BEFORE THE HIMACHAL PRADESH REAL ESTATE REGULATORY AUTHORITY, SHIMLA

Review Application in Complaint No.: HPRERA202321/C

Sh. Jitender Bansal S/o Sh. T.R. Bansal,
Resident of Chester Hill, Mall Road, Shimla. **....Complainant**

Versus

Sh. SudershanSinghla,
Resident of 829, Manimajra, Chandigarh. **....Respondent**

ORDER ON REVIEW APPLICATION

Date of Decision: 28.07.2025

1. This Authority is seized of a review application filed by Ms. Pooja, Learned Advocate on behalf of the complainant, in the matter titled *Jitender Bansal vs. Sudershan Singhla*, under the provisions of Section 39 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act"). The review has been sought in respect of the final order dated 26.10.2023 passed in Complaint No. HPRERA202321/C. The relief prayed for in this application is as under

> *(i) Rectification or modification/clarification of the Order dated 26.10.2023 to the limited extent of the observation permitting use of the internal road/passage of the project by residents of nearby villages, and to clearly state that no unauthorized third parties can be granted or can claim usage rights over the internal road/passage.*
> *(ii) Any other relief as deemed fit and proper in the facts and circumstances of the case.*

2. In order to appreciate the prayer for review, it is necessary to refer to the original findings recorded by this Authority in the final order dated 26.10.2023, which form the basis of the impugned observations. The relevant portion of the main order dated 26.10.2023 is under:

5 *"The Authority has heard the parties and also gone through the record of the case. After hearing the parties, what emerges is that the complainant has no evidence to show that the respondent has parted with the use of the road of the society with anyone else in writing. On the basis of mere apprehension, the complaint has been filed. Further, on the submission of the respondent that some villagers or residents of nearby villages use the road, this Authority is of the considered view that any use by the villagers of adjacent villages cannot be stopped by the respondent from using the road/passage. So far as the oral prayer of the complainant to restrain the promoter from further granting right to use the road in writing to other persons is concerned, the mandate of Section 14 is very clear and it reads as under..."*

Section 14 of the RERD Act read as under:

"Section 14 Adherence to sanctioned plans and project specifications by the promoter"- The Real Estate Regulation and Development Act, 2016)

(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make

i. any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an

authorized Architect or Engineer after proper declaration and intimation to the allottee.

Explanation: For the purpose of this clause, "minor additions or alterations " excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

ii. *any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.*

Explanation

For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."

6 From the aforesaid section it is clear that the promoter cannot make any alteration or addition in the sanctioned plans, layout plans, specification of the building and common area(s) of the project

without the prior consent of at least 2/3rd of the allottees who have agreed to take the apartments in the building. The road of the project is also its common area and every allottee has proportionate right on the same. Therefore, in the interest of justice and in view of the mandate granted to the Authority under Section 14 read with Section 37 of the RERD Act, 2016 this Authority hereby restrains the promoter from altering, adding or adversely affecting the rights of the allottees in the common areas including the road of the society without first obtaining consent of at least 2/3rd of the allottees who have agreed to take the apartment(s) in the project.
The aforesaid complaint is disposed of in the aforementioned terms."

3. The review application filed by the complainant seeks to alter or clarify the above observations, particularly with reference to the portion that allows incidental use of the internal road by nearby villagers. The complainant contends that the order should categorically state that no unauthorized third party can claim usage rights over the internal roads of the project. To examine the permissibility of such a request, it is essential to consider the statutory framework governing rectification of orders.
4. Section 39 of the Real Estate (Regulation and Development) Act, 2016 provides for rectification of orders and states that the Authority may, at any time within two years from the date of the order, amend any order passed by it in order to rectify a "mistake apparent from the record." However, the provision is subject to two important limitations: firstly, that no such amendment shall be made if the matter is already under appeal, and secondly, that the Authority shall not, while rectifying any mistake apparent from the record, amend the substantive part of its order.
5. In the present case, this Authority has carefully perused the impugned order and finds that the directions now sought to be reviewed were passed consciously after a full hearing of the matter and consideration of all submissions made by the parties.
6. In view of the above, it is evident that the complainant, through this review, essentially seeks reconsideration of findings of fact and law already adjudicated upon, which is outside the purview of the limited

power of rectification granted under Section 39. There is no clerical, computational, or manifest error apparent on the face of the record that would justify interference. What is being sought through this application is a substantive change in the reasoning and outcome of the order dated 26.10.2023, which is expressly barred by the second proviso to Section 39.

7. Accordingly, the application is not maintainable and does not warrant any interference by this Authority in exercise of its limited review jurisdiction. The review application filed by the complainant through Advocate Ms. Pooja in Complaint No. HPRERA202321/C is hereby dismissed, as the Authority has no power under Section 39 of the Real Estate (Regulation and Development) Act, 2016 to alter or revisit the substantive findings or reasoning contained in its earlier order dated 26.10.2023.

(Amit Kashyap) MEMBER	(R.D. Dhiman) CHAIRPERSON	(Vidur Mehta) MEMBER