

**REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH**

1. M/S Diamond Traexim Pvt. Ltd. ...Complainant
Versus
M/S Nirvana Woods and Hotels Pvt. Ltd. ...Non-complainant
2. Shri Daman Kapoor, s/o Shri Jagdish Chand, r/o 5 (2) Muhal, Lower
Bhagwahan, Ward no. 9, Tehsil- Sadar Mandi, District Mandi, Himachal
Pradesh-175001. ...Complainant
Versus
M/S Nirvana Woods and Hotels Pvt. Ltd. ...Non-complainant
3. Shri Sunil Kumar Sood, R/O House no. 142, Sector 7, Panchkula,
Haryana ...Complainant
Versus
M/S Nirvana Woods and Hotels Pvt. Ltd. ...Non-complainant
4. Dr. Pawan Kumar Banta, House no. 500 A, Sector IV, New Shimla-
171009, Himachal Pradesh ...Complainant
Versus
M/S Nirvana Woods and Hotels Pvt. Ltd. ...Non-complainant

Present: -

**Shri Ranjeet Singh, Advocate for the Complainant M/S
Diamond Traexim Pvt. Ltd.**

Shri Sunil Kumar Sood, in person

Shri Pankaj Gupta for Nirvana Woods and Hotels Pvt. Ltd.

Dr. Pawan Kumar Banta,

**Sh. D.N. Kaundal, Project Architect, Nirvana Woods & Hotel
Pvt. Ltd.,**

**Shri Mayank Manta, Assistant District Attorney, Department
of Town & Country Planning for the State of Himachal
Pradesh.**

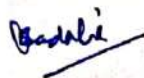
Date of Order: 03.01.2020

QUORUM: - Shrikant Baldi - CHAIRPERSON

B.C. Badalia -MEMBER

Rajeev Verma - MEMBER

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BRIEF FACTS OF THE CASE

The present matter refers to a series of complaint(s) filed under the provisions of the Real Estate (Regulation and Development) Act, 2016 seeking immediate appropriate action (including stopping of unauthorized and illegal development & construction of the residential/ commercial colony/ complex on any agricultural land) against M/S Nirvana Woods and Hotels Pvt. Ltd.

The Complainant M/S Diamond Traexim Pvt. Ltd. had filed a sequel of complaints before the competent authority under the Real Estate (Regulation and Development) Act' 2016 dated 28.06.2018 alleging that appropriate action including stopping of unauthorized and illegal development & construction of the residential/ commercial colony/ complex on agricultural land be taken against the non-complainant M/S Nirvana Woods and Hotels Pvt. Ltd. Similar allegations were leveled by the Complainant Shri Sunil Kumar Sood against the non-complainant M/S Nirvana Woods and Hotels Pvt. Ltd. for strict compliance of the order dated 26.06.2018 passed by the Hon'ble High Court of Himachal Pradesh directing the parties to maintain status quo selling, alienating or creating any third party right or interest upon the suit property.

Shri Daman Kapoor vide his complaint dated 15.09.2018 and Dr. Pawan Kumar Banta vide complaint dated 5.12.2018 have filed General Complaints (GCs) against M/S Nirvana Woods and Hotels Pvt. Ltd alleging the unauthorized and illegal development and construction activities are being carried out in the vicinity of the without any sanctions/ permissions/ approvals/ NOC's from any of the competent Authorities.

Brief facts of the case as per the office record are that the Member Secretary, Special Area Development Authority, Shoghi has approved the drawings of the Non Complainant/ Respondent on 27.11.2015 and subsequently Licence certificate under Section 78 p (3) of the Himachal Pradesh Town & Country Planning Act' 1977 was issued on 17.12.2015 in the name of Shri Sunil Kumar Sood, owner of the project land for developing land

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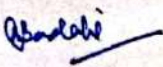

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as Colony namely **Nirvana Woods**. The revised drawings of the project in question were approved on 01.03.2017 by the Member Secretary, SADA, Shoghi and conveyed to the complainant Shri Sunil Kumar Sood under the provisions of Chapter IX-A & B of the Himachal Pradesh Town & Country Planning Act' 1977 and Rules' 2014. The Himachal Pradesh State Pollution Control Board then had issued the consent to establish the colony/ aforesaid project on 03.03.2017. Further, Sh. Sunil Sood transferred the project including the license certificate under the Chapter IX-A & B of the Himachal Pradesh Town & Country Planning Act' 1977 and Rules' 2014 to the non complainant M/S Nirvana Woods & Hotels Pvt. Ltd. after getting necessary approval from the competent authority in name of **M/S Nirvana Woods & Hotels** on 04.08.2017.

M/S Nirvana Woods and Hotels Pvt. Ltd. had applied for the purpose of registration of real estate project situated at Up Mohal Kiari/ Rirka, Tehsil and District Shimla, Himachal Pradesh measuring 31,768 sqm with the Himachal Pradesh Real Estate Regulatory Authority (herein referred as HP RERA) on 20.12.2017. Subsequently, the Complainant, M/S Diamond Traexim Pvt. Ltd. through its authorized signatory filed a sequel of complaints against the Real Estate Project of M/S Nirvana Woods and Hotels Pvt. Ltd. The disputing contesting parties in the instant case are already pursuing the matter before the Hon'ble High Court of Himachal Pradesh as to the civil liabilities and implications related to the project under question amongst themselves in OMP nos. 415 of 2017 & OMP nos. 184,128,455 & 637 of 2018 in COMS no. 8 of 2017 and OMP nos. 269, 285, 459, 490 and 2018 in COMS no. 23 of 2018 and COMS no. 25 of 2018.

It becomes important to mention herein that the Hon'ble High Court of Himachal Pradesh vide its order dated 18.12.2017 had passed the following directions, the relevant operative part of which is summarized as under:-

and -  

"In the meanwhile, till further orders, the parties are directed to maintain status quo selling, alienating or creating any third party right or interest upon the suit property."

Further, the Hon'ble High Court was pleased to issue following directions, vide its order dated 27.09.2018 directing that,

"The learned counsel for the plaintiff(s) in COMS No. 8 of 2017 and COMS No. 23 of 2018, have, placed on record, a, notification, of, 14.10.2016, issued by the competent Authority, with disclosures therein, qua, the lands in respect whereof sale deeds are executed, hence occurring within the limits of Municipal Corporation, Shimla. The requisite building permission, there from, though required, yet does not exist, on record.

Consequently, the defendants concerned may raise construction upon the suit land, only upon theirs holding the requisite permission, if any, granted by all the statutory authorities concerned, besides till an adjudication is meted, upon, the afore OMPs, there up to, the authorities concerned, may not, process, the building plans."

The Hon'ble High Court of Himachal Pradesh decided the aforesaid matter vide its judgment dated 13.08.2019 had directed as under, the relevant extract of which is summarized as under,

"Be that as it may, the rejection of the afore espousal of the plaintiff in COMS no.23 of 2018, would not relive M/s Nirvana Woods and Hotels Pvt. Ltd., of, the dire obligations, of, its ensuring its raising constructions, upon, the suit land, upon, its/ theirs holding, a, valid sanction, from the authorities concerned, vis-à-vis, the proposed construction. In sequel the contesting defendants are permitted to raise construction, only upon, its holding a validly meted sanction, by the authorities concerned, and, also if construction is commenced by M/s Nirvana Woods and Hotels Pvt. Ltd., fling an affidavit with a clear disclosure therein, that, it would not claim any equities, in, the construction raised, upon, the suit land. (a) even if a verdict adverse to it is pronounced, upon, COMS No. 8 of 2017, and, upon COMS No. 23 of 2018, (b) thereupon, the afore espousal made in the affidavit furnished, on behalf of M/s Nirvana Woods and Hotels Pvt. Ltd, shall obviously carry the requisite binding effects, upon, it. Since accordingly prima facie case is loaded in favour of the applicants/defendants concerned, balance of is convenience also is loaded in favour of the applicants/defendants concerned, and, also since, the, continuance of the order, strived to be modified rather would encumber hardship and injury, upon, the applicants/defendants concerned, hence not re-compensable in monitory terms thereupon, the relevant order(s), is/are, with the afore observations hence modified."

The parties to the complaint(s) have filed their written submissions/ replies before this Authority after issuance of notice for hearing and since the cause of action in the above complaints are common in nature hence all the complaints were taken up together for hearing since relief sought is also similar.

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The present complaint(s) have two fold aspects. One aspect refers to immediate appropriate action including stopping of unauthorized and illegal development & construction of the residential/ commercial colony/ complex on any agricultural land against M/S Nirvana Woods and Hotels Pvt. Ltd and the second aspect relates to registration of the case of the project proponent under the provisions of Real Estate (Regulation and Development) Act' 2016. This authority confers itself no power as to the former issue in question, being a matter of civil liabilities amongst the disputing parties. On the second count, whether the case of the project proponent can be considered for the registration or not is the prima facie to be considered under the lights of the facts and circumstances of the present case as per the provisions of Real Estate (Regulation and Development) Act' 2016 read with HP Real Estate (Regulation and Development) Rules' 2017 or not along with locus standi of the complainant(s) to file and maintain the present complaints thereof.

To substantiate the process of registration of project under Real Estate (Regulation and Development) Act' 2016 read with HP Real Estate (Regulation and Development) Rules' 2017, the State of Himachal Pradesh has issued a clarification as to the implications of the provisions of the RERA vide its letter dated 23.03.2019, which specifies ***the salient features of the Real Estate (Regulations and Development) Act, 2016. As the objectives, spirit and intention of the Act of 2016 would reveal, the Act of 2016 has been enacted with view to establish the Real Estate Regulatory Authority for regulation and promotion of real estate sector and to ensure sale of plot, apartment and building or sale of real estate project, in efficient and transparent manner and to protect the interest of consumers in the real estate. The provisions of RERA require developers of project and agent to mandatory register their project (including ongoing project for which completion certificate has not been issued, the registration has to be obtained mandatorily within a period of three months from May 1, 2017. Any violation of section 3 by the promoters could result in a penalty up***

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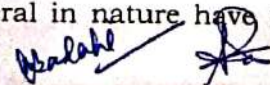
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*10% of the estimated cost of the project. Further, section 88 of the RERA does not bar application of other law. It provides that the provision of the Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force. However, section 89 of the Act gives overriding effect to the provisions of the RERA. Section 89 thus stipulates that the provision of the RERA shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further, section 84 of the Act *ibid*, *inter alia*, empowers the appropriate Government within a period of six months to make/notify rules for carrying out the provisions of the RERA.*

Thus, the combined reading of the provisions and the whole scheme of the RERA, it transpires that the Legislature has expressly intended to apply the provisions of the Act retrospectively in as much as the Act applies not only to future projects but also to the ongoing projects, where the construction has begun prior to 1st May, 2017. The Act appears to be a piece of welfare legislation aiming at the protection of the interests of all stakeholders especially the interest of buyers.

One of the contesting parties to the matter, namely Shri Sunil Kumar Sood had raised certain objections during the course of hearing before the Hon'ble High Court vide order dated 13.08.2019 on certain counts, i.e. not having statutory permissions/ licenses/ sanctions/ NOC's and mutation. However, considering qua the decision rendered by the Hon'ble High Court the entire objection raised was rejected as the said project has necessary statutory permissions/ licenses/ sanctions/ NOC's and copy of mutation. It is the basic principle of the established set of rule that filing of objections etc. does not operate as a stay of the proceedings under a decree or order.

The complaint(s) filed by the Shri Daman Kapoor and Dr. Pawan Kumar Banta being general in nature have been heard, we find no material

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substance to be adjudicated upon by this Authority. Hence the same are dismissed.

In view of the foregoing submissions, and after perusal of the case file & after hearing the disputing parties along with the Counsel present, official record along with the directions passed by the Hon'ble High Court of Himachal Pradesh vide its order dated 13.08.2019, the real estate project of M/s. Nirvana Woods and Hotels Pvt. Ltd. is fit for registration under the provisions of the Real Estate (Regulation and Development) Act' 2016. The real estate project may be registered strictly in consonance with the provisions of the Real Estate (Regulation and Development) Act' 2016 read with Himachal Pradesh Real Estate (Regulation and Development) Rules' 2017 subject to the further orders of the Hon'ble High Court of Himachal Pradesh in this matter. The complaints filed by M/S Diamond Traexim Pvt. Ltd and Shri Sunil Kumar Sood are therefore disposed of in view of the present order passed by this Authority. Files be consigned to the record room and copy of order be provided, free of cost, to the complainants and respondent.

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03.01.2020

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Shrikant Baldi - CHAIRPERSON

B.C. Badalia
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Rajeev Verma
Rajeev Verma - MEMBER

**Real Estate Regulatory Authority,
Himachal Pradesh, Shimla-2.**