

**REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH**

In the matter of:-

Suneet Kumar (Prop.) M/S Shubham Construction having its existing office/ residence at VPO Hatwas, Tehsil Nagrota Bagwan, District Kangra, Himachal Pradesh

.....**Complainant**

Versus

1. Department of Fire Services, Shimla, Himachal Pradesh
2. Department of Town & Country Planning, Yojna Bhawan, Block no. 32A, SDA Complex, Vikas Nagar, Shimla, Himachal Pradesh.

.....**Non-Complainants/ Respondents**

Complaint no. HPRERA/ OFL-2021-28

Present: - Shri Suneet Kumar, Proprietor, M/S Shubham Construction along with Shri Ankur Soni, Advocate for the Complainant,

Smt. Anjana Sharma, Assistant District Attorney for respondent no.1, Department of Fire Services, Himachal Pradesh.

Shri Mayank Manta, Additional District Attorney for respondent no.2, Department of Town & Country Planning, Himachal Pradesh.

Shri Prateek Pal, Law Officer, RERA, Himachal Pradesh

Final Date of Hearing (Through WebEx): 19.05.2021.

Date of pronouncement of Order: 04.06.2021.



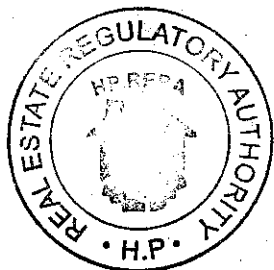
ORDER

CORAM: - Chairperson and both Members

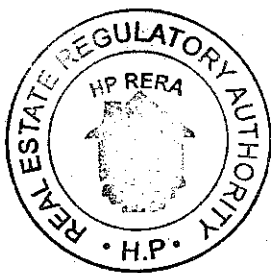
1. **BRIEF FACTS OF THE CASE:- COMPLAINT**

The present matter refers to a Complaint filed under the provisions of the Real Estate (Regulation and Development) Act, 2016 (herein after referred to as the Act.)

2. That the Complainant Shri Suneet Kumar (Prop.) M/S Shubham Construction had filed an offline complaint dated 19th March, 2021 before this Authority under 'Form-M' bearing Complaint no. HPRERA/OFL/2021-28 of the HP Real Estate (Regulation & Development) Rules' 2017. As per the Complaint the present ongoing real estate project of the Complainant named as "The Mcleo Homes" is registered with this Authority vide registration no.- RERAHPKAP12170017. The project consists of five residential blocks and one commercial block. Each residential block consists of 24 flats each. It is further provided in the complaint that respondent no.1 has issued a No Objection Certificate for fire services (herein referred to as NOC for short) for Block A1 on 31st September, 2019 and the possession of the same block has been handed over to the respective allottees/ buyers after procuring occupation certificate from respondent no.2 respectively. The Complainant



has further alleged in his complaint that after getting the part completion for Block B1 from respondent no.2, the promoter Complainant, in accordance with one of the condition of the part completion certificate, has applied for NOC from the Department of Fire Services, which has been rejected on the ground that one external stair case is required to be provided in the premises as per the National Building Code Part IV, 2016. Keeping in view of fire and life safety, i.e. means of escape, travel, distance, means of egress/ exit etc.” As per the existing site condition and as per the proposed/ revised drawings approved by the respondent no.2, one open stair case and two lifts have been constructed additional staircase in the block. As such, due to non-issuance of the NOC from the Department of Fire Services resulting in/ leading to non-issuance of occupation certificate by the respondent no 2, the Complainant promoter is unable to hand over the possession to the respective buyers/ allottees. In view of these submissions, the Complainant promoter had sought the intervention of this Authority to direct the respondents to issue the NOC for fire services along with occupation certificate for the residential Block B1 of the present project in question.

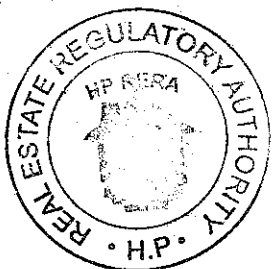


3. REPLY TO THE COMPLAINT.

Both the respondent Departments have filed a detailed reply to the Complaint on 4th May, 2021.

I. REPLY ON BEHALF OF RESPONDENT NO.1- DEPARTMENT OF FIRE SERVICES, HIMACHAL PRADESH:-

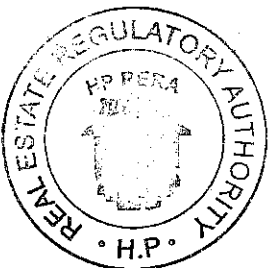
It has been contended by the respondent no.1 in their reply that the present complaint is not maintainable as the mandatory compliance of National Building Code, 2005 (which was revised in 2016) has not been fulfilled by the promoter Complainant. It has been categorically specified in the reply further that as per National Building Code, part IV 2005. Clause No. 4.6.2, all buildings, which are 15mtrs. in height or above, and all buildings used as educational, assembly, institutional, industrial, storage, and hazardous occupancies, having area more than 500 m² on each floor shall have minimum of two staircases, which shall be of enclosed type; at least one of them shall be on external walls of the building and shall open directly to the exterior, interior open space or to an open space of safety. In the case of complainant, the area is less than 500 m² but at the same time the height of the building is about 25 mtrs., therefore, the NOC cannot be issued to the project of the Complainant. Further, the reply on behalf of respondent no.1 provides that as per the provisions of the Himachal Pradesh Town & Country Planning Rules, 2014, it has been provided under clause 13 (ii) of the Appendix-7 that,



“The provision of stair cases shall be as per clause 4.6.2 of Part-IV of National Building Code of India i.e. minimum of 2 stair cases for floor area of more than 500 m². At least one of the stair cases shall be on external wall of the buildings and shall open directly to the exterior. Width of stair case shall not be less than 3.00 M i.e. 1.50 M in one flight. The replying respondent has further submitted in their reply that a two member committee comprising of Divisional Fire Officer & Station Fire Officer was constituted vide office order no. HOM (FS) (HQ) 6/10/67-MISC-IV-1661-1664 dated 19.04.2021 (Annexure R-V) to verify the plea of the Complainant that for similar situated building of Block A1, the respondent department has issued NOC on 30.09.2019. As per the fresh inspection report (Annexure R-VI & R-VII) there are material discrepancies like single stair has been erected, height of the main gate constructed in the entrance of the above block/building is inadequate, side and rear open space around the block is also inadequate etc. Therefore, in view of the aforesaid submissions, the Complaint is liable to be dismissed.

II. REPLY ON BEHALF OF RESPONDENT NO.2- DEPARTMENT OF TOWN & COUNTRY PLANNING, HIMACHAL PRADESH:-

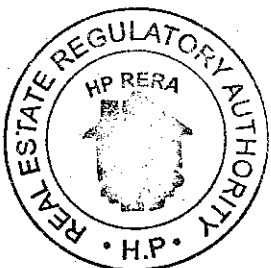
It has been contended in the reply by the respondent department of Town and Country Planning in their reply that the drawings of the project in question have been duly approved by the



respondent department vide letter dated 22.04.2015, which were further subjected to revised approval vide letter dated 19.11.2016 (Annexure R-1). The respondent no.1 vide its NOC dated 30.09.2019 had granted the part completion certificate for residential block no. A1 (24 units) vide letter dated 27.08.2019 (Annexure R-3 and occupation certificate vide letters dated 06.11.2020 (Annexure R-4) .A part completion certificate for block B-1, issued vide letter dated 6.11.2020(AnnexureR-4) with the condition precedent that the occupation certificate shall only be issued after the promoter Complainant submitted NOC for fire safety from respondent no.1. It has been specifically reiterated by the respondent department further that the project under reference has been approved prior to the enforcement of revised National Building Code, 2016 by amending the Himachal Pradesh Town & Country Planning Rules, 2016 and the same cannot be applied retrospectively. The respondent department has therefore submitted that the occupation certificate can be issued to the Complainant promoter provided the necessary NOC for fire safety is issued by respondent no.1.

4. REJOINDER TO THE REPLY.

The Complainant has responded to the reply so filed by the respondent no.1 only by filing rejoinder on 11th May, 2021. It has been submitted in the rejoinder by the Complainant that the

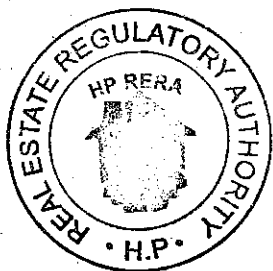


entire contents of the reply filed by the respondent no.1 are wrong, contrary and have been misinterpreted. It has been further submitted that the present complaint is wholly maintainable before this Authority and hence may be allowed qua the submissions already made in the complaint so filed herein before this Authority.

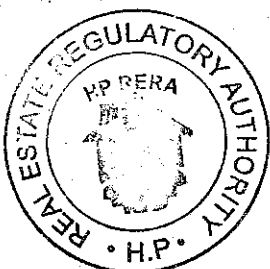
5. **ARGUMENTS ADVANCED**

The final arguments in this case were heard on 19.05.2021.

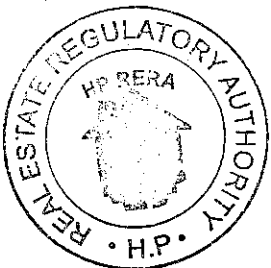
Shri Ankur Soni, Ld. Counsel representing the Complainant has argued before this Authority that the drawings/ plans for the project in question were duly approved by the respondent no. 2, i.e. Department of Town & Country Planning, Himachal Pradesh in the year 2015 and the initial construction at the site was carried out in accordance with the approved maps/ drawings. Later in the year 2019, the construction work of building having residential block A1 comprising of 24 units/ apartments was completed strictly as per approved drawings/ plans and the promoter complainant was granted NOC for fire services by the respondent no.1 on 30.09.2019. On the basis of the aforesaid NOC, the department of Town & Country Planning had issued the occupation certificate accordingly. At present the construction of Block B1 is complete and Block A2 is partly completed. In Block B1, one staircase has been constructed on



open sides with two lifts in the building premises, as per the approved plan. It has been argued further that the Complainant after obtaining the part completion certificate from respondent no.2 for Block no. B1 had applied before the respondent no.1 for issuance of NOC for the fire safety, which was rejected by the aforesaid respondent number 1 on the ground that one external staircase, is required to be provided in the premises as per clause 4.6.2 of the National Building Code, 2016. The rejection of the NOC by the respondent no.1 is completely wrong, arbitrary and against the norms of the HP Town & Country Planning Rules which provides that there is no need for second staircase, if the floor area is less than 500 m². Due to non-issuance of NOC by the respondent no.1, the respondent no.2 is further not issuing the occupation certificate and as such, it has practically become almost impossible to handover the possession to the buyers/ allottees. The Ld. Counsel for the Complainant has argued before this Authority that owing to the non-issuance of NOC for fire safety, huge financial loss has occurred to the Complainant, as the same pending under since October, 2020. The Ld. Arguing Counsel for the Complainant has requested this Authority to direct the respondent no.1 to issue NOC for fire services and safety for Block B1 and further direct respondent no.2. to issue the occupation certificate.

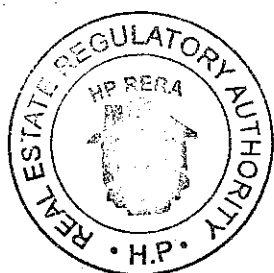


6. Smt. Anjana Sharma, Ld. ADA appearing on behalf of respondent no.1 has limited her line of arguments before this Authority that the construction of the building in question has not been carried out by the promoter Complainant in accordance with the provisions of the National Building Code, 2016. The height of the building of Block B1 is around 24 mtrs and as per the NBC guidelines, NOC for buildings beyond 15 mtrs, being a high-rise building is necessarily required with two staircases in the building vide clause 4.6.2 which shall be of enclosed type and at least one of them shall be on external walls of the building and shall be open directly to the exterior, interior open space or to an open space of safety. Therefore, the NOC cannot be issued to the project Complainant. It has been further argued by the Ld. ADA for the respondent Department of Fire Services that notice has been issued to the Complainant by the respondent department for the aforesaid violation of the National Building Code and the respondent fire department has carried out a fresh inspection of the site in question and it has been found that there are material discrepancies including single stair has been erected, height of the main gate constructed at the entrance of the above block/ building is inadequate, side and rear open space around the block is also inadequate etc. On being questioned by this Authority that



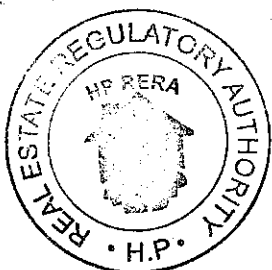
whether the provisions of National Building Code as included in the HP Town and Country Planning Rules, 2016 can be applied retrospectively before 2016? It has been submitted during the course of arguments that the provisions of two staircases in high rise buildings were already in existence prior to the amendments in the revised National building Code, 2016 and in the earlier NBC, 2005. The only amendment that has been effected vide NBC, 2016 is that it applies to all type of buildings having height of more than 15 mtrs. Therefore, in view of the aforesaid submissions, the Complaint is liable to be dismissed.

7. The matter for the respondent no.2, i.e. Department of Town & Country Planning, Himachal Pradesh has been argued by Shri Mayank Manta, Additional District Attorney. The Ld. ADA for the respondent TCP Department has argued before this Authority by making reference to page no.9 of the reply so filed on behalf of the respondent department, whereby it has been provided that vide Annexure R-2, the respondent no.1 has earlier issued no objection certificate dated 30.09.2019 in favour of the Complainant for Block A1 of the aforesaid real estate project. The National Building Code, 2005 was subjected to amendments in the year 2016, whereas the respondent Department has approved the case of the complainant much prior to its amendments in the year 2016. Therefore, under



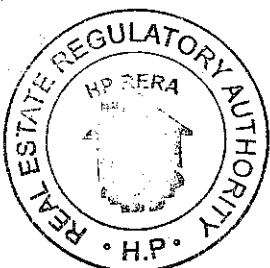
such facts and circumstances the operation of revised National Building Code, 2016 cannot be applied retrospectively. The Ld. ADA have relied upon following judicial pronouncements on the issue of retrospective effect of law, here as under:-

- a. **Hitendra Vishnu Thakur vs. State of Maharashtra and others (1994) 4 SCC 602**), whereby the Hon'ble Apex Court has held that it is well settled legal position that even 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.
- b. **Writ Petition (C) No. 329 of 2008 titled Goan Real Estate & Construction Ltd. &Anr. vs. Union of India through Ministry of Environment & Ors. (Decided on 31-10-2010**, whereby the Hon'ble Supreme Court had observed that, *"It is well settled that an order of Court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of this Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein*



the observations were made. Observation made in a judgment, it is trite, should be read in isolation and out of context. On perusal of paragraph 10 of the judgment, it is abundantly clear that even under 1991 Notification which is the main Notification, it was stipulated that all development and activities within CRZ will be valid and will not violate the provisions of the 1991 Notification till the Management Plans are approved. Thus, the intention of legislature while issuing Notification of 1991 was to protect the past actions/transactions which came into existence before the approval of 1991 Notification.

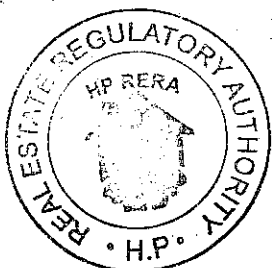
In paragraph 39 of the judgment, this Court considered the argument proposed by the learned Additional Solicitor General that construction has already taken place along such rivers, creeks etc. at a distance of 50 meters and more. This plea was specifically answered by observing that even if this be so, such reduction would permit new constructions to take place and this reduction could not be regarded as a protection only to the existing structures. Thus, on perusal of the above statement, it is clear that this Court had quashed the amendment because the amendment would permit new constructions to take place which was contrary to the provisions of the Environment Act, 1986 and not because of



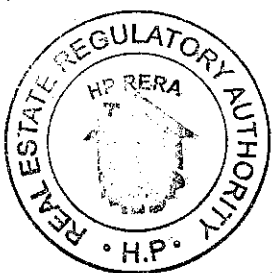
the reason that there was evidence before the Court that constructions already made or on-going pursuant to the plans sanctioned on the basis of Notification of 1994 had, in fact, frustrated the object of the Act. Thus, paragraph 39 clearly reflects intention of this Court that Court wanted to give the judgment prospective effect.

On perusal of the judgment in entirety, it is abundantly clear that the judgment is in form of directions to the Central Government and other authorities formed within the purview of Environment Act, 1986 and those directions are to be followed in future.”

- c. **Managing ECIL, Hyderabad & Ors. vs. B. Katunakar & Ors. (1993) 4 SCC 727**, where in factors were considered which were to be taken into consideration while giving prospective operation to a judgment. It was observed that, “*When judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions or prospectively to the transactions in future only. This process is limited not only to common law traditions, but exists in all jurisdictions. It is, therefore, for the Court to decide, on a balance of all relevant considerations, whether a decision, which unsettles its previous position of law, should be*

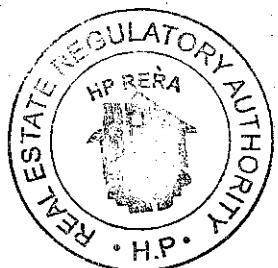


applied retrospectively or not. The court would look into the justifiable reliance on the overruled case by the administration; ability to effectuate the new rule adopted in the overruling case without doing injustice; the likelihood of its operation whether substantially burdens the administration of justice or retard the purpose. All these factors are to be taken into account while overruling the earlier decision or laying down a new principle. The benefit of the decision must be given to the parties before the Court even though applied to future cases from that date prospectively would not be extended to the parties whose adjudication either had become final or matters are pending trial or in appeal. The crucial cutoff date for giving prospective operation is the date of the judgment and not the date of the cause of action of a particular litigation given rise to the principle culminated in the overruling decision. There is no distinction between civil and criminal litigation. Equally no distinction could be made between claims involving constitutional right, statutory right or common law right. It also emerges that the new rule would not be applied to ex post facto laws nor acceded to plea of denial of equality. This Court would adopt retroactive or non-retroactive effect of a decision not as a matter of



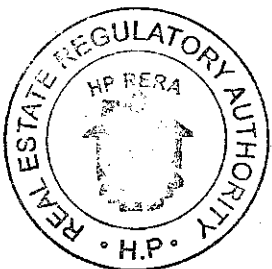
constitutional compulsion but a matter of judicial policy determined in each case after evaluating the merits and demerits of the particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard its operation. The reliance on the old rule and the cost of the burden of the administration are equally germane and be taken into account in deciding to give effect to prospective or retrospective operation.

8. The Ld. ADA for respondent TCP Department has further argued before this Authority that the only statutory hindrance for the Department in the instant case is that as per clause 13(i) of the Appendix 7 of the HP Town & Country Planning Rules, 2014, in case of buildings above 15.00 M of height, No Objection Certificate (NOC) from the Department of Fire Services is required for the purpose of issuance of occupation certificate to the complainant. However, the area of the building is less than 500 m². Therefore, the implications of NBC, 2016 is not applicable at all.
9. So far as the issuance of no objection certificate for fire safety in the already constructed buildings is concerned, the Ld. ADA for respondent TCP Department has made reference to judgment of Kerala High Court in **Writ Petition(C) no. 31928 of 2019 (M) titled as T.P.Biju versus Attingal Municipality & others, decided**



on 5th December, 2019, whereby the Hon'ble Court has observed that, *"That said, I am of the prima facie opinion that if the building is an old one and it only a very small portion has been added to it recently, then a Fire NOC may not be required and this is a matter to be carefully considered by the 4th respondent when he makes the evaluation of the relevant factors as above in terms of the following directions.*

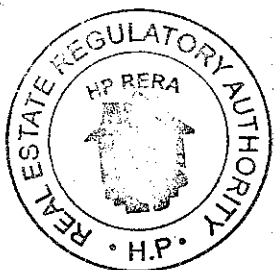
Resultantly and for the reasons above, I order this Writ Petition and direct the 4th respondent to immediately inspect the premises in question, along with the Secretary of the Attingal Municipality; and thereafter, issue appropriate orders as to the requirement of a NOC for the new construction, as also regarding the fire safety measures that will have to be complied with by the Club, both with respect to the existing and the new construction. This shall be done by the 4th respondent as expeditiously as is possible but not later than two weeks from the date of receipt of a copy of this judgment; and the resultant order will be issued to the Secretary of the Municipality and to the petitioner without any further delay thereafter. On receiving the resultant order of the 4th respondent as above, the Club will comply with all the directions therein and will be at liberty approach the Secretary of the Panchayat with a written intimation that they have done



so; in which event, the said Authority will then take up their application for occupation certificate, consider it and dispose it of, after properly confirming that all such directions have been complied with and after affording an opportunity to be heard to them, without any avoidable delay but not later than one month from the date on which the Club approaches the said Authority as directed above.” In the present case, the construction at the site has been completed. Therefore, non-issuance of NOC or raising of objections to issue NOC on behalf of respondent no.1 is not justified in nature.

10. REBUTTAL:

The Ld. Counsel for the Complainant has rebutted the stance of the respondent no.1 by arguing before this Authority that so far as the issue of discrepancies is concerned as alleged have been noticed by the Department of Fire Services in their site inspection, the complainant after getting his case approved from the Town & Country Planning Department had already submitted the approved drawings/ planning permission for issuance of NOC to the fire safety department in the year 2019, which was duly issued for block A1 on 30.09.2019 without any objections and after due site inspection. It has been vehemently argued by the Ld. Counsel here before this Authority that the entire construction, whether completed or on-going has been and is been carried out strictly in



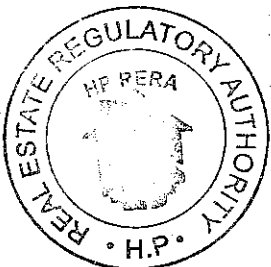
accordance with the approvals granted by the Town & Country Planning Department and not deviations have ever been made so far. As argued by the Ld. ADA representing Department of Fire Services regarding issuance of notice for alleged violations by the department, no such notice has ever been issued to the Complainant till date. Therefore, the complainant is entitled to be issued NOC for fire safety along with occupation certificate accordingly.

11. **CONCLUSION/ FINDINGS OF THE AUTHORITY:-**

We have heard the arguments advanced by the Ld. Counsel and respective Ld. ADAs for the Complainant & 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 there are three issues including issue of NOC for fire safety measures to the ongoing real estate projects as a condition precedent for taking occupation certificate, that requires the consideration and adjudication, namely:-

A- Legal Position for issuance of NOC in respect of fire safety measures under the Himachal Pradesh Town & Country Planning Rules.

B. Applicability of the National Building Code, 2016 in Real Estate Projects for fire safety measures.

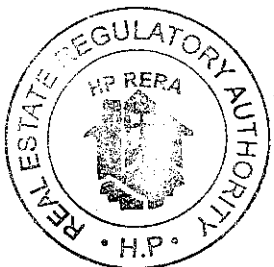


C. Inconsistency in the fire safety regulations framed by Department of Town and Country Planning and Department of fire services and absence of Standard operating procedure (SOP) for obtaining Fire safety NOC for RERA registered real estate projects

12. A. Legal Position for issuance of NOC in respect of fire safety measures under the Himachal Pradesh Town & Country Planning Rules

This Authority deems appropriate that the issuance of NOC for fire safety measures in respect of existing set of rules and statutory provisions provided under the Himachal Pradesh Town & Country Planning Act, 1977 read with its Rules, 2014 (as amended up to 2020) along with the provisions of the revised National Building Code, 2016 needs a clear cut interpretation before deliberating the main issue of NOC for fire safety being a condition precedent for construction activities/occupation or not in real estate projects.

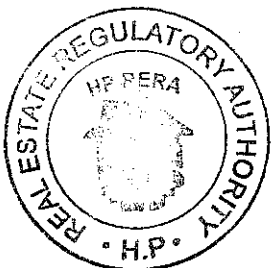
The statutory provisions on fire safety measures prevailing under the Himachal Pradesh Town & Country Planning Rules, 2014(as amended in the year 2016) can be broadly summarized as under:-



Appendix 7-HP TCP Rules, 2014- Safety measures.	Whether existing or amended
(i) In case of buildings above 15.00 M of height, No Objection Certificate (NOC)	Existing and prevailing in the

from the Director, Fire Services or Chief Fire Officer, as the case may be, shall be required.	year 2014
(ii) The provision of stair cases shall be as per clause *4.6.2 of Part-IV of National Building Code of India i.e. minimum of 2 stair cases for floor area of more than 500 M2. At least one of the stair cases shall be on external wall of the buildings and shall open directly to the exterior. Width of stair case shall not be less than 3.00 M i.e. 1.50 M in one flight	Amended vide HP TCP (Amendment) Act, 2016
(iii) Up to 4 storeys and 1 parking floor, provision for a lift shall be optional. However, for more than 4 storeys and one parking floor, it shall be mandatory requirement. The Promoter has to make provision of power back up for the lift and general lighting within and outside the building at his own cost.	Existing and prevailing in the year 2014
(iv) Adequate system of fire hydrants/ firefighting systems to the satisfaction of Director General, Fire Services or Chief Fire Officers or the District Level Fire Officer, as the case may be, shall be required.	Amended vide HP TCP (Amendment) Act, 2016

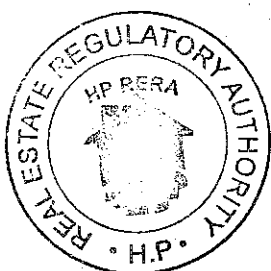
Thus from the above provisions of TCP Rules it is clear that only one stair case is required for buildings having floor area less than 500 sq. meter, even after 2016, though NOC from the Department of Fire is required to be taken.



13. B. Applicability of the National Building Code, 2016 in real estate projects for fire safety measures,

Having discussed the legal position discussed regarding the set of rules and regulations that are prevailing under the Himachal Pradesh Town & Country Planning Rules, 2014 and provisions under the National Building Code, 2016, the applicability of these aforesaid guiding set of principles in real estate projects needs to have a clear picture. The Authority during the course of hearing has put forwarded the following queries to the parties to the complaint, which are of paramount importance to draw a proper inference. Following queries were sought:-

- i. Whether the complainant submitted the No Objection Certificate of the competent authority of Himachal Pradesh Department of Fire Services as per serial no.24 of check list of Appendix -7 of the HP TCP Rules, 2014 while applying for planning permission?
- ii. Whether the Complainant had made a written submissions/ application to the respondent no.1 for issuance of NOC duly supported by complete set of documents including completion plan etc.?
- iii. Are there any other fire safety regulations existing under the HP TCP Rules, 2014 apart from clause 13 of Appendix 7 in cases of apartments?

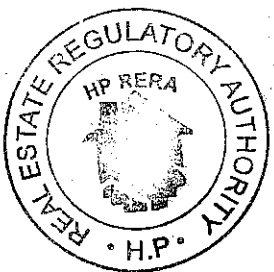


iv. Legal status of the National Building Code, 2016

14. It has been affirmed by the Complainant in the present case that the complainant at the time of initial submission of planning permission before the department of town & Country planning in the year 2015 and then later in 2016 for revised approvals had submitted the No Objection Certificate of the competent authority of Himachal Pradesh Department of Fire Services as per serial no.24 of check list of Appendix -7 of the HP TCP Rules, 2014 and will supply a copy of the same but this Authority did not receive any such NOC from complainant till date.

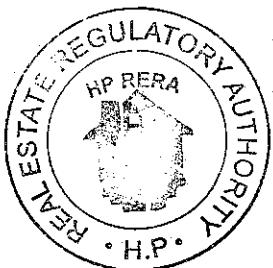
On the second query sought by this Authority, the Complainant had agreed that he had moved a written application to department of fire services for procurement of NOC. The revised approvals of the project in question as approved by the respondent no.2 vide Annexure R-2 dated 19.11.2016, detailed in the reply of the respondent no.2, no deviations from the approved plans have been carried out by the Complainant and as such the same drawings were submitted to the Department of Fire Services for obtaining the requisite NOC for residential block B1 of the project.

It has been duly clarified by the Ld. ADA representing respondent no.2 that there exists another fire safety regulations



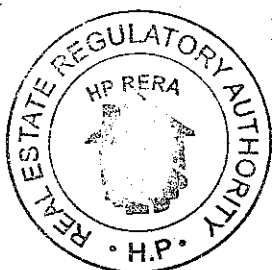
existing under the HP TCP Rules, 2014 in Appendix-1, apart from clause 13 of Appendix 7 in cases of apartments.

Coming on to the question of legal sanctity of the National Building Code, 2016, the Ld. ADA for TCP department has made reference to judicial pronouncement passed by the Hon'ble Kerala High Court in **WP no. 20706 of 2013 in the matter of CM Dinesh Mani versus State of Kerala**, decided on 8th July, 2015, wherein it has been observed that, *"17. One another contention urged is non-compliance of the guidelines issued by NBC. NBC guidelines itself indicates that it is non-statutory in nature, whereas it is for general application. It is for the respective State Governments to either decide to WP(C) No.20706/13 & connected cases incorporate any provisions in the NBC as applicable to their building rules or to modify such provisions or to incorporate the same with such modifications as may be required in a particular State, as the case may be. Therefore, non-adherence to the guidelines issued under the NBC cannot be a reason for setting aside KMBR, 2013. In fact Rule 3B of KMBR, 1999 has been incorporated by way of an amendment as per SRO 591/2010 dated 21/6/2010, which reads as under; "3B: Application of National Building Code of India- Wherever the provisions of the National buildings Code are mentioned in these rules, the provisions of the code in force shall be adopted."*



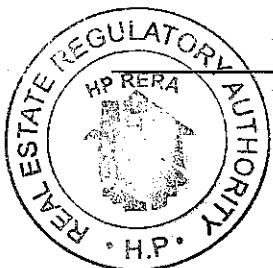
15. We find merits in the submissions and referred judgment supra made by the Ld. ADA before this Authority. In a similar placed position, the query of this Authority has been answered in affirmative. The State of Himachal Pradesh under its legislative competence has amended the Himachal Pradesh Town & Country Planning Rules, 2016 by adding a selected portion of fire and safety measures of the National Building Code, 2016, as provided in clause 4.6.2 but clearly restricting it to the extent that minimum of **two staircases for floor area of more than 500 sqm** , under its clause 13 (ii) of the Appendix 7 of the Himachal Pradesh Town & Country Planning (Amendment) Act, 2016. None of the other provisions of the National Building Code 2016 were incorporated in the HPTCP rules 2016. In this context, This authority has also relied upon the judgment passed by the of Hon'ble Supreme Court of India in the case of **T. Vijayalakshmi &Ors vs Town Planning Member & Anr., 2006 (8) SCC 502 19 (Decided on 19 October 2006)** where it has been held that "the rights of the parties cannot be intermeddled so long as an appropriate amendment in the legislation is not brought into force."

Therefore, it becomes very much clear that the existing provisions of the clause 13 (ii) of the Himachal Pradesh Town & Country Planning Rules, 2014 has a legal sanction and completely overrides the



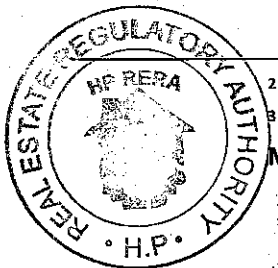
remaining provisions contained in the National Building Code, 2016. Hence, rest of the provisions of Code, which are not part of the TCP rules are not applicable in Himachal Pradesh for planning permission.

16. Regarding the retrospective effect of Law and as per the submissions made during the course of arguments before us, this Authority is inclined to accept the submissions made on behalf of respondent no.2. The same position has been affirmed by the Hon'ble Apex Court in its Judgments namely **Hitendra Vishnu Thakur vs. State of Maharashtra and others (1994) 4 SCC 602**, Writ Petition (C) No. 329 of 2008 titled **Goan Real Estate & Construction Ltd. &Anr. vs. Union of India through Ministry of Environment & Ors. (Decided on 31-10-2010 &Managing ECIL, Hyderabad & Ors. vs. B. Katunakar&Ors. (1993) 4 SCC 727**, where it has been held that the retrospective effect of any law, statute cannot be applied.
17. As per the rulings of the Hon'ble Supreme Court one of the established rule of interpretation is that unless explicitly stated, a piece of legislation is presumed not to be intended to have a retrospective operation ¹ The idea behind such a rule is that a current law should govern current activities. The principle of **lex prospicit non respicit**, which means that **"The Law looks**



¹ Govinddass versus Income Tax Officer(1976) 1 SCC 906 and CIT Bombay v. Scindia Steam Navigation Company Limited (1962) 1 SCR 788

forward and not backward’ was upheld. Retrospective principle is contrary to the general principle that “Legislation introduced for the first time need not change the character of past transactions carried out upon the faith of the then existing law.² The obvious basis of the principle against retrospectively is the principle of ‘fairness’, which must be the basis of every legal rule”.³ Any legislation which modifies accrued rights or imposed disabilities are treated to be prospective in nature unless they are accounting for an obvious reason or explaining a former legislation. The doctrine of fairness is a relevant factor when construing a statute that conferred a benefit without inflicting a corresponding detriment. The Hon’ble Supreme Court of India in the case, **T. Vijayalakshmi & Ors vs Town Planning Member & Anr** 2006 (8) SCC 502 19, has held that “18. *It is thus, now well settled law that an application for grant of permission for construction of a building is required to be decided in accordance with law applicable on the day on which such permission is granted.*” Thus in this case, only the approved proposal drawing becomes the basis for checking all the compliances and as per the admitted facts of the case one staircase and two lifts were approved and the same have been



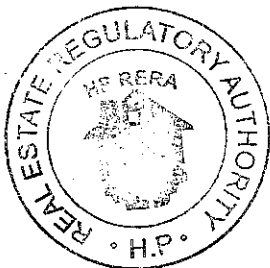
² Philips V. Eyre (1870)LR 6 QB 1

³ Government of India & Ors v. India Tobacco Association (2005) 7 SCC 396 and Vijay v. State of Maharashtra & Ors (2006) 6 SCC 286

installed/constructed. It is clear from various judgments of Hon SC, that no amended provisions which came into existence, after the original approval of the proposed drawings, can be applied in the present case

18. This Authority further cite two judgments of the Hon'ble Kerala High Court , Firstly in **WP(C) No. 35444 OF 2016 titled as T.S. Saludeen And Another v. State of Kerala And Others in case no. (Decided on March 18, 2019)** where it has been held very clearly that the case of the applicant, after the construction of the building, has to be dealt in accordance with the rules that were prevalent at the time when approval was accorded for the purpose of issuing of occupation certificate. The relevant part of the judgment is reproduced hereunder.

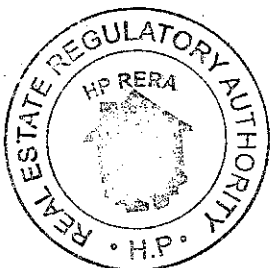
“10. Learned counsel for the petitioners relied on the judgment of the Hon'ble Supreme Court in T. Vijayalakshmi and Others v. Town Planning Member and Another reported in 2006 (8) SCC 502 to contend that an application for grant of permission for construction of a building is required to be decided in accordance with law applicable on the day on which such permission is granted. In view of the said judgment of the Hon'ble Supreme Court it is clear that requirements for building construction by the petitioners should be tested on the basis of law as existed in 2007, when the building permit was



issued. Admittedly, in the year 2007, Building Rules applicable to the area in question was the Kerala Municipality Building Rules, 1999, as it stood then. Therefore, the Kerala Panchayat Building Rules, which came into force in the year 2011 cannot be relied on to decide the legality or regularity of the issuance of the building permit to the petitioners.”

The Authority also take note of similar case in **Writ Petition (C) No. 34430 of 2016(C) titled as Ummer Farook v. Divisional Officer (Decided on April 3, 2018)** where it has been held by the Hon’ble Kerala High Court in para 3 that “the issuance of Final Fire NOC in respect of the construction put up by the petitioner shall be based on the law as prevailed at the time when the petitioner has obtained the building permit in 2002 and if the conditions are found to be satisfied by the petitioner, the 1st respondent shall issue the final fire NOC to the petitioner within a period of three weeks from the date of receipt of the copy of this judgment.”

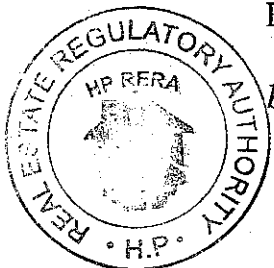
The Authority has also gone through the case decided by the **Hon’ble Karnataka High Court in Writ Petition No. 105258/2018 titled as Smt. Sundhya W/O Ramesh Timmapur v. The State of Karnataka (Decided on November 14, 2019)** where it has been clearly laid down by the Hon’ble Court in para 6 that “it is well settled law that an



application for grant of permission for construction of a building is required to be decided in accordance with law applicable on the day on which such permission is granted.

19. This Authority after careful examination of the entire submissions made by the contesting parties in the present case is of the firm view that the provisions of National Building Code of India, 2005 & 2016 cannot be applied in its entirety, as it lacks any statutory backing except, for the specific portion of the revised National Building Code 2016, that has been incorporated in the HP TCP rules 2014 amended from time to time. In the present case, the respondent no.2, i.e. Department of Town & Country Planning had accorded the sanction/ permission as per Appendix-7 of the HP Town & Country Planning Rules, 2014 to the complainant. The Building in question has been constructed as per rules and regulations of the Town & Country Planning Department and also in accordance with the approved map. Thus, the compliant has complied with the provisions of HPTCP Act and Rules and is entitled to get the occupation certificate.

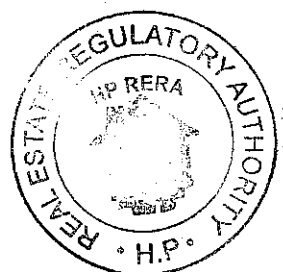
20. This Authority finds it appropriate to refer the order of Haryana Real Estate Regulatory Appellate Tribunal dated 08.12.2020 in the matter of Palm Hills Owner Apartments Society, Gurgaon versus Emaar MGF Land Ltd. Gurgaon & ors. Under para 18, *“From the bare perusal of clause 4.6.2 of National building Code, 2005, it is*



clear that all buildings having 15 mtrs height or above and having area more than 500m² on each floor were required to have minimum two staircases. Thus, if the building height is more than 15 mtrs, but the area at each floor is less than 500m² on each floor, in that case, there is no stipulation in National Building Code, 2005 to provide minimum two staircases provided the building is not used for the purposes of educational, assembly, institutional, industrial, storage and hazardous occupancies and mixed occupancies....”Therefore, it is apparently clear that the provisions of NBC, 2016 are not applicable in the instant case as the building is for residential use and the area in each floor is less than 500 m².

The present real estate project of the Complainant is duly registered with this Authority on 09.08.2018. As per the provisions of the Real Estate (Regulation & Development) Act, 2016, this Authority is duly entrusted with a duty to protect the interests of the home buyers/ allottees who are unable to occupy their homes in absence of NOC.

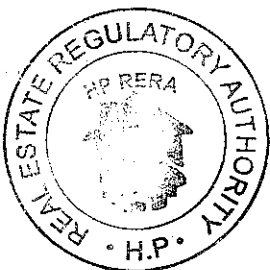
21. Now, as per the sanctioned plans registered with this Authority while approving the registration under the Act, there are six blocks in the present real estate project. The Block A1 & Block A2 is 6+1 (parking) storeyed and maximum area on each floor is 425.28 m². The Block B1 & B2 are 6+1 (parking) storeyed and the maximum area on each floor is 496.66 m². The Block C1 is 6+1 (parking)



storeyed and maximum area on each floor is 446.70 m². The Block D1 is 3 storeyed and maximum area on each floor is 446.70 m². The Block D1 is 3 storeyed and maximum area on ground floor is 258.52 m². Therefore, it is quite evident that each floor area is less than 500 m² and thus is not covered under the provisions of clause 13(ii) of appendix -7 of HPTCP Rules 2014 amended from time to time.

22. The Authority in this case firmly holds that the provisions of the National Building Code 2005(revised in 2016) are not applicable on the Real Estate Projects in HP, except to the extent incorporated in the rules, for instance Appendix-1 of HPTCP rules 2014. It is for this reason that this authority is not going into the details of the specific provisions of NBC 2005 (revised in 2016), mandating the provision of two staircases for all buildings having height more than 15 mtrs as the same is not applicable in this case as all the provisions of the NBC 2005 as amended in 2016 were never incorporated in the rules dealing with the fire safety norms to be followed in the construction of Apartments in the state of Himachal Pradesh.

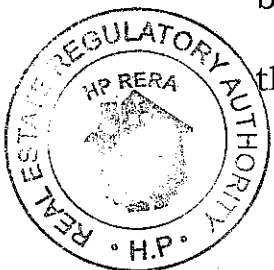
23. C. Inconsistency in the fire safety regulations framed by Department of Town and Country Planning and Department of fire services and absence of Standard



**operating procedure(SOP) for obtaining Fire safety NOC
for RERA registered real estate projects**

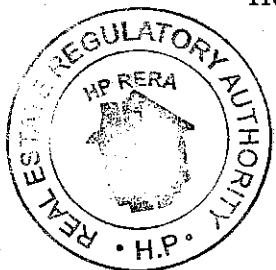
The Ld. ADA on behalf of respondent no. 1 has raised certain points based on National building codes and other guidelines of the department. As far as, constitution of committee and carrying out of fresh site inspection by the respondent no.1 at the site under reference and along with revocation of previous NOC dated 30th September, 2019, in absentia and similar points raised by the Ld. ADA for the respondent Department of Fire Services are concerned, we are not in consensus ad idem, particularly on the reasoning that neither the record nor the reply filed before this Authority transpires any of them as referred in the arguments including the issuance of notice to the Complainant. Further they are not in consonance with HPTCP Act and Rules.

24. The State of Himachal Pradesh through the department of Home had issued a notification dated 23.07.2019 as annexed as Annexure R-10 in the reply of respondent no.2 regarding precautions for fire prevention and fire safety measures mandating compliance for various kinds of buildings. None of the precautions therein mentioned depicts the two staircases essential for the high rise buildings or buildings having height of 15 mtrs or above. Moreover, the Ld. ADA has not been able to answer to our queries when



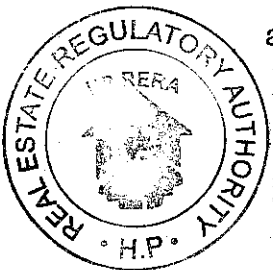
sought during the arguments regarding issuance of notice to complainant, withdrawing of NOC dated 30.09.2019 for block A1, applicability and retrospective effect of National Building Code, 2005 & 2016 in the instant case and particularly the aspects of non-issuance of NOC for block B1.

25. During the course of arguments, the Ld. ADA representing respondent no 2 has conveyed that , in addition to the fire safety norms as postulated in clause no 13 of Appendix -7 of HPTCP rules, fire safety norms have also been provided in clause no 29 of Appendix -1, that provides various norms only for Residential buildings other than Apartments which are covered under Appendix-7, where it is specifically made clear that fire-fighting provisions and specifications shall be as per National Building code of India 2005, which as on date stands revised to NBC 2016. Further it is also in public domain that fire safety norms have also been provided at serial no 11 in the Appendix-3, that provides for the norms for the construction of IT Parks , which are identical to the provisions of Appendix-7 with an additional condition that the NOC from Director of Fire services or chief fire officer shall be required only at the completion stage . It has also been observed that there are no fire safety norms in Appendix 2 that provides for norms for the construction of industrial buildings.



The notification by Additional Chief Secretary (Home), Government of Himachal Pradesh, dated 23.7.2019 dealing with general fire safety norms for various kinds of building in the state of Himachal Pradesh is general in nature and as such do not lay any norms to be followed for the construction of new buildings or the specific provisions to be made in the existing buildings nor any SOP for obtaining the NOC for existing buildings or new buildings has been notified. There is no consistency and harmony in the fire safety norms framed by TCP department and Director of Fire services.

26. To achieve the final objective of ensuring that buildings including real estate projects in the state of HP are safe from fire safety point of view, in accordance with the various provisions of TCP rules 2014 amended from time to time and notification of ACS (Home) dated 23.07.2019 dealing with fire safety norms and various recommendatory provisions of revised National Building Code 2016, it is recommended that Department of TCP in consultation with the department of fire Services and with the concurrence of the state Govt. formulate a comprehensive set of regulations/ bylaws, detailing all the requirements from fire safety point of view to be incorporated in the buildings at the proposal stage itself to have a fully fire safety compliant completed building. A copy of the approved completion plan showing all provisions of fire safety



measures, inter alia, including fire escape staircase(s) with its specifications, fire exits with its sizes and specifications clearly marked travel distances on the fire escape route(s), open spaces around the building for fire tender movements taking into consideration of hilly topography, fire hydrant cabinets, fire extinguishers, sprinkler system where ever required, fire refuge area etc. must be marked to the Department of fire services to enable them to issue the requisite NOC after proper verification of the same at the building site and to have ready building record with Department of Fire Services to plan and execute any evacuation/ rescue in case of any emergency, as per standard protocols.

It is also advised that a detailed SOP be also formed jointly by both the departments to deal with the issuance of Fire NOC for all those Real estate projects in which the proposal drawings have already been approved and it is not possible to add fire escape staircase and space for the movement of fire tenders around the building.

It is recommended that Department of TCP should make appropriate amendments in TCP Act/ rules in this regard so that appropriate fire safety norms are incorporated at the Project Map approval stage itself in Himachal Pradesh.



27. RELIEF:-

Keeping in view the above mentioned facts, this Authority in exercise of power vested under various provisions of the Real Estate (Regulation & Development) Act, 2016 issues the following orders/ directions-

- I. The Complaint is allowed and the Respondent no. 1 is directed to issue the NOC to the Complainant within 10 days from the passing of this order and thereafter the respondent no.2 shall issue the occupation certificate to the promoter.
- II. In case the respondent no. 1, fails to issue the NOC within 10 days or delays it, the respondent no. 2 will issue the occupation certificate for block B1, without waiting for the NOC from the respondent number 1, within next 20 days of issue of this order
- III. In case the respondent no.1, fails to issue the NOC within 10 days from the passing of this order or delays it, then the office of this Authority shall take up the matter with the Additional Chief Secretary (Home), to take suitable administrative action against the erring officers/ officials of the respondent no. 1, i.e. Department of Fire Services.
- IV. To achieve the final objective of ensuring that Real Estate Projects in the state of H.P are safe from fire safety point of



view, it is recommended that the department of TCP should make appropriate amendments in HP TCP Act/ Rules, as suggested in para 26.

Badalia
B.C. Badalia
MEMBER

Sikoml
Dr. Shrikant Baldi
CHAIRPERSON

Rajeev Verma
Rajeev Verma
MEMBER

