

REAL ESTATE REGULATORY AUTHORITY**HIMACHAL PRADESH****Complaint no.HPRERA2022029/C
Bhadolian Kalan "New Una"****In the matter of :-**

Bhawak Prashar son of Late Sh. Gajanand Prashar, resident of Narayan Niwas, VPO Ambota, Tehsil Amb, Una, Himachal Pradesh, 177205 and also resident of House no. 506, Zail Singh Nagar, Ropar, Punjab, 140001

.....Informant/ Complainant

Versus

Smt. Indu Walia wife of Ram Prakash Singh, resident of 108, Basant Vihar, Rakkar, Una road, District Una, Himachal Pradesh, 174303

.....Respondent

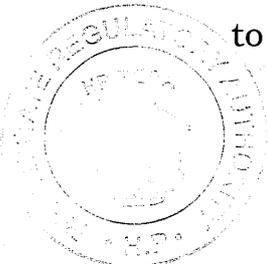
Present: Sh. Bhawak Prashar, complainant through WebEx
Sh. Akshat Mittal, Ld. Counsel for Smt. Indu Walia,
respondent through WebEx

Final date of hearing:-14.03.2024

Date of pronouncement of order:-19.04.2024

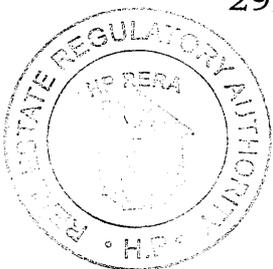
Order**Coram: Chairperson and Member****1. Brief facts of the Complaint:**

In the present matter, a complaint was filed by Sh. Bhawak Prashar pointing out that Smt. Indu Walia wife of Sh. Ram Prakash Singh (the respondent herein) has been advertising, marketing, booking, selling or offering for sale or inviting persons to purchase in any manner any plot, apartment or building in

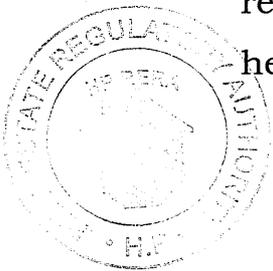


their project "New Una" in the planning area Village Bhadoli Khurd Tehsil and District- Una, H.P. without registering the aforesaid project with this Authority. The details of plots sold in Bhadoli Khurd were appended. It was further alleged that the lands are being sold after carving out plots leading to total **10** plots in violation of Section 3 of the RERD Act, 2016.

2. On the allegations of the complainant this Authority took suo moto cognizance of the same and issued notice under Section 3(1) and Section 59 of the RERD Act to Smt. Indu Walia. On 27.09.2022 Sh. Rishi Tandon Ld. Counsel appeared for the respondent and admitted that the project is required to be registered and sought time to get the same registered. On his undertaking and admission to register the project as plots totalling area more than 500 sq mts have been sold by the respondent, he was granted time to get the project registered and was further restrained not to indulge in any sale without first getting the project registered.
3. On 17.10.2022 it was observed in the order by the Authority that despite time having been granted to the respondent to register the project the same was not registered. Therefore another exceptional opportunity was granted to him to apply for registration and penalty was imposed under Section 59 read with Section 63 of the Act.
4. Further, on 10.11.2022 the respondent again sought time to apply for registration.
5. Further vide order dated 05.12.2022 it was observed by this Authority that respondent had applied for registration online on 16.11.2022 and his application was reverted by this Authority on 29.11.2022 with some observations.



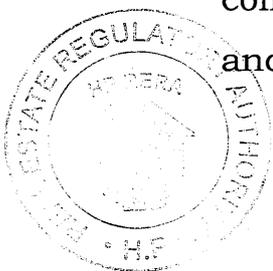
6. The Authority reverted the respondent with 15 nos. of observations primarily amongst them were the promoter's details were not complete, the Khasra numbers did not tally with Khasra numbers of the sanctioned plan/drawings and sanctioned letters. The total land area of the project did not tally with the sanctioned drawings. The revenue documents were inadequate and did not properly reflect the details of the project. The structure stability certificate, NOC/ consent to operate from Pollution Control Board and Environment clearance were not proper. Further an observation was that the sanctioned site plan was not signed by the competent Authority.
7. Further vide order dated 09.02.2023 it was observed by this Authority that the respondent Indu Walia was directed to file a duly sworn in affidavit directing her to disclose the actual detail of land, apartments, or buildings owned by her in Una as well as in rest of the Himachal Pradesh which she had sold or was planning to sell in violation of Section 3 of the RERD Act.
8. Further vide order of the Authority dated 26.07.2023 Sh. Akshat Mittal Ld. Advocate had put in appearance for the respondent and filed two applications firstly for rejection of the complaint being not maintainable and for waiver of the penalties already imposed.
9. By way of the first application MA no.41 A/2023 it was submitted that no cause of action has accrued in favor of the complainant as he cannot be said to be an aggrieved person competent to file a complaint under Section 31 of the RERD Act. It was further submitted in the application that the complaint before the Authority can be filed by an allottee or a promoter or a real estate agent. It was further submitted that the complainant herein is neither an allottee nor a promoter or a real estate



agent. It was further submitted by way of this application that the complainant has no locus standi and the same has been filed for malafide reasons owing to personal enmity. Another application MA no. 41E/2023 was filed where in it was prayed for waiver of the penalty imposed by the Authority on the ground that another application questioning the maintainability of the complaint has been filed and it was requested that the same may be decided first.

10. Arguments by the promoter

The complainant filed written arguments and stated that they may be read in his defense. It was argued that the present complaint is not maintainable. It was argued that the complaint is not filed in proper format as per the rules and format of this Hon'ble Authority. No cause of action has ever been accrued in favor of the complainant. It was pleaded that the complaint before this Hon'ble Authority can be filed only by an 'aggrieved person'. It was further argued that the complaint in question was filed against the respondent Smt. Indu Walia in her personal capacity and the company has not been impleaded as a party. The respondent has been alleged to be Director of one "Group Colonizers Pvt. Ltd." but the said company has not been impleaded in the complaint. It was argued that the said company i.e. 'Group Colonizers Pvt Ltd,' has been struck off since the year 2019 and there exists no such company as on date. It was argued that the complainant has no locus standi to institute the complaint against the respondent. The instant complaint has infact been filed for malafide reasons owing to personal enmity of the complainant with the answering respondent. The complainant has also filed complaints against the respondent and her family before the Income Tax Department, E.D.,



Vigilance, N.G.T. as well as other complaints of criminal nature. It was submitted that the said project has already been sold by the respondent in the year 2014 and as on date the respondent has nothing to do with the said land. It was submitted that the sale deeds have already been got executed, prior of coming into force of the RERD Act, 2016 but certain sale deeds which have been got executed subsequently have also been got approved by the T.C.P Department under Section 16 C of the TCP Act, by duly paying the required fees. It was argued that the RERD Act is not applicable to the instant facts there is no requirement to get the said land parcel registered. It was argued that the applicant respondent has still applied for RERA registration on insistence and directions of this Ld. Authority fearing penalties. It was argued that this Ld. Authority has granted a blanket stay regarding all the project lands of the respondent and has barred sale/ purchase etc. which has been causing unnecessary burden and harassment to the respondent. Moreover, various penalties have also been imposed upon the respondent without any fault on the part of the respondent. It was argued that even the recovery processes regarding the said penalties have been initiated during pendency of the main complaint without disposing off and finally deciding the complaint and without initiating any execution proceedings thereto. With these arguments it was prayed for the dismissal of complaint and for removal all the restrictions imposed.

11. Findings of this Authority-

This Authority has gone through the record in detail and has minutely examined the contentions raised by the respondent. From the perusal of the record it transpires that the respondent has sold total **10** plots of different shapes and sizes after the



commencement of Section 3 of the RERD Act, 2016. The details are that the respondent had sold vide sale deed no. **1095** on 3.7.2019 land measuring 0-04-80 (**480 sq mts**) in khewat no. 30, khatauni no. 46, khasra no. 2917/2338/2; sold vide deed no. **1317** on 14.9.2021 land measuring 0-04-18 (**418 sq mts**) in khewat no. 34, khatauni no.40, khasra no. 2753/2488; sold vide deed no. **1016** on 2.5.2017 land measuring 0-04-00 (**400 sq mts**) in khewat no. 33, khatauni no. 49, khasra no. 2927/2355; sold vide deed no. **504** on 25.3.2019 land measuring **113 sq mts** in khewat no. 30, khatauni no. 46, khasra no. 2913/2337 & land measuring **88 sq mts** in khewat no. 30 khatauni no. 46 khasra no. 2923/2339; sold vide deed no. **1523** on 18.10.2021 land measuring **200 sq mts** in khewat no. 51, khatauni no. 57 khasra no. 2927/2355 & land measuring **120 sq mts** in khewat no. 35, khatauni no. 41 khasra no. 2996/2920/2338 & land measuring **180 sq mts** in khewat no. 36, khatauni no. 42 khasra no. 3024/2925/2339; sold vide deed no. **2522** on 25.9.2017 land measuring **50sq mts** in khewat no. 30, khatauni no. 46, khasra no. 2921/2338/1/2; sold vide deed no. **1862** on 4-10-2018 land measuring **200 sq mts** in khewat no. 30, khatauni no. 46, khasra no. 2921/2338/3; sold vide deed no. **1012** on 1.5.2017 land measuring 81-07 (**8107 sq mts**) in khewat no. 33,50 khatauni no. 49,66 khasra no. 2927/2355, 2225/4463, 2929/2356; sold vide deed no. **1013** on 1.5.2017 land measuring **3346 sq mts** in khewat no. 30, khatauni no. 46, khasra no. 2940/2379, 2946/2380,2931/2376; sold vide deed no. **2022340/1/1417** on 17.8.2022 land measuring **916 sq mts** in khewat no. 35, khatauni no. 41, khasra no. 2996/2921/2338, 2940/2379,2946/2380 & land measuring **232 sq mts in** khewat no. 36 khatauni no. 42 khasra no.



3024/2925/2339 & land measuring **1008 sq mts** in khewat no. 51 khatauni no. 57 khasra no.2927/2355.

- 12.** The corresponding jamabandi's have been appended along with the record. The Authority is convinced from the record that the respondent has sold more than **15,858 sq mts** (approx.) of land in Bhadoli Kalan/Bhadolian Khurd, District Una and has sold 10 plots of different shapes and sizes in between the year 2017 to 2023 in violation of the RERD Act, 2016.

Section 3 of the RERD Act is as under-

“(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

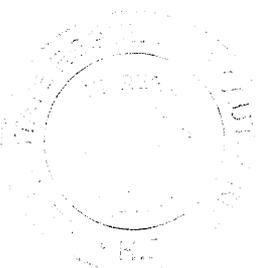
Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made there under, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) **where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:**

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case



may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

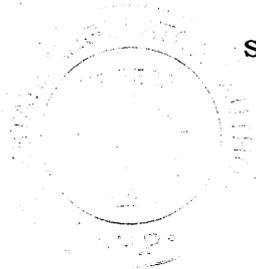
(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

13. The provisions of section 3 of the Act *ibid* are very clear that no promoter shall advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot having area more than 500 sq. mtrs. or flats more than eight, in any planning area without registering the project with this Authority. As per proviso one to sub clause 1 of Section 3 of the RERD Act, 2016 three months period from the date of commencement of the Act was granted by the legislature to the ongoing projects to get the same registered. The commencement of Section 3 of the RERD Act, 2016 was from 1.5.2017 therefore the respondent was required to apply for registration on or before 1.8.2017.
14. In the present case the respondent has sold about ten plots having area of about **15,858** sq. mtrs. without obtaining registration from this Authority under the provision of Real Estate (Regulation and Development) Act, 2016. It is clear that the respondent has flagrantly violated the aforesaid provisions and the violations are writ large.
15. It is clear from the record that all the sale deeds have been executed by Smt. Indu Walia therefore the issue of summoning the Company “Group Colonizers Pvt. Ltd.” does not even arise.



More so when it is the statement of the respondent in written arguments that the company is no more in existence. Otherwise also from the record available the ownership of the land was of Smt. Indu Walia and she has entered into the sale of land in violation of law therefore she is the defaulter in the present case. This Authority is further clear that the respondent cannot escape the rigours of law by taking the plea that complainant herein has personal enmity with her because the fact ultimately remains is that she has caused huge violations of the RERD Act, 2016. We are further of the considered view that a person who has already violated the law by selling plots more than 500 sq mts without getting the project registered with this authority cannot later take the plea of force majeure for delay in registering the project. It was the duty of the respondent to get the project registered with this Authority after removing all objections. After selling about 10 plots and when being caught by the Authority and insisted to take approvals he cannot turn around and say that the time required for taking approvals shall be excluded. By taking the pretext that the complaint is not maintainable she cannot be permitted to flout the legal provisions. There are about 10 sale deeds appended on the record along with corresponding jamabandis which go to show that more that 10 plots of total area more than **15,858** sq mts (approx.) was sold by the respondent in violation of law and therefore it is incorrect and wrong on her part to say that the said project has already been sold in the year 2014 i.e. before the commencement of the Act. It is further clear from the record that the sale deeds have been got executed after the commencement of the RERD Act, 2016. Therefore it is absolutely clear that the registration application submitted to this Authority by the respondent is an eye wash as



the observations pointed out by this Authority have not been removed for the past almost two years.

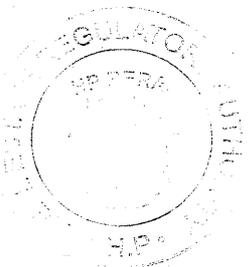
16. So far as the issue of locus standi raised by the respondent before the Authority is concerned it is pertinent to mention here that any person can apprise this Authority about any violations being caused of the provisions of the Act *ibid* because this Authority has suo moto powers under Section 34 (f) & (g) to deal with any of the violations under the Act and to ensure compliance of obligations cast upon various stakeholders under the Act. Further so far as the contention of the respondent qua the complainant not falling in the definition of aggrieved person is concerned. This Authority is of the considered view that the definition of aggrieved person is relevant for the purpose of filing complaint under Section 31 and not for providing information of violation of Section 3 of the Act and any violation of the section can be brought to the notice of this Authority by anybody. The definition of aggrieved person is not applicable for violation of section 3. The suo motu powers of the RERA have been enlisted under section 35 and 38 of the Act. The RERA can take action on its own accord in matters pertaining to calling for information or conducting investigation. This Authority has clear powers to call for information and conduct investigation.

17. Since the respondent had undertaken before this Authority to get the project registered for which she had sought time from the Authority on 27.09.2022. Her application was reverted online with certain observations by the office of this Authority on 29.11.2022. Since then she has not complied with the observations. Sufficient time has already been granted to the respondent to comply with the observations of this Authority and get the project registered. A person cannot be permitted to sit



over the registration of the project by merely applying the same and then not reverting back for almost about two years. For her delay and failure to comply with the orders of this Authority she was imposed a penalty total amounting to Rs 13,14,000/- for which a recovery certificate was sent to the concerned District Collector. However, she has not paid the penalty amount till the passing of this order. The penalty imposed earlier is meagre keeping in view the quantum of land involved in the sale of plots in violation of Section 3 of the Act. The execution of the aforesaid sale deeds have otherwise been admitted by the respondent vide order dated 27.09.2022, but her defense was that she was not aware of the mandate of RERD Act, 2016. The well known maxim is that 'ignorantia juris non excusat' meaning ignorance of law is no excuse but keeping in view her admission she was directed to register the project. The respondent was restrained to the extent that she was barred/restrained from advertising, marketing, booking, selling or offering for sale or inviting persons to purchase in any manner any plot, apartment or building owned by respondent in Bhadoli Kalan, District Una, H.P. without getting the project registered with the Authority as per Section 3 of the Act *ibid*. This direction is in accordance with the mandate of Section 3 of the RERD Act, 2016. Further powers of the Authority to call for information and conduct investigations is given under Section 35 of the RERD Act, 2016.

Section 35 Powers of Authority to call for information, conduct investigation - (1) *Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint*



one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) issuing commissions for the examination of witnesses or documents;

(iv) any other matter which may be prescribed.

18. Further in case titled as **Praveen Chhabra V. Real Estate Appellate Tribunal W.P.(C) 14552/2021** pronounced on 26.05.2022 the Hon'ble Delhi High Court in para 18 it was held as under

“18. Turning then to the provisions which deal with the constitution and powers of the Authority, **it is manifest that it is obliged to regulate real estate projects**, to ensure compliance of obligations placed on promotees, allottees and real estate agents. In terms of Section 35, where a complaint is received by it in respect of any real estate project, it is empowered to call upon the promoter, allottee or real estate agent to furnish information in writing or explain its affairs to the Authority. **The powers exercised by the Authority under Section 35 can be set in motion either on a complaint or by the Authority itself acting suo moto. Section 35(2) confers on the Authority the same powers as are vested in a Civil Court under the Code of Civil**



Procedure, 1908 insofar as they pertain to discovery and production of books of account and documents, summoning and enforcing the attendance of persons, issuing commissions for the examination of witnesses or documents and other matters which may be prescribed. **Section 36 empowers the Authority to issue interim orders by way of restraint against a promoter, allottee or real estate agent injuncting it from carrying on any act** which is complained of or noticed until the conclusion of the enquiry initiated under Section 35. **This very provision also empowers the Authority to issue interim orders ex-parte.** The Authority in terms of **Section 37 is invested with the power to issue directions from time to time to any promoter, allottee or real estate agent and prescribes that all such directions would be binding on parties concerned.'**

19. Therefore the Authority has powers to investigate and call for information and in pursuance to the powers, this Authority was investigating the violations committed by the respondent and the complainant herein is merely a provider/supplier of the information just to assist this Authority to catch hold of the violators of the Act. Therefore this is not a complaint filed under Section 31 of the Act and for such information no format is prescribed. This Authority after due application of mind and from the perusal of the record in the shape of copies of sale deed, jamabandis etc. supplied by the complainant from which it is apparent that the respondent has consecutively violated Section 3 of the Act and after due satisfaction has passed restraint orders to the respondent not to engage in any selling activity till she registers her project with the Authority. By merely applying the respondent is not absolved of her liability to get the project registered and she has to ensure that registration is obtained by her in a time bound manner.



20. Section 5 of the RERD Act, 2016 mandates that on receipt of application of registration under section 4, the Authority shall decide the application within a period of 30 days. Therefore, we are mandated to take a decision on grant of registration within 30 days. However, in this case the respondent after applying for the registration is not supplying the requisite information since 29.11.2022. The respondent is willfully not providing the information and documents required for registration under RERD Act, 2016 and HP RERD Rules, 2017. Because of this inordinate delay by the respondent, this Authority is not able to discharge its duty under Section 5 of the Act.

21. Order/ Directions

The Authority considering all the facts and circumstances of the case hereby passes the following orders/ directions.

- I. The application(s) of the respondent MA 41A/2023 on the issue of maintainability of the complaint and MA 41E of 2023 for waiver of penalty are hereby dismissed being devoid of any merits.
- II. It is reiterated that the respondent shall not advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building without first getting the project registered with this Authority as per the mandate of Real Estate (Regulation and Development) Act 2016.
- III. The respondent is again directed to pay the interim penalty of Rs. 13,14,000/- already imposed by this Authority during the course of proceedings at the earliest.
- IV. A further period of one month as last opportunity is granted to the respondent to get the project 'New Una' registered with HPRERA under Section 3 of the Act by providing all the requisite documents and information online on HP RERA webportal, failing which the respondent is hereby imposed a penalty of Rs



20,000/- per day which may cumulatively extend upto ten percent of the estimated cost of the project till registration is obtained by the promoter under Section 5 of the RERD, 2016. The time taken by the Authority to process her application for registration shall be hereby excluded for the purpose of computing the penalty.

V. All the pending applications are disposed of in aforesaid terms.

B.C. Badalia
B.C. Badalia
MEMBER

SKant
Dr. Shrikant Baldi
CHAIRPERSON

