

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

Complaint No.HPRERA2022026/C

BTM Residents Welfare Association resident of NH-22, Barog Bye pass Village- Kalol, Kumarhatti, Tehsil And District- Solan, H.P. through its President Sh. Varinder Chopra resident of Apartment no. A-311, BTM Apartments, Barog Bye Pass Solan Himachal Pradesh- 173229

Complainant

VERSUS

Ashok Kumar Kukreja resident of House no. 1327, Sector 37 B, Chandigarh 160036

.....Respondent

**Present :- Sh. Varinder Chopra President for complainant
None for respondent**

Final date of hearing and disposal :- 29.05.2023

Order

Coram: - Chairperson and Member

1. The instant complaint was filed by BTM Residents Welfare Association through its president Sh. Varinder Chopra. In the complaint it was pleaded that without consent of the flat owner(s) the Director of the project Mr. Ashok Kukreja (promoter here in) entered into an agreement for use of project passage/road with one of the neighbor Sh. Narinder Kumar. It was further pleaded that after one month the neighbour Sh. Narender Kumar sold his land to M/s M.M. Square Company and in the sale deed use of passage/road of the BTM apartments was also given to the said company. It was further pleaded that on the basis of the above M/s M.M. Square is illegally trespassing from the land of the project and its construction material is also going through the road of the project.

- 2.** A reply to this complaint was filed by Sh. Ashok Kumar Kukreja pleading therein that an agreement dated 22.11.2019 was signed between him as Director of BTM Real Estate Developer Private Limited and Sh. Narender Kumar where by the promoter agreed to give access to Narender Kumar for his residence through the road constructed for the BTM apartments (project here in). It was further pleaded that the agreement was signed by Sh. Narender Kumar based on misrepresentation and concealment of essential facts. It was further pleaded that Sh. Ashok Kumar Kukreja the Director of Company did not obtain the approval of Board of Directors as it was pleaded that the grant of access was only given as good way of gesture to Sh. Narender Kumar. It was further pleaded that Sh. Narender Kumar sold this land to M/s M.M. Square for their tourism project and executed sale deed showing usage of passage/road of the BTM apartment project. It was further pleaded that a fraud was played by granting the access to M/s M.M. Square in the manner it was never intended to. It was further pleaded that there was no direct agreement between the respondent/promoter and M/s M.M. Square for the usage of the aforesaid path and as such the agreement inter se Sh. Narender Kumar and M/s M.M. Square is not binding on the respondent.
- 3.** Simultaneously, a Civil Suit was filed by M/s M.M. Square plaintiff before the Civil Judge, Solan wherein it was pleaded that M/s M.M. Square purchased land comprised in Khata No. 13 min, Khatauni No.44 min, Khasra no 554/269 in Mauza Barog Tehsil and District Solan from Sh. Narinder Kumar. The promoter in this complaint was made the defendant in the aforementioned civil suit. It was further pleaded in the civil suit that the defendant M/s BTM resident developers the promoter in the instant complaint are in possession of Khasra No. 880/557,313/2 and 590/314 in Mauza Barog, Tehsil and District Solan. It was alleged in Civil Suit that Sh. Narender Kumar and the promoter of the BTM project vide agreement dated 22.11.2019 had agreed to use road passing through the land of the project. It was

further alleged that in the aforesaid agreement it was acknowledged by the promoter that part of the said road of BTM project also passes through the land of Narender Kumar which was later sold to plaintiff therein M/s M.M. Square. It was further alleged in the civil suit that the promoter simultaneously obtained right to widen the existing road which also passes through the aforesaid land of the predecessor of the plaintiff M/s M.M. Square i.e. Sh. Narender Kumar. It was further alleged in the civil suit that the promoter agreed that the predecessor of the plaintiff could connect his land with the aforesaid motorable road passing through the project land. It was further alleged in the civil suit that in October, 2021 the promoter as well as the residents of the project threatened and stopped the present plaintiff M/s M.M. Square from the using the road. Along with the suit an application under order 39 Rule 1 and 2 CPC was also filed. The Civil Suit was registered as CS No. 207-01 of 2021.

4. To the aforementioned civil suit a reply was filed by the promoter herein. It was further pleaded in the written statement by the promoter herein that the agreement dated 22.11.2019 between the promoter and Sh. Narender Kumar is forged and fictitious document and does not bear his signatures. It was further pleaded in the defense that an agreement which was not registered has no bearing on the rights of the parties. The claim of M/s M.M. Square plaintiff there in qua right to use the road was specifically denied. The counter claim in the aforesaid suit was also filed by the promoter wherein the agreement dated 22.11.2019 was claimed to be declared void as it was pleaded to be an un-registered/unstamped document and also without consideration. It was further pleaded in the counter claim that the land of the project and Khasra no. 544/269 of the plaintiff M/s M.M. Sqaure are distinct and separate on the spot and do not adjoin each other. It was further prayed in the counter claim that the flat owners of the project which are the complainants herein have invested Lakhs of rupees and if the plaintiff there in M/s M.M. Square

is not restrained from the using the motorable road the rights of the flat owner and the promoter will be affected adversely.

- 5.** While hearing the interim application the Court of Ld. Civil Judge, Court no. 2, Solan held that the existence of motorable road through the suit land of the promoter was not in dispute and the execution of the agreement dated 22.11.2019 was also not denied by the promoter who was defendant therein. It was held that the only issue raised was qua the legality and enforceability of the agreement for want of registration. Therefore, it was held that till the civil suit is heard finally, on the issue of interim relief under Order 39 Rule 1 and 2 CPC the defendants were restrained from obstructing the use of road by the plaintiff and creating any hindrance in the use of motorable road passing through the land of the project during the pendency of suit as it was held that plaintiff M/s M.M. Square had a prima facie case in their favour. It was further also held that the plaintiff is restrained from changing the nature of road comprised in Khasra no. 590/314 and 880/557 /313 during the pendency of the suit. Therefore to conclude two different directions one against M/s M.M. Square and the other against project promoter were passed by way of interim relief which will remain in force till the suit is finally disposed of.
- 6.** Against these orders two separate appeals were filed by both the parties, the promoter as well M/s M.M. Square before the Ld. District Judge Solan which was registered as Civil Miscellaneous appeal no. 15-S/14 of 2022. The appeal(s) of both M/s M.M. Square and the promoter were dismissed vide order dated 18.08.2022. It was held in the appeal that in the agreement dated 22.11.2019 there were reciprocal promises that Sh. Narender Kumar would be granted the right to use the road of the project and the promoter shall simultaneously have a right to widen that portion of the road land which passes through the land of Sh. Narender Kumar i.e. Khasra No. 554/269 which is now in possession of M.M. Square Limited by way of sale deed. While upholding the judgment of the Ld. Trial Court the Ld.

District Judge Solan clarified that prima facie the right of passage of M/s M.M. Square through the suit land is recognized and therefore it was held that the right of the use of the road/project by M/s M.M. Square is lawful and it was also held that the plaintiff M/s M.M. Square till disposal of the main suit shall have right to use project property but will not make any alteration in the motorable road. In aforesaid terms the appeal before the Ld. District Judge was decided and the matter on merits is subjudice before the Ld. Civil Judge Solan.

- 7.** Today Sh. Varinder Chopra president of the complainant welfare association has fairly submitted that the grant of right to use the road by way of agreement dated 22.11.2019 is subjudice before the Ld. Civil Court. However, on the strength of Section 14 of the RERD Act, 2016 it was prayed that the promoter who is respondent here in shall be restrained from altering the common area(s) of the project particularly the road of the project without previous written consent of 2/3rd of the allottees as per mandate of Section 14 of RERD Act, 2016. It was further prayed by Sh. Varinder Chopra that the purpose of filling the complaint would suffice if the Authority restrains the respondent from further granting the right to use the road or altering any other common area without first obtaining the consent of at least 2/3rd allottees. Further an affidavit has been filed by the promoter on dated 25.4.2023 wherein he has agreed to permit uninterrupted access to road in question constructed on the project land to the residents.
- 8.** The Authority has heard the complainant but none is present on behalf of the respondent/promoter. From the perusal of the zimni sheets of the case file it transpires that earlier also on several occasions none was present on behalf of the respondent/promoter.
- 9.** This Authority is totally in conformity with the submissions made by the complainant. The Ld. Civil Court on the basis of prima facie case has granted M/s M.M. Square company the right to use the road

without altering the nature of road till the main case is finally disposed off and therefore it can be said that the legality of agreement dated 22.11.2019 is pending adjudication before the Civil Court. The Civil Court is seized of the matter in which the interpretation/legality of the agreement dated 22.11.2019 has to be given. Therefore, this Authority while exercising powers under RERD Act, 2016 does not deem it proper and fit in the facts circumstances to give any findings on the issue of legality of passing of right to use the road of the project to Sh. Narender Kumar which right was subsequently given by Sh. Narender Kumar to M/s M.M. Square. This Authority in order to avoid any contradictory findings on the issue of validity of agreement restrains itself to comment on the same and grants the liberty to the complainant resident welfare association to again approach this Authority as and when the civil litigation between the promoter M/s M.M. Square is finally decided and verdict on the interpretation of aforesaid agreement dated 22.11.2019 is given. In so far as the oral prayer of the complainant to restrain the promoter from further granting right to use the road to other persons as well as making any alteration or additions in the common area of the project are concerned. The mandate of Section 14 is very clear and it reads as under:

Section 14 of the RERD Act read as under:

"Section 14-Adherence to sanctioned plans and project specifications by the promoter" - The Real Estate (Regulation and Development Act, 2016)

(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are

disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make-

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to the allottee.

Explanation:

For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation

For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(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."

10. From the aforesaid section it is clear that the promoter cannot make any alteration or addition in the sanctioned plans, layout plans, specification of the building and common area(s) of the project without the prior consent of at least 2/3rd of the allottees who have agreed to take the apartments in the building. The road of the project is also its common area and every allottee has a proportionate right on the same. Therefore, in the interest of justice and in view of the mandate under Section 14 read with Section 37 of the RERD Act, 2016 this Authority hereby restrains the promoter from altering, adding or adversely affecting the rights of the allottees in future in the common areas without first obtaining consent of at least 2/3rd of the allottees who have agreed to take the apartment(s) in such building or project.

The aforesaid complaint is disposed off in the aforementioned terms.


B.C. Badalia
MEMBER


Dr. Shrikant Baldi
CHAIRPERSON