

**REAL ESTATE REGULATORY AUTHORITY,  
HIMACHAL PRADESH**

**In the matter of:-**

**Complaint No. HPRERA/OFL/2021-46**

Sh. Ram Lok Moudgil,  
Chanderlok Colony Ward No. 4, Una  
District Una (H.P.)

.....Complainant

**Versus**

Sh. Surinder Mohan President ,  
House No. 66-67, Chanderlok Colony,  
Ward No. 4, Una , District Una (H.P.)

.....Respondents

**Present:** - Sh. Ram Lok Moudgil, Complainant in person  
Sh. Sh. Surinder Mohan, President, Respondent  
Shri Abhishek Sood , Assistant District Attorney for  
RERA Himachal Pradesh

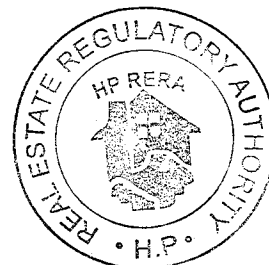
**Final Date of Hearing (Through WebEx): -08.11.2021**

**Date of pronouncement of Order: - 06.12.2021**

**ORDER**

**CORAM: - Chairman and both the Members**

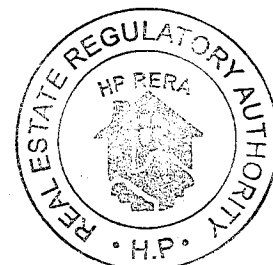
The present matter refers to Complaint filed under the provisions of the Real Estate (Regulation and Development) Act, 2016 (herein after referred to as the Act) against Chanderlok Society, Una seeking the following relief:



**“It is humbly prayed that no new plot be carved out from land which has been left for the road and septic tank rather it should be used for greenery and a thorough investigation be got conducted and provide relief to the residents from the mental stress and tension in this era of COVID 19 Pandemic.”**

1. **Facts in case of complaint**

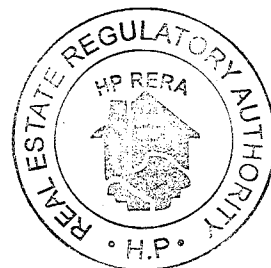
Sh. Ram Kumar Moudgil filed a complaint before the authority on 28.07.2021 in “Form-M”. It has been pleaded in the complaint that the site plan of the Chanderlok Colony Ward No.4, Una was provisionally approved by the Town and Country Planning Department in the year 1993 which was finally approved in the year 2007. It was further pleaded that the Town & Country Planning Department has approved the site plan with rider of three conditions and as per condition No. 3 it was stipulated that there will be no change in the approved site plan but despite that the Society by violating the norms and rules of the Society wants to sell the same. As per the Town and Country Planning Rules, it is mandatory that 10% area of the colony is required to be reserved for greenery. It was further alleged that in the Chanderlok Colony instead of 2231 Sq. Mt. only 600 sq. mts Area has been left for greenery, which is a clear cut violation of the norms and rules of the Town and Country Planning Act. It was further alleged that the society is planning to sell the land



which has been kept reserved for septic Tank and road, that too without obtaining required approval from the competent authority. It was further pleaded that all the members of the society have been allotted plots in the Society and no new member be admitted or new plot be carved out from land which has been left for the road and septic tank.

**2. Reply by the Respondent:**

The respondent in his reply has categorically denied that the area reserved for greenery has been reduced. The contention of the complainant that the green area in the society is less than what is prescribed in the rules of T&CP, was denied. It was submitted that the Town and Country Planning department has approved the site plan vide their letter No. 126 dated 9.8.2007. Further it was pleaded no change has been made in the status of site and the approved plan. It was further pleaded that the green area in the society is as per the approved site plan. The contention of the complainant that the society is planning to sell the land reserved for septic tank and road without the approval of the competent authority has been denied. However it was pleaded that a case for change of the use of the land reserved for septic tank was taken up with the Municipal Committee, Una who further referred the case to the T&CP Deptt. Una . On the advise of Assistant Town Planner Una, Municipal Committee Una has forwarded this case to the Director, Town and Country Planning,



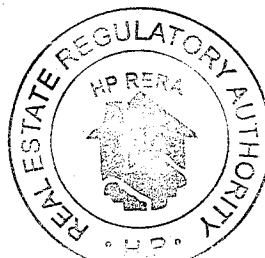
Shimla vide letter dated 12.7.2021 for assistance and clarification. It was alleged that the complainant has himself admitted that the provision of the supply of drinking water and sewerage system has already been set up in the colony. It was submitted that the society is well within its rights to make best use of the land of the society. It was further pleaded that actions of the society are taken as per will of majority of the members.

**3. Rejoinder**

In the rejoinder the facts contained in the reply have been denied and the pleading made in the complaint have been reiterated and reaffirmed.

**4. Order of The Authority for a factual site report dated 12.10.2021**

The issue raised by the complainant in the present complaint was that the society by violating the terms and conditions of the sanction accorded by the Department of Town and Country Planning H.P is planning to sell out the land which was reserved for septic tank and road that too without obtaining prior approval from the competent Authority. Further the project in question is developed on land measuring more than 500 sq. mts and the same was not registered with this Authority. Therefore on 12.10.2021 the Authority directed Assistant Town Planner to visit the site to do spot inspection of the project in presence of both the contending parties and submit detailed report on the two issues firstly the issue of registration of the project



with the Authority and secondly to report on the factual aspect of the issues raised by the parties.

The Asstt town planner of this Authority visited the site on 25<sup>th</sup> October, 2021 at 2.00PM and in the presence of both the parties did spot inspection and gave a detailed report dated 28.10.2021. The contents of the site inspection report are as under

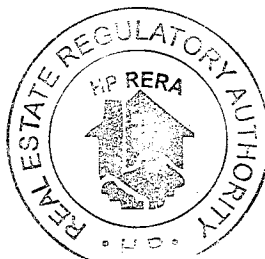
*“ In compliance to Order dated 12.10.2021 of the Himachal Pradesh Real Estate Regulatory Authority (HP RERA), the site of Chanderlok House Building Co-operative Society Ltd, Ward No-4 Una, District Una Himachal Pradesh was visited by the undersigned on 25.10.2021 at 2.00 PM onwards.*

*As directed by the HP RERA in its Order dated 12.10.2021, and the issues (1) regarding registration of the project with the Authority in terms of the H.P. Real Estate (Regulation and Development) Act, 2016 and Rules and Regulation made there under (2) the factual position on the spot qua the relief claimed have been examined as under:-*

**Issue No-1**

*The Sub division of the land of the Chanderlok society was initially approved by the Town Country Planning Office, Una in the year 1993 and latter on revised map was approved by the Municipal Council, Una in the Year 2007. All the 81 plots carved in the society have been allotted to the member of society, out of which some plots are constructed and some are vacant. During the visit it came to the notice of the under signed that the fresh revised proposal was submitted by the society for carving out a new residential plot by clubbing the common area of land reserved for the septic tank and road right side on the plot no 59 . The proposal has been forwarded by the Municipal Council Una to Director Town and Country Planning Department for change of land use of plot/land reserved for septic tank and road to residential use which has been rejected by the Directo ,Town and Country Planning Department vide letter dated 06.10.2021 copy is enclosed herewith at **Annexure-B**.*

**Issue No-2**



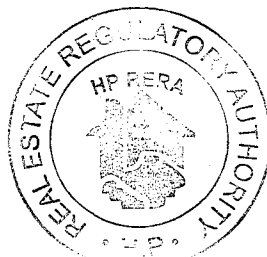
*During the site inspection it has been observed that the land/plot earmarked for site in the revised approved plan in the year 2007 measuring at site 20.00 mt x 9.00mt is vacant and some ornamental trees are planted on the edges of the boundary of plot ( **as shown in Photo No-1**). There is 5.00 mt wide road existing at site between the line of plot no 59 and 58 upto the boundary wall of the colony as approved in the revised plan ( **as shown in Photo No-2**). and another 5.00 mt road is also existing at site between the right side of the plot no 59 on which building has already been constructed and land reserved for the use of septic tank up to the boundary wall of the colony ( as shown in Photo No-3).*

*In view of above it is submitted, that since the project was approved in the year 1993 and further revised in the year 2007 i.e. more than 13 years ago and in the meantime all the plots have been allotted to the members of the society and development works in term of road development works , laying of sewerage lines etc. has been carried out at site. More ever there was no provisions in the HPTCP Act, 1977 and rules made there under which mandated society to get the completion certificate. The latest amendment made in HPTCP Rules on 20.08.2020 in terms of building is also silent about plotted colony.*

*However, the report is submitted for your kind perusal and taking appropriate decision in the matter under consideration, please. “*

#### **4. Arguments-**

The arguments in the case were heard on 8<sup>th</sup> November, 2021. In the arguments both the parties made their submissions based on their pleadings and did not argue anything other than the averments made by them in their pleadings. On being specifically asked by the Authority as to whether any of the parties had any objections to the report given by ATP, they replied that they agree with and admit the report given by the ATP and have nothing adverse to say against it.

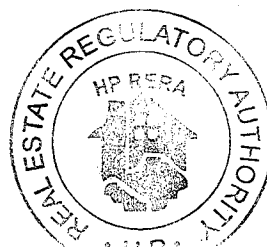


## 5. Findings and conclusion-

We have heard the arguments advanced by the Ld. Counsels 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 the issue that requires the consideration and is to be dealt with as a preliminary issue before deciding all the other issues is:-

### **Whether the Authority has jurisdiction to decide/ adjudicate upon the present complaint?**

To decide whether Authority has jurisdiction to decide/adjudicate upon the present complaint it becomes imperative to discuss the report given by the ATP. The ATP in its reports has submitted that the sub division of the land of the Chanderlok society was initially approved by the Town Country Planning Office, Una in the year 1993 and latter on revised map was approved by the Municipal Council, Una in the Year 2007. All the 81 plots carved in the society have been allotted to the members of society, out of which some plots are constructed and some are vacant. In view of aforesaid it was submitted by the ATP in the report that since the project was approved in the year 1993 and further revised in the year 2007 i.e more than 13 years ago and in the mean time all the plots have been allotted to the members of the society and further all the development



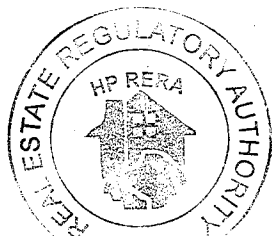
woks such as road development works, laying of sewerage lines etc has been carried out at site and the society is inhabited/occupied by residents. Further it was also submitted in the report that at the time when the map of the project was approved i.e. 1993 or revised i.e. 2007, there was no provision in the HPTCP Act, 1977 and rules made there under which mandated society to get the completion certificate. It was also submitted that even the latest amendment in HPTCP Rules on 20.08.2020 is silent about completion certificate qua the plotted colonies.

To address the issue at hand pertaining to the applicability of the Act to the projects where in all the developments works are complete and nothing remains to be done, it is pertinent to discuss the provisions of Section 3 of the Act. The same are being reproduced hereunder -

“3. (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

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

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project





to register with the Authority, and the provisions of this Act or the rules and regulations made 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:

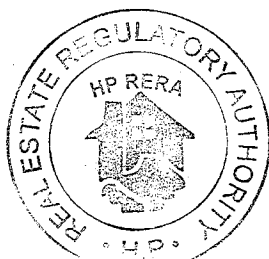
Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(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.”

The section, in general, imposes an obligation on a ‘promoter’ to get a real estate project registered with the Real Estate Regulatory Authority established under the Act before advertising, marketing, selling or offering for sale or inviting any person to purchase any plot, apartment or building, as the case may be, in such real estate project. Where the project has received its completion certificate or where the plots have been sold and all developments works are complete before



the commencement of the Act, the rigours of Section 3 of the Act will not apply.

Section 2 (q) of the Act defines completion certificate as under

(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

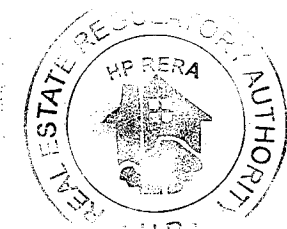
Thus a promoter who offers his project for sale after the coming into force of the Act is required to register the project with the Authority under the provisions of the Act under Section 3 (1). The first proviso to Section 3 (1) of the Act, however requires that projects that may have started before the coming into force of the Act but are not complete on the date of coming into force of the Act, i.e. have not obtained completion certificate shall also require registration under the Act. Therefore, to sum up it means that apart from the new real estate projects that are developed after the commencement of the Act, the ongoing projects on the date of commencement of the Act also require registration under the Act. An ongoing project means any project for which completion certificate has not been issued by the competent authority. The completion certificate, as described in section (2)(n)(q) of The Real Estate (Regulation and Development Act) 2016, is issued only after the real estate project has been developed



according to the sanctioned plan, layout plan and specifications as approved by the competent authority under the local laws.

So, from the above legal position, it comes out that, there should be a completion certificate with regard to the real estate project duly issued by the competent authority to the effect that the project has been developed according to the sanction plan, lay out plan and specifications for it to satisfy the first proviso of section 3(1) of the Act *ibid* and be exempted from the registration.

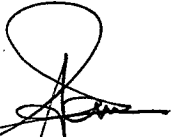
However, to adjudicate the issue of completed projects that could not be accorded the completion certificate in the absence of any statutory provisions, rules or bylaws of Deptt of Town and Country planning and/ or Urban Development Deptt. in the state of Himachal Pradesh, the authority has relied upon the language of the completion certificate, development, development works, and external development works as provided for in the Act and on the perusal of the report of Asstt Town Planner of the Authority observed that all the development works including external development works have been completed in the colony, a plotted project, long back, much before 1.5.2017, as mentioned in section 3 of the Act but sans completion certificate in the absence of there being any provision for applying and according completion certificate in any of the local laws. In present facts there is no grievance of the complainant against the development works being incomplete



therefore it can safely be concluded that development works were complete much prior to the date of commencement of the Act. To conclude the project in question is not a registerable project and it has been clearly held by the Division Bench of the Bombay High Court in case titles as Neelkamal Realtors Suburban Pvt. Ltd. and Ors. Versus Union of India and Ors Manu/MH/3135/2017; 2018(1)RCR (Civil) 298 that the Act is applicable only to projects which are required to be registered under the Act and thus the complaint in respect of the project not requiring registration cannot be maintainable. Therefore, the Authority has no jurisdiction to decide the present case as this project was completed before the commencement of operation of the Real Estate (Regulation and Development) Act, 2016 and thus the complaint is held to be not maintainable before the Authority.

  
**B.C. Badalia**  
**MEMBER**

  
**Dr. Shrikant Baldi**  
**CHAIRPERSON**

  
**Rajeev Verma**  
**MEMBER**

