

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

IN THE MATTERS OF :

M/s Ahlawat Developers and Promoters Baddi,

.....Promoter/ Decree Holder

Versus

**Smt. Namita Kumar Palo, Flat No. 204, Tower A-3, Himachal One
Baddi, District Solan HP.**

.....Allottee/ Judgement Debtor

Execution Petition No. 20/2022:

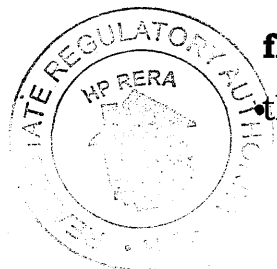
**Present: None for the Judgement Debtor(s)
 Smt. Neha Gupta, Ld. Counsel for the Decree
 Holder**

**Final date of hearing (through WebEx): 02.09.2023
Date of pronouncement of order: 12.09.2023**

ORDER

Coram:- Chairperson and Member

1. The main case in the aforesaid execution petition was compromised between the parties and a settlement deed was placed on record. On the basis of the aforesaid settlement deed a compromise decree dated 16.07.2022 was passed where in it was jointly agreed by the parties that they will apply for permission under Section 118 of the H.P Tenancy and Land Reforms Act,1972 and the respondent /promoter further undertook to execute and register the convenience deed of the **flat No. 204 in Tower A-3** of the complainant within ten days of the receipt of permission under Section 118. The complainant



paid a sum of Rs 18,00,000/- to the promoter and the remaining payment of Rs.8,00,000/- towards balance cost of the flat was deposited by the complainant with this Authority. Therefore, entire payment has been made and permission under Section 118 of the Act Ibid is awaited.

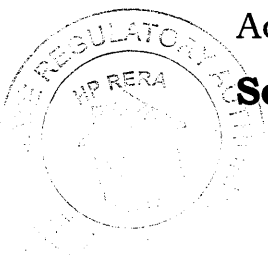
2. Hearing in the cases and interim orders by the Authority

In the case of Namita Kumar Palo on 14th September, 2022, 10th March, 2023, 21st March, 2023 this Authority sent letter(s) to the District Collector Solan and a copy to the Principal Secretary (Revenue) requesting them to take necessary action for the grant of permission under Section 118 of the Act ibid. On 11 April 2023, a second letter was sent to the Principal Secretary (Revenue) requesting that he may direct the District Collector Solan to expeditiously process Section 118 cases and submit them to the State Government for approval. On 1 June 2023, a second reminder was sent to the Principal Secretary (Revenue) regarding this matter. On 11 July 2023, an additional letter was sent to the relevant District Collector, instructing him to forward the Section 118 cases to the Principal Secretary (Revenue).

3. Whether the promoter is under obligation to get executed the sale deed in favour of the complainant(s) under Section 11(4)(f) of the RERD Act and the effect of non grant of permission under the provisions of Section 118 of the HP Tenancy Land Reforms Act, 1972 on the performance of this obligation?

Primarily the main grievance raised by the complainant(s) is with respect to execution of sale deed. Section 11 of the RERD Act, 2016 enumerates the functions and duties of promoter.

Section 11(4) (f) of the Act which reads as under :



Section 11 (4) (f) “execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;”

Further as per **Section 17(1)** which reads as under-

(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

As per **Section 19 (11)** which reads as under

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

Therefore in view of the provisions quoted herein above the execution of conveyance deed of the apartments, plot or building is one of essential duties or obligations of the promoter and correspondingly it is the duty of the allottee also to participate in the registration of



conveyance deed

Further as per **Section 34(f) & (g) of the RERD Act, 2016** which reads as under-

34. The functions of the Authority shall include—

(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

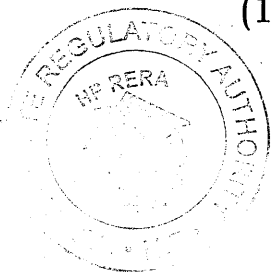
(g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;

Under Section 34 (f) of the RERD Act, 2016 the Authority is duty bound to ensure compliance of the obligations cast upon the promoter under the RERD Act, 2016. Further the authority as recorded in para supra has already in all the above cases passed interim directions to the parties directing them to apply for permission under Section 118 of the Act ibid to the concerned competent authority

4. In the present case, the complainant/allottee and respondent/ promoter both are non- agriculturist(s). In that case the provisions of section 118 of the HP Tenancy and Land Reforms Act, 1972 are applicable to them. Section 118 of the HP Tenancy and Land Reforms Act, 1972 is as under-

Section 118. Transfer of land to non-agriculturists barred.-

(1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the



time being in force, but save as otherwise provided in this Chapter, no transfer of land (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue) by way of sale, gift, will, exchange, lease, mortgage with possession, creation of a tenancy or in any other manner shall be valid in favour of a person who is not an agriculturist.

Explanation. For the purpose of this sub-section, the expression —transfer of land shall not include—

(i) transfer by way of inheritance;

(ii) transfer by way of gift made or will executed, in favour of any or all legal heirs of the donor or the testator, as the case may be;

(iii) transfer by way of lease of land or building in a municipal area;

but shall include—

(a) a benami transaction in which land is transferred to an

agriculturist for a consideration paid or provided by a non agriculturist; and

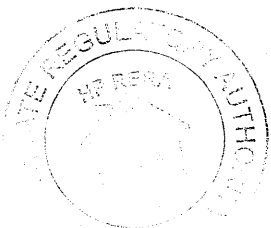
(b) an authorisation made by the owner by way of special or general power of attorney or by an agreement with the intention to put a non-agriculturist in possession of the land and allow him to deal with the land in the like manner as if he is a real owner of that land.]

(2) Nothing in sub-section (1) shall be deemed to prohibit the transfer of land by any person in favour of,—

(a) a landless laborer; or

(b) a landless person belonging to a scheduled caste or scheduled

tribe; or



(c) a village artisan; or

(d) a landless person carrying on an allied pursuit;
or

(dd) a person who, on commencement of this Act, worked and continues to work for gain in a estate situated in Himachal Pradesh; for the construction of a dwelling house, shop or commercial establishment in a municipal area, subject to the condition that the land to be transferred does not exceed-

(i) in case of a dwelling house -500 square Meters; and

(ii) in the case of a shop or -300square meters: commercial establishment

Provided that such person does not own any vacant land or a dwelling house in a municipal area in the State.

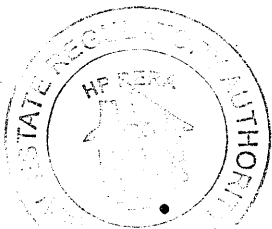
(e) the State Government or Central Government, or a Government Company as defined in section 617 of the Companies Act, 1956, or a Company incorporated under the Companies Act, 1956, for which land is acquired through the State Government under the Land Acquisition Act, 1894 or a statutory body or a corporation or a board established by or under a statute and owned and controlled by the State of Central Government; or

(f) a person who has become non-agriculturist on account of-

(i) acquisition of his land for any public purpose under the

Land Acquisition Act, 1894 (1 of 1894); or

(ii) vestment of his land in the tenants under this Act; or



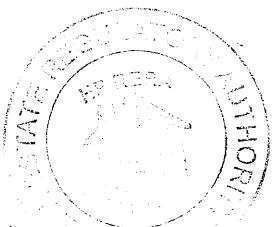
(g) a person who has become non-agriculturist on account of the acquisition of his land for any public purpose under the Land Acquisition Act, 1894 (1 of 1894); or

(h) a non-agriculturist who purchases or intends to purchase land for the construction of a house or shop, or purchases a built up house or shop, from the Himachal Pradesh Housing and Urban Development Authority, established under the Himachal Pradesh Housing and Urban Development Authority Act 2004, or from the Development Authority constituted under the Himachal Pradesh Town and Country Planning Act, 1977 or from any other statutory corporation set up any State or Central enactment; or

(h) a non-agriculturist with the permission of the State Government for the purposes that may be prescribed:

Provided that a person who is non-agriculturist but purchase land either under clause (dd) or clause (g)] or with the permission granted under clause (h) of this sub-section shall, irrespective of such purchase of land, continue to be a non-agriculturist for the purpose of the Act:

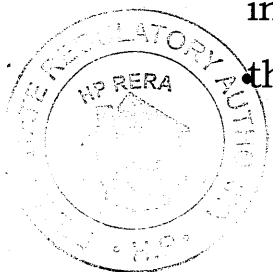
Provided further that a non-agriculturist who purchases land under clause (dd) or in whose case permission to purchase land is granted under clause (h) of this sub-section, shall put the land to such use for which the permission has been granted within a period of two years or a further such period not exceeding one year, as may be allowed by the State Government for the reasons to be recorded in writing to be counted from the day on which the sale deed of land is registered and if he fails to do so or diverts, without the permission of the State



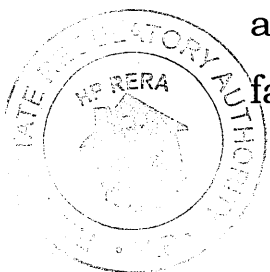
Government, the said user for any other purpose or transfer by way sale, gift or otherwise, the land so purchased by him shall, in the prescribed manner, vest in the State Government free from all encumbrances.

(3)

Therefore, as per clause 2(h) of Section 118 of the Act ibid a non- agriculturist has to apply for permission from the State Government. In the present cases, the apartment purchasers as well as the seller have applied for permission under section 118 of the HP Tenancy and Land Reforms Act, 1972 and this Authority has also requested the District Collector as well as to the Principal Secretary Revenue to grant permission expeditiously in the interest of all the parties i.e. allottees/ complainant(s) and the promoter. However, till today the permission under section 118 of the Act ibid as mentioned above has not been granted to the parties by the State Government. The allottees who have invested hard earned money to buy their home(s) are made to wait indefinitely for the grant of permission. The acquisition of title to the property is the most important and invaluable right in favour of the allottee(s). It is also one of the obligations cast upon the promoter, but grant of this permission is not in the domain of the promoter, therefore he cannot perform the said obligation till the permission under section 118 of the Act ibid is accorded in favour of the parties. If the permission in the aforementioned case is not granted then it is neither the fault of the promoter nor the allottee. The promoter got



the project license from the competent authorities, after obtaining permission under Section 118 of the Act ibid at the time of purchase of the land, to develop a Real Estate Project. Only thereafter, the promoter constructed the said real estate project i.e. Himachal One. The respondent promoter has sold residential flats/ built up structure(s) to the non- agriculturist complainants. All the allottees herein have filed these complaints for execution of sale deeds, which are pending as the necessary permission under Section 118 of the Act ibid has not been granted. The allottees have invested their hard earned money to buy houses, for their living, but still they have not got the ownership of the respective flats. Without getting the title, the said property is of no use to the complainant(s). The promoter cannot execute sale deed in favour of the allottees, till the permission under Section 118 of the Act ibid is granted by the competent authority. The administrative power vested with the State Government under Section 118 of the Act ibid has to be exercised in a time bound manner, in the interest of the home buyers. The delay being caused in the grant of permission is causing mental agony and injustice with the allottee(s). The State Government granted various permissions to the promoter like permission under Section 118 of the Act ibid and BBND A approved the building plans and thereby permitted the project to be constructed/ executed and now at this stage by delaying the permissions u/s 118 in favour of home-buyers would cause grave injustice to the

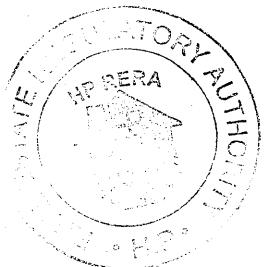


allottees/complainants. This Authority has already written letters to the Principal Secretary (Revenue) and the concerned District Collector for expediting the cases in the interest of the parties but nothing has happened so far and much time has passed by. The allottees have been waiting for the past many years for attaining ownership of their Flats and this authority is left with no other option but to request the Principal Secretary (Revenue) to grant permission in a time bound manner. Therefore, there is felt a need to pass directions the Principal secretary to decide the cases for grant of permission under Section 118 of the Act, ibid in a time bound manner, so that the allottees are not meant to wait indefinitely in getting their sale deeds registered. Therefore keeping in view the interest of parties this Authority deems it fit to request the Principal Secretary (Revenue) to the Government of H.P. to grant the permission under section 118 of the Act ibid to the parties to this litigation, so as to enable the parties to perform their obligations under the RERD Act, 2016.

5. 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 Principal Secretary (Revenue) to Government of H.P. is requested to grant permission under Section 118 of the Act ibid to the parties herein as early as possible positively within two months from passing of this order.



- b. The promoter is directed to get the sale deed executed in favour of the allottee in the present case within ten days from the date the permission under Section 118 is granted as agreed by him in the compromise deed.
- c. List the matter on 23.11.2023 at 3 PM through Webex.

B. Badalia
B.C. Badalia
MEMBER

Shrikant
Dr. Shrikant Baldi
CHAIRPERSON

