

**REAL ESTATE REGULATORY AUTHORITY  
HIMACHAL PRADESH**

**Complaint No.HPRERA2023035/C**

**In the matter of:-**

Sh. Harish Kumar Sethi son of Late Sh. Murat Singh Sethi, resident of Village Rohtan, Post Office Mandal, Tehsil Jubbal, Shimla, Himachal Pradesh,171216

..... Complainant

Versus

- 1 Sh. Harsh Tomar, son of Lekh Raj Tomar, Shiva Vihar, Kundidhar, Post Office Shamti, Solan, Himachal Pradesh,173212
- 2 Sh. Mohal Lal son of Late Smt. Leela Devi, resident of Village Sharanu, P.O. Barog, Tehsil and District Solan H.P.

.....Respondent(s)

**Present:- Sh. Harish Kumar Complainant through WebEx  
Sh. Harsh Tomar respondent promoter through WebEx**

**Final date of hearing:-19.04.2024**

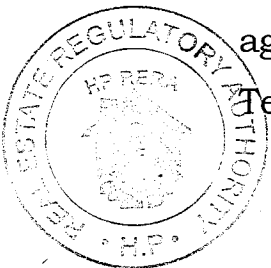
**Date of Pronouncement of Order:- 17.05.2024**

**Order**

**Coram: Chairperson and Member**

**1. Facts in the complaint-**

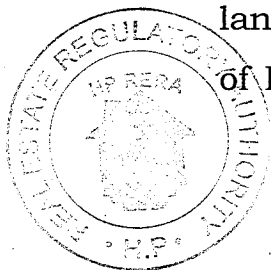
The facts in brief giving rise to present complaint are that Sh. Harish Sethi son of Late Sh. Murat Singh Sethi from Rohtan Tehsil Jubbal District Shimla purchased a plot no. 4 from Sh. Mohan Lal son of Sh. Ram Krishan through the real estate agent Mr. Harsh Tomar on dated 06.02.2021 in Mauza Sharanu Tehsil and District Solan H.P. The size of the plot purchased by



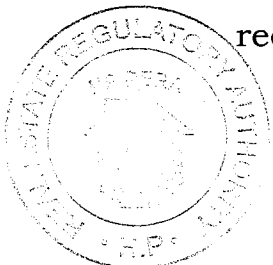
the complainant was 4 biswa i.e. 168 sq mtrs. It was further pleaded that there were total 7 plots in the project. The copy of sale deed has been appended. It was alleged that the promoter has not developed the road. With these pleadings it was prayed that the promoter may be directed to develop and construct the road in the project as per approved map from TCP.

## **2. Reply of the respondents-**

In the reply it was pleaded that the present complaint is not maintainable and the complainant has not approached this Authority with clean hands and has concealed true and material facts from this Authority . It was further pleaded that the present complainant has no locus standi to file and maintain the present complaint. It was further pleaded that the replying respondent namely Sh. Mohan Lal has got approved his sub division of land from Town and Country Planning Department Solan vide reference no. 01202000203 dated 09.02.2021 and thereafter has surrendered a path of 5 meters width after carving out separate tatima and has gifted the same to local body i.e. Gram Panchayat Anji qua which mutation has also been incorporated in the revenue record, hence it was pleaded that the path is owned and possessed by Gram Panchayat Anji. It was further pleaded that the respondents have developed the road at the spot before surrendering it in favour of the local body and also installed proper pucca points, iron angles at the spot. It was further pleaded that the respondents have carved out separate tatimas of the plots / subdivision along with road and further marked the same through revenue officials at the spot. It was further pleaded that the portion of land adjoining the said land/road previously owned and possessed by Sh. Ram Lal son of Late Smt.Leela Devi who had sold the said plot to Sh. Pawan



Kumar Negi son of Megh Nath Negi resident of Village Kulgaon, Tehsil Chirgoan , Distt. Shimla H.P through registered sale deed dated 20.04.2021. Sh. Pawan Kumar Negi after getting transferred the said plot in his favour applied for demarcation of his plot thereafter. It was further pleaded that thereafter in connivance with revenue staff he got conducted a false demarcation of the land in his name. Further it was pleaded that Sh. Pawan Kumar Negi has encroached the existing road owned and possessed by local body and affixed the false pucca points by encroaching approximately 16 feet portion of the road illegally and forcibly. It was further pleaded that Sh.Mohan Lal and Harsh Tomar filed complaint regarding the illegal encroachment of the road by Sh. Pawan Kumar Negi to the concerned local authority which matter was enquired at the spot and after inquiry Sh. Pawan Kumar Negi was held to be in illegal possession of the land. It was further pleaded that a complaint before Town and Country Planning Department was filed and the concerned officials after visiting the spot found that Sh. Pawan Kumar Negi illegally encroached the portion of the road and was issued a notice to stop the illegal construction. It was further pleaded that Sh. Pawan Kumar Negi did not stop even then and forcibly and illegally raised construction by encroaching the portion of road in connivance with local contractor Sh. Bittu Mehta. It was further pleaded that the promoter/ project never denied its duty to develop the road. It was further submitted that the promoter has already developed the road and transferred/surrendered the same in favour of the local body as per rules after affixing pucca points at the spot. It was further pleaded that Sh. Mohan Lal and Harsh Tomar at various times requested Sh. Pawan Kumar Negi to stop the illegal construction



work but no action was taken by Sh. Pawan Kumar Negi. It was further pleaded that Mohan Lal and Harsh Tomar on several occasions cleared the road at the spot as Sh. Pawan Kumar Negi had thrown debris and muck on the road several times.

### **3. Rejoinder-**

It was submitted in the rejoinder that the complainant is not satisfied with the version of the respondent because it is an admitted fact that Sh. Pawan Kumar Negi had encroached 16 feet of road at the spot. It was further submitted that there is no report of demarcation from any revenue agency appended with reply by the respondent which could substantiate their version of encroachment by third party. It was further submitted that the complainant fails to understand as to why respondent has failed to develop the road on the spot till today. It was further submitted that the respondent has not even developed the road leading to the plot of the complainant even beyond the land encroached by the Sh. Pawan Kumar Negi.

### **4. Written arguments-**

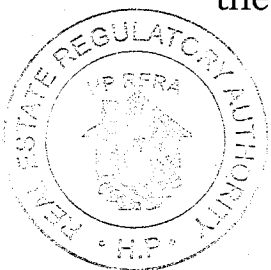
It was argued that the respondent has not constructed the road leading to the plot which is causing great harassment to the complainant. It was further argued that on the area which the respondent is talking of the encroachment, no revenue record qua encroachment has been submitted by the respondent to the complainant or to this Authority. It was further argued there is further 10-15 meters of road length beyond the area of road encroached by Sh. Pawan Kumar Negi which has also not been developed by the respondent till date. It was further argued that no authority pertaining to revenue has given the findings that there is any encroachment by Sh. Pawan Kumar Negi on the access to the plot of the complainant. The complainant further



argued that the version of the respondent that the width of the road throughout is 5 meters is incorrect and baseless and the width of road through is far less than 5 meters. It was argued that the width of the road is roughly around 3 meters and for this reasons the plan of the complainant to do construction work is not being sanctioned by the concerned authority.

#### **5. Arguments by the respondent-**

It was argued on behalf of the respondent that the road 5 mtrs wide was developed through out the land in question and thereafter as per regulations it was got mutated in favour of the local authority i.e. Gram Panchayat. It was further argued that the revenue official while conducting demarcation have acknowledged the fact that Sh. Pawan Kumar Negi has done encroachment of 16 feet. It was further argued that the respondent intends to construct the road but because of the afore mentioned encroachment is unable to do the construction work. It was further argued that the complainant is correct in saying that the road developed on the spot is only 6 feet and there is an encroachment of 4 ½ meters. It was further argued that because of the encroachment there is an obstruction on the road and further access road cannot be completed on the site leading to the plot of the complainant. It was further argued that the respondent had constructed the road with a width of 5 meters at all places and surrendered the same to the local Gram Panchayat. However, due to the said obstruction/encroachment it could not be completed at all places particularly where the access was leading to plot of the complainant. It was further admitted that the respondent could not give a proper access to the complainant as approved in the sanctioned plan. It was



further argued that a complaint with regards to the encroachment has been lodged with the local SDM as well.

**6. Proceedings before this Authority-**

Vide dated 15.02.2024, it was directed by the Authority that the promoter involved in the present case shall get its project registered with this Authority within a time bound manner. However, till date Sh. Mohan Lal has not got its project registered with this Authority. During the course of hearings in the matter an application of one Sh. Rajinder Sharma no. PR01120220011 was received in the office of this Authority for getting its project registered through Sh. Harsh Tomar. However the TCP of HP, RERA has informed that the said project application has no concern what so ever with the land of Sh. Mohan Lal from whom the plot was purchased by the complainant herein.

**7. Findings of the Authority-**

This Authority has gone through the records of the case and also heard the arguments made by both the parties. After going through the record of the case the undisputed facts are that the complainant had purchased a plot from the respondent no. 2 Sh. Mohan Lal and the path as per approved plan was 5 mtrs in width but admittedly the same could not be constructed as there was encroachment by one Sh. Pawan Kumar Negi who happens to be a neighbour but not an allottee in the project. Therefore this Authority cannot exercise any jurisdiction directing a person who is not an allottee but simultaneously also holds that it is the duty of the promoter to ensure that a proper road is constructed upto the plot of the complainant as per the sanctioned plan for which he shall take effective steps and ensure the free and developed access as per the sanction plan.



8. Further since the project of respondent no. 2 Sh. Mohan Lal is registerable project developed on an area more than 500 sq mts and situated in the MC area Solan and despite repeated directions from this Authority the respondent Mohan Lal has not applied for registration. Therefore, a direction has to be passed directing him to get his project registered with this Authority within a time bound manner failing which he is liable for penalty under the RERD Act, 2016.

**9. Relief-**

Keeping in view the above mentioned facts, this Authority in exercise of power vested in it under various provisions of the Act, rules and regulations made there under, issues the following orders/directions:

- a. The respondent no. 2 Mohan Lal is hereby directed to apply for registration of project within one month from the date of passing of this order, failing which he is liable for penalty of Rs one lakh under Section 59 read with Section 63 of the RERD Act, 2016.
- b. The promoter is directed to ensure that a proper path/road is constructed up to the plot of the complainant, in accordance with the sanctioned plan within 3 months from passing of this order, failing which he shall be liable to pay a penalty of Rs three lakhs under Section 63 of the Act, 2016.

*B. C. Badalia*  
**B. C. Badalia**  
**MEMBER**

*SKan*  
**Dr. Shrikant Baldi**  
**CHAIRPERSON**

