

REAL ESTATE REGULATORY AUTHORITY

HIMACHAL PRADESH

Complaint

No.HPRERA2022025/C

- 1 Parul Singal daughter of Late Sh. Ashok Kumar Jain, resident of House No.892, Sector 12, Panchkula 134112 Haryana
- 2 Vipin Kumar Singal, Son of Late Sh. Om Prakash Singhal, resident of House No.892, Sector 12, Panchkula 134112 Haryana
.....Complainant(s)

VERSUS

- 1 Ahlawat Developers and Promoters, through its partners; Khasra No.602-608,610-611, Malku Majra (Opposite Dr. Reddy Laboratories) Tehsil Baddi, Solan Himachal Pradesh 173205 also resident of M/s Ahlawat Developer and Promoter SCO 124, First Floor, Swastik Vihar, Sector 5, MDC, Panchkula 134 109
- 2 Department of Town and Country Planning, Himachal Pradesh, through its director; Yojna Bhawan, Block No.32A, SDA Complex Vikas Nagar, Shimla 171009, Himachal Pradesh
- 3 Baddi Barotiwala Nalagarh Development Authority, through its Chief Executive Officer; EPIP-I Jharmahri, Baddi 173205, District Solan, Himachal Pradesh.
..... Respondent (s)

Present:- Sh. Vishal Singhal Ld. Counsel for the complainant(s)
Parul Singhal and Vipin Kumar Singhal

Mrs. Neha Gupta along with Sh. Jagjit Singh Ahlawat
respondent promoter Himachal One Baddi

Final date of hearing: 03.01.2024

Date of pronouncement of order: 07.02.2024

Order

Coram: Chairperson and Member

1. Brief facts of the Complaint:

The fact giving rise to the present complaint are that respondent no. 2 & respondent no. 3 i.e. The Department of Town and Country Planning & Baddi Barotiwala Nalagarh Development Authority, Himachal Pradesh are the competent authorities and are necessary parties for the adjudication of the present complaint under Section 7 of the Real Estate Regulation & Development Act, 2016. The respondents were accused of violations of law and contraventions of various provisions of the RERA Act, 2016, particularly respondent no. 1 / promoter, who failed to register his project 'HIMACHAL ONE BADDI' with H.P. RERA within 3 months of the Application of RERA Act in Himachal Pradesh. Further it was alleged that the respondent no. 1 has prima facie violated the provisions of Section 7 of the Act by adopting unfair trade practices, fraudulent practices and false and misleading representations. Further the respondent no. 1 has failed to discharge their functions and duties as envisaged under Section 11 of the Act. Further the respondent no. 1 has prima facie violated the provisions of Section 12 of the Act by making false and misleading advertisements and prospectus. Further the respondent no.1 has prima facie violated the provisions of Section 13 of the Act by accepting advances without executing agreements as provided in the Himachal Pradesh RERA Rules & Regulations. Further the respondent no. 1 has prima facie violated the provisions of the Section 14 of Act by changing the layout plan and scheme of the Project and respondent no. 2 & 3 are prima facie guilty of approval of revised project layout illegally in contravention of Section 14. of the Act

without having firstly following the mandatory provisions of registration of the project under Section 3 of the RERD Act. Additionally, it was claimed that respondent no. 1 had ostensibly contravened Section 15 of the Act through the illicit carving of plots and the transfer of the housing project land Himachal One Baddi's title via subdivision of land. Further it was alleged that the respondent no. 1 has prima facie violated the provisions of Section 17 of the Act by carrying out conveyance deeds of subdivided land in favor of third party without having any occupation or completion certificate for the project. Further it was alleged that the complainants being aggrieved by the aforementioned illegal and malafide acts of the respondents are seeking revocation of registration of Housing Project HIMACHAL ONE BADDI under Section 7 of The Real Estate Regulation & Development Act, 2016 and to handover the project to the Association of Allottees as provided under Section 8 of Act.

2. It was further stated that the respondent no. 1 is guilty of making false and misleading representation regarding the services to be provided to allottees and is guilty of unfair trade practice as provided under Section 7 of the Act. Furthermore, it was mentioned that respondent no. 1 had previously provided for the construction of a club house, convenience stores, nursery school, CRECHE, and EWS units in the aforementioned housing project—amenities which are being denied now. It was further alleged that the respondent No.2 & respondent No.3 are hand in glove with respondent No.1 and have illegally and malafidely issued a Letter of Intent for the change in the layout and scheme of the project on dated 20.07.2018 wherein they allowed for the sub-division of land in contravention of Act *ibid*. With the aforesaid pleadings it was prayed to revoke the registration of the

Real Estate project under Section 7 of the RERD Act, 2016. It was further prayed to restore the original scheme and layout plan of the housing project originally approved by the respondent no. 2 and 3 on dated 17.11.2007 and quash the revised layout map and revised scheme of the housing project approved on dated 16.04.2019 in contravention of the RERD Act, 2016. It was further prayed that penalty be imposed on respondent number 1, under Section 59 of the RERD Act for non registration of their ongoing project within stipulated time. Further, a prayer was also made to hold respondent 2 & 3 guilty of approving the revised layout scheme / map in connivance with respondent no.1 on 16.04.2019 without complying with Section 14(2) of the RERD Act. It was further prayed that the project after revocation under Section 7 shall be handed over to the association of allottees under Section 8 of the Act *ibid*.

3. Reply on behalf of respondent No.1

It was submitted on behalf of the respondent no. 1 that this complaint is an attempt on the part of complainant to obstruct the completion of the project which has attained the status of deemed completion as it has all the facilities as assured by the Respondent No.1. It was further stated that the project being a residential project allowed even non-residents of State of Himachal Pradesh to purchase the flat(s) in the project for their residential needs. It was further stated that the project offered the facilities as per the building plans approved by BBND and no facility of crèche, nursery school or EWS units was proposed by the Respondent No.1. It was further stated that every purchaser who is a non agriculturist is permitted to buy but is under legal obligation to seek permission under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. It

was further denied that respondent No.1 had allured the complainants to purchase unit(s) in its project. It was further stated that the condition of Section 118 of the HP Tenancy and Land Reforms Act 1972 was known to the complainant No 2 as her father in law had served in HP State Electricity Board for more than 35 years before his retirement much before Flat No.501 was purchased by the Complainant No 1. It was further stated that as per Clause 13 of the agreement for sale dated 09.09.2015, the complainant has given his free consent to the respondent no. 1 to make such variations, additions, alteration and modifications in the plans, designs, specifications in the project. It was further stated that the project is duly registered with the HP RERA and all licenses so required for completion of the project have either been granted or are in the process of being granted. With these pleadings the respondent no. 1 prayed for dismissal of the complaint.

4. Reply by respondent no. 2-

Vide zimni order of this Authority dated 21.01.2023 it was recorded that respondent no. 2 i.e. Department of TCP shall adopt the reply on behalf of respondent no.3.

5. Reply by respondent no. 3-

It was pleaded on behalf of respondent no. 3 that the planning permission on land comprised in Khasra no. 602 to 608, 610 & 611 Measuring 20,304 Sqm (27-0 Bigha) situated at Mauja Malku majra, Tehsil Baddi, District Solan (H.P.) has been accorded vide this office letter no. BBNDA/BADDI/Case No. 1602/524-7369 dated 17-11-2007 for the construction of group housing as "Himachal One Baddi in favour of M/s Ahlawat Developer and Promoters". It was further submitted that the planning permission was accorded in favour of M/s Ahlawat

Developer and Promoters for the construction of 260 nos. of flats in 4 nos. of blocks namely A, B, C1 & C2 vide this office letter no. BBNDA/BADDI/Case No. 1602/524-7369 dated 17-11-2007 but respondent no. 1 constructed only 80 nos. of Flats in block A. The remaining land has been utilized by the respondent no. 1 for carving out of 70 nos. of residential plots instead of flats for which permission was accorded vide this office letter no. BBNDA-TCP-BADDI-Case No. 1602/BB-829 1-93 dated 27-10-2018. As per the office record the planning permissions on the above referred land has been accorded as per the prevailing law, Act, Rules and Regulations applicable. It was further submitted that the replying respondent-3 has not acted illegal and malafide as alleged by the complainants, while according the planning permission in favour of M/s Ahlawat Developer and Promoters for construction/ development of housing project. It was further submitted that the planning permission has been accorded as per the provisions of H.P. TCP Act, 1977, H.P. TCP Rules, 2014 and Regulations of Development Plan-2025 of BBN Special area. It was further submitted that the present construction/development under taken for 80 nos. of flats as well as sub-division of plots carved on remaining land is as per approved plan for which approval was accorded vide office letters dated 17-11-2007 & 27-10-2018. Further it is submitted that as per letter dated 17-11-2007 of this office the layout of housing project "Himachal One" is approved by BBNDA with the provisions of basic facilities such dispensary, shopping center, gym, community center and school etc. but developer has not provided these facilities till date at the site as alleged by the complainants. Further it is submitted that the completion/ occupation certificate of the housing project in question has not

been issued by the replying respondent-3 as respondent no. 1 has not obtained the consent to establish/ operate certificate from the HP Pollution Control Board as required before issue of part completion/occupation certificate as per letter dated 23-03-2021 of the Director, Town & Country Planning Department, Govt. of HP for running STP of housing project. In addition to this organized green parks as proposed to be developed for the housing project are yet to be constructed by the respondent no. 1/ builder. Further it is submitted the planning permission as per the provisions of HP TCP Act, 1977 for housing project in question on land measuring 27-0 Bigha, situated at Mauja Malkumajra, Tehsil Baddi, District Solan (H.P.)) has been accorded vide this office letter dated 17-11-2007 for construction of 260 nos. of flats. The builder has constructed 80 nos. of flats against 260 nos. of flats and remaining land of said project has been used for the carving out of 70 nos. of plots. It was further submitted that the facilities such as dispensary, gym, office space, community centre and park etc. have also been proposed in the revised layout plan approved by this office vide letter dated 16-04-2019 for sub-division of plots for residential use which were already proposed in the earlier layout plan approved vide letter dated 17-11-2007. But these facilities have not been developed by the developer on earmarked sites till date. Therefore completion/ occupation certificate so sought by developer has not been issued in favour of M/s Ahlawat Developer and Promoters by this office. It was further submitted that the permission for construction of housing project (260 nos. of flats) namely 'Himachal One' is approved by BBNDAs as per the provisions of H.P. TCP Act, 1977 on land measuring 27-00 bigha, situated at Mauja Malku Majra, Tehsil Baddi, District

Solan, H.P. in favor of M/s Ahlawat Developer & Promoters vide this office letter dated 7-11-2007. The above referred land was purchased by the said developer with due permission of the State Govt. letter no. रैव०-बी०-एफ०(10)-602/2006 dated 17-04-2007 based on the essentiality certificate issued by the Department of Housing vide their letter no. HSG-6(F) 6-34/2006 dated 26-07-2006. It was further submitted that the housing project has been registered by the RERA authority vide no. RERAHPSOP06180035 dated 04-03-2020, which is valid upto 03-03-2025. The planning permission of flats and plotted development of housing project has been considered in accordance with the provisions of definition of 'colony' as contained in the H.P. Town and Country Planning Act, 1977. It was further submitted that revised layout plan for sub-division of plots is as per the provisions of H.P. TCP Act, 1977, H.P. TCP Rules, 2014 and regulations of Development plan-2025 of BBN Special area. It was further submitted that the completion/occupation certificate has so far not been obtained by respondent no. 1 as they have not provided the consent to establish/operate NOC of HPPCB for obtaining CC/OC as per instruction(s) of the Director, TCP Department vide their letter dated 23-03-2021.

6. **Rejoinder**

In addition to the averment made in the complaint the contents whereof were re iterated in the rejoinder it was stated the office of the Deputy Commissioner, District Solan in its letter dated 16.05.2023 addressed to the Principal Secretary cum Financial Commissioner Revenue to the Government of Himachal Pradesh for grant of permission us 118 of the HP Tenancy and Land Reforms Act, 1972 has also categorically mentioned that, "It is pertinent to mention here that the Government vide clarification

No. Rev.B.N.(2)-23/2017 dated 21,11.2017 in the matter of M/s Omaxe Construction Ltd. has clarified that the permission granted for residential colony only includes built up structures and not plots". It was further stated that the sale of plots is the violation of Section 118 of H.P. Tenancy Land Reforms Act, 1972. It was further stated that in the instant case the allottees have paid advance amounts as consideration of built up flats, but sale deeds in respect of these have not been executed. It was further stated that the developer has violated terms of the permission by selling plots. It was further stated that the RERA Authority has been actively and consistently liaising with the Government of Himachal Pradesh in pursuit of obtaining the requisite permission under Section 118 of the HP Tenancy and Land Reforms Act, 1972, particularly for the genuine purchasers of flats within the Himachal One Baddi project. It was further stated that the Principal Secretary (Home/Vigilance) to the Govt. of Himachal Pradesh vide its Letter dated 16.08.2022 to the Principal Secretary (Revenue) to the Govt. of Himachal Pradesh has initiated appropriate action against various builders against whom Justice D.P. Sood (Retd.) commission has recommended stern action under HP Tenancy and Land Reforms Act, 1972, and HP Apartment and Property Regulation Act, 2005 in consultation with the Town and Country Planning Department and other concerned departments. It was further stated that the Principal Secretary (Revenue) to the Govt, of Himachal Pradesh vide its Letter dated 03.09.2022 addressed to the Deputy Commissioner Solan had again requested the Deputy Commissioner Solan to take immediate action in light of the observations of the Investigation Unit Shimla SV & ACB Special as per report submitted by Commission of Justice D.P. Sood

Inquiry against the 42 builders including respondent no. 1. It was further stated that the Principal Secretary (Revenue) while writing to the Deputy Commissioner vide Letter dated 03.07.2023 in the matter of grant of permission under Section 118 of the HP Tenancy and Land Reforms Act, 1972 has again strictly observed that the name of M/S Ahlawat Developers & Promoters is enlisted in the Justice D.P. Sood Commission and this fact was not examined by the office of the Deputy Commissioner for processing of applications under Section 118 of the HP Tenancy and Land Reforms Act, 1972. It was further stated that the Department of Vigilance vide its letter dated 16.08.2022 has pointed out that no action has been taken against the respondent no. 1 as mentioned in the report of D.P. Sood Commission and requested the office of the Deputy Commissioner to examine the issue properly in light of the facts and take appropriate action as per law and the cases for permission under Section 118 for the part of land be processed and recommended only if violation of Section 118 of the HP Tenancy and Land Reforms Act, 1972 is not established, after following due process of law.

7. Arguments by complainant-

It was argued that the present complaint has been filed under Section 7 for revocation of the registration of the project. It was argued that the respondent-promoter has failed to register their project "Himachal One Baddi" with the HPRERA Authority within 3 months of the RERA Act's application in Himachal Pradesh, violating Sections 4 and 5 of the Act. It was further argued that respondent no. 1 has violated Section 7 of the RERA Act, 2016 by engaging in unfair trade practices, irregularities, fraud, and false and misleading representation. It was further argued that additionally, respondent no. 1 did not fulfil their duty under

Section 11 of Act *ibid.* Respondent no. 1 also made deceptive advertisements and prospectuses, which is violation of Section 12 of Act. The RERD, rules & regulations prohibits accepting advances without executing agreement for sale, therefore respondent no. 1 violated Section 13 of the Act. It was further argued that respondents have changed the layout plan and scheme of the housing project. It was further argued that respondents 2 and 3 must also be held accountable for improperly authorising the alteration of project layout plan under Section 14 of the RERD Act 2016. It was further argued that the respondents violated Section 15 of the RERD Act, 2016 by illegally subdividing the housing project land and transferring ownership. It was further argued that Section 17 of the RERD Act, 2016 was violated when the respondent conveyed subdivided land to third parties without an occupation or completion certificate. It was further argued that Section 8 follows Section 7 and the association of allottees have the first right to be consulted for carrying out the remaining development of the project. It was argued that initially the sanctioned plan was approved on 17.11.2007 and the subsequent revision of the layout plan on 16.04.2019 in contravention of the RERD Act. It was argued that initially 260 flats were proposed to be constructed. However later the 80 flats were constructed. It was further argued that the common areas and services promised by the respondent no.1 have not been developed by him on the site till today. Further, it has also been argued that completion and occupancy certificate qua any of the parts of the project have not been obtained by respondent no.1. It was argued that an inquiry may be conducted against the approving Authority.

8. Arguments by respondent no. 1(Promoter)-

It was submitted on behalf of the respondent that the complaint itself is not maintainable as Section 7 has to be read in consonance with Section 31 of the RERD Act. It was stated that the complaint under Section 7 can be initiated on three different categories: first on the basis of complaint, suo moto or on the recommendation of the competent Authority. Further, Section 31 of the Act says that any aggrieved person may file the complaint. It was further argued that complainants in their individual capacity cannot file a complaint under Section 7 and complaint under the aforesaid Section can only be filed by an association of allottees which has been clearly held by Maharashtra RERA in its order no. 8/2019 dated 28.3.2019 copy of which has been supplied. Further it was argued that complainants here in i.e. Parul Singhal and Vipin Singhal have already filed their complaint under Section 31 of the RERD Act and the Authority has given its verdict on the same which is pending consideration in appeal before the Hon'ble Real Estate Appellate Tribunal Chandigarh. Initially unit 501 was allotted to them and thereafter they sought re-allotment of 103 which has been questioned by the respondent no. 1 and the case is pending before the Hon'ble Real Estate Appellate Tribunal on the issue as to who is the actual allottee in that case. It was further argued that the case of the complainants otherwise does not fall within the purview of Section 7 in as much as the Promoter has not done or committed any default in doing anything required by the Act. Further, the promoter has not violated any of the terms and conditions of the approval given by the competent Authority and the promoter is also not involved in any unfair practice or irregularities and indulge in any fraudulent practice. It was argued that the HPRERA started functioning on 1st January,

2020 and before that the designated Authority was exercising powers under the Act. Therefore it was argued that the Authority has come into existence on 1st January, 2020 and the projects were registered within three months i.e. on 4th March 2020 with H.P. RERA. The promoter argued that he has registered the project within three months from the establishment of the HPRERA. It was further argued that respondent no. 1 applied for registration with the HP RERA on 30th June, 2018. A letter dated 4th January, 2019 was written to the Chairman of HPRERA saying that the promoter had applied for registration of the project on 30th June, 2018 along with prescribed fees and documents. It was further asserted that even if the Authority had granted approval in 2020, the project's registration would be presumed within one month of the promoter's date of applying in the year 2018 on the concept of deemed completion as stated in Section 5. Furthermore, it was claimed that the respondent no. 1 has not yet violated any of the terms of the RERD Act and that the promoter is carrying out all of the activities and functions mandated by the Act. It was further argued that in terms of arguments made on behalf of the complainant qua violation of Section 12 the Authority may peruse the advertisement placed on record at page 47 of his complaint wherein it has been written in the advertisement that "non-himachalis can also buy" and the promoter has nowhere in the advertisement written that Section 118 of the H.P. Tenancy and Land Reforms Act permission is not required. It was further argued that the original agreement for sale was executed between Parul Singhal and the promoter for flat no.501. In the agreement for sale it was mentioned that the promoter being a non- agriculturist has sought the permission to construct the project under Section 118 of the HP Tenancy

and. Land Reforms Act, 1972. Further in clause 21 of the agreement for sale the allottee has undertaken to abide by all the laws, rules, regulations as applicable in the State of H.P. and therefore whatever requirement has to be complied by the allottee shall be binding on him and the allotted is required to obtain requisite permission as per existing law. Further it was argued that this condition of the agreement is binding on the allottee. It was further argued that the advertisement of the promoter that non-himachali(s) can buy only states that they are permitted to buy but they have to seek permission under the relevant laws applicable to the State of H.P. It was further argued that there is no violation of Section 13 of the RERD Act in as much as the promoter has executed the agreement for sale and thereafter taken the sale consideration. In the present case there is no violation of Section 14 as the complainant Smt. Parul Singhal in para 13 of the agreement for sale has given her consent for the revised approval which has been done by the competent Authority in accordance with law. It was further argued that the HPRERA was established in 2020 whereas all the revision have been done before the operation of RERA in H.P. It was further argued that Section 14(2) applies to association of allottees and only an association can raise the contention of 2/3rd consent as written under Section 14(2) of the RERD Act. It was further argued that in the State of H.P. the promoter has to take the occupation certificate/ completion certificate for each unit separately. It was further argued that for the agriculturist of Himachal Pradesh there is no issue and the sale deed can be executed immediately. It was further argued that maximum of the cases where the purchasers are agriculturist the sale deed(s) have been executed by the promoter. It was further argued that

the promoter, has in all the cases where the allottee has submitted their document(s) complete in all respects submitted the cases further to the competent Authority and it is not the fault of the promoter if the competent Authority is not granting any permission. It was further argued that the complainant whose allotment itself is in question in another litigation between the parties cannot ask for revocation of the project. It was further argued that from the perusal of the advertisement as well as the agreement for sale nowhere it has been mentioned that the promoter will provide nursery school, crèche in the advertisement. Further it has been argued that some of the facilities pointed by the BBND A in their reply have not been completed but it has been submitted that the present project in question is an ongoing project and the promoters abides to complete the same. It was further argued that the D.P Sood committee was formed to look into the violation if any committed by the promoters which basically was to find out the Benami transaction. There is no Benami Land transaction in the present project. The present land is exclusively of the promoter and he after getting requisite approval has developed the project. It was further argued that in the D.P Sood Committee report there is no conclusion that the present promoter is a violator. Further, it was argued that there are no conclusive findings by any of the authorities that the promoter has violated the provisions of Section 118 while developing the aforesaid project in question. It was further argued that 90 % of the construction is complete and the promoter has requisite funds to complete the remaining part of the project. It was further argued that the complainant herein under the garb of this complaint is trying to raise issues

having wide ramifications and is trying to increase and enlarge the scope of this complaint.

9. No arguments have been addressed on behalf of respondent no. 2 & 3-

10. Rebuttal arguments-

In rebuttal it was argued that a complaint under Section 7 can be filed by an allottee or even a person who is not an allottee of the project and therefore the complaint filed by the present complainant(s) under Section 7 is maintainable.

11. Conclusion/ Findings Of The Authority:-

We have heard the arguments advanced by the Ld. Counsels for the complainant(s) & the respondent 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. The issues raised by the complainant against the competent authority, which revised the plans are to be agitated under the TCP Act before the appropriate appellate authority. Hence, this Authority is of the view that the points of determination requires the consideration and adjudication, namely:-

- a. Whether the complaint under Section 7 of the Real Estate Regulation and Development Act, 2016 is maintainable on behalf of an individual or not?**
- b. Whether the promoter while getting revised scheme of the housing project approved on dated 16.04.2019 originally approved on dated 17.11.2007 committed violations and contravention of Section 14(2) of the RERD Act, 2016?**

- c. Whether respondent no. 1 for non registration of their ongoing project within stipulated time is liable to be imposed penalty under Section 59 of the RERD Act?**

12. Findings of the Authority-

- a. Whether the complaint under Section 7 of the Real Estate Regulation and Development Act, 2016 is maintainable on behalf of an individual or not?**

The primary relief claimed by the complainant(s) is under Section 7 of the RERD Act, 2016 for revocation of registration of the project. He has further prayed that after revocation of registration by HP RERA the project shall be handed over to association of allottees. The contention of the respondent no. 1 is that a complaint under Section 7 of the RERD Act, 2016 is maintainable only by an association of allottees as described in the RERD Act, 2016 and no complaint by an individual is maintainable against project. Further the respondent no. 1 has also placed reliance on order no. 8 of 2019 dated 28.03.2019 passed by Maharashtra Real Estate Regulatory.

- 13.** This Authority has heard both the sides. Before discussing this issue let us first go through Section 7 & 8 of the RERD Act, 2016.

Section 7- Revocation of registration.

(1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—

- (a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;*

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation. — For the purposes of this clause, the term “unfair practice means” a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(A) the practice of making any statement, whether in writing or by visible representation which,—

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;

(d) the promoter indulges in any fraudulent practices.

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the

allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

(4) The Authority, upon the revocation of the registration,—

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;

(b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;

(c) shall direct the bank holding the project bank account, specified under sub-clause (D) of clause (l) of subsection (2) of section 4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;

(d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.

Further Section 8 of the RERD Act, 2016 reads as under

Section 8 Obligation of Authority consequent upon lapse of or on revocation of registration. -Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:

Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:

Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.

By conjoint reading of Section 7 & 8 of the RERD Act, 2016 it transpires that if upon conditions satisfied in Section 7 the registration of the project is revoked it is a duty of the Authority to consult appropriate Government to take actions as it may deem fit. Such actions may include carrying out the remaining development works by the association of allottees or the competent authority. As per the second proviso to Section 8 of the Act after revocation of registration the association of allottees shall have the first right to carry out the remaining development works. Further this Authority has gone through the **order no. 8/ 2019 dated 28.03.2019 passed by Maharashtra RERA** wherein they have taken a decision that MAHA RERA shall only consider complaints for revocation when association of allottee is involved. Further it was held that association of allottees is association or society or co-operative society or a federation or any other body by what ever name called whether registered consisting of a majority of allottees i.e. not less than 51% members to whom plot or apartment or building have been allottees, sold or otherwise transferred. Further the **Maharashtra Real Estate Appellate Tribunal in appeal no. AT00500000052509 dated 2nd December, 2022 in case titled as Marvel Aquanas Co operative Housing Society Ltd. versus Marvel Promoters and Developers Pvt. Ltd.** has held

that Association of allottees is only competent to file complaints in respect of reliefs claimed under Section 7 & 8 of the RERD Act, 2016. This Authority relying on the aforesaid decision(s) is also of the considered view that complaint under Section 7 and 8 of the Act is maintainable by an association of allottees having not less than 51% members to whom plot or apartment or building has been sold or otherwise transferred and not by an individual. Section 7 cannot be read in isolation and has to be read with Section 8 as well which mandates that in case the project registration is revoked the first right to carry out with the remaining development works is of the association. No complaint has been filed by the Association of allottees of the project. This Authority has to strike a balance between rights of an individual as well as rights of the association as a whole. If the association is not before us to get the project registration revoked, we presume that they do not intend the project registration to be revoked. Meaning thereby that they have no such grievance against the promoter and they want to continue with the promoter and want him to complete the remaining development works of the project. Therefore it can safely be held that the complaint against revocation of registration of the project is only maintainable if filed by the "association of allottees" as it can be the AOA along who can be said to be an "aggrieved person" under Section 31 for the purpose of seeking relief under Section 7/8 of the RERD Act, 2016. Permitting individual complaints on the issue of revocation would lead to chaos and unnecessary litigation in every project as then any allottee in order to settle personal issues with the promoter may file such complaints and expect action from the Authority, which may not be in the

interest of the project as a whole as well as for other allottees or association of allottees.

14. b. Whether the promoter while getting revised scheme of the housing project approved on dated 16.04.2019 (originally approved on dated 17.11.2007) committed violations and contravention of Section 14(2) of the RERD Act, 2016?

It is the case of the complainant that the initial plan of the project was sanctioned by the competent authority on 17.11.2007. It was further the case of the complainant that the planning permission was accorded in favour of M/s Ahlawat Developer and Promoters for the construction of 260 nos. of flats in 4 nos. of blocks namely A, B, C1 & C2 vide this office letter no. BBNDA/BADDI/Case No. 1602/524-7369 dated 17-11-2007 but respondent no. 1 constructed only 80 nos. of Flats in block A. The remaining land has been utilized by the respondent no. 1 for carving out of 70 nos. of residential plots instead of flats for which planning permission was accorded on 16.04.2019. The case of the complainant is that the revision in sanction plans was done without complying with the mandate of Section 14(2) of the RERD Ac, 2016 and in connivance with the respondent no. 2 & 3. The reply of the respondent no. 2 & 3 is that plans were revised in accordance with law as per the prevailing law, Act, Rules and Regulations applicable. This Authority confers itself no jurisdiction to delve further into the issue of connivance as alleged by the complainant and has to believe the version of respondent no. 2 & 3 which are governmental authorities. However on the issue of non-compliance of the mandate of Section 14(2) of the Act this Authority found nothing in the reply of the respondent no. 1 that they had taken consent of at least 2/3rd allottees, who have taken apartments in the project. The

relevant sections pertaining to the issue discussed herein above came into force on 1.5.2017 and the plans were revised on 16.04.2019. Since the Act was already in operation when the plans were revised and ignorance of law is no excuse therefore it was the bounden duty of respondent no. 1 as a promoter to comply with Section 14(2) of the Act which reads as under

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

(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and

verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.— For the purpose of this clause, minor additions or alterations excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.— For the purpose of this clause, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from

the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

Therefore it is clear from the bare reading of the aforesaid section that respondent no. 1 was required to obtain 2/3rd consent before making any additions or alterations in the specifications of the project by revising the plans (original approved on 17.11.2007) on 16.04.2019 and is liable for penalty.

For seeking compensation the complainant is at liberty to approach adjudicating officer under Section 71 & 72 of the Act.

15. Whether respondent no. 1 for non registration of their ongoing project within stipulated time is liable to be imposed penalty under Section 59 of the RERD Act?

It was the case of the complainant that respondent no. 1 did not register their on going project with in stipulated time and is liable to penalised under Section 59 of the RERD Act, 2016. The respondent no. 1 has rebutted the contention of the complainant and submitted that the registration of the project was applied in time. It was the contention on behalf of respondent no. 1 that HPRERA started functioning on 1st January, 2020 and before that the designated Authority was exercising powers under the Act. Therefore, the Authority has come into existence on 1st January, 2020 and the project was registered within three months i.e. on 4th March 2020 with H.P. RERA. It was further the contention of respondent no. 1 that they had applied for registration with the RERA on 30th June, 2018.

16. This Authority has heard the parties on this issue and also gone through the record of the case as well as the registration portal of the website of HP RERA to check as to when was the registration applied. This Authority observed that the respondent no. 1 applied for registration on 30th June, 2018 and the approval was granted on 4th March, 2020. Further the HP Real Estate (Regulation and Development) rules 2017 were notified in the official gazette on 7.10.2017. The Designated Authority under the RERD Act, 2016 was the Director TCP who vide notification/ circular dated 13.9.2017 had conveyed to the general public qua the development of dedicated Web Portal and urged all the project promoters to get their on going/ new projects registered with in terms of the provisions of the Act. Therefore it cannot be said that there was any gross delay in applying for registration which calls for imposition of penalty under Section 59 of the Act on behalf of this Authority.

17. No other point urged or argued.

18. **RELIEF:-**

Keeping in view the abovementioned facts, this Authority in exercise of powers vested in it under various provisions of the Act issues the following orders/directions:

- i. The Complaint filed by complainant(s) herein for revocation of the project under Section 7 and 8 of the Real Estate (Regulation and Development) Act, 2016 is held to be not maintainable, in view of absence of complaint by the association of allottees/majority of allottees.
- ii. The respondent no. 1 /promoter is held liable to a penalty of Rs One Lakh for violating the provisions of Section 14 (2) of the Act.

iii. The complainant is at liberty to approach the adjudicating officer for compensation if any under Section 71 and 72 of the Act.

B. Badalia
B.C. Badalia
MEMBER

SKant
Dr. Shrikant Baldi
CHAIRPERSON