

REAL ESTATE REGULATORY AUTHORITY**Complaint No.HPRERA2024007/C****In the matter of:-**

Sh. Abeer Sharma son of Late Sh. Vijay Kumar, resident of House no.1824P, Sector 21, Panchkula, Haryana,134112 and also Adyogi, Plot 1SP, Golf Course Road, Sector 27, Gurgaon, Haryana,122009

.....Complainant

Versus

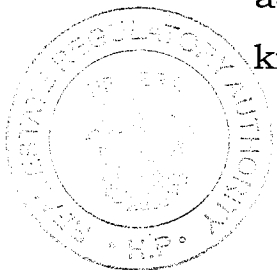
Smt. Sushma wife of Sh. Ravinder Kumar Chopra, resident of Circular Road Solan, Tehsil and District Solan, Himachal Pradesh,173212

.....Respondent

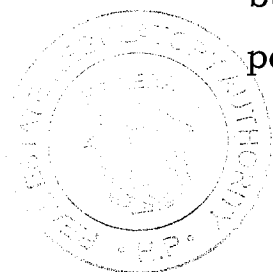
Present: Sh. Sanjay Kumar Kaushik, Smt. Suman Sharma & Sh. Abeer Sharma, Complainants through WebEx
Sh. Mohit Sharma, Ld. Counsel for respondent promoter(s) through WebEx

Date of hearing:22.10.2024**Date of pronouncement of order:20.11.2024****Order****Coram: Chairperson****1. Facts of the case:**

This is a complaint against the respondent/ promoter/ builder that father of present complainant Late Sh. Vijay Kumar purchased a Flat No 4A, Khasra No 1187/1040/593/519/372, situated in Mauza Anji, Hadbast No 645, Tehsil and District Solan, HP. It was further pleaded that the sale deed executed inter se the parties which is dated 25.09.2014 specifies the flat as having "one bed room, one drawing room cum dining, one kitchen, two toilets cum bath rooms and balcony". However, the



flat provided only one bathroom and no balcony. It was further pleaded that the flat bought by the complainant is constructed over the area originally designated for parking, as clearly shown in the attached building plan. It was further pleaded that due to the violation of the building plan and illegal construction of the flat, Tax Assessment of the Flat could not be done, thus barring the complainant from paying property tax. It was further pleaded that a septic tank, which should have been built underground, was illegally constructed adjacent to the flat in the absence of complainant after the purchase of Flat. It leads to foul smell around the Flat of the complainant which makes it inhabitable. It was further pleaded that when the complaint with respect to this was raised by the complainant it was promised that the flat will be replaced but the same was never done. It was further pleaded that the father of the complainant the original purchaser late Sh. Vijay Kumar, developed pneumonia during his stay in this flat and subsequently passed away from the illness. It is widely recognized that prolonged exposure to sewer gas can contribute to the development of pneumonia. It was further pleaded that the complainant against the leakage of sewage tanks was made by the residents collectively on 1st Aug 2023 but no action has been taken till date. It was further pleaded that the plumbing system is defective, causing overflows from toilet and drains into the flat during rains, leading to damage to furniture and belongings, posing serious health risks. It was further pleaded that the present condition is such that the complainant and his family have to wear face masks and gloves to enter the house. It was further pleaded that the promoter/builder has not provided the Water Storage Tank of 1000 Litres per flat as per the Sale Deed and Underground Water Tank as



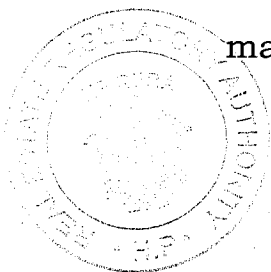
per condition no.15 in the Consent to Building Construction No.128/2007 dt.31/1/2008 issued by MC, Solan. It was further pleaded that no parking space has been allocated to the complainant as was committed by the promoter. It was further pleaded that over the past decade, the builder has constructed more than 15 blocks (each containing 12-13 flats), in areas approved only for parking. It was further pleaded that the builder has misled the RERA Authority by falsely providing the incorrect information that only 3 Apartments/Blocks have been constructed in the total area of 263 sq.m to avoid the Registration/Approval from RERA. It was further pleaded that the builder has not received completion certificate therefore the project is RERA registerable. On the basis of these pleadings it was prayed that compensation for his father's loss of life & harassment for 9 years be awarded. Further it was prayed that Flat shall be taken back and a new Flat as replacement shall be given as per specifications in the sale deed and also as per valid sanction plan. Further a dedicated 1000 Lts separate water tank with assured water supply and designated four wheeler parking space with easy access to the flat shall be ordered to be provided. Further proper plumbing facilities shall also be ordered to be provided and the Tax assessment shall also be ordered.

2. Reply-

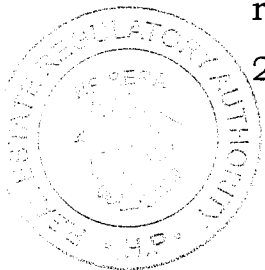
The respondent took the preliminary objections of maintainability, and estoppel. It was further pleaded that this Authority has no jurisdiction over the project in question and the same is not required to be registered under the RERA Act, 2016 as it does not meet the requirements of Section 3 of the Act *ibid*. It was further pleaded in the reply that the flat now owned and possessed by the complainant is situated in ground floor of the building and in front of the flat pucca court yard has been



provided which is being used by the complainant and his predecessor in interest. It was further pleaded that the flat in question was purchased by the father of complainant through registered sale deed dated 25.9.2014 and since then the open court yard is being used first by the predecessor of the complainant and now by the Complainant and for the last about 10 years no grouse in this regard was ever raised against the balcony as well as bath room. It was further pleaded that the predecessor in interest of the complainant as per clause 4 of the sale deed had taken the possession of the flat after being fully satisfied about the construction of the flat and building in all respects. The respondent denied that the flat bought by the complainant is constructed over the area originally designated for parking as shown in the attached building plan as alleged. It was further denied that due to violation of the building plan and illegal construction of the flat, tax assessment of the flat of the complainant could not be done, thus barring the complainant from paying property tax as alleged. It was pleaded that there is no violation whatsoever of the building plans as such the non-payment of the property tax by the complainant for his flat, by no stretch imagination can be attributed to the building. It was further denied that a septic tank was illegally constructed adjacent to the flat of the complainant after their purchase. It was further pleaded that the septic tank is in existence on the spot, even prior to the construction of the flats. It was denied that due to septic tank there is foul smell around the flat of the complainant and has made conditions unliveable. It was submitted that the complainant and his predecessor in interest had been using the flat for the last 10 years and he has never made any complaint regarding alleged nuisance prior to this



complaint. It was further pleaded that the issue of replacement of the flat does not arise at all nor the same was ever promised. It was further pleaded that the father of complainant had died a natural death and not on account of pneumonia as alleged. It was further denied that plumbing system is defective causing over flows from toilets and drains into the flat during rainy season, leading to damage to the furniture and belongings and posing serious health risks. It was further pleaded that the plumbing system is proper and there is no over flow from toilets and drains. It was further submitted that water storage tank of the capacity of 1000 litres has been provided to the complainant placed on the roof of top floor of the building being used by the complainant independently since the date of purchase of the flat and the complainant or his predecessor in interest have never raised any grievance regarding the same ever before. It was further pleaded that the respondent had never committed to the complainant to provide parking nor there is any recital in the sale deed and the complainant cannot go beyond the recitals of the registered sale deed. It was denied that over the past decade the builder has constructed more than 15 blocks (each consisting of 12-13 flats) often in areas approved only for parking as alleged. It was submitted that each owner of the land is developing his/her area by way of raising construction according to the demands and the availability of funds and according to the site plans being got sanctioned from the local authority. It was further pleaded that it is not required to be registered with HP RERA and this Authority has no jurisdiction to entertain, try and decide the complaint because the replying respondent is not a promoter as defined under the RERA Act, 2016. It was further submitted that the completion certificates



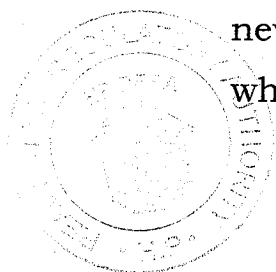
were not being issued by the local authorities at the time when the flats were passed and approved by the local authority as the site plans of the building of respondent were approved in the year 2011.

3. Rejoinder

It was pleaded in the rejoinder that as claimed by the respondent the ground floor flat has a "pucca courtyard" instead of a balcony but this "courtyard" is not a functional substitute for a balcony as per standard building codes and the sanctioned plan. It was further pleaded that regarding the missing bathroom, the respondent remains silent in his reply. It was further pleaded that the complainant has attached photograph clearly showing the flat's location on the originally designated parking area. It was further pleaded that the respondent avoids addressing the core problems of the illegal construction of the septic tank adjacent to the flat i.e. the unliveable conditions, the verbal promise for flat replacement and complainant's father's untimely demise by developing pneumonia possibly due to prolonged exposure of sewerage gases from the septic tank.

4. Arguments by Abeer Sharma

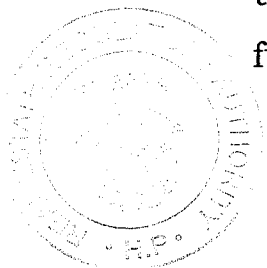
It was argued that the specifications of the flat are different from the one promised to them. It was further argued that the sale deed in the present case was executed on 25th September, 2014. It was argued that the complainant in this case was shown a sample flat and asked to stay in the current flat for some time till the builders builds the actual flat and gives the possession. It was further argued that the father of the complainant the actual allottee of the flat requested the respondent time and again to shift him to a flat away from the septic tank but the request was never adhered to. It was further argued that the current flat which is in the parking area was a temporary flat till the



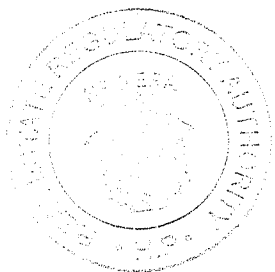
complainant gets the possession of the actual flat. It was further fairly admitted that in the sale deed it has not been mentioned that this is a temporary flat and the new flat will be delivered as and when ready. It was further argued that the ATP report also says that the flat has been built in the parking area. It was further argued that the septic tank is right next to the flat of the complainants and there is seepage in the walls of the flats. It was further argued that the original allottee the father of the complainant got pneumonia and ultimately died because he was residing in this flat where there was continuous problem of smell and seepage from walls of the septic tank. It was further argued that the flat has defective plumbing and many a time the commodes overflow. It was further argued that the problem with the seepage of walls happened after the first five years from the date of the taking of possession. It was further argued that the allottees never got uninterrupted water supply and separate water tank was also not provided to them.

5. Respondent Arguments

It was further argued on behalf of the respondent that he does not qualify to be a promoter and therefore the project is not liable to be registered under the RERD Act. It was further argued that these are small chunks of land in the name of daughters of Ravinder Chopra and they have developed these properties separately. It was further argued that from the perusal of the report of Municipal Corporation Solan no irregularity in the construction has been reported. It was further argued that the construction of the building has been done way back in the year 2008, 2009 and at that point of time the RERD Act was not enforced and not applicable to the project in question and therefore this law cannot be applied retrospectively. It was further argued that when RERD Act came into force the flats were



already possessed and owned by the respective complainants. It was further argued that the complaint is hit by the provisions of the acquiescence and estoppel. Further it was argued that the appropriate forum for the complainant to argue that the respondent had violated the sanctioned plan was Municipal Corporation Solan, but no complaint has been made to Municipal Corporation Solan by the complainant. It was further argued that the competent Authority to approve maps i.e. the Municipal Corporation Solan has found no irregularity in the construction of the blocks in question. It was further argued that the Municipal Corporation did not provide NOC's for the flats in question. The same fact was also sought from the Municipal Corporation Solan through RTI and in reply Municipal Corporation Solan submitted that there was no provision for providing NOC's and completion certificate. A letter dated 22.05.2024 was issued wherein it was stated by the Municipal Corporation Solan that in the year 2008-2009 they did not issue completion/occupation certificate no.RTI16/2024 /3753. It was further argued that the primary claim of the complainant is that the respondent has violated the sanctioned plan but no such findings have been given in the reports by Municipal Corporation Solan. It was further argued that the respondent has provided a 2000 ltrs tank from which connections to two residence have been provided and this fact is also collaborated from the report of the ATP HPRERA. It was further argued that the possibility to construct parking in the lower floor was almost impossible therefore the same was constructed in the top floor of the building. It was further stated that all the people who bought the parking and such rights were mentioned in the sale deeds have been provided so by the respondent. It was further argued that



none of the residents of the area or the building in question have raised such issue with any of the Authorities before .It was argued that there are certain facilities that are being provided to the residence of the blocks i.e. lighting, security guards and other amenities including water supply. It was further argued that the arguments made on behalf of complainants with respect to delivery of new Flat instead of the present temporary Flat are totally beyond the pleadings .

6. Conclusion/ Findings of the Authority:-

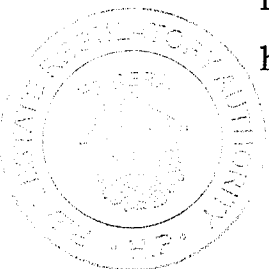
We have heard the arguments advanced by the complainant & the Ld Counsel of the respondents and also perused the record pertaining to the case. We have duly considered the entire submissions and contentions submitted before us during the course of arguments. This Authority is of the view that the point of determination(s) that requires the consideration and adjudication, namely:-

- 1. Whether the project in question is required to registered under Section 3 Of the RERD Act, 2016 with HP RERA?**
- 2. Whether the Complainant is entitled reliefs as claimed for in the complaint?**

7. Findings of the Authority

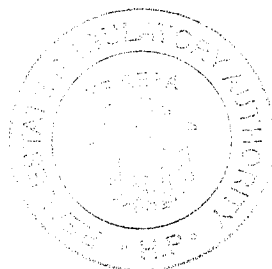
- 43. Whether the project in question is required to registered under Section 3 Of the RERD Act, 2016 with HP RERA?**

In the present matter, since there are disputed question of facts vis a vis registration of project involved in the case, which could not be ascertained from the documents on record without getting the case investigated under Section 35 of the RERD Act 2016 from the concerned competent Authority. The Authority after hearing the case on 14.5.2024 had directed its office to send a



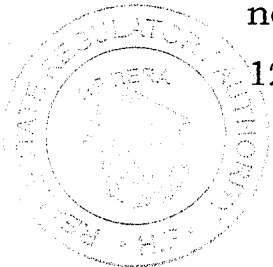
letter to the Municipal Commissioner Solan on dated 22nd May,2024 to give a detailed report with regard to the project in question particularly the actual number of flats constructed and the other issues stated therein.

8. In pursuance to the order of this Authority a report was received from MC Solan stating therein that the site was visited by the official(s) of MC Solan on 27.06.2024 and it was found that there is a gated society namely S Chopra Apartments at the site. It was further mentioned in the report that the owners have registered individual building blocks in the names of Smt. Sushma , Smt. Kanika, Smt. Ruchika and Smt. Nitika who are mother and daughters. As per the report there are total twenty two numbers of blocks constructed at the site and six more buildings are approved out of which two are under construction. The details of all the twenty eight blocks were mentioned therein.
9. Further, this office had deputed Assistant Town Planner of HP RERA to also conduct the spot inspection and give a detailed report. In terms of the report of ATP dated 07.09.2024, it was mentioned that the site was inspected by him on 04.09.2024 in the presence of complainants and the representative of the respondents. In the report of the ATP it transpires that there were total 13 number of dwelling units/ Flats existing in Block no. 3. In this report the version given by the report of the MC Solan was reiterated and it was pointed out that the approach to all the blocks is common and it is a gated society and the owner had not obtained the completion certificate for the blocks in question. There is no rebuttal from the respondent on the fact recorded in the report of MC Solan qua twenty eight blocks and it being gated society. However, the respondent has only submitted in his comments to the report that each blocks has



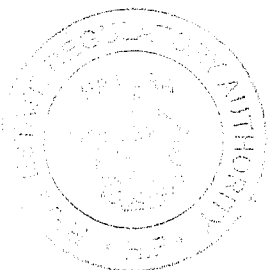
separate khasra numbers owned by separate owners and the maps have been approved separately.

10. To further delve deep into the issue the report of M.C. Solan is examined minutely and it transpires that in building no. 1 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on old khasra no. 522/465/372/1 new khasra no. 1182/522/465/3/72 having area 246.50 sqm 6 biswa map approved in the name of Smt. Kanika vide Nagar Parishad Solan resolution No. 276/2008(4) dated 29.02.2008 in the year 2008 and the building is constructed at the site.
11. In building no. 2 owner is Smt. Ruchika daughter of Smt. Sushma and the building is situated on old khasra no. 522/465/372/1 new khasra no. 1183/522/465/3/72 having area 246.50 sqm 6 biswa map approved in the name of Kanika vide Nagar Parishad Solan resolution No. 261/2007 dated 27.12.2007 in the year 2007 through sale deed the said property is transferred from Smt. Kanika to Smt. Ruchika vide sale deed no. 562/008 dated 17.05.2008 and building is constructed at site.
12. In building no. 3 owner is Smt. Kanika daughter of Sh. Ravinder Kumar and the building is situated on old khasra no.522/465/372/3 new khasra no. 1184/522/465/3/72 having area 348 sqm 8 biswa map approved in the name of Kanika vide Nagar Parishad Solan resolution no. 345/2008(41) dated 31.07.2008 in the year 2008 and the building is constructed at the site.
13. In building no.4 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on old khasra no.1040/593/519/3/72/4/2/3 new khasra no. 1220/1188/1040/593/519/372 having area 210 sqm 5 biswa



map approved in the name of Kanika vide Nagar Parishad Solan resolution No. 702/2015(43) dated 09.06.2015 in the year 2015 and the building is constructed at the site.

14. In building no. 5 owner is Smt. Sushma daughter of Sh. Amar Nath and the building is situated on khasra no. 523/372 having area 169 sqm 4 biswa map approved in the name of Sharat vide Nagar Parishad Solan resolution no. 832/98(162) dated 13.10.1998 and Smt. Susham has purchased this building in year 1998 and the building is constructed at site.
15. In building no.6 owner is Smt. Sushma daughter of Sh. Amar Nath and the building is situated on old khasra no. 1040/593/519/3/72/3 new khasra no. 1187/1040/593/519/372 having area 966 sqm 1 bigha 3 biswa map approved in the name of Smt. Sushma daughter of Sh. Amar Nath vide Nagar Parishad Solan resolution No.126/011(40) dated 31.10.2011 in the year 2011 and the building is constructed at the site.
16. In building no. 7 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on khasra no.930/621/378 having area 848.40 sqm 1 bigha map approved in the name of Mangat Ram vide Nagar Parishad Solan resolution No. 766/05(21) dated 29.07.2005 and Smt. Kanika has purchased this building in year 2005 this building is constructed at the site.
17. In building no. 8 owner is Smt. Sushma daughter of Sh. Amar Nath and the building is situated on old khasra no. 929/621/378/1 new khasra no. 1060/929/62/1/378 having area 500 sqm 12 biswa map approved in the name of Smt. Sushma daughter of Sh. Amar Nath vide Nagar Parishad Solan



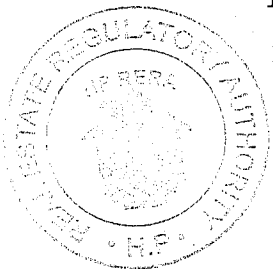
resolution No.30/2006(5) dated 27.05.2006 in the year 2006 and the building is constructed at the site.

18. In building no. 9 owner is Smt. Sushma daughter of Sh. Amar Nath wife Ravinder Kumar Chopra and the building is situated on khasra no.1059/928/809/3/77/3 having area 168 sqm map approved in the name of Smt. Sushma daughter of Sh. Amar Nath vide Nagar Parishad Solan resolution No. 219/2012 (23) dated 20.04.2012 in the year 2012 and the building is constructed at the site.
19. In building no. 10 owner is Smt. Sushma wife of Sh. Ravinder Kumar daughter of Sh. Amar Nath the building is situated on khasra no. 806/619/377 having area 169.68 sqm 4 biswa map approved in the name of Smt. Sushma daughter of Sh. Amar Nath vide Nagar Parishad Solan resolution No. 186/2007 (17) dated 18.06.2007 in the year 2007 and the building is constructed at the site.
20. In building no. 11 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on khasra no. 802/619/377 having area 169.68 sqm 4 biswa map approved in the name of Kanika vide nagar Parishad Solan resolution No. 331/2007(20) dated 28.09.2007 in the year 2007 and the building is constructed at the site.
21. In building no. 12 owner is Smt. Ruchika daughter of Smt. Sushma and the building is situated on khasra no.929/621/378/2/1 having area 848.10 sqm 1 bigha map approved in the name of Ruchika & Sushma vide nagar Parishad Solan resolution No. 403/2008(47) dated 27.12.2008 in the year 2008 and the building is constructed at the site.
22. In building no. 13 owner is Smt. Sushma, Ruchika, Nitika and Kanika and the building is situated on khasra no.



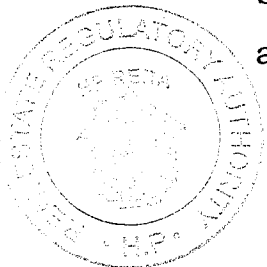
1188/1040/593/519/372/4/4 having area 2226 sqm 2 bigha 13 biswa map approved in the name of Smt. Sushma, Smt. Ruchika Smt. Nitika and Smt. Kanika vide Nagar Parishad Solan resolution No. 104/2016(29) dated 31.05.2016 two blocks are approved in the year 2016 and the building is constructed at the site.

23. In building no 14 owner is Smt. Ruchika daughter of Smt. Sushma and the building is situated on khasra no. 1217/1188/1040/593/519/372/4/3/5 having area 424.20 sqm 10 biswa map approved online in the name of Smt. Ruchika daughter of Smt. Sushma vide reference no.02201901827 dated 29.10.2019 in the year 2019 and the building is constructed at the site.
24. In building no.15 owner is Smt. Kanika the MC Solan was in search of the revenue record but the fact of the matter is that the building is constructed at the site.
25. In building no. 16 owner is Smt. Nitika daughter of Smt. Sushma and the building is situated on old khasra no. 1040/593/519/3/72/4/2/2 having area 210 sqm map approved in the name of Smt. Nitika daughter of Smt. Sushma vide Nagar Parishad Solan resolution No. 392/2013(11) dated 22.08.2013 in the year 2013 and the building is constructed at the site.
26. In building no 17 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on khasra no. 1188/1040/593/519/372/4/4 having area 8 biswa map approved in the name of Smt. Sushma, Smt. Ruchika, Smt. Nitika and Smt. Kanika vide Nagar Parishad Solan resolution No. 104/2016(29) dated 31.05.2016 two blocks approved 1



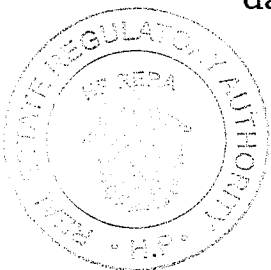
mentioned at para no. 22 & another is this one in the year 2016 and the building is constructed at the site.

27. In building no. 18 owner is Smt. Sushma daughter of Sh. Amarnath and the building is situated on khasra no. 371/2/5 having area 462 sqm map approved online in the name of Smt. Sushma daughter of Sh. Amarnath vide reference no. 02202202103 dated 22.02.2023 in the year 2023 and the building is constructed at site.
28. In building no 19 owner is Smt. Sushma daughter of Sh. Amarnath and the building is situated on khasra no 1177/464/372 having area 210 sqm 5 biswa map approved in the name of Smt. Sushma daughter of Sh. Amar Nath vide Nagar Parishad Solan resolution No. 661/2015 (38) dated 21/02/2015 in the year 2015 and the building is constructed at the site.
29. In building no 20 owner is Smt. Sushma daughter of Sh. Amarnath and the building is situated on khasra no 464/372/4 having area 294 sqm 7 biswa map approved in the name of Smt. Sushma daughter of Sh. Amar Nath vide Nagar Parishad Solan resolution No. 634/2014 (23) dated 28/11/2014 in the year 2014 and the building is constructed at the site.
30. In building no 21 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on khasra no. 118/1040/593/5/19/372/4/2 having area 294 sqm map approved online in the name Kanika daughter of Smt. Sushma of vide reference no. 02201801677 dated 29.01.2019 in the year 2019 and the building is constructed at the site.
31. In building no 22 owner is Smt. Sushma daughter of Sh. Amarnath wife of Ravinder Kumar Chopra and the building is situated on khasra no. 1188/1040/593/519/372/4/1 having area 169.68 sqm 4 biswa map approved online in the name of



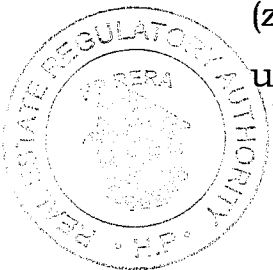
Smt. Sushma daughter of Sh. Amarnath vide reference no. 02201900214 dated 25.06.2019 in the year 2019 and the building is constructed at the site.

32. In building no 23 owner is Smt. Sushma daughter of Sh. Amarnath wife of Ravinder Kumar Chopra the building is situated on khasra no. 521/465/372 having area 212.10 sqm map approved in the name of Smt. Sushma daughter of Sh. Amarnath vide Nagar Parishad Solan resolution No. 503/10(28) dated 27.02.2010 in the year 2010 and vacant plot is there.
33. In building no 24 owner is Smt. Sushma daughter of Sh. Amarnath wife of Ravinder Kumar Chopra and the building is situated on khasra no. 515/463/372, 516/463/372 & 517/463/372/1 having area 714 sqm 17 Biswa map approved online in the name of Smt. Sushma daughter of Sh. Amarnath vide reference no. 02202302553 dated 18.03.2024 in the year 2024 and the building is under construction at site as at present plot development work is in progress.
34. In building no 25 owner is Smt. Sushma daughter of Sh. Amarnath wife of Ravinder Kumar Chopra and the building is situated on khasra no. 524/465/372 & 525 /373 having area 225.22 sqm 6 biswa map approved online in the name of Smt. Sushma daughter of Sh. Amarnath vide reference no. 02202201088 dated 15.07.2022 in the year 2022 construction has not started at site.
35. In building no. 26 owner is Smt. Sushma daughter of Sh. Amarnath and the building is situated on khasra no 1217/1188/1040/593/519/372/4/3/3/1 having area 168.68 sqm 4 biswa map approved online in the name of Smt. Sushma daughter of Sh. Amarnath vide reference No.02202100228 dated



31.07.2021 in the year 2021 and construction has not started at site.

36. In building no. 27 owner is Smt. Ruchika daughter of Smt. Sushma and the building is situated on khasra no. 518/463/372 & 517/463/372/2 having area 714 sqm 17 biswa map approved online in the name of Smt. Ruchika daughter of Smt. Sushma vide reference No. 02202302551 dated 18.03.2024 in the year 2024 and the building is under construction at site as at present plot development work is in progress.
37. In building no. 28 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on khasra no. 1217/1188/1040/593/519/372/6 having area 169.68 sqm 4 biswa map approved online in the name of Smt. Ruchika daughter of Smt. Sushma vide reference No. 02202000659 dated 28.09.2020 in the year 2020 and construction has not started at site.
38. From the aforesaid discussion it is absolutely clear that the blocks have been developed by Smt. Sushma wife of Ravinder Chopra Smt. Kanika, Smt. Ruchika and Smt. Nitika daughters of Ravinder Chopra and the sum total of the area on which these blocks have been constructed if calculated comes out to be approximately 11,683 sq mts. From the report of the MC Solan as well as ATP of HPRERA it is crystal clear that the common facilities, approach road of all the blocks are common/ same and it is a gated society. Further, there are documents on record to show that the entire project has been named S. Chopra Apartments. Therefore the respondents cannot escape from the fact that it is a Real Estate project as defined under Section 2 (zn) of the RERD Act, 2016. Further Section 3 (2) which reads as under:



Section 3 - Prior registration of real estate project with Real Estate Regulatory Authority.

(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:

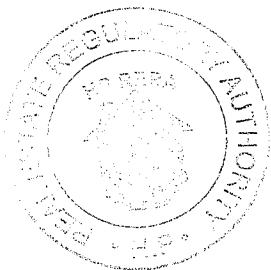
Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this 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 thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in subsection (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;

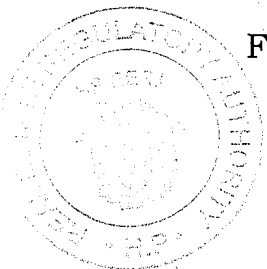


(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(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.

39. From the aforesaid section it is absolutely clear that where the area of the land proposed to developed inclusive of all phases exceeds 8 flats or apartments and also exceeds beyond 500 sqmtrs area under construction, the project is required to be registered with RERA. Further the project is required to be registered if the promoter has not received completion certificate as given in section 3 of the Act *ibid*. In the present case no completion certificate has been placed on record by the respondents and neither they have been able to successfully rebut the averments made by the complainant. Further in the report of the ATP it has come on record that there were total 13 number of dwelling units/ Flats are existing in Block no. 3. The violation of the RERD Act, 2016 is very evident. It has also come on record that the respondent has deviated from the original sanctioned plans and constructed flats even in the area(s) designated for parking. Therefore the project as a whole developed in phases having mutual 'common areas' and being a gated society is required to be mandatorily registered under Section 3 of the RERD Act, 2016 within a time bound manner. Further the Act commenced on 01.05.2017 and this being an on

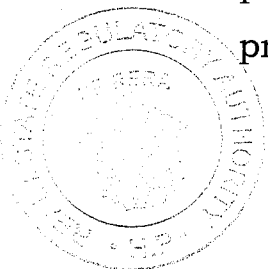


going project the promoters were required to register the project within a time bound manner. For failing to do so they are liable for penalty under Section 59 of the RERD Act,2016.

40. Further, it is clear that all the blocks have been developed by mother and her three daughters within the family therefore all four i.e. Sushma wife, Kanika, Ruchika and Nikita daughters of Ravinder Chopra are held to be co- promoters in this case. Even otherwise if individual shares of ownership of Kanika, Ruchika, Nitika and Sushma are drawn out on the basis of approval of maps as per report of MC Solan and building constructed thereto, their individual shares comfortably surpass the benchmark of 500 sq mtrs and as per Section 3 of the Act. Further, the paramount consideration as to whether a project is required to be registered under Section 3 is the intention of the parties therein. Since it is a matter of record that it was a gated society having common areas and road, by no stretch of imagination the defence of the respondents can be acceded to. It is therefore held that this project require registration under Section 3 of the RERD Act.

41. Whether the Complainant is entitled reliefs as claimed for in the complaint?

The primary claim of the complainant is for new Flat as per approved plan consisting of one bed room, one drawing cum dining, one kitchen two toilets cum bathroom and balcony provision for 1000 ltrs separate water tank designated four wheeler parking and proper plumbing. The sale deed in the aforesaid case took place on 25.09.2014 between Smt. Sushma wife of Sh. Ravinder Chopra and Vijay Kumar father of the present complainant. Further the claim of the complainant that present flat was temporary flat till proper Flat as per approved



drawings is delivered is dehors and beyond the pleadings in the case as well as there is no such clause in the sale deed which supports the claim of the complainant for delivery of a new flat. For coming to any conclusion on this issue, the important section i.e. required to be delved into is Section 14(3) which reads as under:

Section 14 Adherence to sanctioned plans and project specifications by the promoter.

(1).....

(2).....

(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.

From the bare reading of this provision it is clear that in case of any structural defect for any defect of workmanship, quality **or provision of services or any other obligations of the promoter** as per the agreement for sale is brought to the notice of the promoter within a period of five years, it shall be the duty of the promoter to rectify such defects within further thirty days. The primary concern here for this Authority is that such defects of quality or provision or for any other obligations have to be brought to the notice of the promoter within **five years** from the date of taking over possession. In this case the sale deed i.e. appended on record is dated 25.09.2014. As per clause 4 of the aforesaid sale deed the actual vacant and physical possession of

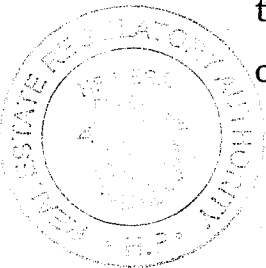


the flat in question was delivered to the complainant. Since the possession was delivered to the complainant on 25.09.2014 i.e. the date of execution of the sale deed. There is nothing on record that the complainant had raised the issue of provision of services to the promoter within five years from the date of the execution of sale deed where by the possession was delivered. Therefore, their claim by way of this complaint is held to be barred by time and is much beyond the period of five years as apparently the claim has been raised for the first time in the year 2024, by way of filing this complaint, which has been filed after a period of ten years. Therefore, their claim cannot be adjudicated upon being barred by time under the provision of section 14 (3). In view of the above the individual claims of the complainant for defects in workmanship, quality and provision of services or for other obligations cannot be adjudicated upon.

44. Relief-

Keeping in view the above mentioned facts, this Authority in exercise of powers vested in it under various provisions of the Act, rules and regulations made there under, issues the following orders/directions:

- a. The project as a whole is developed in twenty eight Blocks having mutual 'common areas' and being a gated society is required to be registered under Section 3 of the RERD Act, 2016. The promoters are directed to apply for registration within one month from passing of this order.
- b. The RERD Act, 2016 commenced on 01.05.2017 and this being an on going project, the promoters were required to register the project with HPRERA in time. For failing to do so they are liable for penalty of Rs three lakhs under Section 59 of the RERD Act, 2016.



- c. The individual claims filed by the complainant cannot be adjudicated upon being time barred under the provision of section 14 (3).

skant

Dr. Shrikant Baldi
CHAIRPERSON

