

REAL ESTATE REGULATORY AUTHORITY

HIMACHAL PRADESH

IN THE MATTERS OF:-

Complaint No. HPRERA/OFL/2021-41

1. Anuradha Siwatch wife of Sh. Virender Siwatch, resident of FLAT No-8, Sylverton building, Thakur Baag, Annadale, Shimla(HP) -171003
.....Complainant

Versus

Manju Thakore wife of Sh. Jagdish Singh Thakore & Narin Thakore son Sh. Jagdish Singh Thakore, both residents of Thakore Baag, Annadale, Shimla(HP) -171003
..... Respondents

Complaint No. HPRERA/OFL/2021-42

2. Narender Kunwar son of Lt. Sh. Gopal Singh & Sharda Kunwar Wife of Sh. Narender Kunwar, both residents of FLAT No-05, Sylverton building, Thakur Baag, Annadale, Shimla (HP) -171003
.....Complainant

Versus

Manju Thakore wife of Sh. Jagdish Singh Thakore & Narin Thakore son Sh. Jagdish Singh Thakore, both residents of Thakore Baag, Annadale, Shimla(HP) -171003
..... Respondents

Complaint No. HPRERA/OFL/2020-21/43

3. Chunni Lal Sharma son of Sh. B.R. Sharma, resident of FLAT NO-1, Sylverton Building, Thakur Baag, Annadale, Shimla (HP) -171003.
.....complainant

Versus

Manju Thakore wife of Sh. Jagdish Singh Thakore & Narin Thakore son Sh. Jagdish Singh Thakore, both residents of Thakore Baag, Annadale, Shimla(HP) -171003
..... Respondents

Complaint No. HPRERA/OFL/2020-21/44

4. Indira wife of Sh. Ramesh Mehta, resident of: FLAT NO-4, Sylverton Building, Thakur Baag, Annadale, Shimla (HP) –171003.

.....complainant

Versus

Manju Thakore wife of Sh. Jagdish Singh Thakore & Narin Thakore son Sh. Jagdish Singh Thakore, both residents of Thakore Baag, Annadale, Shimla(HP) -171003

..... Respondents

Complaint No. HPRERA/OFL/2020-21/45

5. Sunil Sood son of Sh. Gopal Krishan Sood, resident of FLAT No-6, Sylverton Building, Thakur Baag, Annadale, Shimla (HP) –171003.

.....complainant

Versus

Manju Thakore wife of Sh. Jagdish Singh Thakore & Narin Thakore son Sh. Jagdish Singh Thakore, both residents of Thakore Baag, Annadale, Shimla(HP) -171003

..... Respondents

Present:-

**Sh. Ravi Tanta, Ld. Counsel for the complainants
Sh. Rohit Sharma, Ld. Counsel for the respondents.**

Final date of hearing (Through WebEx): 03.03.2022

Date of pronouncement of order: 01.04.2022

ORDER

CORAM:- Chairperson and Member

1. COMMON FACTS IN ALL THE FIVE COMPLAINTS:

Since the facts in all these complaints are same or almost similar with complainants having same prayers in all the cases, therefore they are being taken up together. The common facts in brief giving rise to the present

complaints are that it has been pleaded that the respondent has carried out unauthorized construction and applied for regularization under section 30-B of the impugned amendment Act of HP TCP(A) ACT, 2016 which was quashed by the Hon'ble High Court of Himachal Pradesh vide judgment dated 22.12.2017 in CWP No. 612 of 2017. It was averred that the respondents have deprived the complainants of the basic amenities of water and electricity. It was further pleaded that the complainants requested the respondents a number of times for providing NOC as per conditions of the sale deed so that domestic water and electricity connection for the respective flats could be applied. It was pleaded that due to act, conduct and acquiescence of the respondent, the complainants are compelled to utilize basic facilities of electricity and water at higher commercial tariffs. It was further pleaded that the complainants have a perception that the respondents have constructed more than 8 apartments and sold to different purchasers for which they were supposed to register with the Department of Town and Country Planning, Himachal Pradesh as a promoter and were duty bound to acquire a valid license. With these averments it was prayed in all the complaints that the Authority after carrying out site inspection direct the respondents to grant the NOC so that the complainants may apply for water and electricity connections at domestic tariffs instead.

2. FACTS IN REPLY

Same facts have been pleaded in all the replies. The facts in reply are that the respondents are owner of the land comprised in Khata Khatoni No. 8min, Khasra No. 723 and 724, kita 2, measuring 79.20 sq. mts and land comprised in Khata Khatoni No. 9/10 min and 11, Khasra No. 715, 725, 726, 728, and 727 total measuring 319.68 sq. Mts in total situated at UP-Mohal Kaithu Pratham, Tehsil Shimla (U) District Shimla, HP. It was further pleaded that the respondent has applied for sanction of construction of a four storied building over the aforesaid land, which plan came to be sanctioned vide no.

14(AP) dated 18.01.2012 in the joint name of the respondents. A copy of the sanction plan is being filed herewith as Ann-R-1. It was further pleaded that the respondents had constructed a building over the above mentioned land and had constructed total number of 8 units which were semi-furnished flats. It was further pleaded that the sale deeds with respect to all the units intended to be sold was done on or before the year 2017. It was further pleaded that the provisions of Real Estate (Regulation & Development) Act 2016, came into operation with respect to the State of Himachal Pradesh on 1st May, 2017. It was pleaded that all the transactions were complete before the commencement of the RERA Act therefore the rigours of the Act do not apply to the project. It was submitted that the provisions of the Act are prospective in nature and the provisions of the Act would not apply to a completed project and concluded transactions. Further it was also pleaded that the provisions of the Act would also not apply to this project in question as the area over which the project is situated is 398.88 sq mts which is less than 500 sq mts and the flats constructed are eight in number therefore also it was pleaded that the rigours of the Act apply to projects which qualify as per Section 3 (2) of the Act. With Therefore it was prayed that all the complaints may kindly be dismissed with costs.

3. FACTS IN REJOINER:

Same rejoinders have been filed in all the five complaints. It was pleaded in the rejoinder that the respondents have filed short reply which is not legally permissible and hence this short reply be treated as reply on merits on behalf of the respondent. It was denied that respondent had constructed 8 semi furnished flats. It was pleaded that the flats are yet to be completed as per terms settled between the parties according to the sale deed. It was further pleaded that the project is yet to be completed by the respondent as the rain harvesting tank is defective and leaks almost every day, causing a flood like situation for the residents of the building as well as for the entire vicinity.

The respondents in order to avoid such leakage had cut the rain harvesting pipes leading to the rain harvesting tank from the roof, which action has worsened the situation. It was further pleaded that as per agreement the stainless steel railings were to be provided by the respondents but cast iron railings have been provided, which has diminished the aesthetics of the building. It was also further pleaded that the exterior paint of the building has not been done by the respondent as promised and the roof of the building leaks as the CGI sheets installed there upon are second hand causing great hardship especially during the rainy season. It was further pleaded that the fact that on the date of commencement of the provision of Real Estate Regulation Act (hereinafter referred to as Act), in Himachal Pradesh all transaction between the parties stood concluded has been denied. It was pleaded that the Authority has jurisdiction in the mater. It was further pleaded that the respondents have deliberately suppressed the fact that the building in which the complainants reside is not the only building being constructed by them but rather adjoining building consisting of four stories have been constructed by respondents no.2, which is consisting of one flat in each floor and this building is approximately covering area of 250 sq. meters. Therefore it was pleaded that the respondents are trying to evade the provisions of the act by concealing and misleading the Ld. Authority by claiming that the provisions of the Act would not apply to them. It was further pleaded that the respondents be directed to file a detailed affidavit to the effect as to declare the number of projects/buildings constructed by them alongwith the details of the area of construction, number of flat sold. It was further pleaded that the respondents had undertaken as per the sale deed that within six months of the execution of the sale deed, they will provide the complainants and other similarly situated flat buyers with the No Objection Certificate (NOC) but they have not even bothered to apply for the NOC till date in the name of the complainant.

4. ARGUMENTS BY COMPLAINANT-

It was argued on behalf of the complainant that the objection qua jurisdiction is a mixed question of law and facts and therefore can be raised either in the main reply or by filing objections. It was argued that there is no provision in law to file a short reply. It was further argued on behalf of complainant that the project has been constructed on more than 500 sq mts and flats are also more than eight. It was further argued that the respondents have constructed another building adjacent to the building where the complainants reside which is also a part of the same project and the total area of both the buildings taken together is more than 500 sq. mts. with more than eight flats and therefore the project is amenable to the jurisdiction of this Authority. It was further argued that the respondent be directed to file affidavit stating therein clearly the number of flats and total area of the project as this fact cannot be ascertained by the complainants.

5. ARGUMENTS BY RESPONDENT-

It has been argued on behalf of the respondent that the project in question is 319.68 sq mts and this fact is undisputed. To substantiate this it was submitted by the respondent that sanction plan has been appended as R-1. It was argued that after the sanction was accorded, the respondent has constructed only eight units which fact can be verified if spot inspection is done. Further it was argued that the area in question of the project as submitted in the reply has not been denied by the complainant in their rejoinder. It was argued that the sale deed is signed by both the parties and therefore it is an admitted document which also shows the area of the project in question to be 319.68 sq mts. Therefore it was submitted that before proceeding to the merits, the Authority has to first decide the issue of jurisdiction as a preliminary issue. On the argument of the complainant that

there is no provision in law for filing short reply it was submitted on behalf of the respondent that strict rules of procedure do not apply to the Authority exercising powers under the Real Estate (Regulation & Development) Act 2016. It was argued on behalf of respondent that jurisdiction has to be specifically pleaded and proved therefore it cannot be assumed. Further it was submitted that the complainants have to stand on their own legs and cannot shift the burden on the respondent of proving that their case falls within the jurisdiction of the Real Estate (Regulation and Development) Act, 2016.

6. FINDINGS OF THE AUTHORITY-

We have heard the arguments advanced by the Ld. Counsels for the complainants & respondents and perused the record pertaining to the case. We have duly considered the entire submissions and contentions submitted before us during the course of arguments. This Authority is of the view that the issue that requires the consideration and is to be dealt with as a preliminary issue before deciding all the other issues is:-

Whether the Authority has jurisdiction to decide/ adjudicate upon the present complaints?

7. To address the issue at hand pertaining to the applicability of the Act to the project, it is pertinent and imperative for us to discuss the provisions of Section 3 of the Act. The same are being reproduced hereunder -

Section 3 of the Real Estate (Regulation and Development) Act, 2016 says

*3. (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 there under, 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 stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

8. Therefore in view of the above all such real estate projects are required to be registered under the Act and are amenable to the jurisdiction of the Act where the area of land proposed to be developed exceeds five hundred square meters or the number of apartments proposed to be developed exceeds eight. If either of the two conditions are satisfied then real estate project is required to be registered under the Act and is therefore amenable to the jurisdiction of the Authority. From the above it can reasonably be inferred that a real estate

project is not required to be registered under the Act, if it satisfies both the following conditions:

- (i) The area of land proposed to be developed is less than or equal to five hundred square meters; and
- (ii) The number of apartments proposed to be developed are only eight or less than eight.

Thus, if either of these two conditions is not met, the real estate project is not exempt from registration under clause (a) of sub-section (2) of section 3 of the Act. In the case of Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors MANU/SC/1056/2021it was held that

“54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, **it will apply** after getting the on-going projects and **future projects registered Under Section 3** to prospectively follow the mandate of the Act 2016.”

9. From the above discussion it is certain that the Authority has jurisdiction only on projects that are registered or are required to be registered as per Section 3 of the RERD Act.
10. In the present cases the two most important documents to know as to what is the area of plot/ land on which building has been constructed and how many flats are there in the building, taken together on all floors, are Jamabandi and copy of approved/ sanction drawing, in addition to the sale deeds executed between the parties which are a part of the case file. The total area as per the sale deed appended which is an admitted document as it has been signed by both the parties is 398.88 sq mts. and as per the sanction plan the total area over which the project is developed is 373.33 sq mts. As per the sanction plan the total number of flats approved are four in number. There are five complaints from residents of different flats which means that more

than four flats have been constructed at the site but it is the version of the respondent himself that at the site there are eight flats.

11. The complainant took the plea that there is an adjoining building which is also a part of this project and the cumulative area of both the buildings is more than 500 sq mts and the number of flats also exceed eight in number. The burden to prove the aforesaid fact was on the complainant and the complainant has failed to discharge this burden. In the absence of proof of adjacent building what transpires from the record (sanction drawing) is that there is only one building in which complainants reside and the area over which the building is constructed at best is 398.88 sq mts and number of flats are not more than eight in number, therefore the project is neither amenable to the jurisdiction of this Authority and is also not required to be registered with the Authority.

12. CONCLUSION-

Keeping in view the above-mentioned facts, all the above complaints are dismissed being not maintainable for want of jurisdiction and applicability of The Real Estate (Regulation and Development) Act, 2016.

skant
Dr. Shrikant Baldi
CHAIRPERSON

Rajeev
Rajeev Verma
MEMBER