

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

Complaint No.HPRERA2023021/C

In the matter of:

Jitender Bansal, son of Sh. T.R. Bansal, Resident of Chester Hill, Mall Road,
Solan, Himachal Pradesh, 173212

.....Complainant

Versus

Sudershan Singla, resident of 829, NAC Manimajra, Chandigarh,164001

.....Respondent

**Present: Sh. Pradeep Kumar Advocate for complainant
Sh. Atul Advocate for respondent/promoter**

Final Date of Hearing (through webex): 11.10.2023

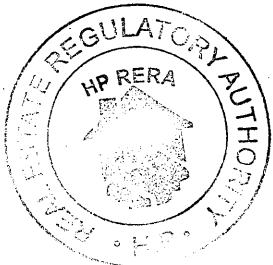
Date of Pronouncement of Order: 26.10.2023

Order

Coram: Chairperson and Member

1. Facts of the case:

The complainant is a resident of Chester Hills residential society and also a representative of Chester Hills Resident Welfare Association (Registered) authorized vide resolution dated 02.02.23 (Annexure -1 with the complaint). The members of the society are residents of Chester Hills,



Mall road Solan developed and constructed by N.G. Estates Solan which is entity of the respondent. The project is situated at Solan (H.P). Complainant has also stated that many families have till now purchased the flats in the project and are living peacefully. Complainant has also stressed that initially when the flats were purchased by him and other residents, it was committed by the builder/ respondent that the path leading towards the flats of the residential area solely belongs to the residents i.e. the residents of the society of Chester Hills. It was further alleged by the complainant that recently the members of the society have come to know that the respondent Builder/ Managing Partner of N.G. Estates, Mr. Sudershan Singla is on the verge of sharing the passage/path with Mr. Rajiv Shandil, the path which was otherwise meant for the residents only as per the commitment of the builder. It was further averred that the residents of the society have heard that a written agreement is being executed by the builder and the said Mr. Rajiv Shandil. It is further the case of the complainant that the Resident Welfare Association has taken over all the common area services along with the road and the passage from the builder and is maintaining the same. The society collects the funds from the residents and are doing the work of maintenance of the path. It is also pertinent to mention that a civil case is also pending in Civil Court Solan named as Rajiv Shandil Vs



Hansraj Thakur and others, in which RERA is also a party, in which Rajiv Shandil is claiming a right in the common area. With these pleadings it was submitted that the builder may kindly be restrained from sharing the path of Chester hills gated society with any other unknown person who is not a member of the residential society. Further it was prayed that the builder be restrained from entering into any new agreement for sharing path and common services without the consent of the RWA and the residents. Further it was also prayed that Municipal Corporation, Solan may be ordered not to entertain any planning permission on the road and path pertaining to land beside Chester Hills without the consent of the RWA for the usage of path/road and common services.

2. Reply-

It was pleaded that the complaint filed by the complainant i.e. Chester Hills Resident Welfare Association is baseless and devoid of any concrete evidence in support of their complaint. It was further submitted that till date there is no sharing of passage/path of the Chester Hills society with any other party and the complaint is based on assumptions. It was further submitted on behalf of the respondent that the complainant has hidden a fact that the respondent has entered into an agreement with the complainant that the path leading towards Chester Hills shall only be



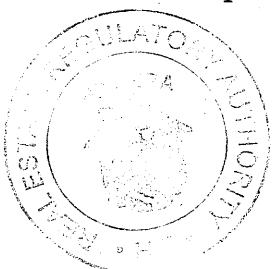
shared with Latika Thakur & one Hans Raj Thakur and not with anyone else and the same is very well accepted by all the officials/members of complainant association. It is further stated that on 20.08.2020 the respondent and complainant association have already entered into a compromise vide which the all the maintenance responsibilities along with handing over of the roads, paths, security, STP, water tanks, CCTV, lifts, parking, common lights and security has also been undertaken by the complainant association. The respondent prayed for dismissal of the complaint.

3. Argument by the complainant-

It was argued that when the flats were purchased by the members of the society it was assured by the builder that the road is exclusively for the use of the residents of the society. It was argued that the respondent be restrained from parting with use of the road of the society with any third party.

4. Arguments by the respondent-

It was argued on behalf of the respondent that they have assured the complainant and other residents of the society that they will not assign the right in the road with anyone else. It was further submitted that some villagers who have their houses near the society, use the road as passage to their houses and the respondent is not in a position to stop



them from using the road. It was further contended that the respondent have not given the right to use path in writing to anyone else apart from the residents of the society.

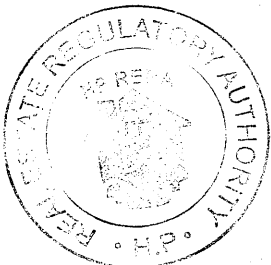
5. Findings of the Authority-

The Authority has heard the parties and also gone through the record of the case. After hearing the parties what emerges is that the complainant has no evidence to show that the respondent has parted with the use of road of the society with anyone else in writing . On the basis of mere apprehension the complaint has been filed. Further on the submissions of the respondent that some villagers or residents of nearby villages use the road, this Authority is of the considered view that any use by the villagers of adjacent villages cannot be stopped by the respondent from using the road/passage. So far as the oral prayer of the complainant to restrain the promoter from further granting right to use the road in writing to other persons is 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

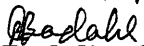
For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked 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."

6. 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 granted to the Authority 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 the common areas including the road of the society without first obtaining consent of at least 2/3rd of the allottees who have agreed to take the apartment(s) in the project.

The aforesaid complaint is disposed of in the aforementioned terms.


B.C. Badalia
MEMBER


Dr. Shrikant Baldi
CHAIRPERSON

