

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

Complaint no. RERA/OFL/21-25

IN THE MATTER OF:-

Sunil Malhotra, son of Late. Sh. Lalit Kumar Malhotra, Resident of F-11, Ansal Villa, Satbari, P.O. Chattarpur, New Delhi- 110062

.....Complainant

VERSUS

R.V. Nirmata Private Limited, through its Managing Director, Resident of D-128, East of Kailash, South Delhi-110065

.....Respondent

Present: Sh. Ajay Sipahiya Ld. Advocate for the complainant.

Sh. Vineet Sehgal Ld. Advocate for the respondent.

Final Date of Hearing : 25.02.2023

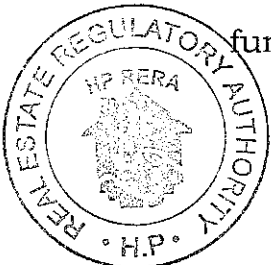
Date of pronouncement of Order: 23.03.2023

Order

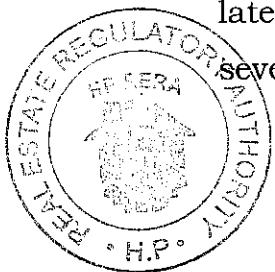
Coram: - Chairperson and Member

1. BRIEF FACTS IN THE COMPLAINT:

In the present case application for filing amended complaint was allowed by order of this Authority in MA no. 12 of 2022 dated 12.8.2022. Thereafter amended complaint, reply and rejoinder were taken on record. The facts from the amended complaint relevant for deciding the case are that the project in question "The Woods Barog" has been registered with HP RERA and is situated at Village Barog, District Solan, Himachal Pradesh. It was pleaded that the complainant applied for the allotment of an apartment in "The Woods Barog" on 23.10.2010 and the same was allotted to him vide allotment letter annexure C-3 dated 06.12.2010 and the agreement for sale annexure C-4 was also executed on the same day. It was further pleaded that the complainant has paid the entire consideration amount of Rs. 59,00,000/- for the Flat/Apartment No. 101-A and 102-A with super area 2195 square feet to the respondent. It was further pleaded that the project "The Woods Barog" got its approval from

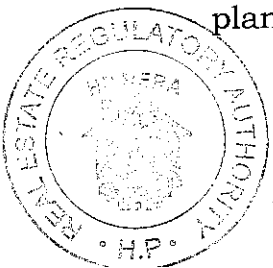


Department of Town and Country Planning, H.P. vide order No. SADA/Barog/P.P. Case No. 432/SA/2009-481 dated 06.03.2009. Further, it was pleaded that the respondent had violated the sanctioned plans while constructing Blocks A, B, and C by adding additional floors. It was further pleaded that thereafter respondent requested the Department of TCP H.P. to revise the layout plans/drawing earlier approved at the time of grant of license for the colony and the information of the same was also given to the complainant by the Director, TCP Department, H.P. Town & Country Planning. The copy of the letter dated 23.07.2015 along with the public notice is annexed with the complaint as Annexure C-6. It was further pleaded that the complainant filed his objections on August 21, 2015, as Annexure C-7 to the public notice with the Director of the TCP Department, Himachal Pradesh. He did this because he didn't want any changes made to the original master plan. It was further pleaded that without giving him any fair opportunity of being heard and without the consent of all the existing allottees of the project at that time, on 11.02.2016, the Director, TCP Department, H.P. sanctioned/approved the revised plan for "The Woods Barog", by which two additional floors were allowed to be constructed. The copy of the revised building plan dated 11.02.2016 is Annexure C-8 with the complaint. It was further pleaded that contrary to the advertisement and agreement for sale, no drive in stilt parking has been provided to the allottees of Block A. It was further pleaded that both the brochures and the approved plan showed a green tree cover at the back of Block B and Block C, but now the respondent has registered another project with HP, RERA called "The Woods Barog (Phase-II)" on the green area and has started the construction of Block-1 and Block-II of Phase-II without the consent of existing allottees. The copy of the sanctioned plan of "The Woods Barog (Phase-II)" is Annexure C-9 with the complaint. It was further pleaded that the original approved building plan for "Woods Barog" had a total of five floors (i.e., four floors plus a parking floor), but in the later revision of the sanction plan, the number of floors were raised to seven, even though the building's foundation was only capable of



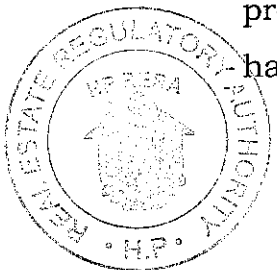
supporting five floors. It was pleaded that for this reason the building become unsafe. It was further pleaded that parking has been provided as open parking & not within building stilts meaning thereby that the flats/apartments sold are non drive in which were supposed to be drive in as per the advertisement. It was further pleaded that green areas shown in approved map adjoining to Block A & B are not available on the spot and instead the same area is unauthorizedly being used as parking space. It was further pleaded that as per the norms of TCP Department, Himachal Pradesh, plinth height is not allowed more than 3.50 meters in the State of H.P but in the present case, the building plinth has been raised up to 9 to 10 meters with stone retaining walls which are in violation of the rules. It was further argued that the two new blocks of the Phase II project which are still under construction block the direct morning sunlight that used to hit the windows of Blocks A, B, and C. It was further pleaded that respondent has failed to preserve the natural hill profile while constructing the project giving the colony a complete concrete look. It was further pleaded that a lot of tree cover was there on the spot and large tree felling took place in the construction of the concrete structures in the area by the respondent. It was further pleaded that the complainant has waited patiently for more than 11 years and requested many times to the respondent for completing the project and provide all the amenities as promised at the time of execution of agreement for sale and in brochure but in vain.

2. It was further pleaded that consent of all the existing allottees of the project was mandatorily required under section 78t of the Himachal Pradesh Town and Country Planning (Amendment) Act, 2015, Rule 63 of the Himachal Pradesh Town and Country Planning (Amendment) Rules, 2016 and section 14 of the Real Estate (Regulation and Development) Act, 2016 before any change in the undivided interest of the allottees in the common area and change in the sanctioned plan is made. It was further pleaded that the unauthorized construction in violation to the sanctioned plan has reduced substantially the proportionate undivided interest of the



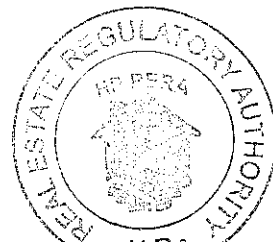
allottees in the common areas. It was further pleaded that the respondent promised the stilt parking area in the basement of Block-A but the same has not been provided till date. It was further pleaded that the stilt parking area allowed for Block A only has space for eight to ten four wheeled vehicles at a time, although the total number of allottees in the block are seventeen and thus the allotted area is insufficient. It was further pleaded that the respondent fraudulently without any prior notice/permission, in year 2020, constructed flats in the basement area which area was allotted as parking area to the residents of Block-A. It was further pleaded that the respondent has failed to provide the amenities as advertised but is constantly sending reminders to pay for maintenance charges. It was further pleaded that although the brochure specified that the roads would be 6.5 mts wide, in reality they were only 4.5 mts wide and were only widened on this Hon'ble Authority's directions after a period of more than 11 years. It was further pleaded that respondent is charging from the complainant more than actual rate for use of electricity and it was further pleaded that complainant is ready to pay the pending bills but only on domestic rates of electric as specified by HPSEBL. It was further pleaded that the complainant wants to get installed electricity meter in his own name. It was further pleaded that the respondent has not obtained the Occupancy Certificate till date as the project is still incomplete, and the Hon'ble National Consumer Disputes Redressal Commission (NCDRC) in the case titled as Madhusudan Redddy R & Ors Vs. VDB Whitefield Development Private Limited & Ors. Consumer case no.763/2020 has held that no maintenance charges can be levied if there is no occupation certificate obtained by the promoter.

3. It was further pleaded that the respondent has not submitted the shelter fees in lieu of EWS/LIC flats against License no. 50/2010 dated 11.02.2016 and is now demanding a sum of Rs. 42,590/- as share of additional levy charges payable to H.P. Government by each allottee of Block -A. It was further pleaded that the respondent had registered a new project with the Authority, called "THE WOODS BAROG (PHASE-II)," and had already started its construction. However, the same road and facilities



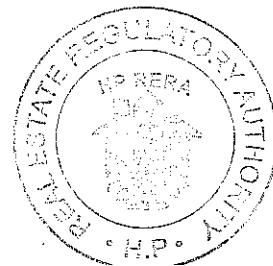
of the earlier project called "THE WOODS BAROG," are being used for the construction of phase-II, without the consent of the people who are already living there. It was further pleaded that the respondent had made several deviations/modifications in the construction of Blocks A, B, and C under the guise of a "revised approved project plan." It was further pleaded that the green cover of trees at the back of Block C has been completely removed, and instead, the Block-I + Block II of the new project, "The Woods Barog (Phase-II)," has been approved without the permission of the existing allottees, which adversely affects their right to light, air, view, and garden area.

4. On the basis of the aforesaid pleadings it was prayed that the Respondent may kindly be directed to stop the construction of the flats in the stilt parking area/ basement of Block-A. In addition, it was prayed that the respondent be directed to cease his unlawful and illegal construction activity on the "The Woods Barog" and "The Woods Barog (Phase-II)" projects, and that his unapproved and illegal construction be demolished. It was further prayed that the revised building plan dated 11.02.2016 may kindly be quashed and set aside. It was further prayed that the respondent may kindly be directed to get installed for the complainant domestic electricity meter directly from the department of HPSEBL. It was further prayed that the previous bill(s) of electricity may be settled with the complainant as per the actual charges of HPSEBL. It was further prayed that the respondent may kindly be directed to submit the shelter fees himself, in lieu of EWS/LIC flats. It was further prayed that the respondent may kindly be directed to pay compensation as it failed to provide any amenities and facilities through any maintenance agency in the past ten years as promised by him in brochure and advertisement. It was further prayed that the registration of the new project "The woods Barog (Phase-II)" may kindly be quashed. It was further prayed that the respondent may kindly be directed to pay compensation to the complainant for delayed possession. Further a prayer was made for costs of Rs 31,000/- on account of litigation expenses and Rs 5,00,000/- on account of mental harassment.



5. Reply on behalf of the respondent to the amended complaint

It was pleaded by way of filing reply that the complainant is guilty of suppression veri or suppression falsi and he has suppressed material facts from the authority. It was further pleaded that the complainant has not come forward by completing the paperwork necessary on his part to get the conveyance deed for his unit executed despite numerous reminders being sent to him. It was further pleaded that the issue with regard to the maintainability of the complaint seeking compensation before this Authority has been settled finally by the Hon'ble Supreme Court in M/s Newtech Promoters & Developers Pvt. Ltd vs. State of Uttar Pradesh & Ors. It was held in the judgment that the Authority has no jurisdiction to adjudicate the issue of compensation which power specifically lies with the Adjudicating Officer. It was further pleaded that the complainant Sunil Malhotra has trespassed into the common area of the project by illegally removing his balcony railings which also causes unwarranted harassment to the other allottees of the Block-A. It was further pleaded that FIR No. 0032 dated 22.02.22 had been registered at Police Station Dharampur under Section 451,147,148,149& 506 IPC against the complainant. On merits it was pleaded that as per the clause 3 of the agreement for sale, the complainant was under an obligation to pay the maintenance charges regularly as and when demanded and was also bound to have executed separate maintenance agreement, but inspite of repeated reminders the complaint failed to do so. It was further pleaded that after completing construction and development work the letter for offer of possession dated 05.07.2013 was issued to the complainant. It was further pleaded that the complainant cleared the dues on 30.08.2013 and immediately thereafter took the possession of the flats which fact has been admitted by the complainant in his mail dated 26.06.2015. It was further pleaded that qua Flat No.101-A, the complainant has failed to pay an outstanding amount of Rs.93,209/- billed on 4thJuly, 2013. It was further pleaded that the complainant has neither come forward for execution of sale deed nor cleared his dues and has also not applied for

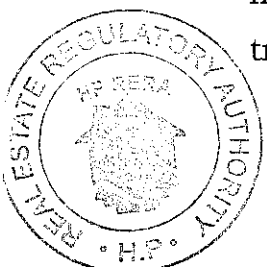


permission under Section 118 of the HP Tenancy and Land Reforms Act, 1972.

6. It was further pleaded that the respondent company has been regularly executing the annual maintenance contract for regulating service and maintenance of the Lifts with reputed company Schinler. It was further pleaded that the respondent-company has also developed an indoor Gymnasium, Sauna steam, Jacuzzi and playing card room for the allottees of the project and the upkeep and maintenance of the same is being regularly carried out by the staff employed by the respondent-company. It was further pleaded that that the Project is duly gated with round the clock security. It was further pleaded that inverters were provided to all the allottees in their units and that open common parking was provided for all the allottees as mandated by the Department of TCP while approving the project's layout plan.
7. It was further pleaded that the building plans of the project were earlier approved by the competent authority on 06.03.2009 and thereafter, the respondent company had applied for approval of revised building plans with the department. It was further pleaded that due procedure was followed while revising the maps and the consent of the allottees was sought as per the requirement of the department and upon receiving the consent from 2/3rd allottees, the request of the respondent was allowed and the building plans were revised on 11.02.2016. It was further pleaded that the department of TCP was accused of not following the due process of law while revising the maps, but they have not been arrayed as a party. It was further pleaded that the respondent never ever offered or agreed to provide stilt/ drive in parking to the allottees of BLOCK-A. It was further pleaded that the entire development of the project Woods Barog phase- 1 and Woods Barog -phase II has been carried out as per the sanctions /approvals granted by the competent authorities. It was further pleaded that there is no danger to the safety of the building by revision of maps. It was further pleaded that sufficient parking space has been provided as per the norms of the Town & Country Planning Department. It was further pleaded that for the convenience of the allottees, the respondent company



has also made a statement before this Authority to the effect that the proposed site of BLOCK-D has now been earmarked to be used for parking purpose only and no construction will be carried out by the respondent-company on the proposed BLOCK-D. It was further pleaded that the Blocks in question have been duly inspected by the concerned authority and after its satisfaction, the completion certificate(s) have been issued. It was further pleaded that the complainant is in continuous default for payment of maintenance charges inspite of specific orders to this effect by this Authority. Further, it was pleaded that flats were handed over to the complainant after completion of all development work in August 2013 and that he has been repeatedly asked to pay the balance payment and to apply for permission under Section 118 of the HP Tenancy and Land Reforms Act, 1972 and execute the conveyance deed. It was further pleaded that when the revised building plans were sanctioned, the Real Estate Regulation Development Act, 2016 was not in operation and therefore the provisions of RERD Act, 2016 cannot be implemented with retrospective effect. It was further pleaded that open common parking for the allottees as sanctioned by the department of TCP while approving the layout plan of the project has been provided. It was further pleaded that the claim for the grant of a special designated parking space is completely unwarranted and without any basis because the respondent company did not demand any extra charges from any of the allottees for this reason. In addition, it was further pleaded that sufficient common parking spaces had been assigned in the project to accommodate all of the allottees in compliance with building byelaws and legislative requirements, and that these spaces had also been officially approved by the relevant Government department. It was further pleaded that roads, open areas, parking spaces are strictly developed as per the sanctioned site plan of the project by the competent authority of the State and no violations of any sort have ever been committed. It was further pleaded that the respondent company demands maintenance charges on cumulative basis from all the allottees for the maintenance of electrical supply system, fire protection system, sewage treatment plant and drainage system, maintenance & clearing of



underground & overhead water storage tanks for blocks, electricity consumption charges, common areas/ passages / corridors, street lighting, maintenance & running of tube wells, water supply motors, booster motors, operation & maintenance of electrification equipment and ancillaries installed within the said complex, cleaning of floors, sweeping of common areas, parking areas, round the clock general watch & wards charges. It was further pleaded that the allottees have been provided electricity supply by the respondent company by installing sub meters. It was further pleaded that actual expenses for use of electricity are raised from all allottees including the complainants as per their actual consumption.

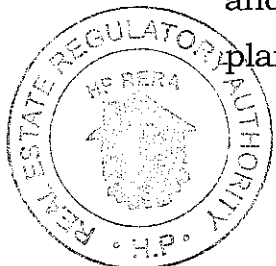
- 8.** It was further pleaded that the judgment relied upon by the complainant with regard to the obtaining of occupation certificate by the builder prior to raising the demand of maintenance charges from the allottee is not applicable in the present case as the judgment relied upon does not discuss the procedure adopted by the Department to Town & Country Planning, Himachal Pradesh wherein initially part completion certificate is issued thereafter completion certificate is issued and finally occupation certificate is issued which procedure is contrary to the other states, where the department initially issues part occupation certificate thereafter occupation certificate is issued and finally completion certificate is issued. Therefore it was pleaded that the procedure adopted by different State(s) are not similar so the precedent relied upon by complainant is not applicable to the present facts. It was further pleaded that this Authority, by order dated August 26, 2021 had rightly directed the complainant to deposit the maintenance charges as well as the actual electricity and water consumption charges at domestic rates but despite the specific directions issued the complainant has not bothered to pay the same to the respondent company. Further, it was pleaded that the respondent company would deposit any shelter fees imposed by the State of HP at its own level and would not make any demands qua the same from the project allottees.



9. It was further pleaded that the project "The Woods Barog, phase-II" was registered with the Authority after obtaining all necessary approvals from the competent department(s) and the land for the said project was bought since inception of the project and accordingly all the allottees of Block-A were duly aware about the development of the 2nd project by the respondent company. It was further pleaded that both the project(s) have a common approach road from the main National Highway and the concerned State Department after having due knowledge of the same and after due application of mind have sanctioned the site plan of the phase-II project. It was further pleaded that the requisite part completion certificate of the Block-A has duly been obtained by the respondent company on 18.06.2018.

10. Rejoinder-

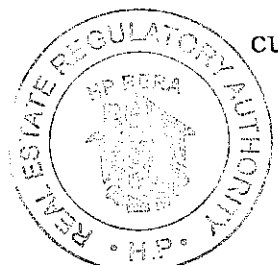
It was pleaded by way of filing rejoinder that it was obligatory upon the respondent to obtain an occupancy certificate and completion certificate as per law, without which a conveyance deed cannot be executed in favor of the complainant. It was further pleaded that any conveyance deed executed without obtaining the mandatory occupancy certificate and completion certificate is illegal. It was also pleaded that by order dated 26.08.2021, the Authority had directed the complainant to pay the maintenance charges as well as the amount due in lieu of the consumption of electricity at domestic rates and that the complainant had already paid an amount of Rs.15,741/- towards the electricity charges despite the fact that the respondent had not provided the complainant with an individual electricity meter. It was further pleaded that the respondent has disconnected the water and electricity supply to the complainant's apartments number A-101 w.e.f. 12th September, 2022. It was further pleaded that despite respondent having completion Certificate for Block A, B and C, he is still carrying out the construction work in Block A. It was further pleaded that complainant booked two apartments in the project on the assurance that he will get all the facilities as assured in the brochure and agreement for sale. It was further pleaded that the original sanctioned plan could not have been revised without the consent of all the already



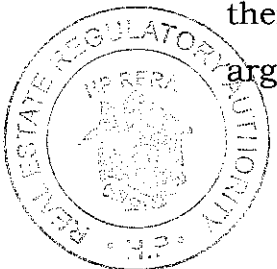
existing allottees in the project "The Woods Barog". It was further pleaded that being the ongoing project on the date of commencement of the RERA Act, 2016 this Authority has jurisdiction to consider even those violations which have been done by the respondent even before the commencement of the RERA Act, 2016 which are continuing in nature especially the violations of the statutory obligations. It was further pleaded that the complainant till today has not handed over final possession of the flat to the complainant as no occupancy certificate has been obtained by respondent.

11. Arguments on behalf of Complainant-

It was argued on behalf of the complainant that on 6th March, 2009 the building plan for project was sanctioned. On 23rd October, 2010 the complainant applied for allotment of two flats. It was argued that the allotment of both the flats was given on 6th December, 2010 and agreement for sale was also entered also on the same date. It was argued that on 23rd July, 2015 respondent requested the Director, TCP HP to revise the drawings and maps earlier approved. It was further argued that intimation with regard to revision of maps was given to the complainant on 23rd July, 2015 which is annexure C-6. It was further argued that the complainant filed objections to the revision of maps on 21st August, 2015 which is annexure C-7. It was further argued that on 11th February, 2016 the maps Annexure C-8 were revised by TCP department without taking consent of all the existing allottees which was the requirement of law. It was further argued that on 13th September, 2020 the respondent registered another project with HP RERA without consent of the allottees. It was further argued that in the year 2020, the case before HP RERA was filed and after filing of the case the complainant sought certain information from the respondent. It was further argued that the entire sale consideration was paid by the complainant to the respondent i.e. Rs Fifty Nine Lakhs but till today they have not obtained the essential occupation certificate and completion certificate. It was further argued that according to the brochure Blocks A, B, C, and D were originally sanctioned in 2009 with one ground cum parking floor plus four stories in each block. It was further argued



that when respondent applied for revision of the building plan the complainant filed objections to the same but Department of TCP revised the plans without dealing with the objections. It was further argued that as per the brochure annexure C-2 and sanction plan total five floors were shown and car parking was also shown and advertised to the complainant. It was further argued that the entire back of Blocks B and C was covered with trees indicating that it was a green area. But now the respondent has registered one more project right at the back of block -C which is using the common road and access of the earlier project. It was further argued that respondent has carried out unauthorized and illegal construction by violating the Municipal and Town Planning laws. It was further argued that while initially five floors were approved the number of floors were afterwards increased but the base of the structure was inadequate for additional floors making the building hazardous and unsafe. Therefore it was argued that a fresh structural stability certificate was required at the time when the plans were amended. It was further argued that respondent has not provided for parking facility as per appendix VII of the HP Town and Country Planning Rules. It was further argued that green areas shown in the map adjoining Block B and C are now not available as they are being unauthorizedly used for parking purposes. It was further argued that plinth height of more than 3.5 meters is not allowed but the respondent has raised a plinth upto 9 to 10 meters. It was further argued that even after a decade the project "Woods Barog" is not complete and unauthorized construction is being carried out by respondent on the spot. It was further argued that as per 78T of HP TCP Amendment Act 2015 and TCP Amendment rules 2016, consent of allottees was not taken. It was further argued that consent of all the existing allottees was not taken before the maps were revised. It was further argued that this Authority had directed the respondent to widen the road and the respondent has acted accordingly but as per the brochure the width of the road was 6.5 meters but since on the directions of the Authority the road has been widened therefore the complainant is not pressing for this relief. It was further argued that the respondent has consistently in his reply submitted that



the complainant is not paying the maintenance charges but on the direction of this Authority the complainant has paid the maintenance charges. It was further argued that without occupancy certificate the respondent cannot charge any maintenance from the complainant as per the law settled by various courts. It was further argued that Woods Barog Phase- II is using common areas of the earlier project without taking two third consent of the allottees which has caused nuisance and reduction in the value of the common areas for existing allottees. It was further argued that Authority had jurisdiction to deal and adjudicate on the present issue for the reason that it is an ongoing project and was registered with the Authority. It was further argued that the Authority has ample jurisdiction to consider even those violations which have been done by the promoters even before the commencement of the RERD Act, 2016. It was further argued that any violations committed by promoters in ongoing project, the Authority has necessary jurisdiction to deal with the same. It was further argued that as per Section 11 of the RERD Act, 2016 the respondent was under obligations to obtain completion and occupation certificate and as per Section 17 of the Act ibid it was obligation of the respondent to execute conveyance deed in favour of complainant. It was further argued that it is the obligation of the respondent to pay all outgoings till he transfers the physical possession of the project. In support of his arguments reliance was placed on New Tech Promoters and Developers Vs State of UP and others (2022)1RCR (Civil) 357, M/s Imperia Structures limited versus Anil Patni and another (2021)AIR (SC)70 para 23 and 33 Samrudhi Urban Co-operative Housing Society ltd vs Mumbai Mahalaxmi Construction Pvt. Ltd. (2022)AIR(SC) 428 para 15, Sangita Agarwal and another vs M/s Chintels India Ltd. of National Consumer Commission in case no. 2562 of 2018 decided 27.5.2022, Super Tech Limited vs Emerald Court Owner Resident Welfare Association and others (2021)10 SCC1.

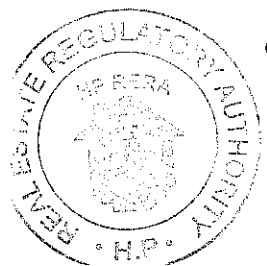
- 12.** The complainant was ignorant of the Authority's question on whether or not the land of 'Woods Barog- II' was included in or was part of the approved plan for the earlier project 'Woods Barog'. Further on the issue that no maintenance can be charged before obtaining occupancy



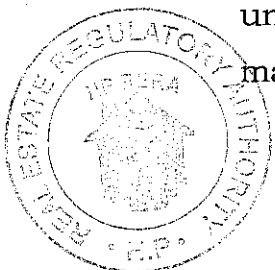
certificate the judgment of National Consumer Commission in Complaint no. 763 of 2020 reserved on 24.11.2021 and announced on 25.1.2022 titled as Madhusudhan Reddy R and others versus VDB WhiteField Development Pvt. Ltd was relied upon. It was further argued that on the point of failure to abide to the terms and conditions of agreement for sale, the judgment of the Hon'ble Supreme court in Ireo Private Limited vs Alope Anand and others (2022)9SCC 412 was relied upon. On the issue that delay and Laches cannot in manner restrict the right of the allottees, a judgment of Punjab RERA in Kanishk Kapoor vs ATS Estates Pvt. Ltd. complaint no. 1828 of 2020 decided on 8.9.2021 was relied upon. It was further argued that although prayer for refund of maintenance charges has not been made by him because legally the respondent promoter cannot charge maintenance therefore it was prayed that the maintenance charges already paid shall be adjusted in the future when the payment of maintenance becomes actually due.

13. Argument on behalf of respondent-

It was argued that the word buyer or buyer(s) used in Section 78 T of TCP Act and rule 63 of TCP rules nowhere says that the consent of all the buyers or 100 % of buyers is required. It was further argued that consent of allottees was taken and only after following the mandate of law and following due procedure of law was the sanctioned map revised. It was further argued that the Director TCP had called for the objections and followed the due process of law for the revision of the maps. It was further argued that the authority that granted revision/modification was not impleaded as a party and no allegations can be made against a statutory authority without hearing that authority. It was further argued that land of project "Woods Barog-II" was never a part of land of project "Woods Barog-1". It was also said that neither the agreement for sale nor the approved plans showed any stilt parking so it is wrong for the complainant to say that stilt parking was ever promised to him or that any amount or consideration was ever charged or levied for stilt parking. The respondent during the course of arguments also denied the contentions of the complainant that there was no structural stability and plinth height rules



were also violated. It was further argued that the competent authority had to analyze whether the norms or yardsticks were followed or not in the department of Town and Country Planning and the authority has granted completion certificate only after verifying all the facts. It was further argued that the completion certificate(s) for Block A, B and C have been issued in favour of promoter by the Authority. It was further argued that completion certificate for block A was granted in the year 2018 for other blocks in the year 2021. It was further argued that in the State of Himachal Pradesh the completion certificate is granted first and then the occupancy certificate. However, it was argued that occupancy certificates have been taken for other allottees but not for the complainant. It was further argued that the judgments relied upon by the complainant don't apply to the present facts because the process in other states like Haryana and Punjab are different. In those states it was argued that the occupancy certificate is given first, and then the completion certificate. It was further argued that in the State of Haryana the allottee can take possession after occupation certificate is granted and completion certificate can be obtained later on. Therefore in view of the above, it was argued that judgment on the issue of maintenance relied upon by the complainant is not applicable to the facts of this case. It was further argued that the complainant hasn't paid an amount of Rs. 93,209/- that has been due since 2013 (paragraph 3, page 7 of the reply). It was further argued that annexure at page 58 of the reply is the letter whereby emails have been sent to the complainant informing him regarding default and for this reason the occupation certificate was rightly withheld. It was further argued that for the purpose of execution of conveyance deed co-operation and documentation from complainant's side is required as they have to jointly apply for permission under Section 118 of the HP Tenancy and Land Reforms Act, 1972 being a non agriculturist. It was further argued that vide communication dated 7th December, 2020 (page 45) a reminder was sent to complainant to furnish his documents to seek permission under Section 118 but he did not turn up. It was further argued that qua maintenance the complainant has made only a part payment to the

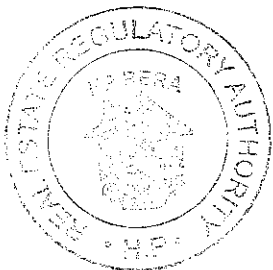


respondent that also after the orders were passed by this Authority. It was further argued that green areas present in the revised sanction plan of 2016 are still existing on the spot. It was further argued that there are no deviations from the revised plans of 2016 and it was for this reason that completion certificate by the competent authority in this behalf was granted. It was further argued that after the directions passed by this Authority to widen the road the respondent in the year 2021 had obtained consent of 2/3 existing allottees in this behalf.

14. FINDINGS OF THE AUTHORITY:-

We have heard the arguments advanced by the Ld. Counsels for the complainant & 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. This Authority is of the view that following are the issues that require the consideration and adjudication namely:-

- A. Jurisdiction of the Authority.**
- B. Claim of the complainant for quashing of registration granted to "Woods Barog Phase -II" vide registration no. RERAHPSOP03200072?**
- C. Whether the revised building plan dated 11.02.2016 for "Woods Barog Phase-I" is liable to be quashed and set aside?**
- D. Whether the respondent is carrying out any unauthorized and illegal construction in the project "Woods Barog phase I" as well as the "Woods Barog phase II"?**
- E. The claim of the complainant for interest on delayed possession?**
- F. Whether the respondent is constructing flats in the stilt parking area/ basement of Block-A and the jurisdiction of the Authority under RERA Act, 2016 to stop the construction?**



- G. Builder to provide individual electricity connection and settle previous bills as per actual rate**
- H. The claim of the complainant that he is not liable to pay maintenance charges as the possession offered to him is not in accordance with law as completion and occupancy certificate has not been obtained-**
- I. Claim of the complainant for compensation on account of respondent's failure to provide amenities and facilities through any maintenance agency for the past ten years.**
- J. The claim of complainant qua cost to the tune of Rs 5,31,000/- on account mental harassment and litigation charges.**

15. A. Jurisdiction of the Authority.

Section 31 of the Act prescribes that any aggrieved person can file a complaint before the Authority or the Adjudicating Officer as the case may be for any violation of the provisions of the Act *ibid*. 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 complaint in 'Form-M.'

16. Section 34(f) of the Act empowers the Authority to ensure compliance of the obligations cast upon the promoter and Section 11(4) (a) of RERD Act, 2016 casts obligations on the promoter to implement "agreement for sale" and ensure compliance of other obligations mentioned in the RERD Act, 2016. Further, Section 37 of the Act empowers the Authority to issue directions in discharge of its functions provided under the Act. The Authority also has power to impose penalties under Section 59 to 63 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.'

17. Proviso to Section 18 of the RERD Act, 2016 says that if complainant does not intend to withdraw from the project then, promoter shall pay



interest for every month of delay till the handing over of possession of the flat to the complainant at such rate as may be prescribed. So, as per proviso of Section 18, interest is to be calculated for every month of delay till the possession is handed over to the complainant. Thus, the moment due date for handing over possession is over, the claim of interest for delay of every month is accrued to the complainant as per Section 18 of RERD Act, 2016. Right to claim interest is statutory right once it is accrued it lasts till the possession is handed over. Once delay is caused in handing over possession, it is continuous cause of action to get possession and consequently interest on period of delayed possession.

18. Further in the case of **Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P.** and Ors MANU/SC/1056/2021 it was held by the Hon'ble Supreme Court in para 86 of the judgment as under:

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint....”

19. Thus, from the reading of the above provisions of the Act as well as law laid down by the Hon'ble Supreme Court, it is very clear that the Authority has power to adjudicate various matters, including refund and interest, and interest on delayed possession under Section 18 of the Act and imposition of penalty under the Act whereas the compensation is to be adjudged by the Adjudicating Officer under Section 71 of the Act *ibid*. It is further.

20. B. Claim of the complainant for quashing of registration granted to “Woods Barog Phase II” vide registration no. RERAHPSOP03200072?



It is the case of the complainant that the respondent has got registered another project with HP RERA with the name "Woods Barog Phase II" as a new project and has already started construction of the same by using same road and other facilities of the earlier project "Woods Barog" without taking the consent of all the existing allottees. It was further his case that the use of common facilities of "Woods Barog phase-I" for the project "Woods Barog Phase II" the undivided interest held by each individual allottee in the common areas and facilities of the earlier project have been greatly diminished. It was further the case of the complainant that the new project "Woods Barog Phase II" has encroached upon the green cover of the earlier project and thereby the promoters have resiled from the representation given to the allottees of earlier project at the time of purchase assuring them of ample green areas in the earlier project i.e. phase I. It was further the case of the complainant that green cover of the trees at back of Block C of phase- I has been completely removed and instead Block I and II of the new project have been sanctioned without the consent of the existing allottees thereby violating their valuable rights.

- 21.** The respondent has denied the aforesaid averments in his reply and submitted that the second project has been registered after obtaining necessary approvals from the concerned departments. The respondent further pleaded that the Phase II Project is duly registered with HPRERA after following due process of law. The respondent further submitted that the Authority has inspected the project site and has recommended certain changes in the project for the betterment and welfare of the allottees vide its order dated 26.08.2021 which have been duly complied by the respondents. It was further his case that the fact of compliance having been made by the respondent has been recorded by the Authority in its order dated 08.02.2022. It was further the stand of the respondent that thereafter the respondent has applied for revision of layout plan from Director TCP, HP which revision has been approved by the TCP department. It was further contended that in terms of the directions of the Authority the width of the approach road to Phase II project has been increased from 3 mts to 5 mts. It was further contended that this direction



has been complied with and therefore it was submitted that the same issue cannot be re agitated again at this stage once the same has been resolved by the Authority by way of judicial order.

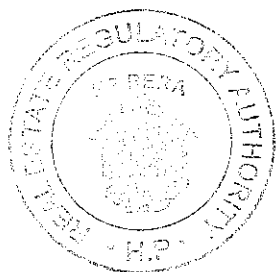
22. This Authority had visited the spot on 4.8.2921 at 12.15PM and given the following report

“From the site inspection the Authority makes the following observations:-

- 1 *During the site inspection the Complainants told that in Block NO-A, earlier , stilt parking was visible. However, recently the promoter has converted that into an apartment. The work is still going on and that needs to be stopped.*

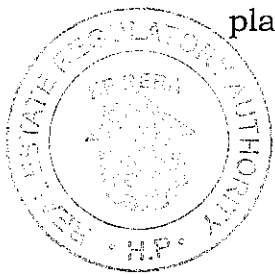
*The Authority perused the sanctioned plan. As per the sanctioned plan of **Phase I**, Block A is 6 storied building wherein STORE IS APPROVED in the basement floor and residential apartments have been approved in the lower ground floor, ground floor , first floor, second floor and in third floor. During site inspection, it has been observed that store is existing in basement floor and residential apartments are existing/under development in all upper floors. Therefore, there is no stilt parking in Block –A , as per the sanctioned plan. (See **Photo No. 3** enclosed herewith). The Authority also clarified to the complainants that the sanction plan has been revised prior to the enactment of the Real Estate (Regulation and Development) Act, 2016. Therefore, revised sanction of plan at that time did not require the consent of the allottees, as the provisions of the RERD Act were not applicable at that time.*

- 2 *The complainants informed that the Electricity Bills are presently being raised at commercial rates i.e. @ Rs.8/per unit as against domestic rate. The representative of the promoter company stated that no payment whatsoever has been made by any allottee not even at domestic rate. The representative of the respondent further stated that he has no problem if allottees get individual connections and he is also willing to extend all cooperation for the same. The Authority advised both the parties to do the needful, including payment at domestic rate.*
- 3 *As per the sanctioned plan of **Phase –I**, approach road has been taken from the National Highways No.5 which was earlier no. 22. The Width of road is 6.50 Meters at the start and up to site of Block E. It has been reduced to 5.00 Meter in front of site of Block E and thereafter it has further been reduced to 3.00 meters from proposed Block D and up to the existing Block C as shown in the sanctioned plan.*
- 4 *During site inspection, it has been observed that the width of road in front of proposed Block D leading towards Block A is 3.30 Meters, at curve (hair pin bend) the turning radius is 6.60 Meters and thereafter the width is 4.30 Meters and 3.30 Meters. (See **Sketch Plan No.1** enclosed herewith).*



- 5 Presently, the site of proposed "D" Block of Phase -1 is being used as open parking for cars (Photo **No.4** enclosed herewith).
- 6 The two open Parking's have been proposed in phase -1 as per the sanctioned plan. (See **Photo No.4 and 5**) enclosed herewith. The approved open parking as it seen in photo -4 is being maintained /used as a grassy green area on the site, whereas it should have been put to parking use. The Authority got the tentative area checked of both the existing open parking's and found it to be deficient in area when cross checked / compared with the approved drawing. The Authority directed both the parties to provide the detail of actual area on the spot viz-a-vis the approved parking area shown in the sanctioned plan. The promoter is required to develop the parking space, at least equivalent to the area shown in the sanctioned plan.
- 7 A full Parking floor have been proposed in the lowest storey of Block D and E of **Phase -I**, but it will barely cater to the needs of allottees of Block D and E only. Therefore, the open Parking will be used by the allottees of Block A, B and C which appears to be deficient.
- 8 The existing internal drive way has not been provided with any proper parapets and / or railings, which appear to be a major safety hazard.
- 9 The Junior Draftsman of the SADA Barog informed that the Promoter has submitted a revised plan of Block A. The TCP Solan should be intimated that no revision be sanctioned till consent of 2/3rd of the allottees of **Phase I** is obtained by the Promoter as per Section -14(2) (ii) of the RERD Act.
- 10 The fire escape staircase constructed in front of Block "B" has an obstruction in shape of rock. The rock needs to be cut (See **Photo No.6** enclosed herewith).
- 11 The Authority also visited the site of Phase -2 of Woods Barog. The Block -1 (**Photo -2**) is under construction whereas the construction of Block -2 is yet to start. The sanctioned plan of Phase -2, shows an approach road of 5 meters width, but surprisingly the approach road is linked with / connected to a 3.0 meters road (a part of which was approved as a path from the hair pin bend near block "A" to hairpin bend from where the approach to the phase -2 is linked /joined) between Block D of Phase -1 and entrance to site of Phase -2. Therefore, it is evidently clear that the total vehicular load on this existing 3.0 meters wide steep road ahead of the hairpin bend near block A, will be very heavy because of total number of vehicles of the 31 flats of the Phase -2 and the width of the existing road is grossly insufficient to take this much vehicular load and requires widening to make a width of minimum 5.0 meters throughout as per the bylaws including improvement /widening of turning radius near Block "A."

23. In brief the relevant facts as emanate from the report are that in Block-A, no stilt parking is visible as per the sanction plan. As per the sanctioned plan of **Phase -I**, approach road has been taken from the National

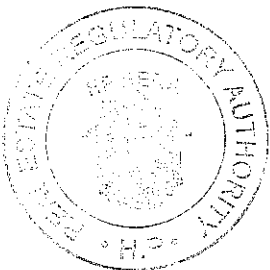


Highways No.5. The Width of road is less than 5 meters and therefore it was ordered that width of entire road shall be widened to 5 mts and the maps shall be revised accordingly after taking consent from 2/3 allottees which fact was brought also brought into notice of the map approving authority i.e. SADA Barog. Further from the report it emanates that the site of proposed "D" Block of Phase -1 was being used as open parking for cars. Block -1 of Phase -2 of Woods Barog was under construction whereas the construction of Block -2 of the phase II project was yet to start. Further from the report it transpired that the sanctioned plan of Phase -2, shows an approach road of 5 meters width, but surprisingly the approach road is linked with / connected to a 3.0 meters road (a part of which was approved as a path from the hair pin bend near block "A" to hairpin bend from where the approach to the phase -2 is linked /joined) between Block D of Phase -1 and entrance to site of Phase -2. It was further observed in the report that the width of the existing road is grossly insufficient to take vehicular load and requires widening to make a width of minimum 5.0 meters throughout as per the bylaws including improvement /widening of turning radius near Block "A".

24. Thereafter an order dated 26.8.2021 was passed. The relevant contents of the order are as under:

"In light of above and the site -inspection dated 04.08.2021, the Authority in exercise of the powers vested in it under Section 37 of the Real Estate (Regulation and development) Act, 2016 is pleased to pass the following orders/directions-

- 1 ***The entire area proposed for the construction of D-Block of phase -I of the project in question shall be converted into common open parking in the allottees of Block A, B,C& E of Phase 1 of the project in question and no construction of any flats/ apartments whatsoever shall be carried out ever in the aforesaid area.***
- 2 *The minimum width of the road(s) in the project in question shall be **increased /enhanced and maintained at 5 meters** and the portions of the road(s) which are less than 5 meters shall be widened accordingly. The turning radius at the hairpin bend between site of D Block and A Block shall also be increased proportionately. Proper parapet walls /railings shall be provided along the entire length of the road /driveway in the site, to ensure the safety. The entire process of*

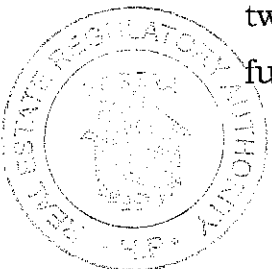


widening including provision of parapets/ railings shall be completed within six months from the passing of this order.

- 3 **The respondent promoter shall submit the revised drawings of the project in question (after incorporation of the changes as directed in the foregoing paras) to the competent authority with a copy of this Authority within three weeks of passing of this order. Thereupon, aforementioned competent authority is advised to grant approval to the aforesaid drawings within one month of the submission of the same in the interest of the allottees. The requirement of approval of the revised drawings will no come in the way of starting of the road widening and other works as per directions.**
- 4 **The complainants shall pay maintenance charges in accordance with the terms of the apartment buyer's agreement as well as the amount due in lieu of the consumption of electricity at domestic rates within one month from the passing of this order. In case of any dispute regarding the quantum of the maintenance charges, the parties shall resolve the issue amicably by holding a meeting between them. The proceedings of the meeting shall be provided to the Authority."**

25. By way of the aforesaid order the Authority directed that the block D of phase-I shall not be constructed and it shall be converted into common parking for allottees of Block A, B,C& E of project phase-I. It was further directed that minimum width of the road shall be increase to 5 mts. It was further directed that the maps shall be revised accordingly.

26. In the zimni order dated 08.02.2022 it was observed that the direction passed by this Authority in the previous order dated 26.08.2021 as reproduced herein above have been complied with. Meaning thereby that the road was widened and the revised drawing were also submitted to the concerned office of competent authority. As per the completion certificates Annexure R-11 and R-12 appended with the affidavit dated 28.02.2023 the total number of flats that received completion certificate from the authority in block A are 17, in block B are 24 and in block C are 23. The list of total number of allottees of flats appended is fifty in number. This fact has remained un rebutted on behalf of the complainant. The consent letter of allottee(s) Annexure R-20 goes to show that in total 36 allottees have given their consent / NOC for revision of maps. Therefore more than two third allottees have given their consent for revision of maps. It was further submitted by the respondent in course of argument that the



revision of layout plan stands approved by the concerned competent department. It was further the case of the respondent in the pleadings and also during the course of arguments that the land being developed for phase II was never a part of the earlier project as the same was purchased at much later stage i.e. in the year 2019. This averment has not been rebutted by the complainant and therefore it is settled law that facts not denied are deemed to have been admitted. The only objection of the complainant is that respondent connived with the officers of the Town and Country planning department to get the plans revised. No evidence or any supporting document has been brought on record by the complainant to substantiate / prove the aspect of connivance between the authorities and respondent therefore his contentions are liable to be rejected being not proved and the version of respondent that revision has been done after following due process of law has to be believed to be true. Further there is nothing on record that could convince this Authority that while developing phase-II project green areas of project no. 1 were altered/ changed adversely. Therefore it is reasonable to conclude that while constructing phase-II the ecology of phase- I project has not been altered except for the widening of road which is in the interest both the projects. Further as per Section 14 of the RERD Act, 2016 user of road of one project by another project would not amount to addition or alteration in the project so as to fall within the ambit of Section 14 (2)(ii) of the RERD Act, 2016 because in a State like Himachal Pradesh which is a hilly state and often there will a situation that one project will be on higher side or on the slope above the other project and the only way possible to the project above would be through the project which is on the lower side. So far widening of road which amounts to alteration of layout plans is concerned it has already been held in para supra that consent of two third allottees has been taken. Therefore this issue is accordingly decided and this claim of the complainant is not sustainable.

27. C. Whether the revised building plan dated 11.02.2016 for “Woods Barog Phase-I” is liable to be quashed and set aside?



The contention of the complainant is that as per Section 78 T of the HP Town and Country Planning/(amendment) Act 2015 and rules 63 of the HP Town and Country Planning (amendment) Rules 2016 consent of all the buyers was required before any change in the sanctioned plans as well as change in undivided interest in the common areas was done. The respondent has replied to the aforementioned statement by submitting that the original plans approved on 06.03.2009 were revised on 11.02.2016 by the competent Authority by taking 2/3 consent of the allottees and it was submitted that the due process was followed.

The maps were revised by the department of Town and Country planning on the 11.02.2016. The Act came into force 01.05.2017. In the case of **Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors MANU/SC/1056/2021 in para 54 of the judgment it was held as under**

“54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered Under Section 3 to prospectively follow the mandate of the Act 2016.”

The Act has been held to be retroactive in nature but will apply prospectively. Since it is an ongoing project therefore this Authority has jurisdiction to go into the contention of continuing violations.

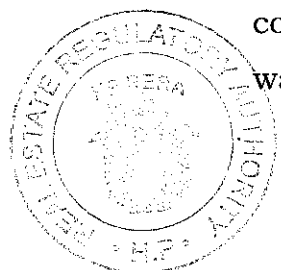
- 28.** From the perusal of Annexure C -6 dated 23.07.2015 it is clear that the Director Town and Country Planning published a notice in the newspaper for inviting objections and suggestions from the buyers or prospective buyers or general public with regard to proposed revision of plans / drawings in the projecting in question. Further Annexure C-7 is letter addressed by the complainant to the Director TCP stating therein his objections to the proposed revision. The RERD Act 2016 was not in operation at the time when the revision of plans were made. The Act relevant at the time was Town and Country Planning Act. Section 78 T of the HP TCP Act reads as under :



78t. No alterations and rectification of defects.- *“(1) After the approval of the project i.e. grant of license under sub-section (3) of section 78 p of this Act, the promoter shall not make any addition or alteration in the project, without the consent of the buyer and without the prior approval of competent authority in the prescribed manner.”*

*(2) Subject to the provisions of sub-section (1), the building shall be constructed and completed in accordance with the plans and specifications aforesaid; and if any defect in the building or material used, or if any unauthorized change in the construction is brought to the notice of the promoter *“by the buyer”* within a period of one year from the date of handing over possession, it shall wherever possible be rectified by the promoter without further charge to the persons who have agreed to take the apartments, and in other cases such persons shall be entitled to receive reasonable compensation for such defects or change and where there is a dispute as regards any defect in the building or material used or any unauthorized change in the construction, or as to whether it is reasonably possible for the promoter to rectify any such defect or change, or as regards the amount of reasonable compensation payable in respect of any such defect or change which cannot be or is not rectified by the promoter, the matter shall, on payment of such fee as may be prescribed and within a period of three years from the date of handing over possession, be referred for decision to the Director and the Director shall, after giving an opportunity of being heard to the parties and after making further enquiry, if any, as it may deem fit, pass order, which shall be final.*

29. From the perusal of the aforesaid section it is clear that the consent of buyer and approval of competent Authority is required. The Authority i.e. the Director TCP has circulated the proposed amendment in the plan and called for objections through the mode of publication. As per Annexure R-19 the consent of 13 allottees was obtained for the purpose of revision of Maps. Under the relevant provision of Town and Country Planning Act, 1977 it is not specified as to consent of how many of the total number of allottees was required and only conclusion that can be inferred from it is that the consent from the 13 allottees was taken. In terms of section 14(2)(ii) of the RERD Act 2016 the consent of two third of the allottees who have agreed to take apartments in the building was required but the provisions of this Act could only be followed once the Act came in operation and not before that and before commencement of RERD Act, 2016 the provisions of the Act operating at the relevant time has to be considered. Therefore it transpires that consent of allottees was taken by the competent authority to revise the maps. Whether consent of all allottees was required or of only a few of them has to be seen by the then competent



authority. Presumption of truth is attached to the working of a Government office and this authority presumes that the TCP Department functioned in accordance with the established procedure and that the authority revised the maps in accordance with the TCP Act. Further still if the complainant was aggrieved by the said revision that was done prior to commencement of RERD Act, 2016 the remedy for him lies under the TCP Act and not under the RERD Act 2016 as, this Act was not in operation at the relevant time. While applying the Act retroactively the law operating at the relevant time cannot be ignored. This Authority confers on itself no power to quash or examine the correctness of the revision of plans done by an authority competent in this regard at the prevalent time and therefore this issue is decided accordingly.

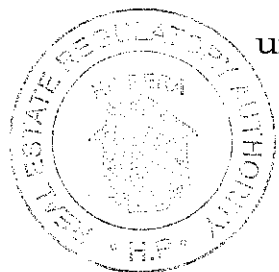
30. D. Whether the respondent is carrying out any unauthorized and illegal construction in the project “Woods Barog phase I” as well as the “Woods Barog –Phase II”?

So far as the issue of unauthorized and illegal construction in the project “ Woods Barog” is concerned the competent Authority i.e. department of Town and Country Planning has issued completion certificates qua Block A, B and C. The expression "Completion Certificate" has been defined in Section 2(q) of the RERA Act, 2016 which reads as below:

"Section 2(q) " completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws."

From the above provision of Section 2(q), we come to the conclusion that completion certificate is essentially a certificate issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, lay out plan and specifications, as approved by the competent authority under the local laws.

31. The department of Town and Country planning being a competent Authority the presumption of truth is attached with the same therefore unless otherwise expressly proved, the Authority has to rely and believe



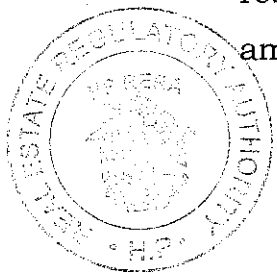
the completion certificate issued by the aforementioned competent authority. The complainant has not brought on record any expert evidence to rebut the presumption of truth attached to the completion certificate. Therefore it is reasonable to hold that no unauthorized or illegal construction has been carried out in the project "Woods Barog" and the construction has been done in accordance with the sanctioned plan dated 06.03.2009 revised on 11.02.2016.

32. So far as the issue of unauthorized and illegal construction in the project "Woods Barog -II" is concerned. The Project is still under construction and the department of Town and Country Planning is still to apply its mind to the issue of adherence of sanctioned plans at the time of granting completion certificate. Therefore the complaint of the complainant on this issue is premature and no findings on this issue can be passed at this stage.

33. E. The claim of the complainant for interest on delayed possession?

It was the case of the complainant that he has paid full consideration for the flats and is entitled to have legal title and possession of the same but till date respondent has not complied with the statutory obligation to obtain occupancy as well as completion certificate. It was further the case of the complainant that no conveyance deed can be executed without respondent first obtaining occupancy and completion certificates. It was further his case that the possession delivered to the complainant is merely paper possession and possession has not been handed over in accordance with law. It was further his case that complainant has waited for more than eleven years but the possession in accordance with law has yet not been delivered.

34. The respondent has refuted the allegations of the complainant and specifically in para 3 of his reply submitted that offer of possession was issued to complainant on 05.07.2013 and on 30.08.2013 he has taken the possession of the flat(s) in question. It was further the stand of the respondent in the same para that the complainant has failed to pay an amount of Rs 93,209/- towards sale consideration and this amount is still



outstanding to be paid by the complainant. It was also the respondent's case that the complainant had been sent multiple reminders to pay the outstanding bills and submit the documents needed to get permission under Section 118 of the HP Tenancy and Land Reforms Act 1972, but the complainant hadn't done either. He or she hadn't paid the bills or given the documents. It was further his case that complainant is enjoying possession of the flats since the year 2013 without any protest therefore his claim for interest of delayed possession at this stage is time barred. It was further the case of the respondent that completion certificate for Block A has been issued by the competent authority on 18.06.2018 and completion certificate Block B and C has been issued by the competent authority on 26.10.2021. Further it is his case that occupation certificate with regard to 54 flats in Block A & B and C have been issued by the competent authority by the 09.11.2022. The only defense of the respondent is that since the complainant has not paid the outstanding dues of Rs 93,209/- therefore occupation certificate in his case could not be obtained and further sale deed could not be executed in his favour as complainant being a non- agriculturist was required to apply for permission under Section 118 of the Act *ibid* and despite repeated requests has not supplied the documents required for obtaining permission as mentioned above. The factum of outstanding dues has been denied by the complainant in his rejoinder and he has submitted that as per agreement for sale dated 06.12.2010 the sale price of the units was Rs 50 Lakhs but the complainant has already paid an amount of Rs 59 Lakhs and till date no final notice of possession was ever given to the complainant.

- 35.** For this purpose the relevant clause of the agreement for sale dated 6.12.2010 is reproduced here in below.

ARTICLE 4

"POSSESSION

4. A DELIVERY /POSSESSION:

That the possession of the Apartment is proposed to be delivered by the Developers to the purchaser(s) within 30 months of signing hereof subject to Force Majeure circumstances and upon registration of sale deed



provided all amounts due and payable by the purchaser(s) under this agreement have been paid to the developers within the stipulated period. It is, however, understood between the parties that various Apartments in the Project shall be ready and be completed in phases and handed over to the Purchaser(s) accordingly.

That it is agreed that in Developers shall also be entitled to reasonable extension of the time for delivery of possession of the Apartment on account of any default or negligence attribute to purchaser(s)' fulfilment of obligations under the agreement.

It is further agreed that by the purchaser(s) that after completion of the floor and receipt of full consideration and other charges, if any, payable by the Purchaser(s), sale deed shall be executed in favour of the Purchaser(s) on the format approved by the Developers. All expenses towards execution of sale deed shall be borne by the Purchaser(s). It is understood and acknowledged by the purchaser(s) that propriety in the Apartment shall vest with the Purchaser(s) only upon execution and registration of the sale deed in his favour and payment of all dues and outstanding payable under this agreement. That it is specifically made clear that until the execution of sale deed, the developers shall continue to be the owners of the Apartment and Developers shall have the first lien and charge on the Apartment for all its dues and outstanding that may become due from the Purchaser(s) to the developers. That Purchaser(s) undertakes to remain present before the registering Authority at the time of registration of the conveyance deed of the Apartment.

4. B NOTICE FOR POSSESSION

That the purchaser(s) shall clear all his dues with stamp duty amount and other charges within 30 days from the date of issuance of final notice of possession by the developers. The possession of the Apartment shall be handed over to the allottee(s) within 30 days after clearance of all the dues. In case the purchaser(s) fails to take over actual physical possession of the Apartment within 30 days as aforesaid or defaults in clearing the dues within 30 days from the issuance of notice of possession, the Purchaser(s) shall be deemed to have taken possession of the Apartment and holding charges @ Rs 5/- per Sq ft. Per month of the saleable area of the Apartment and maintenance charges, as determined by the Developers /maintenance agency, shall become payable by the Purchaser(s) from the date of deemed possession of the Apartment."

- 36.** As per the schedule appended to the agreement for sale Annexure C-4, the total price of the units was Rs 50,00,000/- plus IFMS plus other charges as applicable. As per clause 4.a of article 4 of the agreement for sale the possession of the apartment was to be delivered to the purchaser within 30 months of the signing of the agreement. Further as per this

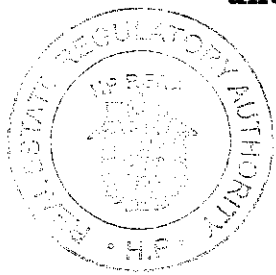


clause after receipt of full consideration and other charges, sale deed shall be executed in favour of the purchaser. Further as per Clause 4 b of article 4 of the agreement for sale the purchaser was to clear all his outstanding dues within 30 days from the date of issuance of final notice of possession by the promoter. The letter dated 05.07.2013 Annexure R-C goes to show that offer of possession was issued to the complainant on 05.07.2013 and he was requested to clear the outstanding dues. Further Annexure R-4 (collectively) are the letter(s) dated 21.06.2016, 11.10.2019, 12.10.2019, 01.12.2020, and 07.12.2020, which were sent to the complainant by the respondent wherein the complainant was asked to finish the paperwork for applying for permission under section 118 of the Act and to pay the outstanding debts. From the perusal of these letter(s) it is clear that respondent had been constantly requesting the complainant and unless the documents were furnished by the complainant the permission under Section 118 could not be applied. No document or evidence has been submitted by the complainant to contradict or rebut these letters or show that he ever raised a dispute about the amount of Rs 93,209/- still unpaid towards the consideration. He has also not submitted the document he needed to in order to get permission under Section 118 of the Act *ibid*. Therefore the only conclusion that can be drawn is that the complainant is in default of payment of dues in lieu of consideration and has not submitted his documents required for seeking permission under Section 118 of the Act. The respondent was justified in not getting the sale deed executed for two reasons. First that the complainant is in default of payment of outstanding amount and secondly that despite requests from the respondent, complainant has not furnished the necessary documents required for seeking permission under Section 118 of the Act *ibid*. However it is the statutory liability and duty of the respondent as a promoter to obtain occupancy certificate under Section 11(4)(b) of the RERD Act, 2016 which he has failed to do so. Further it is also a fact that complainant has been admittedly enjoying the possession of flats since the year 2013 without any protest and it was only when the amended



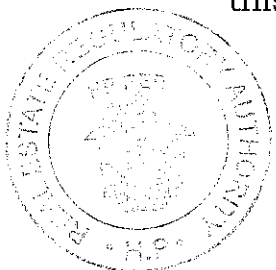
complaint was filed i.e. year 2022 that interest of delayed possession was claimed for.

- 37.** None of the parties on this issue can be held to be innocent. There were reciprocal promises to be performed by both sides in which both the parties have defaulted. Permission under Section 118 of the Act could not be sought without the complainant's document, the granting of which is not within the respondent's jurisdiction. Further outstanding dues from the complainant was no excuse for the respondent to not obtain occupancy certificate.
- 38.** Therefore it is the duty of the complainant to hand over necessary and requisite documents so that his permission under Section 118 of the Act could be applied. Once the balance payment is paid and permission under Section 118 of the Act *ibid* is obtained, it is the respondent's duty to get the conveyance deed executed in favour of the complainant for which stamp, registration and other such charges have to be paid by the complainant separately.
- 39.** Further as per Section 11 (4)(b) of the Act *ibid* it is the duty of the promoter to obtain completion and occupation certificate. As discussed in paras *supra* the respondent has completion for all the three blocks A,B and C but occupation certificate has been obtained for 54 allottees excluding the complainant. The reason given by the respondent is that occupation certificate for complainant was not obtained as he was in default of payment as held above. From the facts and circumstances of the case, it is clear that the respondent discriminated against the complainant by not getting an occupancy certificate, even though he got the same for all the other allottees. The respondent cannot avoid his liability to obtain occupation certificate in favour of flats of the complainant and is duty bound to obtain so within in the time bound manner.
- 40. F. Whether the respondent is constructing flats in the stilt parking area/ basement of Block-A and the jurisdiction of the Authority under RERD Act, 2016 to stop the construction?**



It was the case of the complainant that the respondent without any prior notice or permission has constructed flats in the basement area of Block A which was allotted as parking to the residents of the Block. It is further case of the complainant that the respondents had promised a stilt parking in the basement area. The respondent in his reply has denied the aforementioned allegations of the complainant and stated that no promise for allotment of specific stilt parking was ever made by the respondent company to any of the allottee of the Block A. It was further stated in the reply that open common parking for the allottees as sanctioned by the department while approving the layout plan of the project has been provided. It was further contended in the reply that no additional charges for specific parking space was charged from any of the allottees and therefore the claim of the complainant for stilt parking is false. It was further submitted in the reply that sufficient parking space has already been provided at the project site to cater to the needs of all the allottees.

- 41.** The Authority has gone through the record of the case and also the site inspection report dated 4.8.2021 from which it transpires that there is no stilt parking in Block -A , as per the sanctioned plan which was revised on 11.02.2016. Block A of the project has been issued completion certificate by the competent Authority 18.06.2018. The copy of the completion certificate has been appended as annexure R-11 filed with the affidavit dated 28.02.2023. From the perusal of the document which has been issued by the department of Town and Country Planning which is the competent authority to certify in this behalf, it is clear that the construction has been done in accordance with the sanctioned plan dated 06.03.2009 which was further revised on dated 11.02.2016. Further no documents/evidence has been filed by the complainant to show that any amount was ever charged by the respondent qua the stilt parking. The complainant has averred that the respondent in the brochure has shown stilt parking and also advertised stilt parking but has not provided the same. The remedy for any breach of Section 12 of the RERD Act, 2016, in this regard, is compensation, which is to be decided by the adjudicating



officer under Section 12 of the RERD Act, 2016. The complainant is free to approach the adjudicating officer for any such infringement.

42. G. Builder to provide individual electricity connection and settle previous bills as per actual rate.

It was the case of the complainant that the respondent is through demand letters asking for electricity charges all the time. It is further his case that the electricity is being supplied by way of installation of sub meters but the actual monthly electricity consumption has never been conveyed to the complainant. It is further his case that the demand of charges qua the electricity are not as per the actual consumption on domestic rates but are charged at a much higher rate. This fact has been denied by the respondent and further it has been pleaded by the respondent that they have no objection in case the complainant applies for an individual electricity connection. It is the duty of the respondent company to provide electricity to every allottee. This obligation has also been re-iterated in Section 11(4)(d) of the RERD Act, 2016. The complainant is very much within his right to demand the reimbursement of the difference of charges between the commercial and domestic rates of electricity as they are forced to pay for the services on rates which are exorbitant, without any justification. The complainant has not submitted any proof that they have applied for individual electricity connection from HPSEBL. Once the complainant applies for an individual connection it is the duty and responsibility of the respondent company as a promoter to facilitate the electricity connection in favour of the complainant. Till the individual electricity connection is not installed the respondent can only charge as per domestic rates from the complainant by showing them their actual consumption.

43. H. The claim of the complainant that he is not liable to pay maintenance charges as the possession offered to him is not in accordance with law as completion and occupancy certificate has not been obtained-

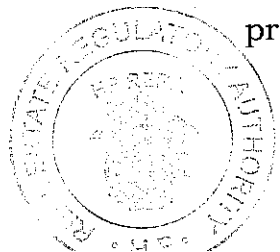
It is the case of the complainant that the respondent cannot claim maintenance charges from him in the absence of mandatory occupancy



certificate and the possession handed over to the complainant is against the law. It was further his case that this Authority vide its order 26.08.2021 had directed him to pay the maintenance charges in accordance with the agreement for sale. It was further his case that he had raised objection before the Authority to the demand for maintenance charges. It was further his case that he was compelled to make payment of Rs 5,10,514 + Rs1065 (TDS) as maintenance charges under protest subject to outcome of this case. Also, it was argued on his behalf that if the Authority comes to the conclusion that paying of maintenance charges is against the law, then the excess amount that the complainant has paid towards maintenance charges should be deducted from the maintenance charges that will be due from the date the occupation certificate is obtained and the flat is handed over legally. The respondent has rebutted the contentions of the complainant and submitted that no relief qua maintenance has been prayed by the complainant and by placing reliance on the judgment of Trojan and Company Ltd Vs RM. N. N. Nagappa Chettiar AIR1953SC 235 has submitted that no relief can be granted to a party which has not prayed for the same in his complaint. Further it was also contended by the respondent that the issue of maintenance has already been settled by the Authority in its order dated 26.08.2021 and 08.02.2022.

44. The Authority is not in agreement with the contention of the respondent that the relief of maintenance cannot be granted once the complainant has not prayed for the same in the complaint. Although there is no specific prayer for refund or adjustment of maintenance charges but the same have been specifically pleaded in the complaint therefore it cannot be said that the pleadings are absent. The claim was also raised by way of MA 8 of 2022. The Authority in its order dated 26.08.2021 and 08.02.2022 has already held that since the complainant is in possession of the flat therefore he is liable to pay maintenance charges at the rate prescribed in the agreement for sale.

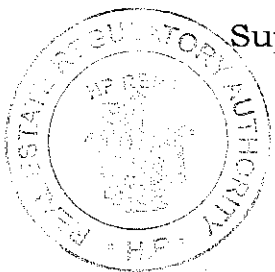
45. Under section 11(4)(d) of the RERD Act, 2016 it is the duty of the promoter to maintain the project by itself or by appointing an agency for



this purpose till the RWA takes over possession. Whether the AOA/RWA has taken possession is not clear from the facts of the case. Once the AOA/RWA is formed, section 11(4)(d) and Section 17(2) of the RERA Act mandate the promoter to handover the maintenance functions to AOA/RWA. The payment of maintenance charges by the allottees is one of the obligations to be performed by the allottee under the RERA Act, 2016. Section 19 (6) of the RERA Act reads as under-

Section 19 (6) Every allottee, **who has entered into an agreement for sale** to take an apartment, plot or building as the case may be, under section 13, **shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place**, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent, and other charges, if any.

46. The allottees are therefore obligated under section 19(6) of the Act *ibid* to pay maintenance charges and various other charges at the appropriate rate as per the terms of agreement for sale more so when the complainant is in possession since the year 2013 without any protest. Under Section 37 read with Section 19(6) of the Act *ibid*, this Authority has full powers to issue any binding directions to the allottees for payment of maintenance charges and interest thereon and also to issue any other directions which it considers necessary to dispense justice. Till such time the association of allottees takes over the project and its common services and decide the common expenses and monthly contribution, payment of charges as stipulated under the agreement for sale and enforceable under the RERA Act, 2016 shall continue to be made by the allottees as there cannot be maintenance holiday once possession is taken. All the allottees who have taken possession and enjoying the facilities of the project must pay the maintenance charges to the promoter as per the agreement for sale till such time the association of allottees takes over and determines the common expenses. The judgments relied on by the complainant in the *Samruddhi Co- operative Housing Society Limited vs Mumbai Mahalakshmi Construction Pvt. Ltd.* AIR 2022 SC 428 of the Hon'ble Supreme Court and *Madhusudhan Reddy R vs VDB Whitefield*



Development Pvt. by Hon'ble National Commission in consumer complaint no. 763 of 2022 decided on 25.1.2022 are not applicable to the facts of the case as they have been passed under a different statute and the provisions of RERD Act, 2016 particularly Section 19(6) has not been dealt with in the aforesaid judgments and therefore they are not applicable in the present facts. The Authority has already vide its orders dated 26.08.2021 and 08.02.2022 directed the complainant to pay maintenance charges as per the agreement of sale. Any sum paid in lieu of maintenance after the order was passed by the Authority shall be adjusted and a fresh bill of pending maintenance charges shall be raised again by the respondent strictly in accordance with the agreement for sale and the payment of arrears of maintenance shall be made within 60 days from the raising of the bill. The MA no. 8 of 2022 is also disposed of accordingly.

47. I. Claim of the complainant for compensation on account of respondent's failure to provide amenities and facilities through any maintenance agency for the past ten years.

Without going into the merits, the issue of grant of compensation is not within the domain of this Authority, as this power is conferred to the adjudicating officer under Section 71 and 72 of the RERD Act, 2016 as also held in para 86 of the New Tech Promoters case.

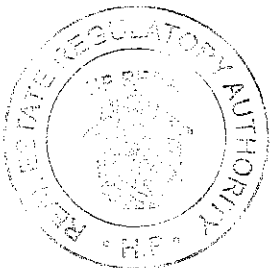
48. J. The claim of complainant qua cost to the tune of Rs 5,31,000/- Lakhs on account mental harassment and litigation charges.

This Authority is bound by the mandate given to it under the RERD Act, 2016 and can only grants reliefs for which it is empowered by the provisions of the Act *ibid*. The Authority is not empowered to order costs in favour of any of the parties therefore no relief can be granted under this head.

49. Relief-

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

- A. The complaint is party allowed.



- B. The respondent shall obtain occupancy certificate in favour of flats owned and possessed by the complainant i.e. flat Nos. 101-A and 102-A within 45 days from the passing of this order failing which he shall be liable to pay a penalty of Rs. Two Lakhs under Section 61 and 63 of the RERD Act, 2016.
- C. The complainant shall pay to the respondents the outstanding dues towards sale consideration of Rs 93,209/- within 30 days from the date of passing of this order. No interest will be charged on this amount.
- D. The complainant shall submit to the respondent all the requisite documents for the purpose of seeking permission under Section 118 of the HP Tenancy and Land Reforms Act, 1972 within 30 days from the date of passing of this order and the respondent shall then within 15 days submit the same to the concerned competent authority for obtaining the approval of the State Government.
- E. The Authority reiterates its direction(s) passed vide order dated 26.08.2021 and 08.02.2022 whereby the complainant was directed to pay maintenance charges as per the agreement for sale in compliance of the provisions of Section 19(6) of the RERD Act, 2016. Any sum already paid in lieu of maintenance charges by the complainant shall be adjusted and after adjustment, a fresh bill of remaining maintenance charges shall be raised by the respondent strictly in accordance with the agreement for sale within 15 days of the passing of this order. Thereafter the complainant shall make payment within 30 days.
- F. The complainant shall apply for the domestic electricity connection with the HPSEBL within 30 days. The promoter shall facilitate and get electricity meter sanctioned in favour of complainant within 60 days from the date when the complainant applies for the same failing which the



respondent company will be liable to pay a penalty of Rs. Three Lakhs under Section 61, 63 & 69 of the Act.

Further the respondent company is directed to reimburse the difference of domestic charges vis a vis the commercial charges/ rates paid by the complainant(s) in the past and in future every month, for supply made/ to be made by the promoter from his commercial connection till the individual domestic connection in favour of complainant is installed.

- G. The complainant is at liberty to approach the Adjudicating Officer to claim compensation under Section 71 and 72 of the RERD Act, 2016.

B.C. Badalia
B.C. Badalia
MEMBER

Sikant
Dr. Shrikant Baldi
CHAIRPERSON

