

**REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH**

In the matter of:-

Smt. Nisha Singh, A-17. Neeti Bagh,
Ground Floor, New Delhi-110049

.....Complainant

Versus

1. M/s Rajdeep & Company Infrastructure Pvt. Ltd.
SCO 12, 1st Floor, Holywood Plaza, VIP Road,
Zirakpur (Punjab)
2. Sh. Rajdeep Sharma S/O Sh. Sansar Chand Tehsil Rohru, Distt. Shimla

.....Non-Complainant/Respondents

Complaint no. RERA/HPSHCTA/ 06200025

Present: - Smt. Nisha Singh with Advocate Shri Sameer Thakur for complainant.

Shri Rishi Kaushal Advocate for respondents

**Shri Mayank Manta, Assistant District Attorney for
State of Himachal Pradesh/ RERA Himachal
Pradesh.**

Final Date of Hearing (Through WebEx): 19.11.2020.

Date of pronouncement of Order: 17.12.2020.

ORDER

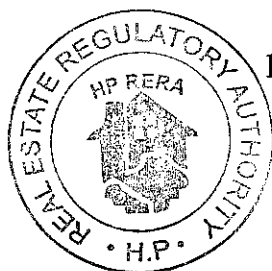
CORAM: - Chairperson and both members RERA



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

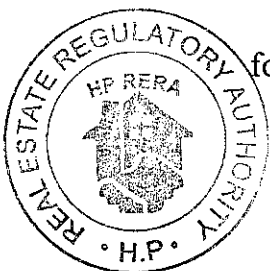
Facts mentioned in the complaint:-

2. That the Complainants Smt. Nisha Singh filed an online Complaint on 8th July, 2020 before this Authority in 'Form-M' bearing Complaint no. RERA/HPSHCTA/ 06200025 of the HP Real Estate (Regulation & Development) Rules' 2017. As per the complaint, it has been alleged that she purchased a flat No. 302 in block A of Claridges Residency, Bharari vide sale deed executed on 7th October, 2016 . She has further submitted that she has been trying for last three and half years to get mutation of above mentioned flat done. Builder is always making some or other excuse to not do the same.
3. She needs mutation done in her name and NOC for domestic water and electricity connections. Her Sale deed clearly mentions (Refer clause 12)" that the Seller will be liable to provide No Objection Certificate/ affidavit for the installation

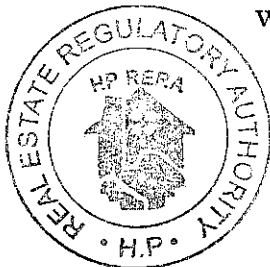


of water and electricity connections. Further, it also state “seller will also liable to provide space for installation of Water tank. However, builder is not providing NOC and space for water tank.

4. Builder is asking to pay maintenance charges which is not mentioned in the sale deed. Further, he earlier asked to pay Rs. 18,000/- per year as maintenance charges. Then last year he started asking for Rs. 24,000/- per year plus GST @ 18% as maintenance charges. He is not doing any maintenance and the residents of Claridges would like to do our own maintenance which can be shared by all flat owners. Builder is threatening to cut off our water unless we pay maintenance charges, because of which we are being forced to pay his arbitrary maintenance charges.
5. Last year in August, 2019, when he asked for maintenance charges, she asked him to supply her with a contract regarding maintenance and what all is included in same. However, he refused to give anything in writing.
6. The builder charges high and arbitrary electricity charges and they are forced to pay same, as he is not giving NOC to apply for her own electricity connection.



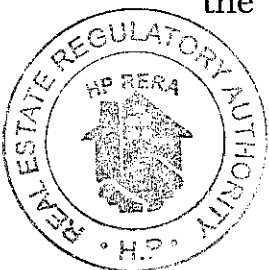
7. As per the sale deed, the builder was liable to provide her one dedicated parking space for which she had paid an extra sum of Rs. 1,00,000/- at the time of purchase of the flat but the same has not been provided.
8. Further, she has paid Rs, 50,000/- plus tax for mandatory club membership, but the premises set aside for aforementioned club are being used by the builder commercially and no such facility is being provided to the flat owners.
9. She prayed that builder be directed to carry out mutation for flat No. 302 in Block A of Claridges Residency Bharari and provide NOC for the separate domestic water and electricity connections. She prayed that builder be directed to provide her a space in Block A for the installation of a water tank of the capacity of 1000 litres.
10. She has asked for the following reliefs:-
 - a) I, Nisha Singh, pray that the builder be directed to carry out mutation for Flat No. 302 in Block A of Claridges Residency, Bharari, at the earliest,
 - b) I pray that the builder be directed to subsequently provide me the NOC for the separate domestic water and electricity connection.
 - c) I pray that the builder be directed to provide me a space for installation of my water and electricity meters in Block A, where my flat is located.



- d) As per my sale deed, I also request that the builder be directed to provide me a space in Block A for the installation of a water tank of the capacity of 1000 litres.
- e) I pray that the builder be directed to provide me a dedicated parking spot, as per my sale deed.
- f) I pray builder be directed to either provide club facilities or refund money paid by me for same.
- g) I pray the builder be directed to stop harassing me for maintenance charges as he is not doing any maintenance, and that we be allowed to make our own arrangement for maintenance, sharing costs of common facilities with other flat owners in Block A.
- h) As I am a woman living alone, I pray that the builder and his staff be directed to refrain from threats and intimidation at all times. If his staff needs to visit my flat for any reason, I pray that he be directed to send a female staff member, give me advance notice about any such visits, and ensure that they do not try to threaten or harass me.
- i) In the interim, I pray the builder and his staff be directed to ensure running water and electricity to my flat until he gets my mutation done and provides me with the NOC for domestic water and electricity connection and the same is allotted to me.'

Reply by the respondents:-

11. The respondent in his reply has made a preliminary submission that it is the duty of the home buyer to make all the payment as per section-19 of the Act. Further, he has referred to section-31 of the Act and alleged that the complainant has failed to point out any violation or contravention of the provisions of the Act. He has further submitted that the answering respondent has no objection for grant of mutation in favour of complainant, but the same should be subject to clearance of pending dues. He has



also replied that water and electricity connections are to be given by the concerned authorities, to which the answering respondent has no objection.

Rejoinder on behalf of the complainant:-

12. The complainant in his rejoinder has pointed out that the respondent has violated clause-3 of the Sale deed, which provide that the attestation of the mutation will be done in favour of the complainant. There is breach of clause-12 of the Sale deed, which requires that respondent is liable to provide no objection certificate for the installation of water and electricity connections in the name of purchaser and he will also provide space for installation of water tank with a capacity of 1000 litres. However, respondents have failed to do so.

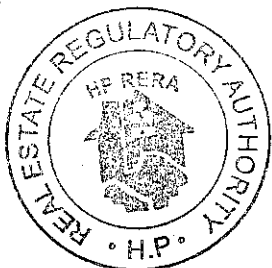
13. She has also pointed out that respondents have not provided space to park one vehicle by the complainant as per clause-13 of the sale deed. She has also pointed out that the respondent is charging maintenance charges at exorbitant rates of Rs. 28320/- along with GST per year which is not mentioned in the sale deed and for which the respondents do not provide any service to the complainant.



14. The complainant has also pointed out that she has paid to the respondent Rs. 3,42,420/- as additional charges, along with service tax at the rate of 14.5% under the garb of parking charges, internal development charges, external electrification charges, fire fighting charges, club membership, sinking fund and maintenance security. However, none of these facilities have been provided till date by the respondent.

15. She has further submitted that the NOC for the building in question has been rejected by MC, Shimla due to the reason that the completion plan has not been approved. (Annexure-A-I).

16. It has also been submitted that the respondent was to provide free parking space as per clause-13 of the sale deed. However, the respondent has taken extra Rs. 1.00 lakh for parking fees, over and above the sale deed, still the parking space has not been provided. Similarly, the respondent has taken Rs. 57,250 towards club charges, over and above the sale deed, still no such facility has been provided. Thus, the complainant has stated that the respondents have failed to fulfil their obligations and have contravened various provisions of Section 11,12,14,17 and 18 of the Real Estate (Regulation and Development) Act 2016.

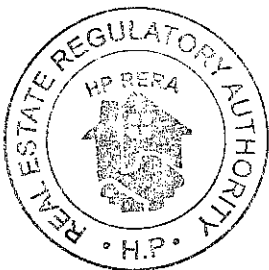


The site inspection Report:-

17. The authorities had directed the Town & country Planner of this office, to look into the issue of mutation and providing of water and electricity connections to the various complainants. The TCP visited the site on 15th Sept. 2020 in the presence of complainants and other parties. The site inspection report is placed in the file. In the site inspection report, it has been mentioned that the mutation in case of Nisha Singh have been entered on 14th Sept, 2020. Further, the relevant paras pertains to water connections, maintenance and electricity are as follows:-

2(iii) The Junior Engineer and Architect Planner of Municipal Corporation, Shimla informed that proposed map for construction of three buildings in the name of Ms. Jaswant Kaur, on Khasra No. 5/5 was approved on 03.02.2003 by the Municipal Corporation, Shimla. They told that later on the buildings might have been named as Block No-A,B and C. The Revised-cum-Completion plan of Block No. B was approved on 07.03.2012, by the Municipal Corporation, Shimla. The Block No. D was approved in the name of Ms. Shakuntla on 11.08.2017 by the Municipal Corporation, Shimla.

2(vii) The Complainant Ms. Nisha Singh complainant Ms. Aditi Rao and Mr. Ravi Kant, resident informed that in the name of yearly maintenance charges, the Respondent was charging a sum of Rs. 18,000/- which was increased to Rs. 24,000/- and now increased to Rs. 35,000/-. In case there is delay in payments by the residents, the Respondent used to stop their supply. They further said that they should be given some space to install their own water tanks as the Respondent is refusing to provide space at roof level.



2(ix) The representative of Respondent was again asked as to when they will provide regular water supply to the residents of Block No-A. The reply of representative of Respondent was not satisfactory.

3(ii) The Complainant Ms. Nisha Singh and Complainant Ms. Aditi Rao informed that they are not aware of their Electricity Metres as to where these have been installed. They are being charged commercial rates @ Rs. 8/- per unit and they are never informed about the electricity metre readings.

3(iv) The representative of Respondent was again asked to show individual electricity metres of residents of Block A. He said the person looking after electricity supply has gone somewhere and only he knows about it. The reply of representative of respondent was not satisfactory'.

Written submissions:-

18. The Counsel for the respondents has filed written submissions. He has pleaded that it is duty of the home buyers to make payment as well as interest under setion-19 of the Act. He has also pointed out that as per Section-3 sub Sectors-2 of the Act, the area of a Real Estate Project should be minimum 500 square metres. Whereas, the area of the plot in the preset case is only 273 sq. mts. He has annexed a copy of Joint Development Agreement dated 16.04.2014, between Rajdeep and Rajdeep & Co Infrastructure and Pvt. Ltd., Which is registered with the Sub Registrar, Solan. He has also annexed an agreement annexed (R-B) dated 11th August, 2016 which narrates that a portion of the

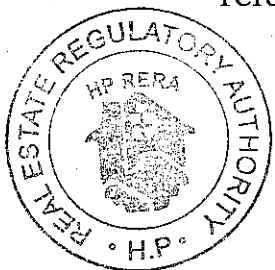


land has been transferred to his mother and wife, after signing the Joint Development Agreement.

19. He has also pleaded that claim of the complainant is under section-18. Hence, section-71 of the Act is applicable and Authority does not have jurisdiction, to try the present case. He has further pleaded that complaint is already infructuous, as the mutation of the said flat has been entered in favour of the complainant. He also stressed that complainant cannot seek any other relief, as she herself is at default for not paying the maintenance charges.

Arguments advanced:-

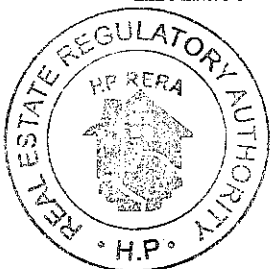
20. The arguments in this case were heard on 19th Nov, 2020. The Counsel for the complainant said, that due to intervention of the Authority, finally after a lapse of more than four years the mutation in the favour of the complainant has been attested. He then argued that respondent has taken extra charges of Rs. 3.42 lakh beyond the terms of the sale deed. He has not provided any additional facilities and extorted this money by cutting the water and electricity supply to the flat. The complainant had to pay these extra charges, under duress and the same should be refunded to her. He pointed out that no parking has been



provided, no internal development and fire fighting facilities have been provided. The club facility is also not available. Therefore, the extra charges paid by her, should be returned to her.

21. He further argued that as per clause-12 of the sale deed seller was liable to provide no objection certificate for installation of water and electricity connection. However, the same has not been provided till date, The complainant is at mercy of the respondents for supply of water and electricity from the common connections, which are disconnected to extort money. He also pointed out that respondent was also to provide space for installation of a water tank of 1000 Litres, but the same has not been done.

22. He also vehemently argued that the respondent is charging maintenance charges at exorbitant rate of Rs. 35,000 per annum. Initially, it was Rs. 1,500 per month which has been increased every year, without providing any justification. He drew the attention towards Ann-A-2 where full details of the maintenance issue have been given. He stressed that the respondent should not charge any maintenance charges, as he is not providing any maintenance facility.



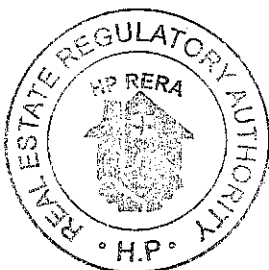
23. The Counsel for the respondents Sh. Rishi Kaushal reiterated the points raised by him in the written submissions and argued that as the mutation has already been entered, therefore, the complaint is infructuous.

Conclusions:-

24. We have perused the record pertaining to the case as well as the site inspection reports. We have also duly considered the submissions made before us in the form of complaint, reply and rejoinders as well as written submissions, made by the parties. In our view, the following issues require consideration and adjudication in the present case:-

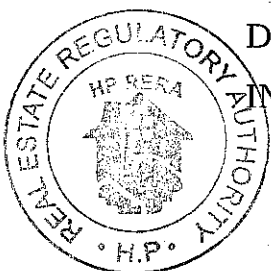
- i) Whether the Real Estate Regulation and Development Act, 2016 is applicable in this case?
- ii) Whether the Authority has jurisdiction to decide this case?
- iii) The issue of attestation of mutation.
- iv) The issue of extra charges taken by the respondents.
- v) Issue of providing basic services like electricity and water.
- vi) The issue of Maintenance charges
- vii) Other issues and directions.

- i) **Whether the Real Estate Regulation and Development Act, 2016 is applicable in this case?**



25. The Ld. Counsel for the respondent in his written submissions and while making arguments, have stressed that in the present case the plot size is 273.60 Mts. which is less than 500 sq. mts, therefore, the Real Estate (Regulation Development) Act 2016 is not applicable in this case. He based his arguments, in view of the provisions of section-3 of the Act. Section-3 of the Act states, that no registration of a Real Estate project will be required where the area of land proposed to be developed does not exceed 500 sq. mts. In the present case, Mr. Rajdeep Sharma, one of the promoter owned 1416 sq. mts. of land in up Muhal Kallestan ,as per revenue record of 2013-14. However, later on, in the family settlement he has transferred a part of this land to his wife, his mother etc. This is clear from the copy of agreement dated 11th August, 2016, supplied by the respondent with his written submissions. At page 2 of the agreement, it is mentioned that

“And whereas the first party was the owner of land comprised in Khata Khatoni No 151/186, Khasra No-5, measuring 1416.80 Sq. Mts situated at Up Muhal Kalleston, Tehsil Shimla(U), District Shimla Himachal Pradesh and at the time of ownership the first party has executed Joint Development Agreement with M/S RAJDEEP AND COMPANY INFRASTRUCTURE PRIVATE LIMITED (PAN No.



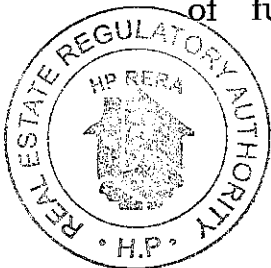
KAAF67444Q) a Private Limited Company having its registered office at 2694, Sector-23 Chandigarh”.

26. Thus, in the present case, it is very clear that Rajdeep being owner of 1416 sq. mts. of land at up Muhal Kellastan had executed a joint development agreement with Rajdeep and Company Infra. The joint development agreement dated 16th June, 2014 was registered in the office of Sub Registrar, Solan and copy is placed as Ann-R-A with the written submissions, filed by the respondent. The Rajdeep & Company has developed Block A,B,C and D of this project. The only change that has taken place later on, is that Sh. Rajdeep Sharma has transferred ownership of some part of land to his mother and wife.

The proviso to Section 3 (2) (a) the Act reads as follows:

“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”.

27. Thus, any project which has an area more than 500 sq. mts. , of all phases is to be registered under RERA. It does not matter whether the ownership of land of the project, belongs to one person or more than one person. In the present case, the total area of full project being developed by Rajdeep and Company

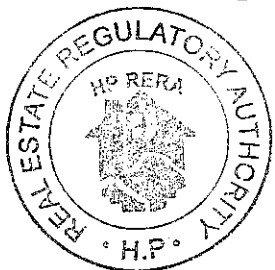


Infrastructure Ltd is 1416 sq. mts. Therefore, the project is fully covered under the provisions of the Act. This is also clear from the fact that Mr. Rajdeep Sharma has applied for the registration of the project with the Authority on 10th February 2020. Thus, it is held that the Act is applicable on the present project and complainant is fully authorized to file the present complaint. The Rajdeep and Co. Infrastructure Ltd, Sh Rajdeep Sharma as well as the all other owners of the land are jointly promoters in the present case, as they are bound by the Joint Development Agreement and are covered as promoters under section 2 (zk) of the Act.

28. Further, The respondent in his reply has stated as follows :

“ That present case is squarely covered by the findings of this present Authority in the Bikramjit and ors. (complainants) vs M/s H.P. Singh and ors. in which it has clearly laid down three conditions that must be fulfilled for such complaints to be considered by it”.

29. We have gone through the above cited order. Firstly, the order is not of Himachal RERA , but of the RERA Punjab. Secondly, the facts of that case are very different then of the present case. In that case, the allegation was about the violation of

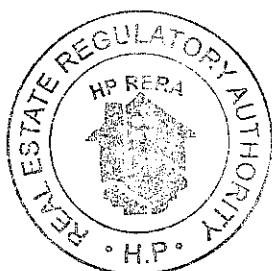


provisions of Punjab Apartment and Property (Regulation ACT) 1996. Thus, that case is not relevant while, adjudicating the present case.

ii) Whether the Authority has jurisdiction to decide this case?

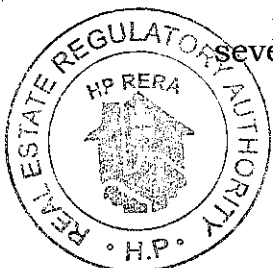
30. The respondent in his written submissions have argued that the claim of the complainant is under section-18 of the Act, hence the Authority does not have jurisdiction in the case. The case is to be decide by the Adjudicating Officer. He has also quoted the following judgments of Hon. SC in his submissions-

“The latest judgments further supporting the said provisions of the law and law laid down by the Hon’ble Apex court, where the Hon’ble Apex court clearly held that 4 Parallel Proceedings before the two forums cannot taken as held. The relevant parts of the Judgement passed by Hon’ble court is as follow:- In case of Meghmala & Ors. Versus G. Narasimha Reddy & Ors, in Civil Appeal Nos. 6656-6657 of 2010 decided on 16.08.2010 Para 9:- “that the self-same relief two parallel proceedings before the two forums cannot be taken”. In another case of Union of India and other vs Cipla Ltd and other Civil Appeal No. 329 of 2005 decided on 21.10.2016 Para 150 held that “A classic example of forum shopping is when a litigant approaches one Court for relief but does not get the desired relief and then approaches another Court for the same relief”. The Hon’ble Delhi High Court in DCM



Shriram Industries Ltd. vs HB Stockholdings Ltd. And Ors on 28 April, 2014, CO.A (SB) 7/2014 & CA No. 275/2014 held that "The expression "Parallel Proceedings" has not been defined. However, the expression has been used in a sense to describe a set of proceedings that a litigant is proscribed to pursue simultaneously. Such set of proceedings either includes proceedings that are identical in effect or a set of proceedings that are inherently inconsistent so as a pursuit of one, negates the other. In the former case, the proceedings must be similar at least in three respects: 1) the parties, 2) the issues involved and 3) the relief claimed. In cases where proceedings are similar in these material aspects, it is obvious that the result of one would render the others meaningless. In such circumstances permitting parallel proceedings would amount to permitting meaningless litigation. The expression "Parallel proceedings" must mean a set of proceedings which are pursued for identical reliefs, are based on the same cause of action and the subject matter of the disputes is similar". In the present matter the issue regarding not to grant mutation is before the competent Revenue Authority in which due to the nonpayment of the consideration amount, the mutation of the property in question has put on hold vide annexure R-2 on record"

31. We have gone through the above case Laws in detail. the first case law is of Supreme Court of India in Meghmala & ors. vs. G. Narasimha Reddy & ors. In that case, litigant had completed several rounds before the high Court. Therefore, the review



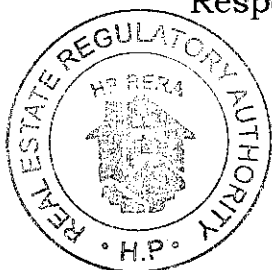
petition was not considered maintainable. In the present case there are no such circumstances.

32. The second case quoted is of Union of India vs Cipla Ltd. The respondent has referred to para- 150 of Forum Shopping, where Solicitor General had brought to the notice of SC, that Cipla had filed petition in the Bombay High Court, The Karnataka High Court and also an affidavit in the Delhi High Court.

33. In the present case, no such instance has been quoted by the respondent that the complainant has filed , any other petition in other court. The reference to issue, regarding grant of mutation before the competent revenue Authority is a separate proceeding and in no way could be considered as parallel proceedings.

34. The respondent has also quoted Delhi HC in DCM Shriram Industries Ltd. Vs HB Stockholdings Ltd. &n ors.

In that case, it was contended by the Appellant that respondent no-1 was barred from perusing the petition before the Company Law Board as, some proceedings were going on before the SEBI. The court concluded that proceedings with SEBI will not prevent respondent to peruse his petitions before the Company Law Board. Thus, the facts of the case quoted by Ld. Respondent are different from the present case. Further, section-



88 of the Act makes, it very clear that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. In the light of above discussions, the argument of the Ld. counsel for the respondent about the parallel proceeding in the case, does not hold ground.

35. Moreover, to decide about the jurisdiction of the Authority, we would like to discuss various provisions of the Act, in this regard.

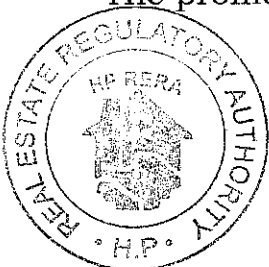
Section 31 of the Act prescribes that any aggrieved person can file a complaint before the Authority or the adjudicating Officers as the case may be for any violation of the provisions of the Act. Further, Rule 23 of the Himachal Pradesh Real Estate (Regulation and Development) Rules 2017 provides the procedure of filing complaint with the Authority and prescribes "Form M" for filing a complaint. In this case, the complainant has filed the complaints in "Form-M."

The Section 34 (f) of the Act prescribes that the function of Authority shall include

" to ensure compliance of the obligation cast upon the promoter, the allottee and the real estate agent under this act and the rules and regulation made their under".

Section 11(4) (a) of the Act prescribes as follows:

The promoter shall—



(a) *“be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made there under or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent Authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-Section (3) of Section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”*

Section 17 of the Act *ibid* provides as under,

(1) *The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent Authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent Authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent Authority, as the case may be, under this Section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) *After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-Section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent Authority, as the case may be, as per the local laws:*

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common



areas, the association of the allottees or the competent Authority, as the case may be, within thirty days after obtaining the occupancy certificate.”

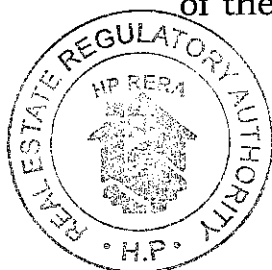
Section 19 (4) of the act provides as under:

(4) “The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made there under.”

Further Section 38 (1) of the Act says

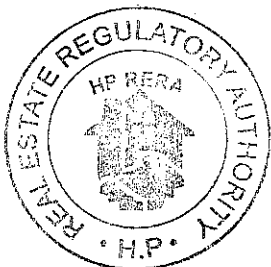
(1) “The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made there under.”

36. Thus the Section 34(f) of the Act empowers the Authority to ensure compliance of any obligation cast upon the promoter and Section 11(4)(a) (Supra) cast obligation on the promoter to implement “agreement for sale”. Further, Section 37 of the Act empowers the Authority to issue directions in discharge of its function provided under the Act. The Authority also has power to impose penalties under Section 59 to 69 for various contraventions of the provisions of the Act. Moreover, Section 38 (1) of the Act in



unambiguous terms empowers the Authority to impose 'penalty or interest.'

37. In the present case the complainant has asked various reliefs which pertains to the obligations cast upon the promoters. Under section-11 (4) (b) the promoter is responsible to obtain the completion certificate. Under section- 11 (4) (f) he is responsible for providing and maintaining the essential services. Under section-14 promotor is obligated to develop the project in accordance with the sanctioned plans. Section-34 clause- (f) provides that the Authority is to ensure compliance of the obligations cast upon the promoter. For this purpose, the Authority has powers to conduct investigation under section 35 and power to issue directions under section 37. Further, the Authority has power to impose penalty or interest in regard to any contravention of obligations cast upon the promoter under section 38 of the Act. The various penalty which can be imposed by the Authority are mentioned from Section-59 to section -69 of the Act. Thus, the Authority has clear jurisdiction to decide about imposing penalty and interest in regards to any contravention of obligations cast upon the promoters. As far as the compensation is concerned,



the same is to be adjudicated by the Adjudicating officer under section 71 of the Act.

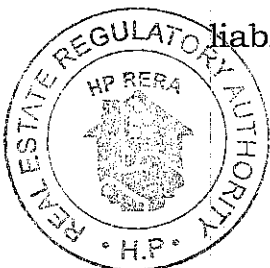
iii) The issue of attestation of mutation:

38. The complainant in the present case had purchased flat No-302 and the sale deed was registered on 7th October, 2016 between Sh. Rajdeep and Nisha Singh. The clause-3 of the sale deed reads as follows:-

“ That the seller hereby undertakes and agrees to get mutation entered in all relevant revenue records and the seller has no objection in case the mutation of case be attested in favour of the purchaser in absence of seller”

39. In spite of the above clear condition in the sale deed, the respondent kept on delaying the mutation on one pretext or the other and only when the Authority took a serious note on its hearing dated 28th August, 2020 and sent its TCP for site inspection on 15th Sept. 2020, then the mutation was got attested. Thus, it took almost 4 years to enter the mutation in revenue record, despite the obligation of the respondent to ensure this. Therefore, it is very clear that the respondents have harassed the complainant on the issue of attestation of mutation and are

liable to pay penalty.



iv) The issue of extra charges taken by the respondents

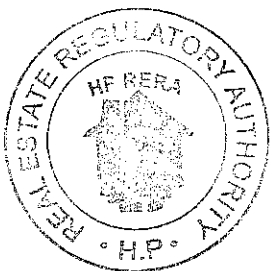
40. The complainant in his rejoinder has stated that the respondent had demanded extra charges of RS. 3.42 lakh along with service tax in the garb of parking charges, internal development charges, external electrification charges, fire fighting charges, club membership etc. He further pleaded that these facilities have not been provided to the complainant.

- i. The counsel for the respondent has not denied, the non-taking of these extra charges in his written submissions or during the arguments. From the perusal of sale deed, it is clear that the seller has received the total consideration of the flat and nothing was due, at the time of signing of the sale deed. These extra payments have been taken after the sale deed. The sale deed provide that the seller will be liable to provide the space for parking of one vehicle for the purchaser, but still extra charges have been taken for parking, Internal development are also part of the valuation report, enclosed with the sale deed. From the site inspection report of the Authority, it is also clear that the fire fighting facility, club facility etc. have not been provided. It appears that the respondents have



been extorting money from the complainant by giving threat of disconnecting electricity and water connections, which they have been controlling. The RERA Act mandates and put obligation on the promoter to provide essential services on reasonable charges (Section-11-4(d)). However, in the present case, the respondents have collected huge extra charges, without providing these facilities.

- ii. In the present case, there exist, clear and valid reasons for holding down that the flat buying Complainant is entitled to return of the extra amount paid. There has been a breach on the part of the respondent in complying with the contractual obligation to hand over the NOC, space for water tank, car parking space, maintenance charges and other services after executing the sale deed and collecting huge amount of money for provision of these services. The failure of the respondent to fulfill all other obligations amounts to contravention of the provisions of the Real Estate (Regulation & Development) Act, 2016. The respondent has failed miserably in fulfilling all obligations as stipulated in Section 11 of the



Act *ibid*. There has been a gross delay on the part of the Respondents in taking completion and handing over of NOC and other services and facilities for almost more than four years. The nature and quantum of the delay on the part of the respondents are of such a nature that the refund of extra charges along with interest would be grossly insufficient considering the hardship and mental agony that the complainant has been subjected to all these years and Judicial notice ought to be taken of the fact that a flat purchaser who is left in the lurch as a result of the failure of the respondents to provide basic services in accordance with the terms and conditions of the sale deed suffers for no fault of his. Having paid full consideration price to the respondent and being required to service the additional charges on different pretexts, the purchaser is unable to obtain NOC and basic services for living is the subject matter of present case.

- iii. Therefore, the Authority direct that the respondent must provide all the extra facilities for which he has taken extra money within next three months. If he fails to provide these extra facilities, then the respondent

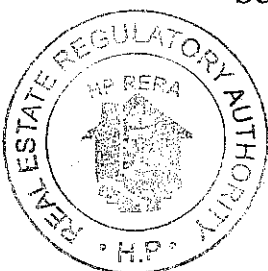


promoters will be liable for a refund/return of Rs. 3,42,420 to the complainant, under section 19(4) of the Act., on completion of three months from issue of this order along with prescribed interest

- iv. Further, the respondent has given a receipt of Rs 1,14,750 dated 27/7/2017 of Service Tax payment. Respondent must provide details of actual deposit of Service Tax to Government, to the complainant.

v) Issue of providing basic services like electricity and water.

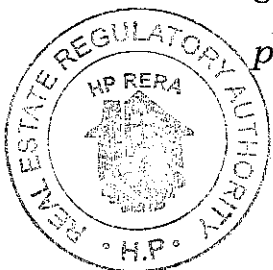
41. The Hon'ble Apex Court in the matter of **Chameli Singh and others vs. State of U.P. and another** 1996) 2 SCC 549, has held that, "*Right to live and specifically observed that right to life includes the right to live with human dignity and further observed that right to live guaranteed in any civilized society implies the right to shelter and while discussing the right to shelter, includes electricity which is undisputedly, an essential service to the shelter for a human being.*



In State of Karnataka vs. Narasimhamurthy (AIR 1996 SC 90) SCC p. 526, para 7: JT at p. 378, para 7), the Hon'ble Apex Court held that, "Right to shelter is a fundamental right under Article 19(1) of the Constitution. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, **pure air and water, electricity**, sanitation and other civil amenities like roads etc. so as to have easy access to his daily avocation ..."

The Madras High Court in the matter of **T.M. Prakash and others vs. The District Collector, Tiruvannamalai District, Tiruvannamalai and another 2013 SCC OnLine Mad 3001** has held that access to Electricity supply should also be considered as a right to life, in terms of Article 21 of the Constitution of India and observed as under:

"66. Lack of Electricity supply is one of the determinative factors, affecting education, health, cause for economic disparity and consequently, inequality in the society, leading to poverty. Electricity supply is an aid to get information and knowledge. Children without Electricity supply cannot even imagine competing with others, who have the supply. Women have to struggle with firewood, kerosene, in the midst of smoke. Air pollution causes lung diseases and respiratory problems.

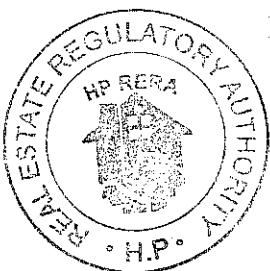


Electricity supply to the poor supports education and if it is coupled with suitable employment, disparity is reduced to certain extent. Lack of education and poverty result in child labour.

68. The Respondent ought to have visualised the difficulties of the women, children and aged persons, living in the huts for several years, without Electricity. Electricity supply is an essential and important factor for achieving socioeconomic rights, to achieve the constitutional goals with sustainable development and reduction of poverty, which encompasses lower standards of living, affects education, health, sanitation and many aspects of life. Food, shelter and clothing alone may be sufficient to have a living. But it should be a meaningful purpose. Lack of Electricity denies a person to have equal opportunities in the matter of education and consequently, suitable employment, health, sanitation and other socioeconomic rights. Without providing the same, the constitutional goals, like Justice, Liberty, Equality and Fraternity cannot be achieved.”

42. For a residential flat to be livable, the provisions of electricity and water supply are minimum essential services. In the present case, para-12 of the sale deed provides as follows:

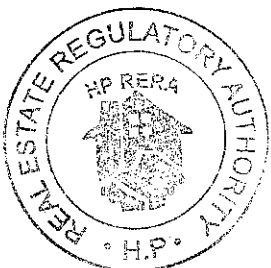
“That the SELLER will be liable to provide No Objection Certificate/affidavit for the installation of water & electricity connections in the names of PURCHASERS & the PURCHASERS have right to use un interrupted the water & electricity from the existing meters and the sellers will also liable to provide the space for installation of water tank capacity of 1000 Ltrs. and the Purchasers have right to use approach for checking, maintenance and replacement of the



water tank from time to time. The other occupants/owners of the building will not make any hindrance/obstruction for the use of approach for the checking/maintenance and replacement of the water tank."

Thus, the respondent promoters were duty bound to install water and electricity connections in the flat sold to the complainant.

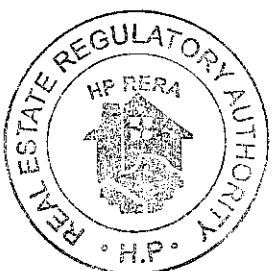
43. In the present case, respondent had initially provided water and Electricity from the common connections, at commercial rates which were being discontinued in between, on whims and fancies of the respondents. Section- 11(4) (d) of the Act mandates that promoter shall be responsible for providing and maintaining the essential services on reasonable charges, till the taking over of the maintenance by the association of allottees. However, respondents have failed to fulfil this obligation. Further, he has failed to fulfill his obligations as per provisions of the sale deed. The Municipal Corporation, Shimla in its letter dated 26.8.2020 (Ann-A-1) has mentioned that completion plan of the building has not been approved. Till the completion plan is approved the NOC for domestic connections cannot be considered. Section-11(4) (b) of the Act provide that the



promoters will obtain the completion certificate. In the present case the promoters have not fulfilled their obligation of getting the completion certificate and also providing NOC for these essential services.

44. It is pertinent to mention that the approximate cost of this project calculated on the basis of average price of Rs. Forty lakhs for the six flats on the lower three floors of the block 'A', average price of Rs. 80,00,000 for the two flats on the top floor with attic, of block 'A', four flats of block 'C' at an average price of Rs. 68 Lakhs and approx Rs. 32,00,000 for the RCC frame and site development of Block 'D' comes to approx Rs. 7.04 Crores approximately and Authority is empowered to impose penalty upto five percent of the cost of project under section 61. Therefore, the respondent promoters are liable to pay a penalty of Rs. 5 lakh under section-61 of the Act, for contravention of provisions of the Act.

45. The respondents are also directed to facilitate and provide location for installation of a water tank linked with a permanent water connection for Complainant, from Municipal Corporation and a covered space for getting a

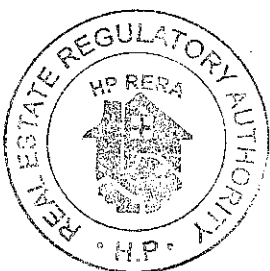


permanent electricity connection within next two months. If the above facilities are not provided, within two months, the respondent will be liable for a penalty of Rs. 12 lakhs.

It is also observed by the Authority, that from the common connections, the complainants/allottees are required to pay for the electricity and water supply at commercial rates, which are much higher than the domestic rates. Therefore, the respondent promoters are directed to reimburse the difference of domestic charges vis a vis the commercial rates paid by the complainant in the past and in future every month, till the respondent promoters obtain No Objection Certificate for getting the permanent domestic connections.

vi) The issue of Maintenance charges

46. The complainant has pointed out that the respondent is asking for heavy maintenance charges without providing any services and maintenance. It has been argued by the Counsel for the complainant that the respondent was to provide club house facility but the same has not been provided. The same is being used as a Guest house for own use of respondent. There are no common services being provided by the respondent, despite that he initially started

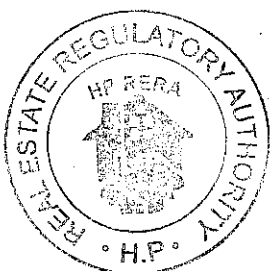


charging for maintenance @ Rs. 1,500 per month which has now been increased to over Rs. 3,500 per month. If the maintenance charges are not provided then the respondent resort to harassment and discontinuation of water and electricity supply of the flat. This problem is being faced by all the allottees. She further pointed out that the sale deed does not provide for charging of any maintenance amount and not details of services being provided have ever been given by the respondent. He is thus taking this money as extortion. The respondent Counsel argued that he is providing various common facilities. It also came to the notice of Authority during the arguments, that the electricity and water charges at commercial rates, are over and above the monthly maintenance charges levied by the respondent.

47. The Authority from its two site inspections has observed that that there are very small common areas like staircases etc. and their maintenance and lighting will not require this much of monthly maintenance charges. Section-11-(4) (d) of the Act prescribes as follows:-

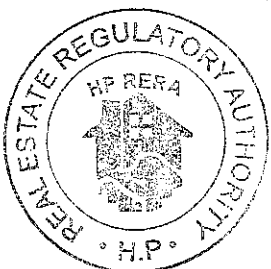
Promoter -

“Be responsible for providing and maintaining the essential services on reasonable charges till the taking



over maintenance of the project by the association of the allottees”.

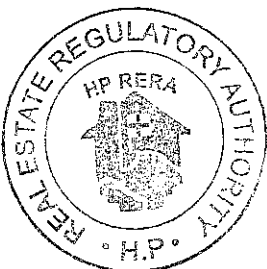
48. Thus, the respondent was required to provide the essential services on reasonable charges. The Authority feel that the charges are not commensurate with the services being provided by the respondent promoters. He is basically extorting money from these flat owners on one pretext or other. However, the Authority is not going into the reasonableness of the charges at this juncture. Section-11-(4) (e) of the Act further provides that the respondent will enable the formation of association of allottees within a period of three months of the majority of allottees having booked their flats. However, the same has not been done in the present case. The Authority directs that the respondent should enable formation of association of allottees (by whatever name called) within next two months. All the common areas should be handed over to the association of allottees, within one month of its formation. After that it is upto the association of allottees to decide whether they themselves want to carry out the maintenance or wishes to give the maintenance to some other person. Thus, the respondent promoters are restrained to take any



maintenance charges from allottees, after three months of issue of this order unless, the association of allottees agrees to hand over the maintenance to the respondent promoters. In that case, the charges would be at the rate as fixed by the association of allottees.

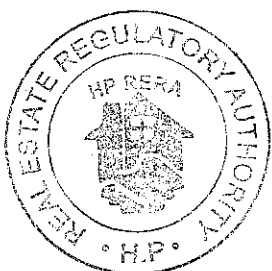
49. Keeping in view the above mentioned facts, this Authority, in exercise of the powers vested to it under various provisions of the Act, issues the follows orders/ directions: -

- i) The complaint is allowed. The respondents are directed to pay a penalty of Rs. Five lakh (Rs 5 lakh) under section 61 of the Act, for not fulfilling their obligations. The penalty imposed shall be deposited in the bank account of this Authority, operative in the name of "Himachal Pradesh Real Estate Regulatory Authority Fund" bearing account no. "39624498226", in State Bank of India, HP Secretariat Branch, Shimla, having IFSC Code SBIN0050204, within a period of two months.
- ii) The respondents are directed to facilitate providing permanent water and electricity connections to the flat

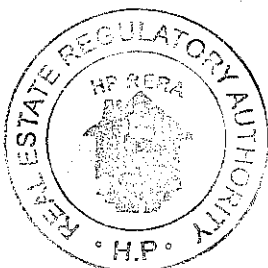


of the complainant, along with independent water tank of 1000 litre in the vicinity of Block A, within two months of this order. If they fail to do so, they will be liable to pay a penalty of, Rs. Twelve lakh (Rs. 12 lakhs) under section 61 the Act.

- iii) The respondents are directed to reimburse the difference of the commercial rate of supplying electricity and water viz-a-viz the domestic rates per month (and also of past months), till the NOC for domestic connections are obtained by them, after getting the completion certificate.
- iv) The complainant is allowed to park one car within the boundary of the block 'A' (as per sale deed) and needs no permission for the same from the respondent
- v) The respondents are directed to enable the formation of Association of Allottees within next two months and hand over the common areas, in subsequent one month. If the same is not done they will be liable to pay a separate penalty of Rs. Six lakh (Rs 6 lakh) under section 61 of the Act.

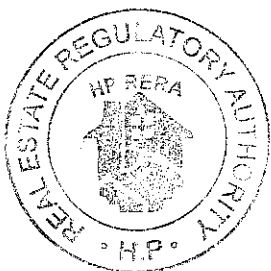


- vi) The respondents are restrained from charging any maintenance charges after three months from the issue of this order except if, the Association of Allottees agrees to continue the maintenance from them on a mutually agreed annual charges.
- vii) The respondent must provide all the extra facilities for which he has taken extra charges of Rs 3,42,420 within next three months. If he fails to provide these extra facilities, then the respondent promoters will be liable for a refund/return of Rs Three lakh forty two thousand and four hundred twenty (Rs. 3,42,420) to the complainant, under section 19(4) of the Act, on completion of three months from issue of this order. Any delay in payment will attract the prescribed interest.
- viii) The respondent will provide the receipt of Rs. 1,14,750 paid as service tax to the government, to the allottee, failing which, a complaint may be made by the allottee to the central excise Department (now GST), informing them about the amount of service tax paid by her to the respondent towards the purchase of flat and with a



request to them to recover the same from him as per procedure along with penalty and interest so that the allottee is not held liable to make the payment to the tax collecting authority .

- ix) The above directions of the Authority are to be implemented by the respondent promoters as well as its land owners as promoters of the project jointly and severally.
- x) It is further ordered that the respondents are barred from selling/leasing/allotting/booking any remaining flats/land in the present project or any of their projects in Himachal Pradesh, till the compliance of this order. Further, no withdrawals from the bank account of the projects are to be made till payment as ordered is made to the complainants and penalty is deposited into the account of Authority. Further, there shall not be any alienation of any movable and immovable assets of this project and any other project of the respondents in HP, till compliance of this order.



- xi) The respondents are directed to submit the details of all their bank accounts within fifteen days.
- xii) Non-compliance or any delay in compliance of the above directions shall further attract penalty and interest on the ordered amount under section-38, 63 and 69 of the Act *ibid*, apart from any other action, the Authority may take under section 40 or to other relevant provisions of the Act.


B.C. Badalia
Member


Dr. Shrikant Baldi
Chairperson


Rajeev Verma
Member

