

**REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH**

In the matter of:-

Sh. Amarjit Singh Chahal, R/O 12/10 Improvement Trust Colony,
Batala Road, Scheme No.-1 Gurdaspur-143521 (Punjab)

.....**Complainant**

Versus

Sh. Savinder Singh S/o Sh. Daljit Singh, Near Davinder Hospital,
Talwara Road, Mukerian, District Hoshiarpur, Punjab; also R/o
Village Khol Kuffar, P.O. Dalhousie, Tehsil Dalhousie, District
Chamba, Himachal Pradesh, 176304

.....**Respondent Promoter**

Complaint no. HPRERA/ OFL/2020-15

Present:- Sh.Amarjit Singh Chahal, complainant through
Webex

Sh. Vivek Thakur, Ld. Advocate for the respondent
promoter through Webex

Sh. Abhishek Sood, Assistant District Attorney,
RERA, Himachal Pradesh

Final Date of Hearing (Through Webex): 30.07.2021.

Date of pronouncement of Order: 16.08.2021



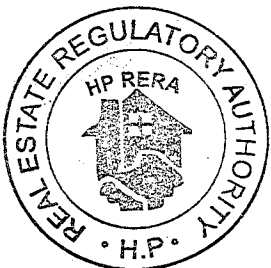
ORDER

CORAM: - Chairperson and both Members

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

1. BRIEF FACTS OF THE CASE IN COMPLAINT:

That the complainant, Sh. Amarjit Singh Chahal had filed an offline complaint dated 22nd October, 2020 bearing Complaint no. HPRERA/OFL/2020-15 before this Authority under "Form-M" of the HP Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred to as the Rules). As per the complaint, the complainant had purchased a flat in residential building comprised in Khata/ Khatouni no-14/15 min Khasra no-222/6 situated in village and Mohal Kholi Kuffar, Pargana Bathri, Tehsil Dalhousie, District Chamba, Himachal Pradesh from the respondent promoter in July, 2017. It has been further submitted that the construction of the building in question started in the year 2014 but the project was never completed. It has been submitted that there are 19 apartments in the aforesaid building and that the construction of the building is still ongoing in violation of all rules and regulations. The respondent promoter is in the process of

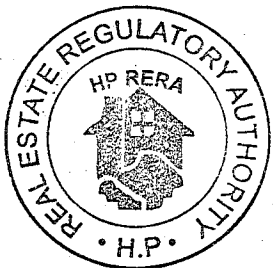


constructing 9th floor in the building but without any requisite planning permissions. It has been further submitted that the respondent promoter does not have a completion certificate with respect to the building in question. The complainant has further submitted that the respondent promoter has contravened the provisions of the Act by constructing rooms in the basement, which was to be left vacant for parking purposes as per the terms and conditions of the agreement for sale. Further, it has been provided in the complaint that the staircase, lift etc. are still under construction. The complainant has further submitted that the building in question is adjacent to the Dalhousie Parel Road and that the construction of the same has been carried out in the 'controlled width' of the road, therefore, in violation of the Himachal Roadside Land Control Act, 1968. It has been further submitted that the construction is being carried out in a haphazard manner in an ecologically sensitive area. In view of these submissions, the complainant has sought a mandatory injunction for the demolition of the unauthorized construction as well as directions to the respondent promoter to handover the parking area to the allottees/residents. The complainant has further sought compensation for harassment on account of delay in the completion of the building in question.

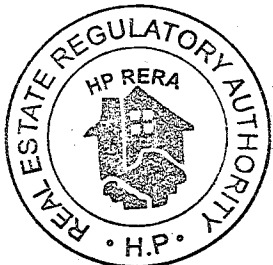


2. **REPLY TO THE COMPLAINT:**

The respondent promoter has filed a reply to the complaint. The replying respondent promoter has submitted in his reply that the complainant is a lessee/tenant in one of the buildings owned by him. It has been alleged that complainant has filed the present complaint out of malice as his demand for extra area of land adjacent to his premises without payment of extra rent/lease money was not accepted by the respondent promoter. It has been further submitted in the reply that building in question has been already completed and that the same has been constructed in consonance with the local laws applicable from time to time. It has been further submitted by the respondent that most of the tenants have obtained unfurnished premises and some of them keep on making aesthetical changes to their respective premises and due to same, the building appears to be under construction whereas it is not so, the construction of building is complete. The respondent promoter has specifically denied that there are 19 apartments in the building in question. In respect of the parking floor, it has been submitted that a small portion of the same was always meant to be developed as an accommodation for the chowkidar. It has been further submitted that the construction of staircase has been completed long ago. It has been further submitted by the respondent



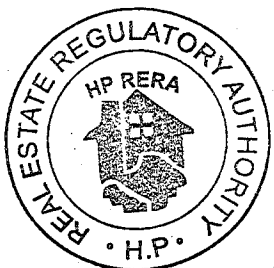
promoter in his reply that there was some delay in the installation of the lift owing to the COVID-19 situation as provider did not deliver it in time, despite the receipt of part payment. It has been further submitted that the respondent promoter has not committed any encroachment while constructing the building in question. The respondent promoter has further submitted that the Authority has no jurisdiction to proceed against him and entertain this complaint as the project in question is not located in 'planning area' and the provisions of the Section 3 of the Act are not applicable to the same. He further submitted that only those real estate projects which are located within a planning area so designated either by the appropriate government or the competent authority under the law related to Town and Country Planning are covered under the Act. To substantiate his claim, he has annexed a certified copy of the latest jamabandi of the property in question as Annexure 1 and a letter of the Assistant Town Planner, Sub-Divisional TCP office, Chamba as Annexure 2. It has been further submitted that the project in question has been developed in two separate plots of land, one measuring 00-3-00 Bighas i.e. 123 square meters and other on the 00-7-00 Bighas of land i.e. 287 square meters. To support the aforementioned claim, the respondent promoter has annexed a copy of one of the lease deeds as Annexure 3. It has been



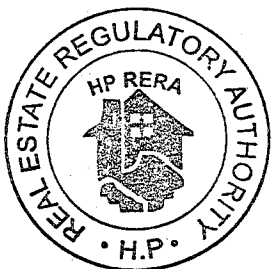
contended that since the aforementioned plots/pieces of land are stand-alone properties and does not exceed the minimum requirement of 500 square meters of area as per section 3(2) of the Act, the Authority has no jurisdiction in the present matter. In light of these facts/submissions in the reply, the respondent promoter has sought the dismissal of the present complaint.

3. REJOINDER TO THE REPLY:

The complainant has responded to the reply so filed by the respondent promoter by filing rejoinder. It has been contended by the complainant that he never demanded any more area from the respondent promoter as has been claimed in the reply. It has been further reiterated that the building in question is still under development and that no completion certificate was ever issued to the respondent promoter by any competent authority. The complainant has attached the pictures of the building with the rejoinder as Annexures 1,2 and 3 to substantiate his claim pertaining to the building in question being under construction. The complainant has again reiterated that there are more than 19 apartments in the building in question and to support this claim the complainant has annexed as Annexure-4 the certified copies of lease deeds of 17 apartments. In respect of the parking area, it has been submitted that



no portion of the same was ever intended to be used for any other purpose and if it was so, the same was never disclosed to the complainant. It has been further submitted that two separate independent rooms have been constructed in the parking floor. He has further contended that the respondent promoter has wrongly interpreted the law and the term 'planning area' has to be interpreted by conjointly reading section 2 (zh) of the Real Estate (Regulation and Development) Act, 2016 and section 1 (3A) of the Town and Country Planning Act, 1977 as amended in 2018. On this basis, complainant has concluded that the building in question falls under the ambit of the term/phrase, "deemed to be planning area" as specified in section 1 (3A) of the Town and Country Planning Act, 1977 and thus has submitted that rigors of Real Estate (Regulation and Development) Act, 2016 are applicable to the present matter. It has been further submitted that clause (a) of sub-section (2) of section 3 of the Act has to be read in its entirety and by virtue of this provision, the real estate projects having more than 8 apartments fall under the ambit of this Act. It has been further contended that construction is not being carried out in phased manner as there is no separate building. It has been averred that there is common passage, common lintels, common sewerage and common parking place in respect of the alleged separate



buildings. Further, the complainant has also referred to second proviso to sub-section (1) of section 3 of the Act and has claimed that the Authority not only has jurisdiction to entertain/adjudicate the present matter but also has the power to direct the respondent promoter to register the project in question in terms of the Act *ibid*. In view of these submissions, the complainant has prayed that his complaint in terms of the prayer made in the complaint, be decreed in his favour.

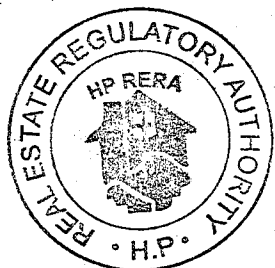
4. **ARGUMENTS ADVANCED:**

The arguments on the issue as to whether the project under question is required to be registered with the Authority as per the provisions of the Real Estate (Regulation and Development) Act, 2016 were heard on 17th April, 2021. Sh. Amarjit Singh Chahal complainant has contended that the project in question is liable to be registered with the Authority as per the provisions of section 3 of the Act because the construction in the aforesaid project is still ongoing and the total number of flats that have been constructed are more than eight in number. He has further submitted that the project in question falls under the ambit of the term “deemed to be planning area” as per sub-section (3A) of section 1 of the Town and Country Planning Act, 1977 as amended in 2018. The complainant has argued that word ‘or’ in the



aforementioned section 1 (3A) signifies that a project being developed outside the notified planning area is 'deemed to be a planning area' if either the area proposed to be developed is more than 2500 square meter or the total number of flats are more than eight in number.

Sh. Vivek Thakur, Ld. Advocate for the respondent promoter has contended at the outset that the project in question is not liable to be registered under the Act as the same does not fall in any planning area and also cannot be 'deemed to be a planning area' as per section 1(3A) of the Town and Country Planning Act, 1977. He has argued that the complainant has wrongly interpreted the aforementioned section 1 (3A) of Act supra. He has contended that a project will be deemed to be in planning area only if its area is more than 2500 square meter. He has argued that the total area in the ownership of the respondent promoter on which the project is being constructed is 14 biswas or about 574 square meters, thus, the same does not fall within the ambit of the term 'deemed to be planning area'. He further argued that the aforementioned section 1(3A) of the TCP Act, 1977 which defines the term 'deemed planning area' uses the term 'for the purpose of selling', whereas the respondent promoter has not sold any flats/apartments but have rather leased them. On the basis of the aforesaid contentions, the Ld. Counsel for the respondent promoter

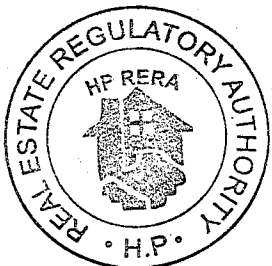


has argued that project in question does not fall within any planning area and therefore is not required to be registered with the Authority.

In view of the rival contentions of both the parties qua interpretation of Section 1 (3A) of the TCP Act, 1977, the issue was referred to State Government through Director, Town and Country Planning for clarification. Therefore, a letter dated 20.04.2021 seeking clarification/ interpretation of the aforesaid provisions of Act ibid was written to Director, TCP Himachal Pradesh who further has sought clarification on the issue from the State Government. The abovementioned interpretation of Section 1 (3A) of the Act ibid was necessary for just and complete adjudication of the case. Both the parties were made aware about this fact by the Authority vide order dated 04.06.2021. The clarification regarding deemed planning area has been received from Department of Town and Country Planning on 5th July, 2021. The relevant contents of the letter of clarification are as under:-

“The Law Department has gone through the submissions made by TCP Department. In the instant matter, this Department has been called upon to interpret the Section 3A of the Himachal Pradesh Town and Country Planning Act, 1977 which was inserted/ substituted by way of amendment Act of 2018.

It transpires from the record that the interpretation of the aforesaid section has been necessitated in view of the communication dated 20.04.2021 made by the Chairperson, Real



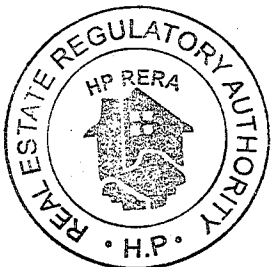
Estate Regulatory Authority (RERA), HP. The aforesaid communication has also been perused.

*The Sub Section 3 A of Section 1 of the Act *ibid* was inserted by way of amendment Act no. 7 of 2018, thereby, substituting the old sub-section (3a) of the Act of 1977. The subsection 3A of the Act *ibid* provides as under:-*

(3A) It shall apply to a real estate project proposed to be developed on an area of more than 2500 square meter for plotting and construction of apartment or any building or buildings having more than eight apartments for the purpose of selling outside the notified planning areas or special areas constituted under this Act and such areas shall be deemed to be planning areas.”

After going through the provisions as re produced above, it is but clear that the text & context of the same is unambiguous and does not need elucidation. As per the provisions of the said section, amongst other, the area shall be considered as Deemed Planning Area, if the same is 2500 Square meter (2500SqMts) or more than that. Thus, as discussed in the communication made by the RERA above, land area less than 2500 Square Meters (2500SqMts) will not attract the provisions of the said section. It appears that the provisions of the newly inserted section have been made intentionally as is evident from the discussions made by the Director, TCP in letter dated 3rd June, 2021.”

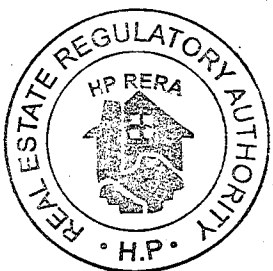
The aforesaid clarification was forwarded to the parties vide email dated 26.07.2021. The parties were heard on the aforesaid clarification as well as on the question of exact area of the project in question on 30th July,2021. On being asked about the exact area of the project in question, Sh. Amarjit Singh Chahal submitted that he had no knowledge qua the same. On the other hand, Sh. Vivek Thakur, Ld. Counsel for the respondent promoter has submitted that the total



ownership of land of the respondent promoter in the relevant area is 00-14-00 biswas in toto i.e. 574 square metres. To support this claim, he has submitted a document wherein the details of various sale/purchase transactions entered into by the respondent promoter pertaining to the land under reference have been mentioned. On the basis of these contentions and the aforesaid clarification received from the State Government, the Ld. Counsel for the respondent promoter has reiterated that since the area of the project in question is much less than 2500 square metres, it cannot be termed as a deemed planning area. Consequently, he has argued that the project in question is not liable to be registered under the provisions of the Real Estate (Regulation and Development) Act, 2016

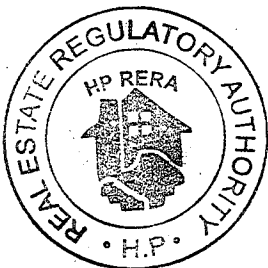
5. FINDINGS OF THE AUTHORITY

At the very outset the moot issue that arises for consideration in the present case is whether the project in question comes within the purview of "Planning Area" in terms of section 2 (zh) of the Real Estate (Regulation and Development) Act, 2016 and section 1 (3A) of the Town and Country Planning Act, 1977. The Authority without going into the merits of the case has to decide issue qua jurisdiction as the main issue.



It is the submission on behalf of the complainant that the project in question is situated in Khata/Khatoni no. 14/15 min khasra no. 222/6 situated in Village Mauza Kholi Kuffar, Tehsil Dalhousie, District Chamba. The respondent promoter has also admitted this fact but has further asserted that the project in question is not situated in “planning area” in terms of the Real Estate (Regulation and Development) Act, 2016. It is further the submission on behalf of the complainant that the project falls under the ambit of the term/phrase, “deemed to be planning area” as specified in section 1 (3A) of the Town and Country Planning Act, 1977 and thus has submitted that the Real Estate (Regulation and Development) Act, 2016 is applicable to the present matter. The counsel for the respondent promoters has strictly refuted the submissions made by the complainant. The respondent promoter has submitted that the Authority has no jurisdiction to proceed against the project and entertain this complaint as the project is located beyond ‘planning area’ and the provisions of the Act *ibid* are not applicable to the same.

Section 2 (zh) of the Real Estate (Regulation and Development) Act, 2016 defines “planning area” as a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a



planning area for future planned development, under the law relating to Town and Country Planning for the time being in force and as revised from time to time;

Section 3 of the Real Estate (Regulation and Development) Act, 2016 says

3. (1) 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:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made there under, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;



(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

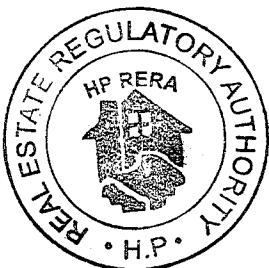
Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

The domain to specify “planning area” or “deemed to be planning area” is with the Department of Town and Country Planning under the Himachal Pradesh Town and Country Planning Act, 1977. The **preamble of the Himachal Pradesh Town and Country Planning Act, 1977** specifies the purpose of the Act

An Act to make provision for planning and development and use of land; to make better provision for the preparation of development plans and sectoral plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective to constitute the Town and Country Development Authority for proper implementation of town and country development plan, to provide for the development and administration of special areas through the Special Area Development Authority, to make provision for the compulsory acquisition of land required for the purpose of the development plans and for purposes connected with the matters aforesaid.*

Section 1(3A) of the Town and Country Planning Act, 1977

*** (3A) It shall apply to a real estate project proposed to be developed on an area of more than 2500 M2 for plotting or plotting and construction of apartment or any other building or buildings having more than eight apartments for the purpose of selling outside the notified planning areas or special areas*

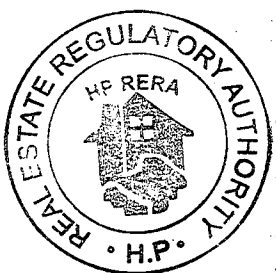


constituted under this Act and such areas shall be deemed to be planning areas.

Section 2 (o) of the Town and Country Planning Act, 1977 defines “**planning area**” to mean any area declared to be planning area under the Act *ibid*.

Section 13 of the Town and Country Planning Act, 1977 Act empowers State government by notification to constitute planning areas for the purposes of this Act and define the limits thereof.

In view of the above, the Department of Town and Country Planning is the “competent Authority” in terms of Section 2 (zh) of the Real Estate (Regulation and Development) Act, 2016 to specify whether the project in question falls within the “planning area” so as to enable the Authority to assume jurisdiction under The Real Estate (Regulation and Development) Act, 2016. The Town and Country Planning Act, 1977 in terms of Section of Section 1 (3A) of the Act talks about the concept of “deemed to be planning area”. It says that the Act *ibid* shall apply to a real estate project proposed to be developed on an area of more than 2500 M2 for plotting or plotting and construction of apartment or any other building or buildings having more than eight apartments for the purpose of selling outside the notified planning areas or special areas constituted under this Act and such areas shall



be referred to as “deemed to be planning areas”. In view of the rival contentions of both the parties qua interpretation of Section 1 (3A) of the TCP Act, 1977, the issue was referred to State Government through Director, Town and Country Planning for clarification. Therefore, a letter dated 20.04.2021 seeking clarification/ interpretation of the aforesaid provisions of Act ibid was written to Director, TCP who further has sought clarification on the issue from the State Government. On 5th July, 2021 the clarification regarding deemed planning area has been received from the Law Department of the State Government conveyed to this Authority through Department of Town and Country Planning. The relevant contents of the letter of clarification have been specified above in para 6. In substance, it has been opined that there is no ambiguity in the language of Section 1 (3A) of the Act ibid. As per the provisions, the area shall be considered Deemed Planning Area if the same is 2500 square meters or more than that. It was further opined that any area less than 2500 square meters will not be “deemed to be planning area” in terms of the Act ibid.


In the present matter, the land used for construction of building/ plot is nowhere close to 2500 square meters and is much less than same. Section 3 of the of the Real Estate (Regulation and

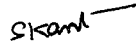



Development) Act, 2016 talks about registration of real estate projects with the Authority. One of the ingredients of Section 3 of the Act is that a project to be registered under the Act has to be in planning area. The project in question is not situated in planning area or falls within the purview of deemed planning area and is therefore not required to be registered under Section 3 of the Act. Consequently, the Authority does not have any jurisdiction to deal with a project which is not eligible to be registered with it; and therefore, the same is not amenable to the jurisdiction of this Authority.

6. CONCLUSION

Keeping in view the above-mentioned facts, the complaint is dismissed being not maintainable for want of jurisdiction and applicability of The Real Estate (Regulation and Development) Act, 2016.


B.C. Badalia
Member


Dr. Shrikant Baldi
Chairperson


Rajeev Verma
Member

