

**REAL ESTATE REGULATORY AUTHORITY,  
HIMACHAL PRADESH**

**In the matter of:-**

Sh. K. Mahesh, having apartment in ground floor of a building (measuring 91.85 sq. mts.) situated in Village Anech, Tehsil & District Solan

.....Applicant/Complainant

Versus

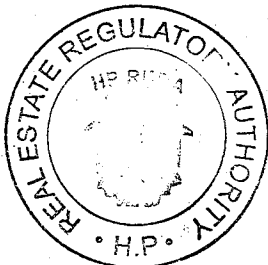
1. Mr. Anil Kumar Goel along with his son Sh. Akhil Kumar Goel, Resident of Aggarwal House, GSSS Area, Sanjauli, Tehsil- Shimla, Shimla (Urban), Shimla, HP -171006 and also at Village Anech, Kumarhatti, Tehsil & District- Solan, H.P.
2. Sh. Akhil Kumar Goel, Resident of Aggarwal House, GSSS Area, Sanjauli, Tehsil- Shimla, Shimla (Urban), Shimla, HP - 171006 and also at Village Anech, Kumarhatti, Tehsil & District- Solan, H.P.

.....Respondents.

**Application/Complaint no. HPRERA/OFL/2020-07**

**Present: - Shri K. Mahesh along with Sh. Kabir Ghosh Advocate for the applicant/complainant  
Sh. Vivek Negi Advocate for the respondent. No. 1 & 2  
Sh. Abhishek Sood, Assistant District Attorney, RERA Himachal Pradesh.**

**Final date of hearing (Through WebEx): 06.12.2021.  
Date of pronouncement of Order: 05.01.2022.**



## **ORDER**

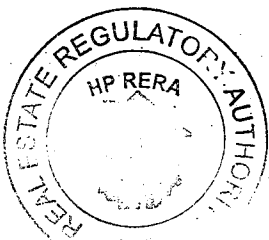
### **CORAM: - Chairperson and both Members**

#### **Brief facts of the case**

The facts giving rise to the present complaint are as follows:

#### **1. Facts in the Complaint:**

The Complainant, in his application/complaint has pointed out that he purchased a property being an apartment in Anech Village, Dagshai, Kasauli (District- Solan) situated on the ground floor consisting of one drawing room, three bedrooms, two toilets, one open kitchen measuring about 91.85 sq mts build on portion of land comprised in khata khatuni no. 15/53, 54 & 55, khasra no. 223 min, 223 min, 223 min and 223 min kitas 4 situated at Mohal Anech, Hadbast No. 69/819, Tehsil & District Solan, in September 2019. He has further mentioned that the property was purchased by complainant along with his wife Smt. Maryam Mirsamady as co owner by way of sub lease. It was further pleaded that subsequent to the purchase of the property it had come to the knowledge of the complainant that Sh. Anil Kumar Goel, through his son Sh. Akhil Kumar has without taking permission, continuing with massive construction activities adjacent to the aforesaid property. The photographs of the same have been appended as P/1 to P/9. It was further pleaded that the construction activities are being carried out by respondent through his son Akhil Kumar in violation of laws, on a plot of more than 500 sq mts and more than 8 plots have been built without any approval and registration from this Authority. It was further pleaded that it is mandatory as per Section 3 of the Real Estate (Regulation and Development) Act, 2016 to get the project registered and therefore the respondent is liable for action under Section 59 and other penal provisions of the Act. It was prayed to the Authority that a survey/



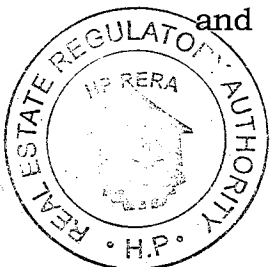
inspection may be ordered by the Authority against the alleged illegal construction.

## **2. Reply-**

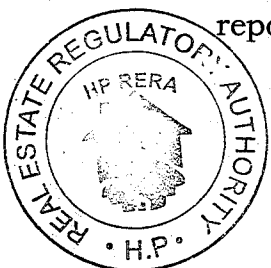
The respondent in reply submitted that the property in question was leased prior to coming into force of Real Estate (Regulation and Development) Act 2016. It was further pleaded that the area in question does not fall within planning area and no permission for construction was required as the construction was complete before 2017. It was further submitted that the respondent has not constructed more than eight apartments and thus has not violated the provisions of the Act. It was pleaded that the said property in question was initially leased to one Rama Mehta in July 2015 i.e. prior to commencement of RERA Act 2017. It was further pleaded that most of the construction work was complete by the year 2013. No construction has been done on the land in question after the commencement of this RERA Act and therefore there is no violation of the provisions of the RERA Act. It was further pleaded that twice, detailed survey has already been conducted by Town and Country Planning Department and all the necessary documents have been provided to them in this regard. It was further pleaded that complainant is habitual of filing baseless complaints against respondent ever since he has got the said property.

## **3. Rejoinder**

The complainant in rejoinder submitted that the construction made by respondent requires permission under sub section 3(a) of Section 1 of the HP Town and Country Planning Act, 1977 as the area in question is deemed planning area reported by the Town and Country Planner in his report dated 3.6.2020. It was further submitted that the unauthorised construction in question is made both by Sh. Anil Kumar Goel and Akhil Kumar Goel. It was further submitted that report submitted by the Town and Country Planner, Divisional Town and Planning Office, Solan is



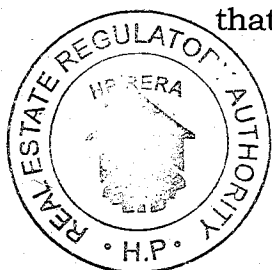
factual report prepared after collection of facts from the site which goes to prove that Sh. Anil Kumar Goel has been constructing 18 unauthorised cottages for commercial purposes. It was further submitted that un-authorized construction was made for the purpose of selling the same in utter disregard to the provisions of the RERD Act. It was further submitted that as per the report of Tehsildar, the total area over which both Akhil and Anil Kumar Goel are raising construction is about 9137Sq mts which is more than 500 sq mts as per the requirement of Section 3 of the Act. It was further submitted that the report of the Tehsildar reveals that Anil Kumar Goel has executed a General Power of Attorney in favour of Akhil Kumar Goel . It was further submitted that Tehsildar in his letter dated 17.7.2020 has listed all the transaction made by Akhil Kumar Goel and Anil Kumar Goel in the said area from which it is clear that the transactions have been made from year 2011 to 2019. The submission of the respondent that the project does not fall within planning area was denied by the complainant. It was further submitted that a detailed survey has been done by the Town and Country Planner, Divisional Town Planning Office, Solan vide letter no. Him/TCP/SLN/PA/UAC/ANCECH/Deemed Area/2020-121-22/ dated 3.6.2020 wherein it was categorically stated that the site is a deemed planning area and 18 number of cottages/ blocks are existing on a site area of more than 2500 sq mts based on the statement by respondent and therefore respondent was required to take permission from the Department of Town and Country Planning. It was further pleaded that both Anil Kumar Goel and Akhil Kumar Goel have been doing construction independently and jointly with Sh. Rajan Sood and with other land owners as developers and power of attorney holders. It was further submitted that respondents are doing construction jointly and severally with other land owners from 2012 to 2019 and some of the villas/ apartments are at completion stage. It was further submitted that report of TCP dated 17.7.2020 reveals that construction has been going



on in the years 2016, 2017, 2018, 2019 and even in 2020. It was further submitted that although TCP in its report dated 3.6.2020 stated that 18 number of cottages/blocks have been constructed unauthorizedly and occupied on the site which has been validated by the Tehsildar Solan that 19 registration deeds have been carried out in the project in question. However, he submitted that at present the number of constructions in this area are not less than 25 villas and 19 have already been registered. It was further submitted that for this purpose the respondent has uprooted the flora and fauna and exploited the ground water for construction works thereby increasing risk of landslides.

**4. Sur Rejoinder by respondent to rejoinder filed by complainant.**

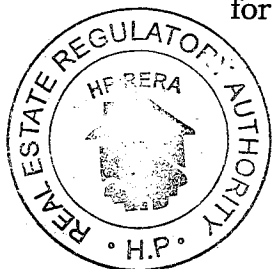
It was submitted that respondent no. 1 & 2 are owners in possession of separate, distinct and respective land in Village Anech, Tehsil and District Solan, H.P. which they had purchased individually in the year 2008 and 2010 respectively. It was submitted that construction work was undertaken by respondent no. 1 & 2 in their respective portions of land which was complete in the year 2012-2013, wherein number of apartments/ units was less than eight (8) in number in their respective portions. It was further submitted that area in question falls within Gram Panchayat, Anech. It was further submitted that at the time when construction was undertaken, no separate permission was required from H.P. Town and Country Planning Department or any other authority for such activity as it was beyond the purview of the Act *ibid*. It was further submitted that most of the units had been under occupation of respective purchasers/ lessees by the year 2015. It was further submitted without conceding that the construction made was well within the norms of TCP. It was further submitted that the complaint is not maintainable and the Authority has no jurisdiction as the construction is complete well before the coming into operation of the Real Estate (Regulation and Development) Act, 2016. The respondent strictly denied that any construction is being carried out on the site in question. It was



further pleaded that complainant has no locus standi to file and maintain the present complaint. It was further submitted that complainant cannot be permitted to raise new pleas or make out a new case during the course of proceedings and file documents to that effect. It was further submitted that complainant cannot be permitted to deviate from the due procedure of law and the prayers made by complainant in original complaint and subsequent pleadings are totally misconceived. It was further submitted that it is apparent from the reports of Town and Country Planner, Divisional Town Planning Office, Solan dated 3.6.2020 and 6.7.2020 that Director TCP has not taken note of the material facts while issuing the communication letter no. HIM/TP/PP/P. Reg/Solan-Gen-2019/Vol-1. It was further submitted that the answering respondent has utmost respect for law and has not disobeyed the orders of the Authority. It was further submitted that respondent is not carrying out any construction activity over their land and have not violated the order dated 18.6.2020 passed by this Authority. It was further submitted that units/ apartments are under occupation of different persons, who are not party to the lis before this Authority therefore complaint is bad for non joinder of necessary parties. It was further submitted that documents Annexure A-1 filed by complainant and decision contained therein is contrary to the report of the Town Planner. It is submitted that said decision had been taken behind the back of respondent no. 1 & 2, without affording them any opportunity of being heard. It was further submitted that the copy of the same has also not been endorsed to respondent no. 1 & 2 by Director TCP.

**5. Request for additional information/ clarification from Director, Department of Town and Country Planning, Government of Himachal Pradesh.**

The arguments in the case were initially heard on 15.6.2021. After hearing the arguments it transpired that it is necessary and incumbent for the effective adjudication of the dispute to call for clarification and



additional information in the case from the Director, Department of Town and Country Planning, Government of Himachal Pradesh. Therefore, a letter dated 23.6.2021 was sent to the Director TCP calling for additional information/ clarification. The contents of clarification are as under:

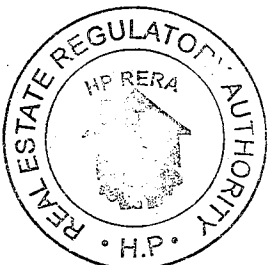
*“This Authority is hearing a complaint filed by Sh K. Mahesh against Sh. Anil Kumar Goel and Sh. Akil Kumar Goel for the alleged violations of the provisions of the Real Estate (Regulation and Development) Act 2016, in the development of the Real Estate Project at village Anech P.O. Dagshai, Tehsil and Distt Solan-H.P.*

*The Tehsildar Solan and Town and Country Planner, Solan have submitted their respective reports about the same on 17.07.2020 and 30.06.2020 last year, (copies of the reports enclosed).*

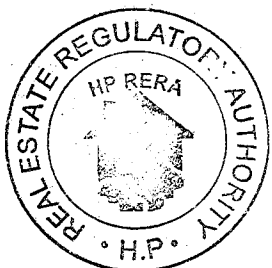
*The hearing in the said complaint matter has been completed and in order to adjudicate the matter, following additional, information and clarifications are required form your office:-*

- i) Sh. Akhil Kumar Goel owns (6-09 Bighas) and Sh. Anil Kumar Goel owns (4-09 Bighas), of land at village Anech, as per details received form Tehsildar, Solan. How much of the area, out of this has actually been developed by them, which can be considered as a Deemed Planning Area as per the provisions of Section 1(3A) of the HP Town and Country Planning Act, as amended in 2013 and subsequently thereafter. The Town and County Planner Solan, in its last report dated 30.06.2020 has relied upon the statement of one of the land owners saying that the area of land is less than 2500 sq mts, whereas the report of Tehsildar shows that the land owned is 6-098 and 4-09 Bighas, respectively.*
- ii) Please also clarify whether, for the purpose of any area being Deemed Planning Area, the precedent condition of total area of land being minimum 2500sq mts as per the provisions of the HP Town and Country Planning Act, is required to be contiguous land or cumulative fragmented area in the same revenue village. Please also clarify, whether a Promoter can make two projects on the fragmented land in the same village or not/*
- iii) In the instant case, as per the report of Town and Country Planner Solan, 18 cottages have been constructed in village Anech by six co-owners in their respective land holdings including Sh. Akhil and Sh. Anil Kumar Goel. You are requested to clarify, the period of construction and completion of the same, as to how many buildings were constructed prior to 2013, when the provisions pertaining to the Deemed Planning Area was incorporated in the TCP Act and how many were constructed after 2013.*
- iv) You are also requested to provide revenue Khasra plan showing all constructed buildings and plots sold, of different co-owners, depicted on their respective ownership of Khasras along with Jamabandies and photographs to ascertain the factual site position.”*

Both the parties were apprised about the letter seeking clarification and additional information. In response to the aforementioned letter dated



23.6.2021, the report dated 25.8.2021 of Town and Country Planner, Divisional Town Planning Office, Solan has been received through Director, TCP vide letter dated 16.11.21 wherein it has been mentioned that total land measuring 10 bighas and 15 biswa comprising of khasra no. 221, 223 min, 227/2 and 229 is in the ownership of Anil Kumar, Aman Kumar, Akhil Kumar, Rajan Kumar, Deepak Kumar, Shail Nidhi, Seema and Rajan. Construction work has been carried out on land measuring 9 bighas and 11 biswa by the aforesaid landowners. In addition above named persons are also having land in their possession in Mauza Anech, Tehsil and District Solan, H.P. bearing khasra numbers 22, 206, 207 and 208 which are lying vacant and at present no construction work is taking place on the said land. A certificate has been issued by the Himachal Pradesh State Electricity Board Ltd. through its Additional Assistant Engineer, Electrical Section, HPSEBL Kumarhatti Solan vide which all electricity connections to the structures constructed in land comprised of khasra no. 221, 223min, 227/2 and 229 at Mauza Anech were installed during the year 2013 to 2016. It was further mentioned in the report that said structure had been completed during the year 2013 to 2015. In accordance with report dated 6.7.2020 of TCP, in which google images were attached which further confirm that the construction was complete by the year 2015. As per the report on khasra no. 221, three cottages are in existence on land bearing no. B 13, 14 & 15 out of which B 13 & 14 are owned by Sh. Anil and B 15 is owned by Sh. Aman. On khasra no. 223 min, five cottages are in existence bearing no. B 8, 9, 10, 11 & 12 out of which B 8, 9 are owned by Sh. Aman and B 10,11,12 are owned by Sh. Anil. On khasra no. 227/2, seven cottages are in existence bearing no. B1, 2, 3, 4, 5, 6 & 7 which are jointly owned by Akhil, Seema, Shail Nidhi, Akhil Ranjan and Deepak. On khasra no. 229 two cottages have been constructed bearing no. B 16 & 17 which are owned by Sh. Ranjan. From perusal of this





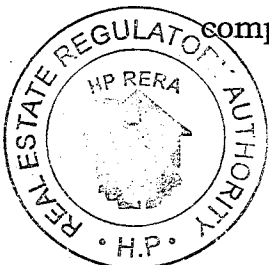
report & previous reports it is evident that buildings were constructed and completed up to 2015

#### **6. Arguments by complainant**

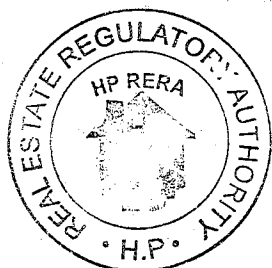
It was argued by the complainant that the area falls under deemed planning area as per Section 1 (3)(a) of The Himachal Pradesh Town and Country Planning Act 1977. It was further argued by the complainant that the area in question is more than 500 sq mts and more than eight flats are being developed in the project therefore the project is required to be registered with the Authority. Further it was also argued by the complainant that the project has not received completion certificate and the construction is still going on in violation of Section 3 of the Real Estate (Regulation and Development) Act, 2016 as the promoter cannot be permitted to continue with his construction without getting the project registered with the Authority. It was further argued by the complainant that the Hon'ble Supreme Court in recent judgment of Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors MANU/SC/1056/2021 has held that the projects that are ongoing are required to be registered with the Authority and the rigours of Real Estate (Regulation and Development) Act, 2016 are applicable to the same. Further it was also argued by the complainant that the report dated 25.8.2021 is against the respondents and in favour of complainant. It was strongly pleaded by complainant that according to the report construction is still going on the site.

#### **7. Arguments by respondent no. 1 & 2**

It was argued on behalf of respondent no. 1 & 2 that no construction work is being carried out at the site. The construction of the project was complete by the year 2015 and all units were with respective owners before the operation of the Act commenced. The Report dated 25.8.2021 of TCP, Solan and specifically para 2 & 3 of the said report substantiates the arguments of the respondents that the construction at the site was complete by the year 2015. It was further argued on behalf of the

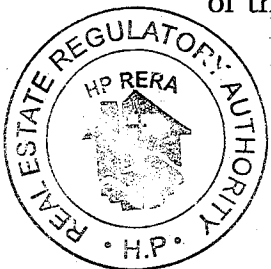


respondent that the word 'colony' as defined in Section 2 (ze) and term 'promoter' as defined in Section 2 (zu) of the Himachal Pradesh Town and Country Planning Act, 1977 came after the amendment in the year 2015 and therefore, at the time when the property was constructed there was no requirement of obtaining completion certificate. Further it was also argued on behalf of the respondent that the complainant has no locus standi to file and maintain the present complaint. Further it was also argued on behalf of the respondent that the judgment cited by the complainant is not applicable to the facts of the case as the project in question is not an ongoing project and the construction was already complete by the year 2015, as is evident from the report dated 25.8.2021. It was further argued on behalf of the respondents that the averments made in the complaint qua ongoing construction in the project are vague and the complainant could not bring on record any substantive evidence to prove his averments. Further it was also argued that it is evident from the report dated 25.8.2021 that the respondent is only required to register with the Authority, if he construct flats/ cottages for the purpose of sale and the Act does not require him to register with Authority if the flats are used for self- utilisation. It was further submitted on behalf of respondents that it is mentioned in the report that a certificate has been issued by the Himachal Pradesh State Electricity Board Ltd. through its Additional Assistant Engineer, Electrical Section, HPSEBL, Kumarhatti, Solan vide which all electricity connections to the structures constructed in land comprised of khasra no. 221, 223min, 227/2 and 229 at Mauza Anech were installed during the year 2013 to 2016. It was further mentioned in the report that the structures on the land in question had been complete during the year 2013 to 2015. In report dated 6.7.2020 of TCP, google images were attached which further confirm that the construction was complete by the year 2015.



## **8. Findings and Conclusion of the Authority-**

The Authority has gone through pleadings submitted by both parties and has also considered the arguments, adduced by both the parties. It was contended by the complainant that on his allegations of massive unauthorised construction the Authority had directed the Department of Town and Country Planning on 14.5.2020 to carry out the site inspection and submit detailed site inspection report regarding alleged unauthorised construction in question. It was further the contention of the complainant that an interim order of status quo on 18.06.2020 was passed against respondent. It was contended that the matter in question was thereafter listed on 1.10.2020 whereby the complainant has stated that he has filed a copy of additional documents on 24.8.2020 and 28.9.2020 before this Authority alleging that respondents have violated order of status quo dated 18.6.2020 passed by the Authority. The Authority after going through the supporting evidence filed by complainant in the shape of CD as well as photographs had passed the order that there is no violation of the interim order. Further vide order dated 23.2.2021 the status quo orders passed vide order dated 18.6.2020 were vacated by the Authority. Thereafter it was contended on behalf of the complainant that in the report dated 25.8.2021 called for by this Authority in para 2 of the same it was mentioned "construction work carried out/being carried out" which as per his version is sufficient enough to show and it is evident from this language that construction work is being carried out. The complainant has failed to appreciate that this is the standard administrative language used when a reference is issued pertaining to a query as to the whether construction was carried out or is being carried out. The language so used cannot be interpreted in a manner to suit the complainant and he cannot be permitted to infer from this language that the construction is being carried out. Further the report has to be seen in its entirety and construed as a whole. In Para 3 of the complaint it has been specifically mentioned that "no construction



work is taking or has taken place in said land”. Further in para 4 of the same report it has been specifically mentioned that all electricity connections to structures constructed on land were installed in the year 2013 to 2016. It was further mentioned in the report that structures had been completed during the year 2013 to 2015. Further the fact that no construction was being carried out on the site is further fortified from the report dated 3.6.2020 of Town and Country Planner, Divisional Town and Planning office, Solan whereby spot inspection was done on 23.5.2020. It is mentioned in para 5 of this report that no construction work was going at the site. Further the report dated 6.7.2020 of Town and Country Planner, Divisional Town and Planning office, Solan also does not reveal that construction on the site was going on. Further the google images of the site under reference for the year 2013 and 2015 were appended with this report dated 6.7.2020 which goes to show that structures were complete during the year 2013 to 2015. The Authority has called the report from Department of Town and Country Planning, Himachal Pradesh thrice i.e. on 3.6.2020, 6.7.2020 and 25.8.2020 and the sum total of all the three reports go to show that no construction was going on the site and the structures were complete during the year 2013 to 2015.

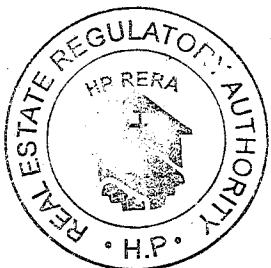
**9. The main points for consideration in this case is-**

**Whether the Real Estate Project of the respondent is required to be registered under the Real Estate( Regulation and Development ) Act 2016, with the Authority or not?**

The provisions of section-3 of the Real Estate (Regulation and Development) Act, 2016 are relevant to decide this point. Section-3 of the Act reads as follows:

*‘Prior registration of real estate project with Real Estate Regulatory Authority.*

*(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 thereunder, 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;*

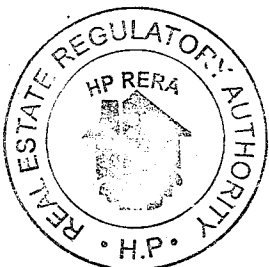
*(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;*

*(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 standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately.'*

For registration of a Real Estate Project, following four conditions must be met, as per section-3 mentioned above-

- i) A Real Estate Project is being developed.**
- ii) The plots or apartments or building in the Real Estate Project are for Sale.**



- iii) **The Real Estate Project should be located in a planning area.**
- iv) **The project should be ongoing on the date of commencement of this Act.**

The Authority will register a Real Estate project, only when all these four conditions are fulfilled by the project to be registered. In the present case, there is no dispute that the project constructed by the respondent is a Real Estate Project and constructed for sale. The main point of difference between the parties is, whether the project falls in the planning area or not?

To adjudicate on this point, we may go through the definition of planning area given section-2(zh) of the RERD Act 2016 which reads as follows:

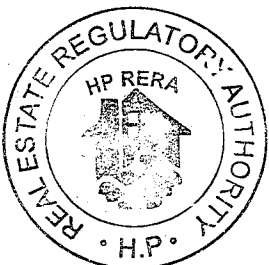
*(zh) "planning area" means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the **law relating to Town and Country Planning for the time being in force** and as revised from time to time;*

From the above definition, it is clear that a planning area is to be designated by the appropriate Govt. or competent authority under the law relating to Town and Country Planning **for the time being in force** and as revised from time to time.

Moreover, in the present case, it is also evident that the Real Estate project/colony in question is located in Gram panchayat Anech, does not fall in any designated Planning area or notified planning area.

Nevertheless, Section-1(3A) of Himachal Pradesh, Town and Country Planning (Amendment) Act, 1977 provides as follows:

*Section 1(3A) -It shall apply to a real estate project proposed to be developed on an area of more than 2500 M2 for plotting or plotting*



*and construction of apartment or any building or buildings having more than eight apartments for the purpose of selling outside the notified planning area or special areas constituted under this Act and such area shall be deemed to be planning areas".*

The above provision was amended/added in the Act, on 22<sup>nd</sup> May, 2018.

Thus, we have to check, when was the provision of the deemed planning was added first time, in the above Act. From going through the amendments in the HP Town Planning Act, the Authority has found that section 1(3A) was added first time, on 21<sup>st</sup> Sept. 2013 as per Gazette notification. The provisions added at that time were as follows:

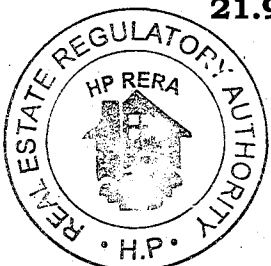
*1(3A)- It shall apply to any area proposed for development of apartments or colonies outside the notified planning area of special area constituted under this Act and such areas shall be deemed to be planning areas.*

This provision was again amended on 18<sup>th</sup> May, 2015, which reads as follows:-

*It shall apply to any area proposed for development of apartments or colonies **for the purpose of selling** outside the notified planning area or special areas constituted under this Act and such areas shall be deemed to be planning areas.*

**From the above provisions of the Himachal Pradesh Town and Country Act, 1977, it is evident that the provisions pertaining to 'deemed to be planning areas' for the development of apartments or colonies outside the notified planning areas was incorporated first time on 21<sup>st</sup> Sept. 2013, in that Act.** Thus, prior to that date, the Himachal Town and Country Planning Act and its provisions were not applicable on any apartments or colonies outside the notified planning areas.

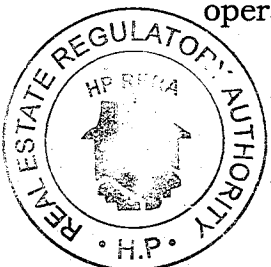
Thus, we have to look into the status of the colony/ Real Estate project developed by the respondent in village Anech Distt Solan, **as on 21.9.2013.** The para-3 of the letter dated 25<sup>th</sup> August, 2021 of the Town



and Country Planner Solan, written to the Director, TCP is very relevant, to know the status of the project on that day. That letter has been sent by the Director, TCP vide his office letter dated 16<sup>th</sup> November, 2021 to the Authority, which has also been circulated to both the parties also. The para-3 of that letter contains as follows:-

*'A certificate has been issued by the Himachal Pradesh State Electricity Board Ltd. through its Additional Assistant Engineer, Electrical Section, HPSEBL Kumarhatti Solan (H.P) vide which all the electricity connections to structures constructed in land comprised in khasra No.221,223 min, 227/2 and 229 located at Mouza Anech, Tehsil and District Solan were installed during the year 2013 and 2016. It is clear that said structures had been completed during the year, 2013 to 2015. The same stands submitted to your good office vide this office letter dated,6/7/2020. The images of the site under reference for the year 2013 and 2015 showing the status of construction work on said land las had already been supplied to your good office vide this office letter No. HIM/TCP/SLN/PA/UA C /Anech/Deemed Area/22020-329 dated 6/7/22020 which are clearly showing the status of the structures constructed in said land. For ownership of the cottages constructed in land under reference stands submitted to your good office vide this office letter dated, 6/7/2020.'*

From the above para, it is clear that structures constructed in land comprised in Khara No-221, 223,227/2 and 229 in village Anech Tehsil and District Solan were completed during the years 2013-2015. Thus, it can safely be concluded that construction work of houses/apartments in this project must have started in year 2009 or 2010. When the work on this real estate project or colony commenced, there was no provision of deemed planning area in the H.P. Town and Country Planning Act, 1977. Further, there is no provision in TCP Act, prescribing retrospective operation of any section of the Act. The Hon'ble Supreme Court in its





recent judgement **M/S Sai Baba Sales Pvt. Ltd vs Union of India and ors. Civil Appeal 595/2021 decided on 26 November, 2021** has held that a builder cannot be asked to raise down validly constructed structures due to later changes in environmental clearance law.

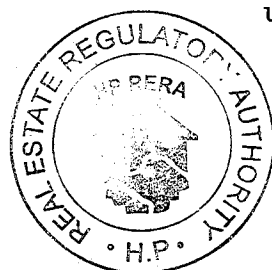
Similarly, the Hon'ble Supreme Court in **Hitendra Vishunu Thakur vs State of Maharashtra and others (1994)4 SCC 602** has held that it is well settled legal position that operation of a statute which tends to affect substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment.

The Hon'ble Supreme Court in **Civil Appeal no. 5815 of 2009 titled as Assistant Excise Commissioner versus Esthappan Cherian and another decided on 6<sup>th</sup> September, 2021** in para 14 of the judgment has held that a rule of law cannot be construed as retrospective unless it expresses a clear or manifest intention to the contrary.

Further the Hon'ble Supreme Court in **Commissioner of Income Tax versus vs Vatika Township (2015)1 SCC 1** observed as follows:

“31. Of the various rules guiding how legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in *Phillips vs. Eyre*[3], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

32. The obvious basis of the principle against retrospectively is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in *L'Office Cherifiendes Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.* Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in



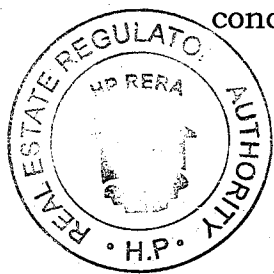
a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later”.

In **Union of India v M.C. Ponnose 1970 SCR (1) 678** the rule that the operation of a statute which tends to affect substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment was spelt out in the following terms;


“The courts will not, therefore, ascribe retrospectively to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect”.

This principle has been further affirmed in many decisions such as **Hukum Chand v Union of India (1973) 1SCR 896, Regional Transport Officer v Associated Transport Madras (1980) 4SCC 597; Federation of Indian Mineral Industries v Union of India (2017)16SCC 186 and recently, in Union of India v G.S. Chatha Rice Mills (2021) 2SCC 209.**

10. Therefore, the rule is that statute creating substantive rights is prospective in operation unless expressly declared retrospective by the statute itself. Hence it is abundantly clear that the construction done in the project under contention was started much prior to the inclusion of concept of deemed planning area in the HP Town and Country Planning



Act, 1977. Therefore, the project in question, when constructed was not in any planning area. The developer/ respondent at that time could not have imagined that the HP Town and Country Planning Act, 1977 will be amended later incorporating the provisions of the deemed planning area or provisions of The Real estate (Regulation and Development) Act 2016 will be enacted. Thus, it is held that project in question, was not in a planning area or deemed planning area when it was constructed. Thus, the essential ingredient for registration of a Real Estate Project to be located in a planning area is not fulfilled in this case. Therefore, the project in question does not require registration under section-3 of the Real Estate (Regulation and Development) Act, 2016 and the complaint filed by the complainant is hereby dismissed.

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

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

  
**Rajeev Verma**  
**MEMBER**

