,700/- and interest of Rs.1,10,592/-), and any amount due as interest **w.e.f. 01.02.2026 of Rs.1,536/- per month till the realization of payment.** Any amount paid by the promoter will be considered as payment against the interest whatever is due. After payment of whole of interest only then the payment will be considered against principal and accordingly the principal will be reduced and interest will be charged on the balance principal amount till the principal amount is fully paid. Even any payment after reduction in principal amount if any will be first considered towards interest payment, if any becomes due on the unpaid principal amount. This amount of Rs.1,536/- will change according to the principal amount due at the start of the month as per the method narrated hereabove in the para.



13. Further, the promoter is directed not to sell, allot, book the Plot No. A-138 measuring 100 square yards in a project namely "Suraksha Enclave Township" situated at Zirakpur allocated to the complainants till the whole payment payable to the complainant of Rs.2,81,292/- upto 31.01.2026 (i.e. principal amount of Rs.1,70,700/- and interest of Rs.1,10,592/-), and subsequent interest amount w.e.f. 01.02.2026 @ Rs.1,536/- per month, if any, becomes dues is fully paid to the complainant. The complainant will have its continuous lien over the said unit till the refund alongwith interest is not fully paid by the promoter to the complainant as determined in this order and/or mentioned in the Decree Certificate. The promoter is free to sell the unit in question after duly obtaining the receipt of the due payment from complainant as per this order.

14. The total amount of Rs.2,81,292/- upto 31.01.2026 (i.e. principal amount of Rs.1,70,700/- and interest of Rs.1,10,592/-), as determined vide this order u/s. 31 of the Real Estate (Regulation & Development) Act, 2016; has become payable by the respondent to the complainant and the respondent is directed to make the payment within 90 days from the date of receipt of this order as per Section 18 of the Real Estate (Regulation & Development) Act, 2016 read with Rules 17 of the Punjab Real Estate (Regulation & Development) Rules, 2017. The total amount of Rs.2,81,292/- (i.e. principal amount of Rs.1,70,700/- and interest of Rs.1,10,592/-) determined as refund and interest amount thereon upto 31.01.2026 and further a sum of Rs.1,536/- to be payable as interest per month from 01.02.2026 is held "Land Revenue" under the provisions of Section 40(1) of the RERD Act, 2016. The said amounts are to be collected as Land Revenue by the Competent Authorities as provided/authorised in the Punjab Land Revenue Act, 1887 read with section 40(1) of the Real Estate (Regulation and Development) Act, 2016.



15. The Secretary of this Authority is hereby directed to issue a "Debt Recovery Certificate" immediately and send the same to the Competent/ jurisdictional Authority as mentioned in the Punjab Land Revenue Act, 1887 after 90 days of the issuance of this order to be recovered as arrears of "Land


Revenue". A copy of this "Recovery Certificate" should be sent to both to the complainant and respondents by email and speed post for necessary action at their end and record purposes. The complainant & the respondent are directed to inform the Secretary of this Authority regarding any payment received or paid respectively so as to take the same in to account before sending "Debt Recovery Certificate" to the Competent Authority for recovery. **Further, Sh. Balbir Singh is held to be Decree Holders and the Respondent i.e. M/s. Phenomenal Construction Pvt. Ltd. as judgment debtor for the purposes of recovery under this order.**

16. No other relief is made out.

17. A copy of this order be supplied to both the parties under Rules and file be consigned to record room.

Chandigarh
Dated: 02.02.2026





(Rakesh Kumar Goyal),
Chairman,
RERA, Punjab.

Endst. No. RERA/Pb/PA-CM/2026/242

Dated: 05/02/2026

A copy of the above order may be sent by the Registry of this Authority to the followings:-

1. Sh. Balbir Singh s/o Ratan Chand Jat, Village Bagkuljan Tehsil ST-Jaisinghpur, Kangra, Himachal Pradesh - 176095
2. M/s. Phenomenal Construction Pvt. Ltd. ,Office at Shop No. 4, Rosewood Estate Gulabgarh Road, SAS Nagar (Mohali), Punjab – 140507.
3. The Secretary, RERA, Punjab.
4. Director (Legal), RERA, Punjab.
- ✓ 5. The Complaint File.
6. The Master File.


(Sawan Kumar),
P.A. to Chairman,
RERA, Punjab.