

**REAL ESTATE REGULATORY AUTHORITY,  
HIMACHAL PRADESH**

**Complaint No. HPRERA2024021/C**

**In the matter of:-**

Sh. Sandeep Kumar son of Sh. Omkar Nath, resident of Tehsil Chamba, Rajnagar, Chamba and also House no. 210, Jasmine block 1, Amravati Apartment Baddi, Solan, Himachal Pradesh, 173205

.....Complainant

**VERSUS**

Amarnath Aggarwal Builders Pvt. Ltd. through project manager of the Amravati Apartments, Resident of Sai Road Baddi, Tehsil Baddi, Distt. Solan HP

.....Respondent

**Present:** Sh. Sandeep Kumar Complainant

Sh. Viren Goyal representative for respondent promoter

**Date of pronouncement of order: 06.12.2024**

**ORDER**

**Coram: Rajeev Verma (Member)**

The Present complaint dated 19.10.2024 has been filed by the complainant under section 31 of the Real Estate (Regulation & Development) Act, 2016 against the respondent. The main averments in the complaint are that the complainant purchased a flat no. 210, category Jasmine, Block No. 1, from Sh. Balender Kumar S/o Sh. Ram Pal Singh, in the project of respondent namely Amravati Apartments situated at Revenue Village Dhakhru Majra Hadbast No. 212, Pargna Dharampur, Tehsil Baddi, District Solan HP for total consideration of Rs. 17,40,000/-. By way of this complaint it was stated that the complainant

has been facing a persistent issue of moisture accumulation in the bathrooms and rooms of his unit at Amaravati Apartments, Baddi, for over two years. This problem has caused inconvenience, potential property damage, and a serious safety risk due to electrical current leakage in the walls. It was further stated that, despite spending ₹80,000 on repairs, the issue remains unresolved due to the lack of action by the apartment management.

With these averments the Complainant seeks immediate resolution of the moisture issue in Amaravati Apartment's, Baddi, and appropriate compensation for the inconvenience, financial burden, and hardship caused due to the defective condition of the property.

On this issue, the Office of this Authority issued a notice to the respondent for preliminary hearing and filing a reply. Sh. Viren Goyal, representative for the respondent appeared through WebEx. Further, the respondent filed a reply along with the order passed by another bench of this Authority in another complaint in the same project on the similar issues, dismissing the complaint and subsequently, the complainant submitted a rejoinder. During the course of hearing the complainant submitted that the maintenance of the complex is being done by the promoters and he has been paying the maintenance charges regularly and it is a deficiency on part of the promoter that they are not rectifying and maintaining the unit/tower. The respondent refuted that they are maintaining the property and further submitted that maintenance is not being undertaken by them but by a third party agency who has been appointed by Resident Welfare Association (RWA). The complainant further submitted that Nitin Enterprises Pvt. Ltd. is a company/subsidiary of the promoters, which was also refuted by the respondent.

After examining the complaint, reply, rejoinder, and the documents annexed thereto, and after hearing both the parties, the complainant and the respondent, this Authority is of the considered view that as per the sale deed appended with the complaint, possession of the unit was handed over by the respondent namely Amrawati Apartments to one Sh. Balender Kumar on 19.02.2013. Sh. Balender Kumar enjoyed possession of the said unit for approximately eight years and thereafter sold it to Sh. Sandeep Kumar complainant through a sale deed dated 03.02.2021. Accordingly, more than Eleven years have been elapsed since the possession of the said flat was originally taken over, as stated above. Further, in the rejoinder, the Complainant failed to provide a satisfactory response to the reply submitted by the respondent. During the arguments, the Complainant was unable to convince this Hon'ble Authority as to under which legal provision(s) the present complaint is maintainable.

In view of the above, the Authority is of the considered view that as far as the maintenance issue is concerned, the same is not under the preview of this Authority and any grievances pertaining to maintenance issue and against the maintenance agency is to be raised/challenged at appropriate Forum. Further on the basis of perusal of the statute of section 14(3) of the RERD Act, it is specifically provided as in here as under:

*“14(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.”*

In view of section 14(3) of Real Estate (Regulation & Development) Act, 2016 the complaint for structural or any other defect in workmanship, quality or provision of services or any other obligation of the promoter as per the sale deed is maintainable within a time period of five years from the date of handing over the possession of the said flat. However, the Flat in question was taken in possession much more than five years ago and the mandate of aforesaid section is absolutely clear that this provision cannot be invoked at this stage when the possession has been handed over to the original allottee by the respondent Eleven Years ago.

On the basis of the above, this complaint is not maintainable and therefore is dismissed. The copy of the order be supplied to both the parties and file is hereby consigned to the record room.



**Rajeev Verma**  
**MEMBER**