

REAL ESTATE REGULATORY AUTHORITY

HIMACHAL PRADESH

IN THE MATTERS OF:-

Suneet Kumar, Sale Proprietor of M/s Shubham Construction, Resident of VPO, Hatwas, Teh. Nagrota Bagwan, Near PNB Hatwas, Kangra, Himachal Pradesh, 176047

.....Complainant

VERSUS

Amarjit Kaushal, S/o Sh. Kishan Lal, resident of 87-B, Model Town Ambala City, Ambala, Haryana- 134003 and 552-B, Old Chari Road, Dharamshala, C/o Panda Hotel, Kangra, Himachal Pradesh, 176215

.....Respondent

Complaint No. HPRERA2023001/C

Present:

Sh. Ankur Soni for M/s Shubham Construction Complainant through WebEx

Sh. Amarjit Kaushal Respondent through WebEx.

Final date of hearing (through WebEx): 17.04.2023

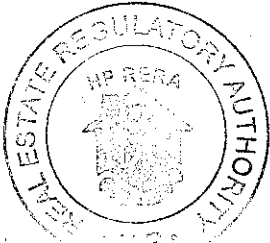
Date of pronouncement of order: 16.05.2023

ORDER

Coram: - Chairperson and Member

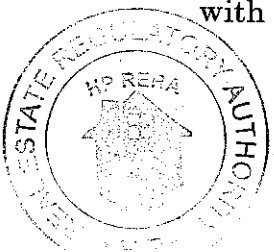
1. This is a complaint filed by Sh. Suneet Kumar, proprietor, Messer's Shubham Construction, against the respondent Sh. Amarjit Kaushal, Respondent. In brief, the facts of the case are as follows:-

The complainant is a promoter of housing project named "The Mcleo Homes", situated at Village-Sudher, Tehsil Dharamshala, District Kangra. The project



is registered with RERA No:- RERAHPKAP12170017. As per the complainant, Sh. Amarjit Kaushal, respondent approached him to purchase flat No.-101 situated in Block No. A-1 in the project, for a consideration of 34.39 lakh + GST. The payment of the flat was paid by the respondent from time to time. The agreement for sale was entered into between the parties, on 25.08.2017. As per Annexure-13 to the complaint, a letter was written by the respondent to the complainant on 23.05.2019 through which the respondent confirmed having accepted the vacant and peaceful possession of the Flat No.-101 in Block-A. The part completion certificate of Block A-1 of the project was issued by the Director, Town & Country Planning Himachal Pradesh, on 27.08.2019, (Annexure-15 to complaint). Further, the Director, Town & Country Planning, vide its letter dated 10.12.2019, granted occupation certificate of 21 units in Block-A-1, (Annexure 16 to complaint). The annexure to the letter includes the name of Sh. Amarjit Kaushal, respondent at serial no.-1, in the issuance of occupation certificate. Later on, a fresh 'agreement for sale' was entered between the parties dated 11.12.2020, as prescribed by HP RERA. This fresh agreement was entered between the parties, for making application under section-118 of the HP Tenancy and Land Reforms Act, 1972 to obtain permission of the Government.

The complainant vide his letter dated 23.07.2020, (Annexure-20), requested the respondent, to pay the maintenance charges of Rs. 18,000/- for the year 2020 and Rs. 24,000/- for year 2021, along with GST. Again the complainant vide letter (Annexure-34), requested the respondent to pay the maintenance charges for the year 2020 to 2022. However, the respondent opposed the payment of maintenance charges and did not pay. Further, the respondent herein filed a complaint before the District Consumer Dispute Redressal Commission Dharmshala. The decision of the District Consumer Dispute Redressal Commission, dated 28.11. 2022, is also annexed with the complaint, according to which, the complainant was directed to pay Rs. 1,25,575/- along with interest @ 9% and a compensation of Rs. 1,00,000/-. The complainant in



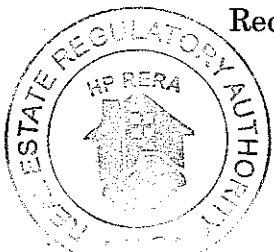
his complaint has mentioned that, he is going to challenge the order before the Appellate Authority.

2. The main prayer and relief sought by the complainant in his complaint, under section 31 read with Section 19, Clause (6) is to direct the respondent to pay the pending annual maintenance charges from the year 2020 till year 2023 amounting to Rs. 1,06,200/- along-with interest of Rs. 26,220/- totalling to Rs. 1,32,421/- along-with Rs. 10 Lakh for legal expenses, mental harassment and monetary loss.
3. Reply by the respondent:-

The respondent sent his reply on 28.01.2023 and again a reply on 20.02.2023 to the complaint. The main point emphasised by the respondent in his reply, is that as per Clause 11 of the agreement for sale dated 11.12.2020; *the promoter shall be responsible to provide and maintain essential services in the project till the taking over of maintenance of the project by the association of allottees upon the issuance of the completion certificate of the project...* Thus, according to the respondent, no maintenance charges are payable before the full completion of the project. It was further pleaded in the reply that the builder has been wrongly taking completion of few blocks of the project, as completion of the project, just to collect the arbitrary and self-imposed maintenance charges from the allottees. He has further, contended that in this project, at the present speed, it is likely to take another 2-3 years, to complete the project, as out of total 5 blocks, only 3 blocks have been completed till today.

4. Rejoinder:-

The complainant has filed the rejoinder on 17th March, 2023, in which, he has denied the contents of the reply, as wrong and incorrect. Moreover, he has pointed out, that the Hon'ble National Consumer Dispute Redressal Commission, New Delhi, in complaint No. 763 of 2020 titled as Madhusudan Reddy R. and other Versus VDB Whitefield Development Pvt. Ltd., held that,



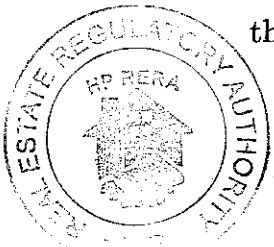
(Para-26) *the complainants will be liable to pay maintenance charges only after the occupancy certificate is received.*

5. Arguments by the complainant:-

Arguments in this case were heard, on 17th April, 2023. The Learned Counsel for the complainant drew the attention of the Authority towards, Annexure-1 to the complaint, through which the respondent Mr. Amarjit Kaushal made an application to purchase apartment no.-101 in tower no.- A(1) in the project. He also drew the attention of the Authority towards Clause 3(a) of the Agreement of sale dated 08th September, 2017, (Annexure-3,) according to which, respondent was to pay maintenance charges. He also drew the attention of the Authority towards, the letter of the Director Town & Country Planning dated 27.08.2019 (Annexure-15) vide which part-completion certificate was granted for Block -A(1) of the present project and the occupation certificate was granted on 10.12.2019, including the flat no. A(1)-101, which is in possession of the respondent, Sh. Amarjit Kaushal (Annexure-16). He further argued that, despite the completion and occupation certificate given by the competent authority for the Flat No.-101 occupied by the respondent, the respondent had not paid the maintenance charges since 1st January, 2020, whereas, the same is being paid regularly by the other allottees. He therefore, contested that despite repeated reminders to the respondent he has not paid the maintenance charges. Therefore, he pleaded that the Authority may direct him to pay the pending maintenance charges along with interest, total amounting to Rs. 1,32,421/- along-with 10 lakh rupees for mental harassment and monetary loss.

6. Arguments by the Respondent:-

The respondent himself argued the case and has also given the written arguments which are placed in the file. The respondent argued that, there was no delay in the payment of the cost of the flat, therefore, it is not true that the delay in offering possession of the flat, was due to delay in payment.

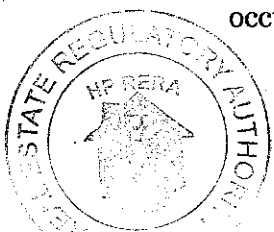


He has further argued that, the maintenance charges in fact, is the only real issue in this complaint. It was further argued by him that the exact position of the same is quite clear by reading clause No. 11 and 23 of the new 'Agreement for sale' between the parties. It was further argued by him that the builder can charge maintenance only on the full completion of the Project and not before that, as per Clause 11 of the agreement for sale. It was further argued by the respondent that the project is still incomplete and only the part completion is received. Therefore it was argued that the builder cannot claim maintenance from the respondent. He has further argued that as per clause 23 of the agreement for sale, in respect of, IFMS Rs. 35,000/- paid by him, was to be kept in a separate fixed deposit account in a scheduled Commercial Bank. It was further argued that the builder has however misappropriated the IFMS Funds. Therefore, he argued that no maintenance is payable in this case hence, this complaint should be dismissed with cost.

7. Findings of the Authority:

The Authority has gone through the pleadings of the parties, record of the case as well as arguments adduced by both the parties. The main point for the consideration in this case is-

- Whether maintenance charges are payable by the respondent in this case to the complainant or not?
8. There is no dispute that the Flat No.-101 in Block-A-1 was allotted to the respondent. Further, there is no dispute that the respondent has paid the full consideration of the flat and has taken possession of the flat, as in May 2019, as per letter written by respondent himself (Annexure-13). It is also evident, that the part completion certificate of Block-A-1 was issued by the competent authority i.e. Director, Town and Country Planning on 27.08.2019 for the block in which, the flat of the respondent is situated. It is also evident, that the occupation certificate of entire Block-A(1) including the Flat No.-101 occupied by the respondent, has been granted by the competent authority on



10.12.2019. The complainant is asking for the maintenance charges w.e.f. 01st January, 2020, i.e. after the issuance of completion certificate and occupation certificate for Block-A(1)-101.

9. The main contention of the respondent is that, as per clause 11 of the new Agreement for Sale, the maintenance charges will be paid by the allottees only after complainant obtains completion certificate of the entire project. In this case, only few blocks have been completed and remaining blocks of the project are yet to be completed. The clause 11 of the agreement for sale, (New Agreement) signed between the parties on 11.12.2020, reads as follows:-

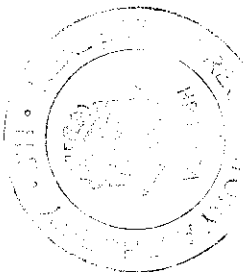
“The Promoter shall be responsible to provide and maintain essential services in the Project till the taking over of the maintenance of the project by the association of allottees upon the issuance of the completion certificate of the project....”

10. From the above Clause, it is clear, that promoter shall be responsible to provide and maintain essential services in the project, till the taking over of the maintenance of the project by the association of the allottees upon the issuance of completion certificate of the project.

11. The main issue in this case, is when, the promoter could start charging maintenance charges from the allottee. Whether, the promoter can charge maintenance on completion of few blocks, when other blocks have not been completed?

The definition of Real Estate Project is given in the Section-2 (zn) of the RERD Act, which reads as follows:-

“real estate project” means the development of a building or building consisting or apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or (apartments), as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;



12. Thus, the definition of Real Estate Project includes selling all or some of the said apartments. Therefore, in any Real Estate Project, the sale of apartments could be in phases. However, the liability to maintain and incur expenses, will start from the occupation of flats in a project. In this project, the respondent had taken possession of the Flat No.-101 since May, 2019 and completion certificate of the entire Block-A(1) including his flat was received in August, 2019 and the occupation certificate of his flat was also granted by the competent Authority in December, 2020. Therefore, his flat was complete in all respects as occupation certificate was granted by the competent authority in December, 2019. It is not reasonable, that a person is enjoying the facility(s) of the project since May, 2019 by taking the possession of the flat but, refuses to pay the maintenance charges, even after grant of the completion certificate and occupation certificate of his flat.

Section-11(4) (d) of the RERD Act 2016, provides

'the promoter shall be responsible for providing and maintaining the essential services on reasonable charges, till the taking over of the maintenance of the project by the association of allottees.'

13. Similarly, Section-19 (6) of the Act provides that every allottee shall be responsible to make payments for maintenance charges as per the agreement for sale. Therefore, in view of the above provisions of the Act and keeping in view, that the respondent is in possession of the flat since May, 2019 and completion and occupation certificate of his flat has been issued by the competent authority, it is held that, the respondent is liable to pay the maintenance charges w.e.f. 1st January, 2020. It is an admitted fact that no maintenance charges have been paid since, January, 2020. Therefore, it is held that respondent is to pay the maintenance charges from 1st January, 2020 till December, 2023, amounting to Rs. 90,000/-. In his written arguments, however, the respondent pointed out that the promoter had cut off his water and electricity for three months. Therefore, that period of three

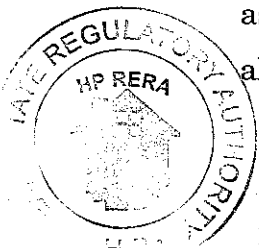


months is deducted from the total period for which maintenance is due and respondent is held liable to pay the maintenance charges of Rs. 90,000-6,000/- i.e. 84,000/- + GST on it.

14. The complainant promoter has also asked interest @18% i.e. Rs. 26,220/- However, the interest rate as per Section-2 (za) of the Act, will be same for the allottee and promoter. The interest rate payable by the promoter and allottee as per Rule-15 of the Himachal Pradesh Real Estate Regulation and Development Rule, 2017, is the highest marginal cost of lending rate being charged by the State Bank of India + 2%. Presently, the SBI HMCL rate is 8.7% therefore, the rate of interest which can be charged is 8.7%+2=10.7%. However, considering the old age of the respondent, it is held, that the respondent will not be required to pay the interest if, he pays the maintenance of Rs. 84,000/- within next 2 months. Further it is clarified that, if the due amount of maintenance is not paid within two months, then the interest @ Rs. 10.7% would be payable from the due date of payment of maintenance charges.

15. Relief:-

- a) The complaint is partly allowed.
- b) The respondent is held liable to pay the maintenance charges of Rs. 84,000/- for the period from January, 2020 till December, 2023. He is directed to pay the same within two months from the pronouncement of this order, failing which he will be liable to pay the interest at the highest marginal cost of lending rate being charged by the State Bank of India + 2% i.e. 10.7% as per rule Rule-15 of the Himachal Pradesh Real Estate Regulation and Development Rule, 2017 from the due dates of payment of maintenance charges.
- c) The complainant promoter is directed to enable the formation of association of allottee, within next 3 months. Once the association of allottees is formed, the association may be asked whether they would like



to take over the maintenance of the project or would like to continue the maintenance through the promoter. Till such time the association of allottees takes over the project and its common services and decide the common expenses and monthly contribution, payment of maintenance charges shall continue to be paid by the respondent to the promoter promptly and regularly.

- d) The complainant is at liberty to approach adjudicating Officer under section 71 & 72 of the Real Estate (Regulation and Development) Act, 2016 for compensation.

Asadali
Sh. B.C. Badalia
MEMBER

skant
Dr. Shrikant Baldi
CHAIRPERSON