

**REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH**

In the matter of:-

Sh. Satish Chander Walia, S/o Late Shri Ram Rattan, R/o Flat
no.7, Valley View, Mauza Bazaar Mashobra, District Shimla-
171007-H.PComplainant

Versus

Sh. Madhusudan, S/o Late Sh. Raghuvar Das, R/o Raghuvar Dass
Bhawan, VPO Mashobra, , District Shimla- 171007-H.P
.....Non-Complainant/ Respondents

Complaint no. RERA/HP SHCTA/07200038

Present: - Shri Satish Chander Walia, Complainant in person.

**Shri Saurabh Sood in person through authorization
letter for the respondent along with Advocate Shri Vivek
Kumar Atri.**

**Shri Mayank Manta, Assistant District Attorney for
State of Himachal Pradesh/ RERA Himachal Pradesh.**

Final Date of Hearing (in person): 29.09.2020.

Date of pronouncement of Order: 20.10.2020

ORDER

CORAM: - Shrikant Baldi ----- Chairperson

Rajeev Verma ----- Member

B.C. Badalia ----- Member

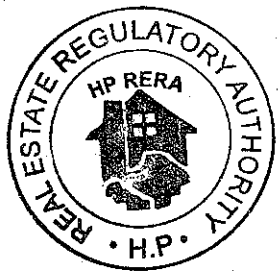


1. The present matter refers to a Complaint filed under the provisions of the Real Estate (Regulation and Development) Act, 2016(herein after referred to as the Act)
2. That the complainant Shri Satish Chander Walia had filed an online Complaint dated 10th July, 2020 before this Authority in 'Form-M' bearing complaint no. RERA/HP SHCTA/07200038 of the HP Real Estate (Regulation & Development) Rules, 2017. As per the complaint it has been alleged that the respondent Shri Madhusudan is the owner in possession of land comprising in Khata Khatoni no. 14 min/17 Khasra nos. 1/1, 2, 3,4,5,6 kitas 6 measuring 9070 sq. feet situated at Mohal Mashobra Bazaar, Tehsil and Distt. Shimla-H.P. The respondent had got the map approved for constructing a parking plus four storeyed building from Municipal Corporation, Shimla vide sanction order no. 20 (AP) dated 20.01.2009.
3. That the complainant had purchased a flat no.7 on the second floor of the aforesaid building for a consideration price of Rs. Twenty Lakhs (Rs. 20, 00, 000/-) which was paid to respondent vide sale deed dated 21.07.2014. The complainant



further alleged that even after approval of the map in the year 2009, the construction of the building is incomplete and only eleven flats out of total approved sixteen flats have been completed and sold. The five number of flats that are yet to be completed, four on the ground floor and one in the top floor, are in state of disdain, neglect and being used for unauthorized usage by the respondent by way of putting unauthorized and dangerous storage of hardware articles for commercial purposes and stock piling of junk in the parking floor. The incomplete construction of building premises is endangering health and safety of flat owners and their families. The complainant has alleged about non provision of individual domestic permanent electrical and water connections, an unauthorized gate on the ground floor that opens in the adjoining property of the respondent, restriction on the use of the complete common parking floor, restriction on the use of the common terrace, non provision of the boundary wall towards the open land of the respondent and dysfunctional rain water harvesting tank.

4. The complainant has sought general relief from this Authority that the respondent should not use complex for commercial activities by way of storing building construction materials of



his shop at the site under reference. Further, the complainant has asked this Authority that the rights to manage the common areas should be immediately handed over to the association of flat owners.

5. The parties to the complaint have filed their written submissions/ replies/ rejoinder before this Authority after issuance of notice for hearing along with additional documents which have been taken on record for proper adjudication of the present Complaint.
6. The Authority has gone through the documents and pleadings of the complainant and Respondent. The following facts have emerged in the case:-
 - i. That the contesting parties have executed a sale deed dated 21st July, 2014 for the sale purchase of flat no.7 located on the second floor of the building after getting the approval from the Municipal Corporation, Shimla in the year 2009 for a consideration amount of Rs. twenty lakhs (Rs. 20, 00, 000/-). As per the terms and conditions stipulated in the aforesaid sale deed, the purchaser has been given the right to use all easementary rights, common path, common stairs, common drainages, common sewerage and all existing fittings, air, light, water etc. of the property so sold. Further, the common



amenities of the said building have to be maintained by the purchaser and other owners proportionately.

- ii. That it is an admitted version of both the contesting parties that eleven numbers of flats, out of total approved sixteen flats in the project, have been constructed and sold to different persons including the complainant.
- iii. That the complainant and the respondent prima facie are in dispute regarding the non provision of individual domestic permanent electrical and water connections, right to use parking floor common area by the complainant/ flat owners to prevent the misuse by the respondent, including guard room with kitchen & toilet, right to use common terrace, construction of side and rear boundary wall/ fencing by the respondent Promoter, about an unauthorized gate in the ground floor and dysfunctional rain water harvesting tank.
- iv. That this Authority in order to verify the veracity of the allegations leveled by the complainant had directed the Town & Country Planner of this Authority vide its order dated 07.08.2020 to carry out site inspection on 14.08.2020 at 12 noon and submit a detailed report on or before 20.08.2020 before this Authority. This Authority directed both the parties



to the complaint to be present at the site under question on the aforesaid date, place and time.

v. Accordingly the site inspection report has been placed before this Authority and the copy of the site inspection report has been supplied to both the contesting parties with a direction to disputing parties to file their respective replies/ objections, if any.

vi. As per the contents of the site inspection report dated 14th August, 2020, the terrace was found to be abandoned and was not maintained. No boundary walls are there around the building in question. On the right side of the building, an old building of the respondent exists, where a gate has been erected by the respondent for passage and entry to the existing building of the respondent promoter. The front boundary of the building/plot abutting the road is properly fenced and a gate has been provided as a main entrance to the building that leads to the parking floor by way of a bridge. Three rooms have been constructed in the parking floor which are said to be meant for guard/ care taker room, kitchen and bath room.

vii. The reply/ comments/ objections to the report of the Town & Country Planner of this Authority were filed by the



respondent. The complainant did not intend to file comments to the report.

viii. This Authority in order to amicably settle the governing issues as detailed para supra had directed the parties to settle the issues amongst themselves through negotiation and reconciliation which failed. Therefore the matter in question was listed for final arguments.

7. The final arguments in this case were heard on 29.09.2020. Shri Satish Chander Walia, complainant has argued before this Authority that from the last seven years, the respondent has failed to fulfill his obligations as a Promoter/builder and has not provided the individual permanent domestic electrical and water connections , has not constructed the boundary wall, misuses the partly finished ground floor, still in his possession, by storing building materials for commercial use of his shop/ business, has constructed an unauthorized entry/ exit gate in the ground floor and uses the same for entering/ misusing the premises by way of loading/ unloading of building construction materials at odd hours, causing nuisance to the residents. The respondent does not allow the flat owners including the complainant to use the full parking floor on one pretext or the other and the guard room with a



kitchen and a bathroom constructed in the parking floor has not been handed over to the association of allottees/ flat owners despite repeated requests. The access to the terrace is restricted and approach to the area for maintenance of water tanks on the roof is through a window. The boundary wall/ fencing has not been provided on the side and rear of the building thus jeopardizing the security and safety of the residents. The rain harvesting tank is dysfunctional. The complainant admitted that earlier, a part of the parking floor was pre occupied by the respondent illegally by storing his personal and commercial items, which after the intervention of this Authority has been removed. The Complainant has further stated before this Authority that no individual permanent domestic electricity and water connections to the residents of the building have been given by the respondent, even after repeated assurance, in the last seven years since the sale of the flat despite of clearly laid down terms and conditions about the provision of the same in the sale deed. The residents/ flat owners of the building are constrained to pay a sum of Rs. 250/- per month/ per flat as electricity charges without even consuming any electricity for the last more than nine years at the commercial rates. The



complainant has further alleged that despite of many requests and even police complaints the situation remained the same. This Authority while hearing arguments has sought a specific query from the complainant that, "whether the complainants along with other residents have applied before the concerned competent authority for the issuance of individual water and electricity connections or not?" The answer to the aforesaid query has been given in negative by the complainant. Rather, the complainant has contended that the respondent has provided the requisite NOC from Municipal Corporation Shimla, for the same only recently which he was duty bound to provide as per the sale deed so executed.

8. The complainant, while arguing his case before this Authority has submitted that the residents of the building in question have formed an association in the name of "Valley View Flat Owners Association." However, on questioning that whether the association has been registered under any Law for the time being in force, the complainant has failed to reply before this Authority and later informed by way of a letter communication about having applied for the same.



9. The complainant has contended specifically before this Authority that the respondent promoter has not performed his promises which were made at the time of execution of sale deed, primarily, a guard room in the premises. The guard room has been constructed in the parking floor but the same is in the possession of the respondent promoter and is being used by him only for storing animal feed and other personal goods.
10. The complainant has further argued before this Authority that the common areas like the terrace in the building have not been given to the flat owners by the respondent promoter.
11. The Ld. Counsel Shri Vivek Kumar Attri along with Shri Saurabh Sood, through authorization letter for respondent have presented the case before this Authority arguing that the present complaint is not maintainable before this Authority. It has also been argued by the Ld. Counsel for the respondent that the complainant has not come before this Authority with clean hands as they have suppressed material facts. To sustain his contentions, the Ld. arguing Counsel has submitted that since the association constituted by the complainant is not a registered association, therefore, the complainant has no right to present his case before this

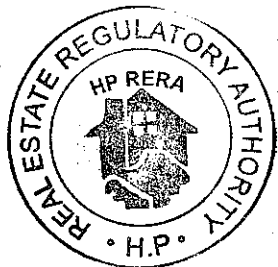


Authority. Therefore, the present complaint has been filed before this Authority individually which is contrary to the facts and circumstances of the instant case. In view of the explanation appended to Section 31 (1) of the Act, which provides that for the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force. Hence, the present complaint is not tenable in the eyes of law.

12. That the respondent has claimed before this Authority that he has made his sincerest efforts to resolve the present issues after the intervention of this Authority but the complainant did not pay any attention and showed no intentions to reconcile. The Ld. Counsel for the respondent promoter has shown the copy of revised cum completion plan approved by Municipal Corporation, Shimla, as approved in January 2020, according to which 5 No. of flats are yet to be constructed/ finished (4 flats on the Ground Floor and one flat on the top floor). The parking floor is being used for parking and as per the terms of the sale deed one car parking space has been given to each flat owner and there is no restriction on them to park their vehicle in the aforesaid floor. However, the



respondent further stated that on the contrary he is not being allowed to use the parking floor for parking his own car despite of the fact that he still has five flats in his name which are yet to be sold by him. It was also stated by him that he has not been given the key for the gate of parking floor by the complainant/ association of allottees, despite his repeated requests and undue restrictions have been imposed on him like using the parking floor before 8.00 p.m in the evening. The respondent promoter has stated that at present the attic floor is an open space and is in a unfurnished state. It has been stated by the respondent promoter that that there is a separate access to the individual water tanks that have been installed at the roof of the building. The approval of revised completion plan has been accorded by Municipal Corporation, Shimla in the January, 2020. The respondent has stated that as per the validity of the registration certificate to complete the project as issued by HPRERA, he has more than eight years to finish the balance works and as such cannot be accused of not intentionally finishing the balance work of five flats.



13. Further as per the sale deed dated 21.07.2014 executed between the complainant and respondent promoter the common areas as mentioned in the deed are being used by the

complainant. Therefore the claim of the complainant is devoid of merits and is liable to be rejected.

14. As far as boundary wall/ fencing is concerned, it is argued by the respondent promoter that as per the sanction plan no such boundary walls/ fencing have been sanctioned. The respondent promoter otherwise has no objection in constructing the boundary wall but for that purpose the flat owners including the complainant are required to get the map in respect of the same sanctioned from the Authorities concerned. Furthermore, the gate installed at ground floor in the premises of the building is not causing any hindrance to the flat owners and only the ground floor of the building is accessible through this gate. No sort of inconvenience is being caused to the flat owners on account of the materials that have been stacked for finishing and completing flats that are still in the possession of the respondent promoter.

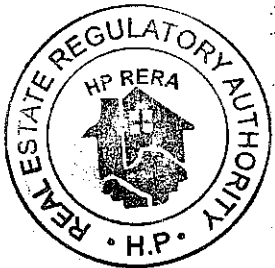
15. The respondent has stated that he has already provided the requisite no objection certificate, as issued by M.C Shimla for the installation of permanent domestic electric connection, the same has not been disputed by the complainant. The permanent water connection in the name of the complainant will also be permissible on the basis of the approval of the



revised cum completion plan as approved by M.C Shimla, in the name of complainant as stated by the respondent promoter. The complainant, on the argument put forward by the respondent promoter agreed that that the respondent promotor was not supposed to get the electrical and water connections installed for his flat but was to provide only the requisite no objection certificate as per the terms and conditions of the sale deed. The respondent promoter has accepted the issue of leakage from rain water harvesting tank and agreed to undertake the necessary repairs.

16. We have heard the arguments advanced by the complainant & Ld. Counsel for the respondent promotor and perused the record pertaining to the case. We have duly considered the entire submissions and contentions submitted before us during the course of arguments. This Authority is of the view that there are two issues that require the consideration and adjudication, namely:-

- A. Jurisdiction of the Authority
- B. Dispute regarding the building:-
 - i) The issue of permanent individual domestic electricity and water connections in the name of individual flat owners.



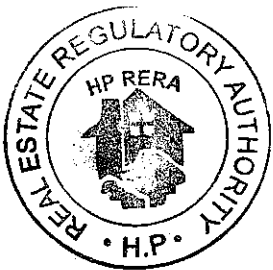
- ii) common area rights of complete parking floor
- iii) common area right of terrace and attic floor
- iv) Use of guard room with kitchen and toilet
- v) The construction of boundary wall/ fencing and repair to rain water harvesting tank

17. This Authority after careful examination of the statutory provisions of the Real Estate (Regulation & Development) Act, 2016 along with judicial pronouncements of various Courts including the Hon'ble Apex Court, deliberates the matter by explaining various provisions of the Act in this regard.

As per the provisions of Section 11(4) of the Act, it is provided that,

“The promoter shall—

“be responsible for all obligations, responsibilities and functions under the provisions of this Act or the Rules and regulations made there under 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.”



The provisions of Section 17 of the Act are primarily important to specify herein. Section 17 of the Act *ibid* provides as under,

“ (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

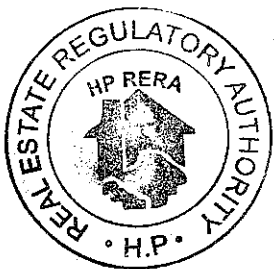
Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.”

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.”

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.

Thus from the reading of the above provisions of the Act, it is very clear that the Authority has power to adjudicate upon the present case.

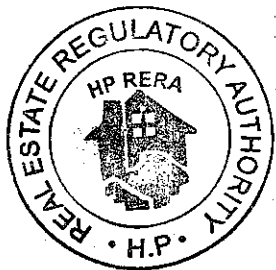
18. Coming to the issues of dispute regarding the common area rights of complete parking floor, the Authority seeks to place reliance upon the provisions of Section 2 (n) of the Act, which provides as under:-

“Common areas” mean—(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

(ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings; (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

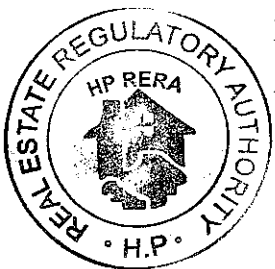
(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;



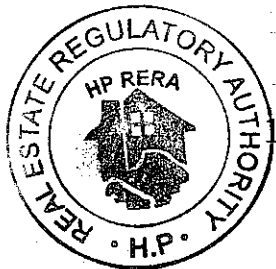
- (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
- (vii) all community and commercial facilities as provided in the real estate project;
- (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use.”

In the instant case, the entire parking floor is a common area as parking floor is permissible under the provisions of interim development plan of Shimla planning area for the purpose of 100% parking, exempted from permissible Floor Area Ratio, commonly known as FAR, for the users of the building so that inhabitant of every dwelling unit gets a parking space and residents do not resort to road side parking. The respondent promoter, in his approved real estate project, as got registered by him with this Authority has shown parking as civic facilities/ amenities, as shown at serial no-10 under civil facilities/ amenities in form “A”. Further, as per the terms of the sale deed as entered upon between the complainant and the respondent promoter, one car parking right has been given to the complainant and as conveyed by the respondent promoter, similar right of one car parking has been given to every flat buyer, goes on to prove that the entire parking floor is common area for the use of the residents of the building.



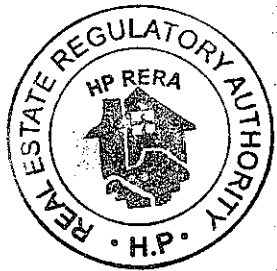
The guard room along with kitchen and toilet is an unauthorized construction as the same is not approved in the parking floor plan, neither in the original proposal plan approved in 2009 nor in the revised cum completion plan approved in January 2020, and thus it is clear that the respondent promoter could not have constructed it legally and the same will have to be removed by the respondent promoter otherwise Municipal Corporation Shimla will not grant approval of the final completion Plan which is mandatory for the respondent promoter to obtain as per the provisions of sections 11 & 17 of the HP Real estate(Regulation and Development)Act 2016. As per Section 2 (n) (iii) of the Act ibid, common area means and include, "the common basements, terraces, parks, play areas, open parking areas and common storage spaces." Therefore, in view of the terrace being a common area, the flat owners have the right to access and use the same. The complainant has stated that there is leakage from the rain water harvesting tank and the same has not been refuted by the respondent promoter.

9. With regards to the terrace, the sloping roof and three open terraces have been shown to be existing/ completed as per the revised cum completion plan as approved by Municipal



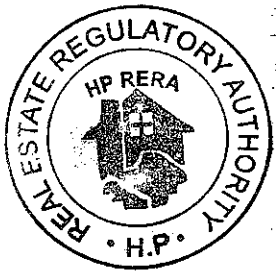
Corporation, Shimla in January, 2020 and shown to the Authority during arguments. However the photographs on the record, as submitted by both the contesting parties and also appended to the report of the Town and Country Planner, of this Authority, shows the terrace is complete with proper railing but the attic is still not complete .The approach to the terraces is through attic only which is further approachable by two internal common staircases that connects all the floors of the building. It is pertinent to mention that the said revised cum completion plan drawing has not been put on record either by the complainant or by the respondent promoter.

20.The Authority further seeks to place reliance upon the provisions under Section 2 (k) of the Act, that "Carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment." While deriving the matter of common areas, the explanation appended to the same Section postulates that, " For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is



appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee.

Thus there is no dispute about terrace being common area, in accordance with the definition, as provided under section 2(n) unless it is designated as an exclusive terrace and being part of a salable flat/ apartment as per definition of carpet area given in section 2 (k) of the Act *ibid*. In this case , as per the original proposal drawing got approved by the respondent promoter in 2009 and subsequently approved revised cum completion drawing, as approved by Municipal Corporation Shimla in January 2020, the terraces are approachable from the attic(space formed within sloping area) and are not , as on date, for exclusive use with any flat/ apartment. The respondent promoter, has also not, shown terrace as "exclusive terrace" in the details filled in the table of group housing/ apartment under sanctioned project plan, formulated in Form "A" in the real estate project under reference as uploaded on the website of the authority. Thus the open terrace unless designated and proved beyond doubt



as exclusive terrace for the use of any allottee is a common terrace and is meant for the use of all flat owners.

21. With regards to attic being common area, this authority is not in a position to take a decision in the absence of any documentary proof submitted by both the parties. This Authority cannot adjudicate upon this issue of common area. The association of allottees or the respondent is at liberty to file documentary evidence, if they wish to provide, separately, for the adjudication of this issue of attic being common area, at a later stage, if they so desire.

22. As per the covenants of the sale deed executed between the complainant and the respondent, to whom the alleged common areas are to be handed over is not defined. The Authority, while construing the fact that whether the common areas in a building have to be provided to the complainant/flat owners, reference to the provisions of Section 17 of the Act is been made to herein as under,

“(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title



documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

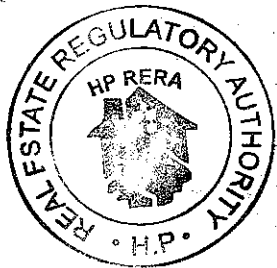
Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.”

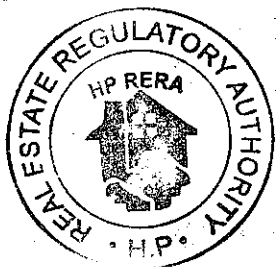
The perusal of the above clearly establishes that the common areas are to be handed over to the association of allottees/ flat owners/users. It is important to mention that the respondent promoter will have all the right to be part of the association of allottees by virtue of his present share of 5 numbers of unsold/ unbooked flats and abide by all terms and conditions as would be applicable to any other allottee in the real estate project.

23. So far as the other two prima facie issues are concerned, firstly, the construction of boundary wall or fencing, it has been admitted by the respondent while arguing that he is ready and willing to carry out the construction of the



boundary wall or fencing on left side and rear side of the building in question, we leave it open for the respondent to abide by the admission so made. It is a common practice of the Urban Local bodies in the State of Himachal Pradesh that the boundary walls/ fencing do not form the part of the sanctioned approved drawings. Since the construction of boundary wall/ fencing in all probabilities is likely to benefit the flat owners for the safety, the submission made by the complainant is hereby allowed. We direct the respondent to provide access to the flat owners for the purpose of maintaining the water tanks installed at the roof of the building.

24. Also, as far as the individual electricity and water connections of the flat owners are concerned, it is clearly postulated under point no 10 of the sale deed executed between the complainant & respondent promoter and subsequently between the other flat owners, as the case may be, that, *"the purchaser will get their own water and electricity connections and the seller will provide all relevant documents to the purchaser for the same purpose. The seller has already installed a water tank of the said flat hereby sold. The purchasers have right to use the approach for maintenance*

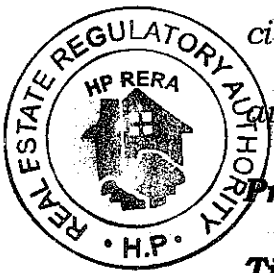


and replacement of the water tank from time to time.” This Authority is guided by the judicial pronouncements of the Hon’ble Apex Court in the matter of **Chameli Singh and others v. State of U.P. and another** (1996) 2 SCC 549, whereby it has been held that,

“Right to live and specifically observed that right to life includes the right to live with human dignity and further observed that right to live guaranteed in any civilised society implies the right to shelter and while discussing the right to shelter, includes electricity which is undisputedly, an essential service to the shelter for a human being. **In State of Karnataka v. Narasimhamurthy (AIR 1996 SC 90) SCC p. 526, para 7: JT at p. 378, para 7)**, the Hon’ble Apex Court held that, “Right to shelter is a fundamental right under Article 19(1) of the Constitution. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civil amenities like roads etc. so as to have easy access to his daily

avocation ...” The Madras High Court in the matter of **T.M. Prakash and others v. The District Collector, Tiruvannamalai District, Tiruvannamalai and another** 2013

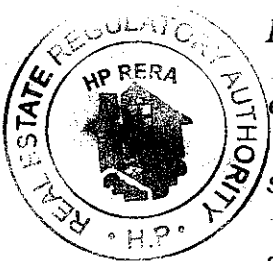
SCC OnLine Mad 3001 has held that access to electricity supply



should also be considered as a right to life, in terms of Article 21 of the Constitution of India and observed as under:

"66. Lack of Electricity supply is one of the determinative factors, affecting education, health, cause for economic disparity and consequently, inequality in the society, leading to poverty. Electricity supply is an aid to get information and knowledge. Children without Electricity supply cannot even imagine competing with others, who have the supply. Women have to struggle with firewood, kerosene, in the midst of smoke. Air pollution causes lung diseases and respiratory problems. Electricity supply to the poor, supports education and if it is coupled with suitable employment, disparity is reduced to certain extent. Lack of education and poverty result in child labour.

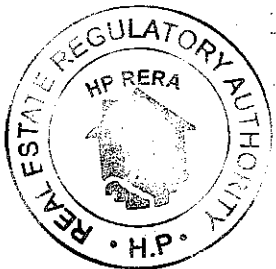
68. The Respondents ought to have visualised the difficulties of the women, children and aged persons, living in the huts for several years, without Electricity. Electricity supply is an essential and important factor for achieving socioeconomic rights, to achieve the constitutional goals with sustainable development and reduction of poverty, which encompasses lower standards of living, affects education, health, sanitation and many aspects of life. Food, shelter and clothing alone may be sufficient to have a living. But it should be a meaningful purpose. Lack of Electricity denies a



person to have equal opportunities in the matter of education and consequently, suitable employment, health, sanitation and other socioeconomic rights. Without providing the same, the constitutional goals, like Justice, Liberty, Equality and Fraternity cannot be achieved.”

25. Keeping in view the above mentioned facts/discussion, this Authority in exercise of power vested in under various provisions of the Act issues the following orders/directions:

- i. The flat owners are entitled to get individual water & electricity connections. In the present case; the Municipal Corporation, Shimla has already given NOC for this purpose. Therefore, the complainant as well as other flat owners may apply for getting individual permanent domestic water and electricity connections.
- ii. This project is a residential project approved by the Municipal Corporation, Shimla as well as by this Authority. It appears that the owner was carrying out certain commercial activities which have been discontinued after the intervention of the Authority. The respondent promoter is directed that in future he may not use this property for any commercial activities except for stacking of construction materials etc. required for



constructing / completing the remaining portion of the residential project.

- iii. That as per the proviso to the Section 17 (2) of the Act, which provides that the promoter shall hand over all the common areas to the association of the allottees. The explanation appended to Section 31 requires that the association of allottees shall be registered. We therefore direct that common areas of this project will be handed over to the association of allottees within one month from its registration as part completion/ occupancy has already been issued in January, 2020.
- iv. That the parking floor is a common area and should be managed by the association of allottees for the purpose of car parking of flat owners and the respondent promoter also, as he is still to complete the construction of 5 flats.
- v. The respondent promoter will be provided a key of the parking floor to have unhindered access to the common areas and five under construction flats in the project.

The terrace is a common area for the use of flat owners of the building and should be managed by the association of allottees.



- vii. Whether attic is a common area or not has not been determined at this stage. The association of allottees or the respondent promotor is at liberty to produce relevant record / documents/ drawings to enable this Authority to determine the same or can mutually settle the issue.
- viii. The guard room, along with kitchen & bathroom is an unauthorized construction in the parking floor which needs to be removed by the respondent promoter before the completion of the project.
- ix. As agreed by the respondent promoter he shall provide the fencing or boundary walls on the sides and rear portion of the building for the safety of the inhabitants within next four months from the date of passing of this order.
- x. Any non-compliance or any delay in compliance of the above directions shall attract penalty under Section 38, 63 and Section 67 of the Act *ibid*, apart from any other action the Authority may take under other relevant provisions of the Act.

skand
Dr. Shrikant Baldi
CHAIRPERSON

B.C. Badalia
B.C. Badalia
MEMBER

Rajeev Verma
Rajeev Verma
MEMBER

