

**REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH**

In the matter of:-

1. **Complaint No. HP RERA/OFL/2020-17**

Mr. Arun Kumar Gupta

.....Complainant

Versus

**Chief Executive Officer-cum-Secretary
Himachal Pradesh Housing and Urban
Development Authority (HIMUDA), Nigam
Vihar, Shimla-171002.**

...Non-Complainants/ Respondents

2. **Complaint No. HP RERA/OFL/2020-18**

Shri Sanjay Gupta

.....Complainant

Versus

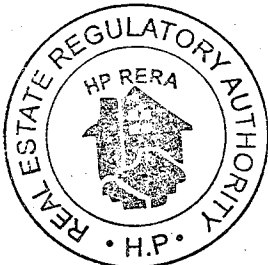
**Chief Executive Officer-cum-Secretary
Himachal Pradesh Housing and Urban
Development Authority (HIMUDA), Nigam
Vihar, Shimla-171002.**

...Non-Complainants/ Respondents

Present: - Sh. Arun Kumar Gupta, Complainant through Webex.

Sh. Sanjay Gupta, Complainant through Webex

**Sh. Jeevesh Sharma Advocate vice Sh. Roop Lal
Sharma Advocate for respondent HIMUDA, through
Webex**



Shri Prateek Pal, Law Officer RERA Himachal Pradesh.

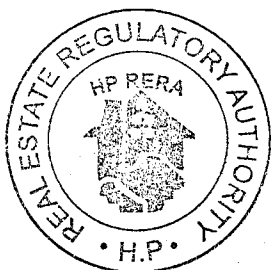
Final Date of Hearing (Through WebEx): 26.03.2021.

Date of pronouncement of Order: 16.04.2021.

ORDER

CORAM: - Chairperson and both Members

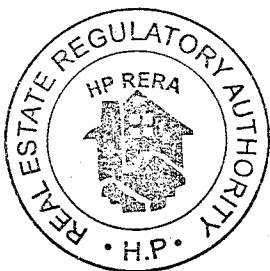
1. The present matter refers to two complaints filed under the provisions of the Real Estate (Regulation and Development) Act, 2016 (herein after referred to as the Act) against the respondent Chief Executive Officer-cum-Secretary Himachal Pradesh Housing and Urban Development Authority (HIMUDA), herein after referred to as the respondent promoter, with respect to the development of a Housing Colony under the Self Financing Scheme situated at Mandhala, Tehsil Baddi, District Solan, Himachal Pradesh. This Authority heard the final arguments in the matter on 26th March, 2021. Since the cause of action in both the complaints is common in nature as well as the reliefs sought are identical hence both complaints were taken up and heard together and are hereby decided.



2. BRIEF FACTS OF THE CASE:

COMPLAINT NO. HPRERA/OFL/2020-17 titled as “Mr. Arun Kumar Gupta v/s Chief Executive Officer-cum-Secretary Himachal Pradesh Housing and Urban Development Authority (HIMUDA), Nigam Vihar, Shimla-171002.”

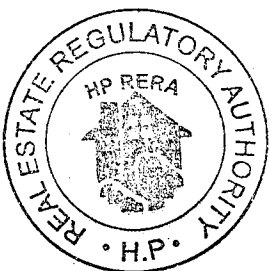
- i) Mr. Arun Kumar Gupta filed the complaint before the Authority on 21st November,2020 in “Form-M”. It has been stated in the complaint that the respondent promoter issued advertisement for allotment of plots in its Housing Colony at Mandhala, Baddi (hereinafter referred to as concerned project) and after receiving the applications, the result of the draw was informed to the successful applicants i.e complainant in this case vide its letter dated 07/05/2007 (Annexure-I of the complaint file).The respondent promoter also asked the successful bidder to pay the first installment of the tentative cost of plot through same letter.
- ii) That the respondent promoter finally allotted freehold residential plots in Mandhala, Baddi, District Solan, H.P. in 2011 vide its letter Dated 16.09.2011 (Annexure-II of the complaint file)



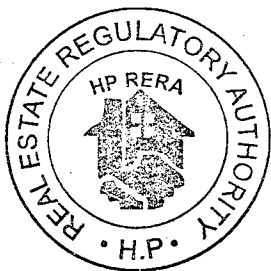
iii) That the permission for development and sub-division of land in Mandhala was granted to the Executive Engineer, HIMUDA, Parwanoo by the Baddi Barotiwala Nalagarh Development Authority (hereinafter referred to as BBNDA), the competent authority. vide its letter dated 07.07.2010 (Annexure-III of the complaint file). This permission was, inter alia, subject to the condition in para 2 that-

“the services namely sewerage, roads, open spaces, rain water harvesting tanks etc. as proposed in the layout plan shall be developed at site before the transfer of any plot carved out in the sub-division.”

iv) That the status of the services proposed in the layout plan was inquired by the complainant from the respondent promoter by way of a RTI application. The reply given by PIO-cum-Executive Engineer, HIMUDA Division, Parwanoo vide letter dated 08.06.2020 (at Annexure-IV of the complaint file) shows that some of the proposed services are under construction/process. It is further alleged that the information is incomplete and that services were not complete even till 08/06/2020.



- v) That the status of electrical works was brought to the notice of the respondent promoter from time to time. The matter was raised by another allottee with the respondent through E-Samadhan on 06/12/2019 (Annexure-VI of the complaint file), which was to be redressed within 7 days. But the same was pending till 30/09/2020.
- vi) That the copy of the completion/deemed completion certificate of various development works of the concerned project was sought from the competent Authority (BBNDA) vide letter dated 20.08.2020 (Annexure-VII of the complaint file) and further by appeal letter dated 05-10-2020 (Annexure-VIII of the complaint file). But the competent Authority transferred the application to PIO-Cum-Executive Engineer, HIMUDA, Parwanoo vide letter dated 12-10-2020 (Annexure-IX of the complaint file) stating that the information sought is not available in its office. It is alleged that PIO-Cum-Executive Engineer, HIMUDA, Parwanoo further transferred the application to the PIO-Cum-Executive Engineer, HIMUDA, Shimla vide letter dated 27.10.2020 (Annexure-X of the complaint file), thus making it obvious that no completion certificate has been issued with respect to the concerned project at Mandhala, Baddi.



- vii) That the project was an ongoing project on the date of the commencement of the Real Estate (Regulation and Development) Act, 2016 and rules made thereunder and published in Rajpatra of Himachal Pradesh on 07/10/2017. It is further alleged that the concerned project is not registered with the Real Estate Regulatory Authority, Himachal Pradesh and also that the time allowed for the registration of an ongoing project under Section 3 of the Act *ibid* has been elapsed long back.
- viii) That the concerned project is not figuring under heading- Promoter Experience/Capabilities, Projects executed/ completed in last 5 years in Promoter profile of form A of any of the registered projects of CEO-cum-Secretary, HIMUDA as per the details published on the official website of the Authority in pursuance of Rule 14 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules).
- ix) That the allottees are aggrieved by various illegal, arbitrary and negligent actions of the respondent which includes, inter alia, pre-mature handing over of possession of plots and thereafter imposition of penalties for belated house construction etc.



x) That in view of the above the complainant has requested the Authority to direct the respondent to get its on-going project at Mandala, Baddi registered with the Authority within time frame as decided by the Authority with advanced copies of application for registration and supporting documents to the complainants and to perform the obligations as per various provisions of the Act/rules made thereunder. Further, complainant has sought imposition of penalty on the promoters as per sections 59 and 69 of the Act ibid along with costs.

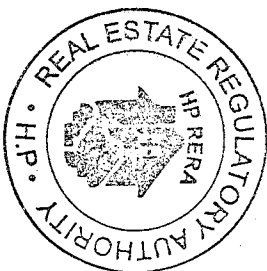
xi) **REPLY TO THE COMPLAINT**

The respondent has filed a detailed reply on 22nd February, 2021. It has been stated in the reply that initially Type-II Plot No. B-185 in Housing Colony at Mandhala (Baddi) was allotted to the complainant vide replying respondent allotment letter dated 21.07.2007 at a tentative cost of Rs. 13,80,000/- (Thirteen lakh eighty thousand) subject to condition that the final cost will be worked out after receipt of final expenditure report from field which was received during August, 2011 and conveyed to the allottee vide final allotment letter dated 16.09.2011 vide which complainant had, to pay the difference of amount already paid against



tentative cost and final cost i.e. Rs 2,83,483 (Two lakh, eighty three thousand, four hundred and eighty three) from the date of allotment letter, to execute the conveyance deed and to take over possession within 45 days also failing which every allottee has to pay watch and ward charges @ 0.1% of the cost upto three months and beyond 0.2% and penal interest @ 14% on delayed payments as the allotment was made in the Self Financing Scheme in which every allottee has to pay full and final cost before execution of conveyance deed and to take over the possession. It is further submitted that as per terms and conditions after issuance of allotment letter based on final expenditure report, every allottee has to construct a minimum one room (one dwelling unit) within 5 years without any non-construction charges.

- xii) That the possession of the plots was offered to every allottee after completion of external services. It has been further submitted that since establishment of Housing Colony was a big project consisting of more than 1000 bighas land, it takes considerable time for its development in which that 900 plots of various categories along with large number of



flats are to be developed. That in such a big project the completion cannot be in less than 3 years. And that the possession has been offered to the complainant almost within stipulated period and grace period. Further that a number of allottees have built-up houses on their plots and are residing there without any objections. It has been contended that the complainant is always pressurizing the replying respondent to get the non-construction charges waived off which will cause loss to the replying respondent.

xiii) That in respect of the averments pertaining to the electrical works made in the complaint it has been submitted that HPSEB ltd. has assured that they will provide the electricity connection as and when demanded.

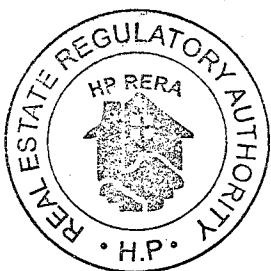
xiv) It has been further submitted by the respondent that HIMUDA has its own Act which came into force in 2004 and the RERA Act came in force in the year 2016. Whereas the possession of Housing Colony at Mandhala (Baddi) was offered during the year 2011 after completion of development works well before RERA Act came into force and that this was intimated by the Executive Engineer, HIMUDA Division Parwanoo vide his letter dated 29.07.2011 (Annexure R-I of the reply) and further worked



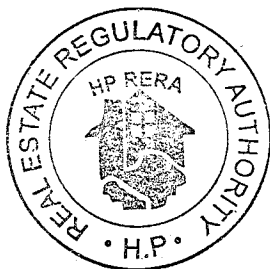
out by the Costing Committee of replying respondent vide letter dated 23.08.2011 (Annexure R-2 of the reply).

- xv) That it has been specifically denied that Mandhala project is not completed and that it was completed well before the RERA Act came into force. It is further contended that the concerned project is not covered under the provisions of the RERA Act.
- xvi) That HIMUDA has already been exempted under Section 78 ZE of the Himachal Pradesh Town and Country Planning Act, 1977 from the requirement of seeking a completion certificate. However, that the new colonies are being registered by the respondent promoters under RERA Act.
- xvii) In view of the above, the respondent has sought dismissal of the complaint with costs as there will be irreparable loss to the respondent if the complaint is allowed.
- xviii) **REJOINDER TO THE REPLY**

The complainant has submitted a detailed para-wise rejoinder on March 8, 2021 in response to the reply so filed by the respondent promoter. It has been submitted in the rejoinder by the complainant that submissions of the respondent in its reply pertaining to the possession having



been offered after completion of external services and that the project is not ongoing are wrong and has also submitted that a number of external services are still lying in arrears and therefore, the project is still ongoing and thus, liable to be registered under the Act *ibid*. The complainant has completely denied the contention of the respondent that the letter dated 29.07.2011 by the Executive Engineer, HIMUDA, Parwanoo and Final Costing of Housing Colony dated 23.08.2011 intimated in any way the completion of the development works. It has been further submitted that Section 78ZE of the Himachal Pradesh Town and Country Planning Act, 1977 has been omitted from the aforementioned Act (TCP Act) by an amendment in 2018. Further it has been contended that various documents annexed to the reply are false evidences. In view of above the complainant has prayed that the complaint be allowed with costs and suitable punishment as per the provisions of the Act be imposed on the respondent.



3. BRIEF FACTS OF THE CASE: -

COMPLAINT NO. HPRERA/OFL/2020-18 titled as “Mr. Sanjay Gupta v/s Chief Executive Officer-cum-Secretary Himachal Pradesh Housing and Urban Development Authority (HIMUDA), Nigam Vihar, Shimla-171002.”

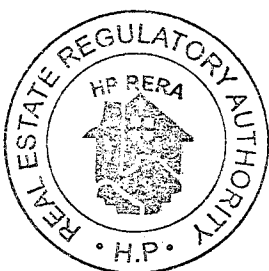
- i) Mr. Sanjay Gupta has filed the complaint before the Authority on 21st November, 2020 in “Form-M”. It has been stated in the complaint that the respondent promoter issued advertisement for allotment of plots in its Housing Colony at Mandhala, Baddi (hereinafter referred to as concerned project) and after receiving the applications, the result of the draw was informed to the successful applicants.
- ii) That the respondent promoter finally allotted freehold residential plots in Mandhala, Baddi, District Solan, H.P. in 2011 vide its letter Dated 16.09.2011 (Annexure-I of the complaint file)
- iii) That the permission for development and sub-division of land in Mandhala was granted to the Executive Engineer, HIMUDA, Parwanoo by the Baddi Barotiwala Nalagarh Development Authority (hereinafter referred to as BBNDA), the competent Authority. Vide its letter dated 07.07.2010



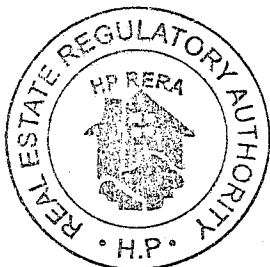
(Annexure-II of the complaint file). This permission was, inter alia, subject to the condition in para 2 that-

“the services namely sewerage, roads, open spaces, rain water harvesting tanks etc. as proposed in the layout plan shall be developed at site before the transfer of any plot carved out in the sub-division.”

- iv) That the completion status of the services proposed in the layout plan was inquired from the respondent promoter by way of a RTI application. The reply given by PIO-cum-Executive Engineer, HIMUDA Division, Parwanoo vide letter dated 08.06.2020 (Annexure-III of the complaint file) shows that some of the proposed services are under construction/process. It is further alleged that the information is incomplete and that services were not complete even till 08/06/2020.
- v) That the status of electrical works was brought to the notice of the respondent promoter from time to time. The matter was raised by another allottee with the respondent through E-Samadhan No. HIMUDA/2019155 on 06/12/2019 (Annexure-V of the complaint file) which was to be redressed within 7 days. But the same was pending till 30/09/2020.



- vi) That the copy of the completion/deemed completion certificate of various development works of the concerned project was sought from the competent Authority (BBNDA). It transpires from its reply dated 12.10.2020 (Annexure-VI of the complaint file) that the information regarding completion/deemed completion certificate of the project is not available in its office records.
- vii) That the project was an ongoing project on the date of the commencement of the Real Estate (Regulation and Development) Act, 2016 and rules made thereunder and published in Rajpatra of Himachal Pradesh on 07/10/2017. It is further alleged that the concerned project is not registered with the Real Estate Regulatory Authority, Himachal Pradesh and also that the time allowed for the registration of an ongoing project under Section 3 of the Act *ibid* has been elapsed long back.
- viii) That the concerned project is not figuring under heading Promoter Experience/Capabilities, Projects executed/completed in last 5 years in Promoter profile of form A of any of the registered projects of CEO-cum-Secretary, HIMUDA as per the details published on the official website of the Authority in pursuance of Rule 14 of the

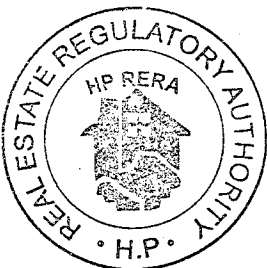


Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules).

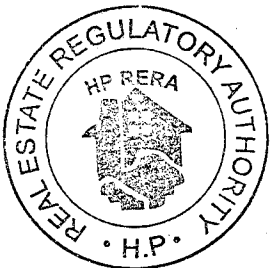
- ix) That the allottees are aggrieved by various illegal, arbitrary and negligent actions of the respondent which includes, inter alia, pre-mature handing over of possession of plots and thereafter imposition of penalties for belated house construction etc.
- x) That in view of the above the complainant has requested the Authority to direct the respondent to get their on-going project at Mandala, Baddi registered with the Authority within time frame as decided by the Authority with advanced copies of application for registration and supporting documents to the complainants and to perform the obligations as per various provisions of the Act/rules made thereunder. Further, complainant has sought imposition of penalty on the promoters as per sections 59 and 69 of the Act ibid along with costs.

xi) **REPLY TO THE COMPLAINT**

The respondent has filed a detailed reply on 22nd February, 2021. It has been stated in the reply that initially Type-II Plot No. B-27 in Housing Colony at Mandhala (Baddi) was



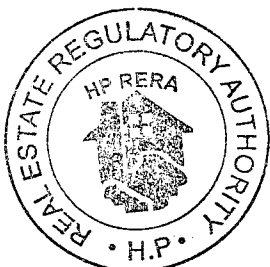
allotted to the complainant vide replying respondent allotment letter dated 24.07.2007 at a tentative cost of Rs. 13,80,000/- (Thirteen lakh and eighty thousand) subject to condition that the final cost will be worked out after receipt of final expenditure report from field which was received during August, 2011 and conveyed to the allottee vide final allotment letter dated 16.09.2011 vide which complainant had, to pay the difference of amount already paid against tentative cost and final cost i.e. Rs 2,75,130/- (Two Lakh, seventy-five thousand, one hundred and thirty) from the date of allotment letter to execute the conveyance deed and to take over possession within 45 days failing which every allottee has to pay watch and ward charges @ 0.1% of the cost upto three months and beyond 0.2% and penal interest @ 14% on delayed payments as the allotment was made in the Self Financing Scheme in which every allottee has to pay full and final cost before execution of conveyance deed and to take over possession. It is further submitted that as per terms and conditions, after issuance of allotment letter based on final expenditure report, every allottee has to



construct a minimum one room (one dwelling unit) within 5 years without any non-construction charges.

xii) That the possession of the plots was offered to every allottee after completion of external services. It has been further submitted that since establishment of Housing Colony was a big project consisting of more than 1000 bighas land it takes considerable time for its development in which that 900 plots of various categories along with large number of flats are to be developed. That such a big project cannot be completed in less than 3 years. And that the possession has been offered to the complainant almost within stipulated period and grace period. It has been further stated that a number of allottees have built-up houses on their plots and are residing there without any objections. It has been contended that the complainant is always pressurizing the replying respondent to get the non-construction charges waived off which will cause loss to the replying respondent.

xiii) That in respect of the averments pertaining to the electrical works made in the complaint it has been submitted that HPSEB ltd. has assured that they will



provide the electricity connections as and when demanded.

- xiv) It has been further submitted by the respondent that HIMUDA has its own Act which came into force in 2004 and the RERA Act came in 2016. Whereas, the possession of Housing Colony at Mandhala (Baddi) was offered during 2011 after completion of development works well before RERA Act came into force and that this was intimated by the Executive Engineer, HIMUDA Division Parwanoo vide his letter dated 29.07.2011 (Annexure R-I of the reply) and further worked out by the Costing Committee of replying respondent vide letter dated 23.08.2011 (Annexure R-2 of the reply)
- xv) That it has been specifically denied that Mandhala project is not completed and that it was completed well before the RERA Act came into force. It is further contended that the concerned project is not covered under the provisions of the RERA Act.
- xvi) That HIMUDA has already been exempted under section 78ZE of the Himachal Pradesh Town and Country Planning Act, 1977 from the requirement of seeking a completion certificate. However, that the new colonies are



being registered by the respondent promoters under RERA Act.

xvii) In view of the above, the respondent has sought dismissal of the complaint with costs as there will be irreparable loss to the respondent if the complaint is allowed.

xviii) **REJOINDER TO THE REPLY**

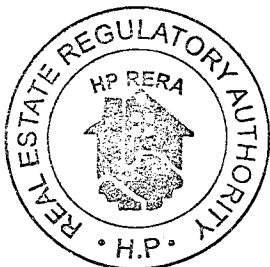
The complainant filed a detailed para-wise rejoinder on 25th of March, 2021 in response to the reply so filed by the respondent promoter. The complainant has submitted that the contents of the reply are either evasive or wrong and has denied the same. It has been further submitted that the services which were required to be completed before handing over of possession of the plot are not complete and that the possession was handed over in haste. That this is evident from the information supplied under the RTI Act. It has been further stated that since the respondent has not fulfilled his obligations pertaining to the completion of services, so the demand for performance of the obligation from the complainant in the shape of construction of the house on the allotted plot and consequent imposition of non-construction charges is unjustified. It has been further submitted that the



provisions of the Act ibid are applicable to the concerned project and same must registered accordingly. It has also been mentioned that Section 78ZE of the Himachal Pradesh Town and Country Planning Act, 1977 under which the exemption to get a completion certificate was claimed by the respondent has been omitted in the amended TCP Act of 2018. In view of the above, the complainant has prayed that the complaint be allowed and that the directions prayed thereunder be issued against the respondent in the interests of justice.

4. ARGUMENTS ADVANCED

The final arguments in this case were heard on 26th of March, 2021. **Mr. Arun Kumar Gupta, one of the complainants** has argued before the Authority that the Housing Colony, Mandhala, Baddi is an ongoing project and is therefore liable to be registered under the provisions of the Act ibid. To substantiate his claim the complainant relied on the information given in numerous replies to various RTI applications filed by him. One such reply of the PIO-cum- Executive Engineer, HIMUDA, Division Parwanoo, District Solan dated 08/06/2020 (Annexure-IV of the complaint file) clearly states at serial



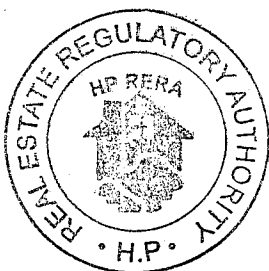
no. 12 that Primary School-3 is under construction. Further no date of completion has also been specified with respect to the medical facilities.

5. It has been further contended that another reply dated 27.01.2021 (Annexure-RJ-II of the rejoinder) to another RTI application specifying the date of start and completion of various institutions/facilities shows the same Primary School-3 as not completed but in progress whereas other institutes/facilities namely community hall, recreational club, rest house, medical facilities, petrol pump, main commercial block, shopping centres etc. are shown to be not started.
6. The complainant further relied on another reply of the respondent promoter dated 03.02.2021 (Annexure-RJ-I of the rejoinder) whereby it has been informed that Category-III of the residential group housing is in progress and thus, not completed. In another reply dated 03.02.2021 vide No. HIMUDA: PD/CB/RTI Act,2005/2020-5498-99 (Annexure-RJ-III of the rejoinder) date of completion for Police Post has not been specified.
7. Further the complainant has argued that the electrical works in respect of the project are also not complete and



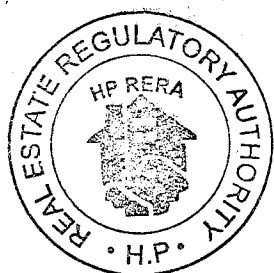
to substantiate this claim he has relied on the information supplied by the PIO-cum-Executive Engineer, HIMUDA, Electrical Division Kasumpti, Shimla wherein it has been stated that Rs. 10,61,160/- (Ten lakh, sixty-one thousand, one hundred and sixty) were spent on electrical works during 2019-20 and Rs. 5,62,847/- (Five lakh sixty-two thousand eight hundred forty-seven) during 2020-21 (up to 11/20). He further argued that the total expenditure comes out to be Rs. 16,24,007/- (Sixteen lakh, twenty-four thousand and seven) whereas the anticipated expenditure for the same period has been stated to be Rs. 67,70,000/- (Sixty-seven lakh and seventy thousand). So, he has claimed that this under-utilization of funds indicates heavy pendency of the project.

8. It has been further argued by the complainant that the contention of the respondent as to the exemption from requirement of getting a completion certificate is also not maintainable as the H.P Town and Country Planning Act,1977 has been amended in 2018 whereby the concerned section 78ZE has been omitted. He also stated that the documents relied by the respondent in support of its contention is a pamphlet of *'One Day Conference on*



Laws Related to the Real Estate Development in Himachal Pradesh' organized by the department of Town and Country Planning in *August, 2015* i.e. at a time, when neither the Act *ibid* had come into force nor *Section 78 ZE* had been omitted. In light of the aforementioned, the complainant has argued that respondent has attempted to mislead the Authority.

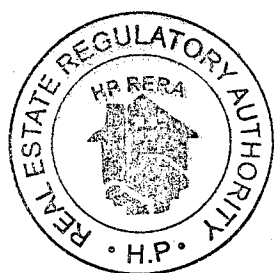
9. Furthermore, it has been contended by the complainant that a large number of plots in the concerned project are still unsold.
10. However, the complainant has admitted that facilities like drinking water (individual connections), roads and sewer lines have been provided by the respondent promoter. He has also admitted that he has taken possession of the land allotted to him in 2011 though his building thereupon is still under-construction.
11. **Mr. Sanjay Gupta, the second complainant** has argued before the Authority that the concerned project at Mandhala is still an ongoing project and is therefore liable to be registered under the provisions of the Act *ibid*. To substantiate this contention, he has also relied on the information supplied by the respondent promoter in



replies to numerous RTI applications. He has argued in specific that the provision/construction of various utilities/facilities/institutions, like community hall, recreational club, rest house, police post and primary schools have not been completed yet.

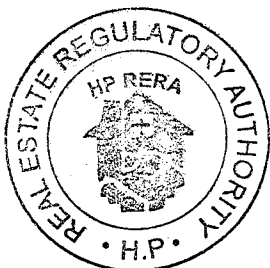
12. However, he has accepted that certain basic facilities like roads, drinking water, compound walls, sewer lines etc. have been provided by the respondent promoter. But in respect of sewerage system, he has contended that it is still not functional. He further argued that the respondent promoter is now taking this plea that the sewer lines are not functional due to insufficient discharge.

13. The Ld. Counsel for the respondent promoter, Sh. Jeevesh Sharma vice Sh. Roop Lal Sharma, has argued before the Authority that the Housing Colony, Mandhala, Baddi, District Solan is a completed project and therefore is not liable to be registered under the provisions of the Act *ibid*. He has contended that the concerned project is a big project consisting of more than 1000 bighas land and large number of plots as well as flats. He has further argued that basic facilities like sewerage, drinking water, roads, external electrification etc. have been provided to



the allottees. To substantiate his contention, he has relied upon the *Final Costing of Housing Colony Mandhala dated 23.08.2011*.

- 14.** He has replied to a query of this Authority regarding non-provision of the facilities like establishment of police post, opening of Primary/ nursing schools as well as medical institutions for the welfare of the allottees that the State Government has not yet accorded sanction for the same and the respondent promoter is now inviting private organizations including the Resident Welfare Association to start the pending facilities especially medical and educational. On being asked as to the status of the community hall, the Ld. Counsel stated that he was not aware of its status and will have to take instructions from the respondent promoter and thereupon send the information to this Honorable Authority.
- 15.** It has been argued by the Ld. Counsel that HIMUDA is exempted from the requirement of procuring a completion certificate on completion of the project under section 78ZE of the Himachal Pradesh Town and Country Planning Act, 1977.

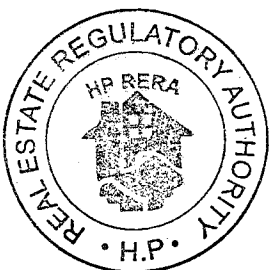


16. REBUTTAL

The complainants have rebutted the stance of the respondent by arguing that the concerned project is ongoing and still not complete as is evident from the information supplied by the respondent himself and therefore, the project is liable to be registered as per the provisions of the Act *ibid*. Further they have reiterated that the document relied upon by the respondent to prove that they are exempted from getting a completion certificate is just a pamphlet of the conference held by the Department of Town and Country, Himachal Pradesh in August 2015. It has been further contended that Section 78 ZE has been omitted by the 2018 amendment to the HP Town and Country Planning Act, 1977.

17. CONCLUSION/FINDINGS OF THE AUTHORITY

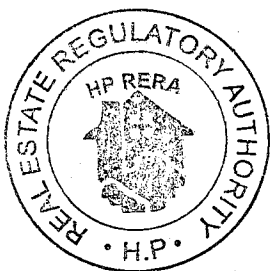
We have heard the arguments advanced by the Ld. Counsels for the Complainants & respondent and have perused the record pertaining to the case. We have also duly considered the submissions made before us in the



form of complaint, reply and rejoinders as well as arguments adduced before us. This Authority is of the view that there is only one main issue that requires the consideration and adjudication, namely:

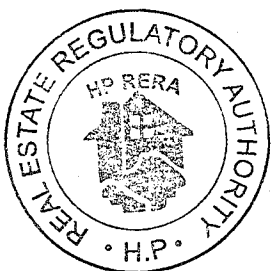
I) Whether the Housing Colony at Mandhala, Baddi is an ongoing project and therefore liable to be registered under the provisions of the Real Estate (Regulation and Development) Act, 2016 or not?

The complainants have argued that the Housing Colony, Mandhala, Baddi is an ongoing project and is therefore liable to be registered under the provisions of the Act *ibid*. To substantiate this claim, the complainants have relied on the information given in replies to various RTI applications filed by him. The Ld. Counsel for the respondent promoter has argued that the concerned project is a completed project and that the possession of the plots in the project was offered in 2011 after completion of development works. To substantiate his claim as to the completion of the project, he drew the attention of Authority to two documents one being a letter of the Executive Engineer, HIMUDA, Division Parwanoo



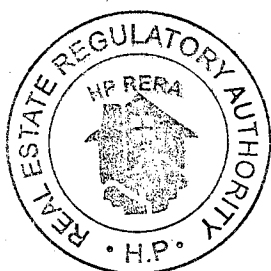
dated 29.07.2011 which has been written to the Superintending Engineer(N), HIMUDA, Hamirpur and encloses a Tentative Costing of Housing Colony Mandhala. The other document relied by the Ld. Counsel is the Final costing of the Housing Colony Mandhala dated 23.08.2011 as worked out by the Costing Committee of the respondent promoter. On the basis of these two documents, he has contested that since the final costing of the project had been worked out way back in 2011, so, the concerned project is a completed project.

- 18.** We have considered the points raised by both the parties. Both the parties have relied on documentary evidences to prove their case. On careful perusal of the documents relied upon by the respondent that is the letter of the Executive Engineer, HIMUDA, Parwanoo Division dated 29.07.2011 alongwith enclosed copy of Tentative Costing of Housing Colony, Madhala and the Final Costing dated as worked out by the Costing Committee of the respondent itself dated 23.08.2011, it becomes clear that these documents only convey the tentative and final costing of the concerned project but in no way prove the completion



of the project. On the other hand, the documents submitted by the complainants especially the replies of the respondent to the RTI applications of the complainant(s) dated 08.06.2020, 27.01.2020 and 03.02.2021 make it abundantly clear that various services/institutions/facilities/utilities such as primary schools, category-III residential group housing, medical facilities, recreational club, rest house, community hall, shopping centres etc. are either in progress or have not been started yet. In view of the above, it becomes clear that a number of development works as well as common facilities (especially as mentioned above) are pending and not complete.

- 19.** The stance adopted by the respondent is in contradiction to the information supplied by them in their replies (supra). Moreover, during the course of the arguments the Ld. Counsel has himself admitted that medical facilities, a number of schools and police post have not started yet for want of approval of the State Government. In respect of the community hall, the Ld Counsel has sent an email to the Authority through email dated 1st April, 2021, the contents of which are reproduced hereunder:



“With due respect, it is submitted that aforesaid two cases were listed for hearing on 26.03.2021. During the course of hearing Ld. Court had made a query about the present status of community hall at Mandela project. As per instructions received from the department, it is submitted that space has been provided for the construction of community hall at Mandela Project. However it is submitted that the cost of construction is to be borne by the allottees and not by the HIMUDA. The resident welfare association of Mandela project, if required the community hall, then they have to construct it with their own cost. However, Himuda will provide the space for that and it is admitted position that space has been provided at the aforesaid project for the said community hall.”

It is transpired from the contents of aforesaid email that the HIMUDA has not yet provided the space for the construction of the community hall and therefore the construction of the same has not been started till date. Therefore, in view of the above, it can be held that the Housing Colony, Mandhala, Baddi is still ongoing project as all the common facilities have not been provided to the allottees.



20. Now coming on to the question as to whether the concerned project is liable to be registered under the provisions of the Act *ibid*, it will be pertinent here to discuss some of the provisions of the Act *ibid*.

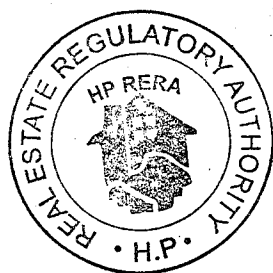
Section 2(zn) of the Act *ibid* defines '**real estate project**' as-
"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto"

Further section 2(t) defines '**development work**' as-

"development works" means the external development works and internal development works on immovable property"

Section 2(w) defines '**external development work**' as-

"external development works" includes roads and road systems landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station, solid



waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws”

And section 2(zb) defines ‘internal development work’-

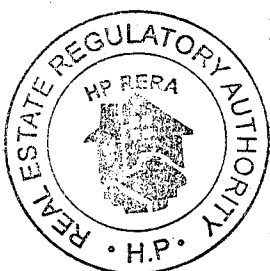
"internal development works" means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per sanctioned plans”

Section 2 (n) defines “**common areas**”, sub-clause (vii) of the same states-

“(vii) all community and commercial facilities as provided in the real estate project”

Further **section 3** of the Act states-

“No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate

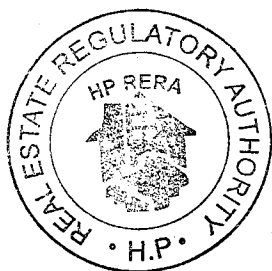


project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

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

Section 17 of the Act provides-

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



And **section 34(a) and (f)** of the Act states-

The functions of the Authority shall include—

(a) to register and regulate real estate projects and real estate agents registered under this Act;

(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder,

21. On reading the above-mentioned sections conjointly it becomes clear that a real estate project, inter alia, includes development works both external and internal as well as common areas. It further becomes clear that internal works, inter alia, includes community buildings, social infrastructure such as educational health and other public amenities and also that “common areas” includes various community and commercial facilities. In the instant case, it is absolutely clear, in view of the evidences and arguments adduced that a number of internal development works and common facilities in the concerned project are still incomplete and the possession of the same has not been provided to the allottees as per the mandate of Section 17 of the Act *ibid*. Thus, the real estate project is an ongoing project.



22. The first proviso to sub-section (1) of section 3 of the Act ibid it states that all the ongoing projects at the time of commencement of the Act and for which the completion certificate has not been issued have to be registered with the concerned Real Estate Regulatory Authority within three months of the commencement of the Act ibid (i.e. within three months from 1st May, 2017). As discussed above, it has been proved that the concerned project at Mandhala is still an ongoing project. As far as the question of completion certificate is concerned, it becomes irrelevant on the basis of the fact that the project is still ongoing. Moreover, the respondent promoter has failed to produce any completion certificate and rather contended exemption from requirement of completion certificate under section 78ZE of the HP Town and Country Act, 1977. It is pertinent to mention here that section 78ZE of the TCP Act has been omitted by Himachal Pradesh Town and Country Planning (Amendment) Act, 2018 (Act no. 7 of 2018). This further adds credence to the conclusion that the project is still ongoing.

23. Further, section 34(a) and (f) of the Act imposes an obligation on the concerned Real Estate Regulatory Authority to not only register and regulate real estate projects but also ensure



compliance of obligations cast upon various stakeholder by the Act or rules and regulations thereunder.

24. Therefore, in view of the above, this Authority holds that the Housing Colony at Mandhala, Baddi is an ongoing project and thus liable to be registered under Section 3 of the Real Estate (Regulation and Development) Act, 2016.

25. **RELIEF**

Keeping in view the above-mentioned facts, this Authority in exercise of power vested in under various provisions of the Act issues the following orders/directions:

- i. The complaints are allowed and the respondent/promoter is directed to get the Housing Colony at Mandhala, Baddi, District Solan, Himachal Pradesh registered with the HP Real Estate Regulatory Authority within one month from the date of pronouncement of this order.


B.C. Badalia
Member


Dr. Shrikant Baldi
Chairperson


Rajeev Verma
Member

