

**REAL ESTATE REGULATORY AUTHORITY  
HIMACHAL PRADESH AT SHIMLA**

**IN THE MATTERS OF:-**

Sunil Malhotra, Resident of F-11, Ansal Villa, Satbari, P.O  
Chattarpur, New Dehli-110062

.....Complainant

Versus

R.V Nirmata Pvt. Ltd., Resident of D-128 East Of Kailash, South  
Delhi-110065

.....Respondent

**Order in MA No. 12/2022  
In  
Complaint No. RERA/OFL/21-25**

**Present: Sh. Ajay Sipahiya, Advocate for Complainant**

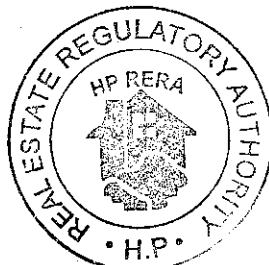
**Sh. Vineet Sehgal, Advocate for Respondent**

**Final date of hearing on MA no. 12 of 2022  
(through WebEx): 15.07.2022**

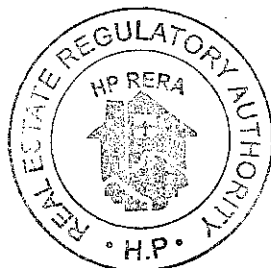
**Date of pronouncement of orders:  
12.08.2022**

**FACTS OF THE MISCELLANEOUS APPLICATION :**

1. It has been pleaded in the application that the complainant is seeking amendment of this complaint pursuant to the order dated 17.03.2022 of the Hon'ble High Court of HP in Civil Writ Petition titled as "Sunil Malhotra vs. State of HP and other CWP No. 547 of 2022" whereby the complainant was permitted to withdraw the CWP pending before the Hon'ble High Court of Himachal Pradesh enabling him to avail the

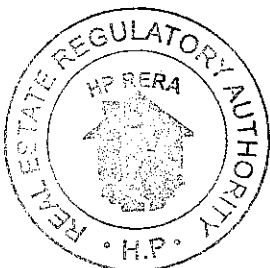


appropriate remedy available to him as per law. It was pleaded in the application that the reason that led to the withdrawal of the CWP before the Hon'ble High Court was that the present respondent made an objection with regard to the maintainability of the CWP placing reliance upon section 79 of the Real Estate (Regulation and Development) Act, 2016 and with regard to the fact that the present complaint is pending adjudication before this Hon'ble Authority with similar reliefs. It was pleaded that the complainant in view of the same requested the Hon'ble High Court to permit withdrawing of the petition so as to enable him to raise the issues as has been raised in CWP No. 547 of 2022 by availing the appropriate remedy available under the law. It was further pleaded that in view of the above, the complainant has moved the present application for amendment of the complaint so as to have redressal of the grievances by filing a detailed complaint along with relevant documents. It was further pleaded that in view of the material developments which have taken place after 17.03.2022, the complainant/applicant has sought to amend the complaint along with the prayer clause. It was further pleaded that rule-23(f) of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 also enable the Authority to ask the complainant for production of additional documents or other evidence. It was further pleaded that the complainant proposes to delete paragraphs 1, 2, 3, 4, 5, 6 from the main paragraph "4. Facts of the Case" of the complaint and substitute the same with the amended paragraphs and incorporate paragraphs No. 5A and 5B immediately after paragraph no.5 in the main complaint by way of this present amendment application. It was further pleaded in the para's pertaining to grounds as mentioned in the complaint, the complainant proposes to delete paragraphs 1, 2, 3, 5, 7, 8, and substitute the same with the amended paragraphs and incorporate paragraphs No. 7A, 7B immediately after paragraph No. 7 in the para's pertaining to

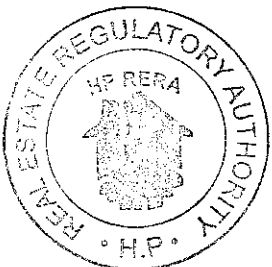


grounds in the main complaint by way of this present amendment application. It was further pleaded that the complainant proposes to incorporate prayers No. 1-A, 1-B, 1-C immediately after prayer No. 1 and incorporate prayer no.4-A, 4-B, 4-C immediately after prayer no. 4 in the main complaint by way of this present amendment application.

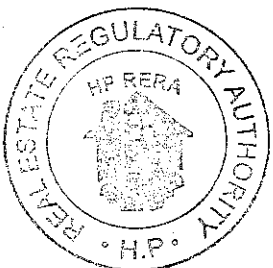
2. It was further pleaded that the complainant wants to add the facts that the respondent has made unauthorized constructions and made alterations, deviating from the sanctioned building plans whereby extra flats have been constructed, provisions for lesser car parking spots in lieu of required sanctioned spots has been provided as well as deviation in width and length of buildings exceedingly FAR ratio has been made without seeking any sanctions in accordance with law from the concerned departments. It was further pleaded that the complainant wants to add the facts that the respondent had made non compoundable violations by way of alterations and deviations in construction without getting revised approved building plans in accordance with law. It was further pleaded that the complainant wants to add the facts that the allottees requested respondent to allot the residents designated parking spots but never received any positive response. It was further pleaded that the complainant wants to add the facts that the respondent fraudulently, without any prior notice/permission, in year 2020, constructed flats in the basement area which was allotted as parking to the residents of Block-A. It was further pleaded that the complainant wants to add the facts that respondent has himself failed to provide any amenities such as; security at gates, Electronic & Manpower Security, Power Backup/Inverter in each Flat, garbage collection and its disposal, designated Parking Space etc claimed as given in the Boucher and agreement for sale/maintenance agreement. It was further pleaded that the complainant wants to add the facts that the roads are still not wide enough as mentioned in the brochure. It was further pleaded that the complainant



wants to add the fact that ignoring all the demands/requests of the allottee the respondent is not providing documents as sought by the complainant time and again which he is legally required to handover. It was further pleaded that the complainant wants to add the facts that respondent is harassing the complainant by sending demand letters constantly for maintenance and electricity charges without giving any maintenance facility. It was further pleaded that the complainant wants to add the facts 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 Madhusudhan Reddy R &Ors Vs VDB Whitefield Development Private Limited &Ors. Consumer Case No. 763/2020 has held that no maintenance charge should be levied before obtaining the Occupancy Certificate. It was further pleaded that the complainant wants to add the fact that the respondent has got registered another project in HPRERA vide RERA No. RERAHPSOP03200072 namely "THE WOODS BAROG (PHASE-II) as a new project and has already started the construction of this new project but same road and facilities of the earlier Project i.e. "The Woods Barog" which comes under the common area of the allottees of the project "The Woods Barog" are being used for the construction of Blocks of the new project i.e., "The Woods Barog (Phase-II)" without any consent of the already existing allottees. It was further pleaded that the complainant wants to add the facts that the construction work is creating a lot of inconvenience to the allottees already residing therein. It was further pleaded that the complainant wants to add the facts that the fraud played upon the concerned Authorities by misrepresentation is ex facie evident from the letter dated 30.09.2020 vide which false assurance has been given by respondent that the plots are well segregated and there will not be any hindrance of any nature to the occupants of Block B and C. It was further pleaded that the complainant wants



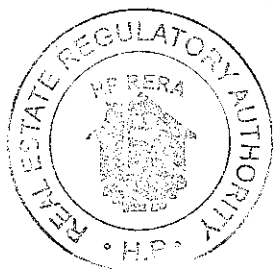
to add the facts that the revised sanctioned plan dated 11.02.2016 and the new project "The Woods Barog (Phase II)" breached the municipal and Town Planning Laws as well as RERD Act, 2016. It was further pleaded that the complainant wants to add the facts that the complainant after payment of the entire sale consideration has also spent a lot of amounts in the maintenance of the apartment and the building since the day they have shifted to the allotted flat but the final delivery of possession in accordance with law has been delayed for about 11 years as only temporary possession has been delivered to the complainant till date, due to which the complainant has to suffer major loss. It was further pleaded that the complainant wants to add the facts that the agreement for sale was executed on 06.12.2010 and the promised period for offer of possession was three years but till date no final notice for possession has been issued to the complainant in accordance with law. It was further pleaded that the complainant wants to add the facts that even till today the Occupation Certificate has not been taken by the respondent in accordance with law. It was further pleaded that the complainant wants to add the facts that Section 78t of the Himachal Pradesh Town and Country Planning (Amendment) Act, 2015 and Rule 63 of the Himachal Pradesh Town and Country Planning (Amendment) Rules, 2016 provide for the consent of the buyers of flats before any change in the sanctioned plans is affected and also envisage that the percentage of undivided common interest of the owners of the flats cannot be changed without their consent. It was further pleaded that the complainant wants to add the facts that the original sanctioned plan could not have been revised without the consent of all the already existing allottees in the project. It was further pleaded that the complainant wants to add the facts that the 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 is made in the sanctioned plan or undivided interest in the common area is made. It was further pleaded that the complainant wants to add the fact that the unauthorized construction in violation to the sanctioned plan has reduced the common areas in the project and, with an increase in the flats from 48 flats to 72 flats in Blocks A, B and C, the proportionate undivided interest in the common areas has been reduced substantially. It was further pleaded that the complainant wants to add the fact that the construction of Blocks A, B and C with deviations under the garb of revised sanctioned plan of the project and the construction of Blocks I and II under the garb of illegally sanctioned plan for the new project "The Woods Barog (Phase-II)" has reduced the value of the undivided interest held by each individual allottee in the common areas and facilities, thereby violating the law, since the allottees consent was not sought. It was further pleaded that the complainant wants to add the facts that the new sanctioned plan of the new project "The Woods Barog (Phase-II)" without the consent of the already existing allottees has encroached upon the green tree cover at the back of Block C of the project "The Woods Barog", thereby resiling from the representation that has been made to the allottees at the time when they purchased the apartments in the project "The Woods Barog". It was further pleaded that the complainant wants to add the fact that the Blocks-I and II are not part of a separate and distinct phase (Phase-II) with separate amenities and infrastructure. Even the green cover of trees at the back of Block C has been completely removed and instead of that Block-I + Block II of the new project i.e., "The Woods Barog (Phase- II)" has been sanctioned without the consent of the existing allottees obliterating their right to light, air, view and garden area, thereby endangering their safety. It was further pleaded that the complainant wants to

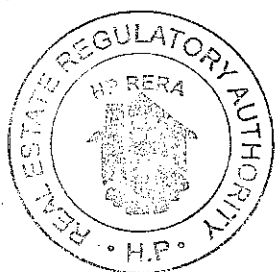
add the facts that the fresh construction of Blocks-I and II under the garb of newly approved project has reduced the undivided interest of the individual allottees in the common area of the project "The Woods Barog" by adding new flats in the new project of Phase-II. It was further pleaded that in addition to averments made herein above, the complainant also proposes to incorporate prayers that the unauthorized and illegal construction work carried out by the Respondent in the project "The Woods Barog" as well as in the new project "The Woods Barog (Phase-II)" shall be stopped. The complainant wants to further add the prayer that the respondent be directed to demolish the unauthorized and illegal construction carried out by him. Further the complainant wants to add the prayer that the revised plan dated 11.02.2016 may kindly be quashed and set aside. The complainant wanted to further add the prayer that the registration of the new project with HPRERA vide RERA No. RERAHPSOP03200072 namely "The Woods Barog (Phase -II)" may kindly be quashed/cancelled and set aside. The complainant wants to further add the prayer that the registration of M/s R.V. Nirmata Pvt. Ltd. under RERA may kindly be cancelled and the respondent may kindly be held liable to make good the loss caused to the allottees, environment and the ecology.

3. It was further pleaded that the complainant applicant wants to add the facts that the complainant filed his objection to the public notice before the Director, TCP Department, H.P. wherein the complainant in clear cut terms objected to any alteration in the original master plan but 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 project by which two additional floors were envisaged in addition to the already sanctioned G+4 floors in the original Blocks B & C, thereby bringing all of them to ground & 6 floors (G+6). It



was further pleaded that the complainant wants to add the fact that contrary to the advertisements and agreement for sale, no drive-in stilt parking has been provided to the allottees of Block A. It was further pleaded that the complainant wants to add the fact that though the brochure as well as the sanctioned plan indicated a green tree cover at the backside of Blocks B and C but now the respondent has registered one more project in HPRERA vide RERA No. RERAHPSOP03200072 namely "The Woods Barog (Phase-II)" at that place and as such he has started the construction of Blocks-I and II without the consent of the already existing allottees. It was further pleaded that the complainant wants to add the fact that some of the violations done by the respondent of the building bye-laws are that initially the sanctioned building plan comprised total five floors (i.e., 4 Floors + Parking Floor) as per the brochures of the project advertised and later on, the revised plan was sanctioned but initially at the time of laying of foundations no one would have an idea of new norms by which the number of floors might be added to existing building foundation. Hence it was pleaded that the building safety is doubtful in this case.

4. It was pleaded by way of this application that the proposed amendments will not change the nature of the case of the complainant in any manner whatsoever. It was further pleaded that the proposed amendments in the complaint are neither inconsistent nor repugnant to the pleas already raised in the complaint. It was further pleaded that the proposed amendments are essential for the effective, proper and just adjudication of the controversy between the parties. It was further pleaded that the proposed amendments could not be incorporated in the original complaint for the reason that several material developments took place after filing of the complaint and also that the respondent has not supplied certain documents and information to the complainant. It was further pleaded that the proposed amendments sought for would go a long way in obviating multiplicity of litigation

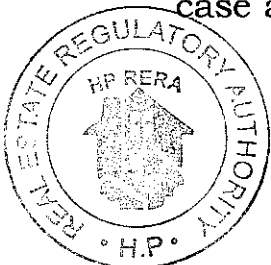




between the parties. It was further pleaded that technicalities in law should not come in the way of granting/substantiating the ends of justice. It was further pleaded that no prejudice shall be caused to the respondent in case proposed amendments are allowed and on the other hand, the complainant shall suffer irreparable loss and grave prejudice in case the same is disallowed. With these averments it was prayed that the present application be allowed and the complainant be permitted to amend the complaint to the extent as mentioned here-in-above and further it was prayed that the matter be adjudicated in terms of the amended complaint after taking the same on record in accordance with law.

**5. Reply to the application-**

It was pleaded in the reply that the present application has been filed by the complainant virtually at the fag end of the proceeding of the complaint and therefore it was pleaded that the same cannot be entertained at this belated stage. It was further pleaded in the reply that no provisions with regard to the filing of an application seeking amendment of complaint has been provided in RERD Act, 2016 as well as HP Real Estate Regulation Development Rules, 2017. Thus, it was pleaded that the present application is not maintainable in the present form and is an abuse of the process of law. It was further pleaded that the complainant has nowhere stated with regard to any change of any circumstances or attaining of knowledge with regard to any new facts after the filing of the complaint which could have been made a basis to file the present application, thereby seeking amendment of the complaint. It was further pleaded that as per the settled proposition of law the amendment of pleadings is required to be declined where it is not necessary for determining the real question of controversy between parties. It was further pleaded that application of amendment of pleadings is rejected when it leads to the introduction of a totally new case and the judgment of the Hon'ble Supreme Court in case

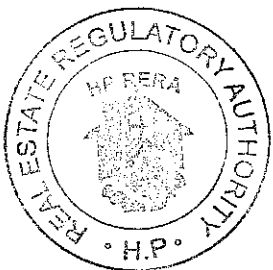


of Modi Spg. Mills v. Ladha Ram & sons reported in AIR 2002 SC 3369(3372). It was further pleaded that amendment cannot be allowed when the complainant or respondent is negligent, when proposed alteration or modification is unjust, when it violates the legal rights or cause injustice to the other party, when it leads to the needless complications in the case, when there has been excessive delay by the parties in filing the amendment of the complaint, when it changes the nature of the disputes and also if application for amendment of pleadings is made with mala fide intention. It was further pleaded that from the perusal of the above conditions it is amply clear that the present application of the complainant prima-facie falls in all the above conditions which debars the party to file an application thereby seeking amendment of the complaint and that too at such a belated stage, when the present complaint is virtually fixed for final arguments. Further, the respondent has pleaded that the Hon'ble Supreme Court in Salem Advocate Bar Association, Tamil Nadu V. Union of India &Ors., (2005) 6 SCC 344, has held that the object of adding the proviso in Order 6 Rule 17 is to prevent frivolous applications which are filed to delay the trial. It was further pleaded that even, in Vidyabai and others vs. Padmalatha and another -AIR 2009 SC 1433, Hon'ble Supreme Court has discussed the legislative intent behind bringing the proviso to Rule 17 of Order 6 of CPC. It was held that the court's jurisdiction to allow an application under Order 6 Rule 17 of CPC is taken away unless the conditions precedent thereof are satisfied i.e., the court must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of trial. It was further pleaded that the Hon'ble Supreme Court in the decision reported in Revajeetu Builders and Developers vs. Narayanaswamy & Sons - (2009)10 SCC 84, by taking into consideration that large number of applications under O VI Rule 17 CPC are filed and Courts in India has held that indiscriminate filing of applications of



amendments is one of the main causes of delay in disposal of civil cases and formulated some basic principles which shall be taken into consideration while allowing or rejecting the application for amendment. It was further pleaded that as per the judgment in Pandit Malhari Mahale vs. Monika Pandit Mahale and others -Civil Appeal No. 189 of 2020 dated 10-01-2020 it was held that whenever an application for amendment is allowed, there should be finding by a court that the Court is satisfied that in spite of due diligence, the party could not introduce amendment before commencement of the trial. It was further pleaded that in Rajesh Kumar Aggarwal vs K.K. Modi - AIR 2006 SC 1647 it was held that court has to primarily decide whether amendment is necessary for determining the real controversy between the parties. It was further pleaded that in Alkapuri Cooperative Housing Society Ltd., vs. Jayanthibhai Nagin bhai -AIR 2009 SC 1948 it was held by the court that by amendment of plaint, the party cannot seek to alter the basic structure of the suit. It was further pleaded that in Boya Pikkili Pedda Venkataswamy vs. Boya Ramakrishnaudu - 2013(2) ALT 214 it was held by the court that the proviso to Or. 6 R. 17 CPC is subject to taking place of subsequent events during the proceedings of the suit, when no injustice is going to be caused to opposite party.

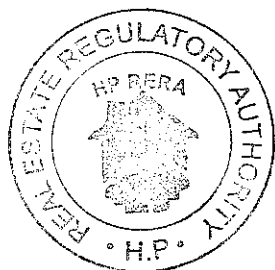
6. It was further pleaded that the complainant by virtue of the present application is seeking to amend the entire complaint that too without any legal basis or upon any subsequent act/event/record/evidence which was not in the knowledge of the complainant at the time of filing the initial complaint. Thus it was prayed that the application deserves to be dismissed.
7. Further it was pleaded that vide orders dated 26.08.2021 & 08.02.2022 passed by this Hon'ble Authority, the complainant was specifically asked to pay the maintenance charges and actual electricity (at domestic rates) and water consumption charges to the respondent. It was further



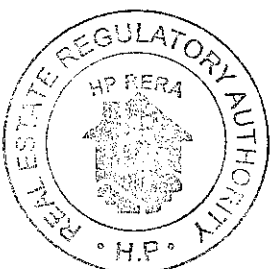
pleaded that complying with the said directions the respondent after receiving the copy of the orders dated 26.08.2021 & 08.02.2022, had issued repeated invoice to complainant mentioning the detailed breakup of the pending maintenance charges, electricity charges etc. along with the applicable rates as was charged from other allottees but in spite of the same the present complainant Sunil Malhotra has not bothered to deposit the same with the builder and has thus not complied with the said directions and has been putting forward one excuse or the other before this Hon'ble Authority to not comply with the directions issued. It was further pleaded that the present complainant along with other persons have conspired to illegally trespass, stop the construction work of Phase- II of the project and disturb the peace the project on 22/02/2022 by advancing threats to laborers and as a result Sunil Malhotra complainant has been arrayed as an accused in FIR No. 0032 Dated 22/02/2022 registered at Police Station Dharampur, District Solan, H.P. under Section 154 Cr. P.C. under IPC Sections 451, 147, 148, 149 & 506 IPC. It was further pleaded that the applicant is trying to set up a new case, complicating the proceedings of the main complaint and that too relying upon the same documents which were already annexed with the original complaint and were duly in the notice and knowledge of complainant since inception of the earlier complaint filed.

**8. Rejoinder to the application-**

It was further pleaded that in the rejoinder by the complainant that in State of Maharashtra vs. Hindustan Construction Company Limited, (2010) 4 SCC 518 it was held that the Order 6 Rule 17 provides for amendment of pleadings. It was held that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions



in controversy between the parties. It was further pleaded that in *Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon, 1969 (1) SCC 869* it was held that a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. It was further pleaded that it was held in the aforesaid judgment that the court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting malafide, or that by his blunder he had caused injury to his opponent which may not be compensated for by an order of costs. It was further pleaded that it was held in the aforesaid judgment that however negligent or careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. It was further pleaded that the Ld. Authority being guided by the principles of natural justice, it may in exercise of its power and discretion can grant leave to amend the pleadings. It was further pleaded that this Ld. Authority is having same powers as vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit and even Rule-23 (f) of the Himachal Pradesh Real Estate (Regulation Development) Rules, 2017 also provides that the Ld. Authority can ask a complainant for production of documents or other evidence. It was further pleaded that the application for amendment has been made for substantiating, elucidating and expanding the pre-existing facts already contained in the original/initial complaint and the newly introduced averments are mere elaboration of the existing facts pertaining to the illegal and unauthorized construction carried out by the respondent and the deviations so caused by him while construction of the project. It was further pleaded that in *M/S. Estralla Rubber vs Dass Estate (Private) Ltd. (2001) 8 SCC 97* it was held that the amendment of pleadings under Order 6, Rule 17 CPC is to be allowed if such an amendment is required for proper



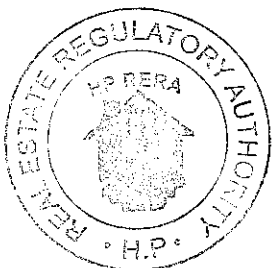
and effective adjudication of controversy between the parties and to avoid multiplicity of judicial proceedings. It was further pleaded that in Ragu Thilak D. John vs. S. Rayappan and Others (2001) 2 SCC 472 it was held that if the amendment sought would change the nature of the suit originally filed it was not a reason for refusing application for amendment and that the dominant purpose of Order VI Rule 17 was to minimize litigation and that the plea that relief sought for by way of amendment was barred by time is arguable in the circumstances of the case. It was further pleaded that it was held in the aforesaid judgment that courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. It was also held in the aforesaid judgment that technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. It was further pleaded that it was held in the aforesaid judgment that amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation. It was further pleaded that same view was reiterated by the Hon'ble Himachal Pradesh High Court in the case of Rajeev Kumar Singhal vs. Mukul Garh and others, 2019 2 Him LR (HC) 899.

**9. Arguments on behalf of complainant-**

It was argued on behalf of the complainant that an application for amendment of the complaint is being filed by him in view of the order dated 17.03.2022 in CWP titled as Sunil Malhotra versus State of H.P. and others filed by the applicant herein wherein he was permitted to withdraw the writ petition pending before the before the Hon'ble High Court. Primarily the reason for withdrawing the complaint before the Hon'ble High Court are that the respondent herein took an objection with regards to maintainability of the writ petition relying on Section 79 of the Real Estate (Regulation and Development) Act, 2016 which deals with issue of



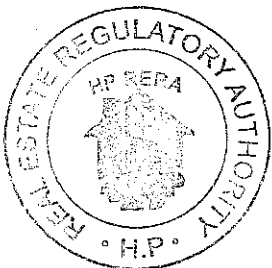
jurisdiction. Therefore, the petition was withdrawn and subsequently this application was filed incorporating all the facts mentioned in the writ petition and adding all the prayers that were made therein in the present amended complaint seeking redressal of the same. Further he argued that Section 35 of the RERD Act talks of the powers of the Authority to call for information and conduct investigation. Further it was argued that as per rule 22 (f) of the Himachal Pradesh Real Estate Regulation and Development, Rules 2017 the Authority can ask for the production of documents and other evidence. Therefore in view of the above and in the interest justice it was argued that the Authority can at any time call for detailed complaint and other evidence. It was argued that the court may at any stage of the proceedings allow any amendment that is just and necessary for the adjudication of real question in controversy between the parties. It was argued that the amendment in the present case is being sought to bring on record the illegal construction that is being caused in the project in question and the violation of the agreement for sale, allotment letter and advertisement caused by the respondent as a promoter. It was further argued on behalf of the applicant that by way of adding these amendments the nature of the original complaint is not being changed and none of the amendments is changing the nature of reliefs being sought by the applicant. Further, it was argued that an objection has been taken on behalf of the respondent that there is no provisions for amendment of the complaint given in the RERD Act and to this it was submitted on behalf of the applicant that wide and ample powers are vested in the Authority in terms of provisions of the RERD Act to permit amendment of the complaint as it is vested with powers of civil court as per Section 35 of the Act. It was argued that no prejudice will be caused to the respondent in case this application will be allowed as it is merely an elaboration of the original complaint and nothing that shall cause prejudice to the



respondent is being added by way of amendment of this complaint. It was argued that the new construction that is taking place by using the same common areas and therefore complaint against respondent is maintainable before this Authority. It was further argued that the Authority has suo-moto powers to take cognizance of the illegal construction that is taking place in the project in question. Therefore, it was prayed that the amended complaint be taken on record and the present application seeking amendment of the complaint may kindly be allowed as irreparable loss would be caused to the applicant. It was further argued that illegal construction in a hilly state such like Himachal Pradesh also contains an amendment of public interest. It was further argued that the Hon'ble Supreme Court has said in catena of judgments that even if nature of suit is being changed that would not call for rejection of application for amendment as the dominant purpose of Order 6 Rule 17 CPC is to avoid multiplicity of litigation therefore the court shall be extremely liberal in allowing the same.

**10. Arguments by respondent-**

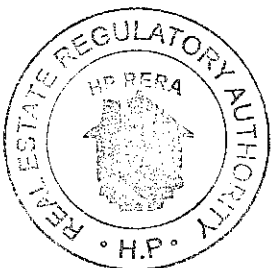
It was argued on behalf of the respondent that the RERD Act is not retrospective in operation and therefore cannot take cognizance of any activity that has taken place before the commencement of the provisions of the Act. It was further argued that the amendment as per Order 6 Rule 17 CPC can only be allowed if the Court comes to the conclusion that facts were not within his knowledge despite due diligence when the initial complaint was filed and it was argued that court cannot allow amendment liberally once the trial has commenced. It was further argued on behalf of respondent that there are certain basic principles that are required to be taken into consideration for allowing an application under Order 6 Rule 17 CPC. These five principles are subsequent events, new facts, impact on the earlier case, multiplicity of proceedings and due diligence. If the application and the entire facts as put out by the applicant are seen none of the





principles as mentioned above which have been laid out in the various pronouncement of the Hon'ble Supreme Court have been adhered to. It was further argued on behalf of the respondent that all the facts and new pleas that the applicant wants to incorporate were available to him at the time of filing of the complaint and therefore this amendment cannot be allowed at this stage. It was further argued that no illegal construction has been done by the respondent and even if it is assumed though without in any manner conceding that the respondent has committed illegal construction in that case also the remedy is under the relevant Town Country Planning laws applicable to the State of H.P. It was further argued that the remedy to deal with illegal construction is not with this Authority and the remedy lies somewhere else. It was then argued that whatever construction is done, is done with the permission of the concerned Authorities. It was further argued that the complainant has filed multiple complaints before various forums and even before Hon'ble High Court where he is confronted with the issue of maintainability and then he withdraws the petition. It was further argued that the order dated 17.03.2022 if may kindly be seen it no where says that the applicant has remedy to raise the issues or file an amended complaint before this Authority. It was further submitted that before amending the sanction plan, two third consent was taken from the allottees. It was further argued that this application is nothing but is a malafide attempt of the applicant to delay the proceedings and take benefit of his own wrong. There has been excessive delay and so much time has passed by and the proceedings are at the fag end when this application from amendment was filed which virtually changes and complicates the scope of the present lis. It was further argued that the present application is an abuse of the process of law and therefore deserves dismissal.

11. Heard the parties at length and also perused the record.



12. From the pleadings of the parties following point arise for determination in the present application :-

**1. Whether the application under Order 6 Rule 17 read with Section 151 of CPC filed on behalf of the complainant may be allowed?**

**2. Order**

For the reasons to be recorded hereinafter while discussing the aforesaid points for determination, point-wise findings of the Authority are as under:-

Point No.1: Yes

Order: The application is allowed as per operative part of order.

### **REASONS FOR FINDINGS**

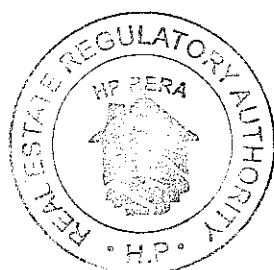
#### **Point No. 1.**

13. The provisions as enshrined under Order 6, Rule 17 Code of Civil Procedure 1908, provide as under:

*“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.*

*Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”*

14. Thus, the perusal of the proviso clause as contained in the Order 6 Rule 17 Code of Civil Procedure shows and makes it apparent that a party to a complaint who seeks amendment in her or his pleadings before commencement of trial of the case, has to plead and show that he or she could not seek



amendment in his or her pleadings despite exercising due diligence.

15. In **State of Madhya Pradesh versus Union of India and another, reported in 2011, (12) SCC 268**, their lordships of the Hon'ble Supreme Court have held as under:

*"7) the above provisions deals with amendment of pleadings. By amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002. But, with an added provision to prevent application for amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it must be shown that in spite of due diligence such amendment could not have been sought earlier.*

**8) The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleading in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Court while deciding such prayers should not adopt a hyper-technical approach, Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.**

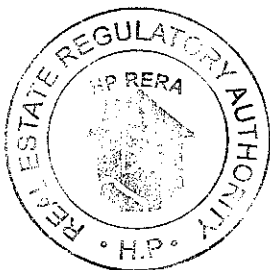
*9) The Court may, at any stage of the proceedings allow either party to amend his pleadings in such manner and on such terms as may be just, but only such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.*

16. The above provision which is similar to Order VI Rule 17 of the Code prescribes that at any stage of the proceedings, the Court may allow either party to amend his pleadings. However, it must be established that the proposed

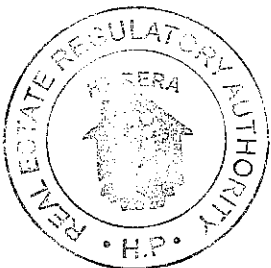


amendment is necessary for the purpose of determining the real question in controversy between the parties.

17. Further Order 6 Rule 17 of the CPC was considered by **Hon'ble Supreme Court in P.H. Patil vs. K.S. Patil AIR 1957 SC 363** that Courts should deal with the merits of the cases that come before them and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.
18. Further it was held by the Hon'ble Supreme Court in that **Surendra Kumar Sharma vs. Makhan Singh - (2009) 10 SCC 626** that delay in filing application is no ground to disallow the amendment.
19. It was further held by **Hon'ble Supreme Court in Pankaja vs. Yellappa AIR 2004 SC 4102** that in the interest of justice to avoid further litigation, even a belated amendment can be allowed. Dominant purpose of the rule is to minimize litigation, enabling the Court to decide all issues in one suit as was held in **Moguluri Venkata Subbarao vs. Syed Khasim Saheb 2003(3) CCC 18(AP)**.
20. It was further held in **Abdul Rehman vs. Mohd. Ruldu - (2012) 11 SCC 341** by the Hon'ble Supreme Court that main purpose of allowing amendment is to minimize litigation and plea that relief sought by way of amendment was barred by time is to be considered in light of facts and circumstances of each case.
21. It was held by the Hon'ble Supreme Court in cases titled as **Rajesh Kumar Aggarwal vs. K.K. Modi, (2006) 4 SCC 385** that truth & merits of the proposed amendments cannot be considered at the time of disposal of the amendment application under Order 6 Rule 17 CPC. Further this view was upheld by the Hon'ble Supreme Court in **Raj Kumar Bhatia versus Subhash Chander Bhatia (2018)2 SCC 87**.



22. Further the Hon'ble Supreme Court in **South Konkan Distilleries vs. Prabhakar Gajanan Naik, AIR 2009 SC 1177** has held that an amendment in pleadings under order 6 Rule 17 C.P.C. cannot be claimed as a matter of right. But the Courts ought not to adopt hyper technical approach while deciding the amendment applications. It was further held that the approach of the court should be liberal particularly when the prejudice to be suffered by the other side due to the amendments in pleadings can be compensated by costs. This view was further reiterated in **B.K.N.Pillai vs. P. Pillai, (2000) 1 SCC 712** and **Haridas Aildas Thadani vs. Godrej Rustom Kermani, MANU/SC/0019/1981**.
23. It was further held by the Hon'ble Supreme Court in **Sampath Kumar Vs. Ayyakannu, AIR 2002 SC 3369** that the question whether it is permissible under Order 6 Rule 17 CPC to convert through an amendment a suit filed for permanent prohibitory injunction into a suit for declaration of title and recovery of possession, it has been held by the Supreme Court that it was permissible as what was sought to be changed by way of amendment was the nature of relief prayed for by the plaintiff and not the basic structure of the suit.
24. The Hon'ble Supreme Court in **Baldev Singh vs. Manohar Singh, (2006) 6 SCC 498** clarifies the scope and limit of Proviso to O. 6, rule 17 CPC added w.e.f. 01.07.2002, the Hon'ble Supreme Court has held that the words "**trial has commenced**" used in Order 6 Rule 17 CPC must be understood in the limited sense as meaning "final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments".
25. What emanates from the aforesaid judgments is that the Courts should endeavour to decide the cases on merits and allow all the amendments that are just and necessary for



deciding the real question in controversy between the parties and Courts ought not to adopt hyper technical approach while deciding the amendment applications. Further delay in filing application is no ground to disallow the amendment and the same can be allowed even at belated stage. Further it is also settled law that truth & merits of the proposed amendments cannot be considered at the time of disposal of the amendment application under order 6 Rule 17 CPC and the merits have to be dealt with at the time of deciding the main case once amended pleadings are on record. It is further settled law the amendments can be allowed if they do not change the basic structure and nature of the complaint.

26. Now coming to the case at hand the complainant wants to amend the complaint and add a new prayers and consequent pleadings to substantiate the prayers in order to get adjudication on all the pending issues between the parties.
27. Applying the principle laid down in the case laws cited above to the case at hand, the Authority is of the opinion that the applicant may be allowed to file this amended complaint/application as the respondent will get the opportunity to file amended reply to the amended complaint and also in order to avoid multiplicity of proceedings between the parties, the present application should be allowed. It is further pertinent to mention, here at this stage that it is also settled law as per *Rajesh Kumar Aggarwal vs. K.K. Modi*, (2006) 4 SCC 385 & *Raj Kumar Bhatia versus Subhash Chander Bhatia* (2018)2 SCC 87 that truth & merits of the proposed amendments cannot be considered at the time of disposal of the amendment application under order 6 Rule 17 CPC therefore, the findings herein shall not affect the merits of the case, as the Authority at this stage has not gone into the merit of the relief sought by the complainant, which shall be decided after taking on record



the amended pleadings and other documents filed by both the parties, at the time of final disposal of the main case.


**Order**

28. Thus in the light of above discussion, the application under Order 6 Rule 17 read with Section 151 of CPC is **allowed** and the applicant is allowed to amend the complaint, to avoid multiplicity of litigation.

Let the matter be now listed for filing reply to the amended complaint on 12.09.2022 at 12.00 PM through Webex.

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

  
**Dr. Shirkant Baldi**  
**CHAIRPERSON**

  
**Rajeev Verma**  
**MEMBER**

