REAL ESTATE REGULATORY AUTHORITY

Complaint No. HPRERA2024001/C

In the matter of:-

Smt. Suman Sharma, daughter of Late Sh. Om Dutt Kaushal, resident of Flat No.3B, First Floor, Block No.3, S. Chopra Apartment, Deonghat, Solan, Himachal Pradesh,173211

.....Complainant

Versus

1 Sh. Ravinder Kumar Chopra, son of Sh. Kuldeep Chand, resident of Circular Road, Solan, Himachal Pradesh,173212
2 Smt. Kanika Chopra, daughter of Sh. Ravinder Kumar Chopra, resident of Circular Road, Solan, Himachal Pradesh,173212

.....Respondent(s)

Present: Sh. Sanjay Kumar Kaushik, Smt. Suman Sharma & Sh. Abeer Sharma, Complainants through WebEx
Sh. Mohit Sharma, Ld. Counsel for respondent promoter(s) through WebEx

Date of hearing:22.10.2024
Date of pronouncement of order:20.11.2024

Order
Coram: Chairperson

Facts of the case:-

1 The facts of the case are that the complainant along with Ramit Sareen jointly bought Flat no. B-3, Block no. 3 situated on first floor of the building in portion of land comprised in khata /khataoni no. 166 min/215 min, khasra no. 1182/522/465/372, situated at Mohal Anji, Hadbast no. 645, hadbast no. 645 Tehsil and District- Solan, H.P. from one Shish Pal son of lt. Ram Kumar on 24.11.2020 for a total sale

consideration of Rs 14,00,000/-. It was mentioned in the aforesaid sale deed that the flat was purchased by Shish Pal from Kanika Daughter Ravinder Chopra on dated 19.9.2011. It was further pleaded that Tax Assessment of his Flat could not be completed because the builder has altered/ deviated from the original sanctioned plan by causing construction of Flats in the third floor. As per the Approved Plan (Consent to Building Construction No.128/2007 dt.31/1/2008) parking was on the Third Floor, instead, the Builder has constructed & sold Flats on 3rd floor and shifted parking to fourth floor. It was pleaded that despite promises the builder has not provided the Water Storage Tank of 1000 Litres per flat as per the Sale Deed and Underground Water Tank as per condition no.15 in the Consent to Building Construction No.128/2007 dt.31/1/2008 issued by MC, Solan. It was further pleaded that in the last 10 years, builder has constructed more than 18 Blocks (each consisting of 12-13 flats) and in most of these Blocks, Builder has constructed flats even in the area approved for parking. Further the Builder has not received completion certificate as per Section (3) (2)(b) of the RERD Act, 2016. With these pleadings it was prayed that the Tax assessment of his Flat may be directed in favour of the complainants, the respondent may be directed to provide for exclusive 1000 Ltr water tank and the provision for parking on the 2nd Floor (Top Floor) as indicated in the sanctioned plan may also be directed and it was prayed that compensation for harassment in the last 3 years may also be awarded in favour of the complainants.

2 **Reply**

The respondent took the preliminary objections of maintainability, and estoppel. It was further pleaded that this Authority has no jurisdiction over the project in question and the

same is not required to be registered under the RERD Act, 2016 as it does not meet the requirements of Section 3 of the Act ibid. It was further pleaded that the flat of Shri Suman Sharma has duly been assessed to local taxes by the office of M.C. Solan and Shri Suman Sharma himself had deposited the tax vide Receipt Book No. 910 dated 22.10.2022. It was further pleaded that the respondent has not deviated from the sanctioned plan by changing the land use on third floor. The building in question was passed for three stories and accordingly three stories have been constructed at the spot as per approved site plan. The parking right has been given to the complainant for parking his vehicle in the common floor of the building situated on roof of top floor and is so mentioned in his sale deed. It was further pleaded that the water storage tank of the capacity of 1000 litres has been provided to the complainant on the mumty of the building. The underground water storage tank has been constructed as per approved plan. Further it was pleaded that the complainant is getting regular supply of water to his water storage tank through the bore well got installed by the respondents. He also denied that in the last 10 years the builder has constructed more than 18 blocks (each consisting of 12-13 flats) and constructed flats in the area approved for parking as alleged. It was further pleaded that each owner of the land is developing his/her area by way of raising construction according to the demands and the availability of funds and according to the site plans being got sanctioned from the local authority. The aforesaid owners of the land including Smt. Sushma Chopra, do not qualify to be a promoter/builder as defined under the RERD Act, 2016. There is no connivance whatsoever with the officials

of M.C. Solan. With these pleadings the respondent prayed for dismissal of the complaint.

3 **Rejoinder**

It was submitted that the last Local MC Tax till 3.8.2022 was paid on 22.10.2022, thereafter the complainant approached MC Solan several times in the last 1.5 years and they are not able to collect tax from 3.8.2022 up to current financial year. Since last 1.5 year MC Solan officials are saying that fresh property survey is required to be carried out to assess Tax on her property. Further it was pleaded that respondents have claimed that they have constructed only three-story building is a blatant lie as Block No.3 has Ground+3 floors and a total of 13 flats (Ground Floor-4, First Floor-3,Second Floor-3 & Third floor-3) are constructed in the said building. It was further pleaded that none of the Block from Block No.3 onwards has less than four storeys. It was agreed by the complainant that they admit that the respondent/builder's have provided the water tank on the mumty above the 3rd Floor of Block 3. Only five tanks are provided for 13 flats built by the builder/respondent in the Block No.3. Further 2 to 3 flats are connected to each Tank. Also, no underground water tank is provided and since 2 to 3 flats are connected to one tank, there is always scarcity of water and the builder/respondent uses it as a tool to arm-twist the complainant compelling her to withdraw the complaint(s). It was further pleaded that the respondent/builder has constructed 13 flats and provided only 8 car parkings and there is always a problem for the flat owner who reach late in the evening/night. In addition to these 13 flat owners, respondent/builder has given parking rights to Flat Owners in other Blocks for parking their cars in Block No.3. Few pages of Sales Dead of two of such flat owners Mr. Bassi & Mrs. Monika in Block No.7 have been

appended in the case file. It was further pleaded that respondent/builder has constructed around 21 Blocks under the aegis of S. Chopra Apartments. Some of the Flat Owners have already filed an attached complaint with MC Solan & other authorities giving details of all the Blocks constructed with no. of Flats per block. Dealing of all the Flats in these Blocks is done by Mr. Ravinder Chopra, though the Owner may be either his wife Mrs. Sushma or any of his daughters Mrs. Kanika or Mrs.Ruchika. Block no. 3 has four storeys with total 13 flats (four flats in the ground floor, three in the first floor, three in the second floor and three in the top floor). Further block 4 has nine flats (three in ground floor, two in the first floor, two in the second floor and two in the top floor). Further block 5 has ten flats (two in the ground floor, two in the first floor, two in the second floor, two in the third floor and two in the fourth floor). The MC Solan through RTI informed that the builder does not have OC and CC which means the project is still incomplete.

4 Arguments by Suman Sharma

It was argued on behalf of Mrs. Suman Sharma that the respondent has made unauthorized construction in block no.3 because of which the tax assessment of flat could not be done and the respondent is time and again disconnecting the water supply to the Flat of the complainant. It was further argued that the respondents are not being provided proper parking facility as per the sale deed. It was further argued that the 2000 ltrs tank of which the respondent was talking has connections to four - five residences which is totally inadequate.

5 Respondent arguments

It was further argued on behalf of the respondent that he does not qualify to be a promoter and therefore the project is not liable to be registered under the RERD Act, 2016. It was further

argued that these are small chunks of land in the name of daughters of Ravinder Chopra and they have developed these properties separately. It was further argued that from the perusal of the report of Municipal Corporation Solan no irregularity in the construction has been reported. It was further argued that the construction of the building has been done way back in the year 2008, 2009 and at that point of time the RERD Act was not enforced and not applicable to the project in question and therefore this law cannot be applied retrospectively. It was further argued that when RERD Act came into force the flats were already possessed and owned by the respective complainants. It was further argued that the complaint is hit by the provisions of the acquiescence and estoppel. Further it was argued that the appropriate forum for the complainant to argue that the respondent had violated the sanctioned plan was Municipal Corporation Solan, but no complaint has been made to Municipal Corporation Solan by the complainant. It was further argued that the competent Authority to approve maps i.e. the Municipal Corporation Solan has found no irregularity in the construction of the blocks in question. It was further argued that the Municipal Corporation did not provide NOC's for the flats in question. The same fact was also sought from the Municipal Corporation Solan through RTI and in reply Municipal Corporation Solan submitted that there was no provision for providing NOC's and completion certificate. A letter dated 22.05.2024 was issued wherein it was stated by the Municipal Corporation Solan that in the year 2008-2009 they did not issue completion/occupation certificate no.RTI16/2024 /3753. It was further argued that the primary claim of the complainant is that the respondent has violated the sanctioned

plan but no such findings have been given in the reports by Municipal Corporation Solan. It was further argued that the respondent has provided a 2000 ltrs tank from which connections to two residents have been provided and this fact is also corroborated from the report of the ATP HPRERA. It was further argued that the possibility to construct parking in the lower floor was almost impossible therefore the same was constructed in the top floor of the building. It was further stated that all the people who bought the parking and such rights were mentioned in the sale deeds have been provided so by the respondent. It was further argued that none of the residents of the area or the building in question have ever raised such issue with any of the Authorities before. It was argued that the buyer and seller are bound by the document i.e. the sale deed executed interse. It was further argued that it was on the request of the residents of the flats in the blocks that 2000 ltrs tanks were provided instead of 1000 ltrs tanks, because numerous flats owners were not staying there. It was further argued that it was for the complainants to apply for individual flat connections. It was argued on behalf of the respondent that it is otherwise not the duty of the builder to provide water to the residents of the building as they have to apply for individual water connection from the concerned competent Authority. Further nothing is being charged from the residents for supplying the water from the common bore well.

6 Conclusion/ Findings of the Authority:-

We have heard the arguments advanced by the complainant & the ld counsel for the respondents and also perused the record pertaining to the case. We have duly considered the entire submissions and contentions submitted before us during the course of arguments. This Authority is of the view that the point

of determination(s) that requires the consideration and adjudication, namely:-

1. **Whether the project in question is required to registered under Section 3 Of the RERD Act, 2016 with HP RERA?**
2. **Whether the Complainant is entitled reliefs as claimed for in the complaint?**

7 Findings of the Authority

1. Whether the project in question is required to registered under Section 3 Of the RERD Act, 2016 with HP RERA?

In the present matter, since there are disputed question of facts vis a vis registration of the project involved in the case, which could not be ascertained from the documents on record without getting the case investigated under Section 35 of the RERD Act, 2016 from the concerned competent Authority. The Authority after hearing the case on 14.5.2024 had directed its office to send a letter to the Municipal Commissioner Solan on dated 22nd May,2024 to give a detailed report with regard to the project in question particularly the actual number of flats constructed and the other issues stated therein.

8 In pursuance to the order of this Authority a report was received from MC Solan stating therein that the site was visited by the official(s) of MC Solan on 27.06.2024 and it was found that there is a gated society namely S Chopra Apartments at the site. It was further mentioned in the report that the owners have registered individual building blocks in the names of Smt. Sushma , Smt. Kanika, Smt. Ruchika and Smt. Nitika who are mother and daughters. As per the report there are total twenty two numbers of blocks constructed at the site and six more buildings are approved out of which two are under construction. The details of all the twenty eight blocks were mentioned therein.

9 Further, this office had deputed Assistant Town Planner of HP RERA to also conduct the spot inspection and give a detailed report. In terms of the report of ATP dated 07.09.2024, it was mentioned that the site was inspected by him on 04.09.2024 in the presence of complainants and the representative of the respondents. In the report of the ATP it transpires that there were total 13 number of dwelling units/ Flats existing in Block no. 3. In this report the version given by the report of the MC Solan was reiterated and it was pointed out that the approach to all the blocks is common and it is a gated society and the owner had not obtained the completion certificate for the blocks in question. There is no rebuttal from the respondent on the fact recorded in the report of MC Solan qua twenty eight blocks and it being gated society. However, the respondent has only submitted in his comments to the report that each blocks has separate khasra numbers owned by separate owners and the maps have been approved separately.

10 To further delve deep into the issue the report of M.C. Solan is examined minutely and it transpires that in building no. 1 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on old khasra no. 522/465/372/1 new khasra no. 1182/522/465/3/72 having area 246.50 sqm 6 biswa map approved in the name of Smt. Kanika vide Nagar Parishad Solan resolution No. 276/2008(4) dated 29.02.2008 in the year 2008 and the building is constructed at the site.

11 In building no. 2 owner is Smt. Ruchika daughter of Smt. Sushma and the building is situated on old khasra no. 522/465/372/1 new khasra no. 1183/522/465/3/72 having area 246.50 sqm 6 biswa map approved in the name of Kanika vide Nagar Parishad Solan resolution No. 261/2007 dated

27.12.2007 in the year 2007 through sale deed the said property is transferred from Smt. Kanika to Smt. Ruchika vide sale deed no. 562/008 dated 17.05.2008 and building is constructed at site.

12 In building no. 3 owner is Smt. Kanika daughter of Sh. Ravinder Kumar and the building is situated on old khasra no.522/465/372/3 new khasra no. 1184/522/465/3/72 having area 348 sqm 8 biswa map approved in the name of Kanika vide Nagar Parishad Solan resolution no. 345/2008(41) dated 31.07.2008 in the year 2008 and the building is constructed at the site.

13 In building no.4 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on old khasra no.1040/593/519/3/72/4/2/3 new khasra no. 1220/1188/1040/593/519/372 having area 210 sqm 5 biswa map approved in the name of Kanika vide Nagar Parishad Solan resolution No. 702/2015(43) dated 09.06.2015 in the year 2015 and the building is constructed at the site.

14 In building no. 5 owner is Smt. Sushma daughter of Sh. Amar Nath and the building is situated on khasra no. 523/372 having area 169 sqm 4 biswa map approved in the name of Sharat vide Nagar Parishad Solan resolution no. 832/98(162) dated 13.10.1998 and Smt. Susham has purchased this building in year 1998 and the building is constructed at site.

15 In building no.6 owner is Smt. Sushma daughter of Sh. Amar Nath and the building is situated on old khasra no. 1040/593/519/3/72/3 new khasra no. 1187/1040/593/519/372 having area 966 sqm 1 bigha 3 biswa map approved in the name of Smt. Sushma daughter of Sh. Amar Nath vide Nagar Parishad Solan resolution No.126/011(40)

dated 31.10.2011 in the year 2011 and the building is constructed at the site.

16 In building no. 7 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on khasra no.930/621/378 having area 848.40 sqm 1 bigha map approved in the name of Mangat Ram vide Nagar Parishad Solan resolution No. 766/05(21) dated 29.07.2005 and Smt. Kanika has purchased this building in year 2005 this building is constructed at the site.

17 In building no. 8 owner is Smt. Sushma daughter of Sh. Amar Nath and the building is situated on old khasra no. 929/621/378/1 new khasra no. 1060/929/62/1/378 having area 500 sqm 12 biswa map approved in the name of Smt. Sushma daughter of Sh. Amar Nath vide Nagar Parishad Solan resolution No.30/2006(5) dated 27.05.2006 in the year 2006 and the building is constructed at the site.

18 In building no. 9 owner is Smt. Sushma daughter of Sh. Amar Nath wife Ravinder Kumar Chopra and the building is situated on khasra no.1059/928/809/3/77/3 having area 168 sqm map approved in the name of Smt. Sushma daughter of Sh. Amar Nath vide Nagar Parishad Solan resolution No. 219/2012 (23) dated 20.04.2012 in the year 2012 and the building is constructed at the site.

19 In building no. 10 owner is Smt. Sushma wife of Sh. Ravinder Kumar daughter of Sh. Amar Nath the building is situated on khasra no. 806/619/377 having area 169.68 sqm 4 biswa map approved in the name of Smt. Sushma daughter of Sh. Amar Nath vide Nagar Parishad Solan resolution No. 186/2007 (17) dated 18.06.2007 in the year 2007 and the building is constructed at the site.

20 In building no. 11 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on khasra no. 802/619/377 having area 169.68 sqm 4 biswa map approved in the name of Kanika vide nagar Parishad Solan resolution No. 331/2007(20) dated 28.09.2007 in the year 2007 and the building is constructed at the site.

21 In building no. 12 owner is Smt. Ruchika daughter of Smt. Sushma and the building is situated on khasra no.929/621/378/2/1 having area 848.10 sqm 1 bigha map approved in the name of Ruchika & Sushma vide nagar Parishad Solan resolution No. 403/2008(47) dated 27.12.2008 in the year 2008 and the building is constructed at the site.

22 In building no. 13 owner is Smt. Sushma, Ruchika, Nitika and Kanika and the building is situated on khasra no. 1188/1040/593/519/372/4/4 having area 2226 sqm 2 bigha 13 biswa map approved in the name of Smt. Susham, Smt. Ruchika Smt. Nitika and Smt. Kanika vide Nagar Parishad Solan resolution No. 104/2016(29) dated 31.05.2016 two blocks are approved in the year 2016 and the building is constructed at the site.

23 In building no 14 owner is Smt. Ruchika daughter of Smt. Sushma and the building is situated on khasra no. 1217/1188/1040/593/519/372/4/3/5 having area 424.20 sqm 10 biswa map approved online in the name of Smt. Ruchika daughter of Smt. Sushma vide reference no.02201901827 dated 29.10.2019 in the year 2019 and the building is constructed at the site.

24 In building no.15 owner is Smt. Kanika the MC Solan was in search of the revenue record but the fact of the matter is that the building is constructed at the site.

25 In building no. 16 owner is Smt. Nitika daughter of Smt. Sushma and the building is situated on old khasra no. 1040/593/519/3/72/4/2/2 having area 210 sqm map approved in the name of Smt. Nitika daughter of Smt. Sushma vide Nagar Parishad Solan resolution No. 392/2013(11) dated 22.08.2013 in the year 2013 and the building is constructed at the site.

26 In building no 17 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on khasra no. 1188/1040/593/519/372/4/4 having area 8 biswa map approved in the name of Smt. Sushma, Smt. Ruchika, Smt. Nitika and Smt. Kanika vide Nagar Parishad Solan resolution No. 104/2016(29) dated 31.05.2016 two blocks approved 1 mentioned at para no. 22 & another is this one in the year 2016 and the building is constructed at the site.

27 In building no. 18 owner is Smt. Sushma daughter of Sh. Amarnath and the building is situated on khasra no. 371/2/5 having area 462 sqm map approved online in the name of Smt. Sushma daughter of Sh. Amarnath vide reference no. 02202202103 dated 22.02.2023 in the year 2023 and the building is constructed at site.

28 In building no 19 owner is Smt. Sushma daughter of Sh. Amarnath and the building is situated on khasra no 1177/464/372 having area 210 sqm 5 biswa map approved in the name of Smt. Sushma daughter of Sh. Amar Nath vide Nagar Parishad Solan resolution No. 661/2015 (38) dated 21/02/2015 in the year 2015 and the building is constructed at the site.

29 In building no 20 owner is Smt. Sushma daughter of Sh. Amarnath and the building is situated on khasra no 464/372/4 having area 294 sqm 7 biswa map approved in the name of Smt.

Sushma daughter of Sh. Amar Nath vide Nagar Parishad Solan resolution No. 634/2014 (23) dated 28/11/2014 in the year 2014 and the building is constructed at the site.

30 In building no 21 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on khasra no. 118/1040/593/5/19/372/4/2 having area 294 sqm map approved online in the name Kanika daughter of Smt. Sushma of vide reference no. 02201801677 dated 29.01.2019 in the year 2019 and the building is constructed at the site.

31 In building no 22 owner is Smt. Sushma daughter of Sh. Amarnath wife of Ravinder Kumar Chopra and the building is situated on khasra no. 1188/1040/593/519/372/4/1 having area 169.68 sqm 4 biswa map approved online in the name of Smt. Sushma daughter of Sh. Amarnath vide reference no. 02201900214 dated 25.06.2019 in the year 2019 and the building is constructed at the site.

32 In building no 23 owner is Smt. Sushma daughter of Sh. Amarnath wife of Ravinder Kumar Chopra the building is situated on khasra no. 521/465/372 having area 212.10 sqm map approved in the name of Smt. Sushma daughter of Sh. Amarnath vide Nagar Parishad Solan resolution No. 503/10(28) dated 27.02.2010 in the year 2010 and vacant plot is there.

33 In building no 24 owner is Smt. Sushma daughter of Sh. Amarnath wife of Ravinder Kumar Chopra and the building is situated on khasra no. 515/463/372,516/463/372 & 517/463/372/1 having area 714 sqm 17 Biswa map approved online in the name of Smt. Sushma daughter of Sh. Amarnath vide reference no. 02202302553 dated 18.03.2024 in the year 2024 and the building is under construction at site as at present plot development work is in progress.

34 In building no 25 owner is Smt. Sushma daughter of Sh. Amarnath wife of Ravinder Kumar Chopra and the building is situated on khasra no. 524/465/372 & 525 /373 having area 225.22 sqm 6 biswa map approved online in the name of Smt. Sushma daughter of Sh. Amarnath vide reference no. 02202201088 dated 15.07.2022 in the year 2022 construction has not started at site.

35 In building no. 26 owner is Smt. Sushma daughter of Sh. Amarnath and the building is situated on khasra no 1217/1188/1040/593/519/372/4/3/3/1 having area 168.68 sqm 4 biswa map approved online in the name of Smt. Sushma daughter of Sh. Amarnath vide reference No.02202100228 dated 31.07.2021 in the year 2021 and construction has not started at site.

36 In building no. 27 owner is Smt. Ruchika daughter of Smt. Sushma and the building is situated on khasra no. 518/463/372 & 517/463/372/2 having area 714 sqm 17 biswa map approved online in the name of Smt. Ruchika daughter of Smt. Sushma vide reference No. 02202302551 dated 18.03.2024 in the year 2024 and the building is under construction at site as at present plot development work is in progress.

37 In building no. 28 owner is Smt. Kanika daughter of Smt. Sushma and the building is situated on khasra no. 1217/1188/1040/593/519/372/6 having area 169.68 sqm 4 biswa map approved online in the name of Smt. Ruchika daughter of Smt. Sushma vide reference No. 02202000659 dated 28.09.2020 in the year 2020 and construction has not started at site.

38 From the aforesaid discussion it is absolutely clear that the blocks have been developed by Smt. Sushma wife of Ravinder

Chopra Smt. Kanika, Smt. Ruchika and Smt. Nitika daughters of Ravinder Chopra and the sum total of the area on which these blocks have been constructed if calculated comes out to be approximately 11,683 sq mts. From the report of the MC Solan as well as ATP of HPRERA it is crystal clear that the common facilities , road etc. of all the blocks are common/ same and it is a gated society. Further, there are documents on record to show that the entire project has been named S. Chopra Apartments. Therefore the respondents cannot escape from the fact that it is a Real Estate project as defined under Section 2 (zn) of the RERD Act, 2016. Further Section 3 (2) which reads as under:

> Section 3 - Prior registration of real estate project with Real Estate Regulatory Authority.
> (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 thereunder, 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.

39 From the aforesaid section it is absolutely clear that where the area of the land proposed to developed inclusive of all phases exceeds 8 flats or apartments and also exceeds beyond 500 sq mts area under construction, the project is required to be registered with RERA. Further the project is required to be registered if the promoter has not received completion certificate as given in section 3 of the Act ibid. In the present case no completion certificate has been placed on record by the respondents and neither they have been able to successfully rebut the averments made by the complainant. Further in the

report of the ATP it has come on record that there were total 13 number of dwelling units/ Flats are existing in Block no. 3. The violation of the RERD Act, 2016 is very evident. It has also come on record that the respondent has deviated from the original sanctioned plans and constructed flats even in the area(s) designated for parking. Therefore the project as a whole developed in phases having mutual 'common areas' and being a gated society is required to be mandatorily registered under Section 3 of the RERD Act, 2016 within a time bound manner. Further the Act commenced on 01.05.2017 and this being an ongoing project the promoters were required to register the project within a time bound manner. For failing to do so they are liable for penalty under Section 59 of the RERD Act,2016.

40 Further, it is clear that all the blocks have been developed by mother and her three daughters within the family therefore all four i.e. Sushma wife, Kanika, Ruchika and Nikita daughters of Ravinder Chopra are held to be co- promoters in this case. Even otherwise if individual shares of ownership of Kanika, Ruchika, Nitika and Sushma are drawn out on the basis of approval of maps as per report of MC Solan and building constructed thereto, their individual shares comfortably surpass the benchmark of 500 sq mtrs as per Section 3 of the Act. Further the paramount consideration as to whether a project is required to be registered under Section 3 is the intention of the parties. Since it is a matter of record that it was a gated society having common areas, by no stretch of imagination the defence of the respondents can be acceded to. It is therefore held that this project requires registration under Section 3 of the RERD Act.

41 Whether the Complainant is entitled reliefs as claimed for in the complaint?

42 The primary prayers of the complainant is for provision of 1000 ltrs tank, provision for parking on the second floor and for tax assessment of their flat. For coming to any conclusion on this issue the important section i.e. required to be delved into is Section 14(3) which reads as under:

> Section 14 Adherence to sanctioned plans and project specifications by the promoter.
> (1).....
> (2).....
> (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.

From the bare reading of this provision it is clear that in case of any structural defect for any defect of workmanship, quality **or provision of services or any other obligations of the promoter** as per the agreement for sale is brought to the notice of the promoter within a period of five years, it shall be the duty of the promoter to rectify such defects within further thirty days. The primary concern here for this Authority is that such defects of quality or provision or for any other obligations have to be brought to the notice of the promoter within **five years** from the date of taking over possession. In the present case the flat was initially sold by the promoter to one Sh. Shish Pal son of Late

Sh. Ram Kumar by way of sale deed dated 19.09.2011 registered in the office of sub-registrar Solan. Thereafter the flat was purchased by the present complainant from aforesaid Shish Pal on 24.11.2020. Therefore the complainant being subsequent purchaser of the flat in question the limitation as provided under Section 14 (3) of five years starts running from the date the initial sale took place by way of which the possession was delivered to Sh. Shish Pal by the promoter in question. Since the possession was delivered to the complainant on 19.9.2011 i.e. the date of execution of the first sale deed. There is nothing on record that her predecessor Sh. Shish Pal had raised the issue of provision of these services to the promoter within five years from the date of the execution of sale deed where by the possession was delivered. Therefore, their claim by way of this complaint is held to be barred by time and is much beyond the period of five years as apparently the claim has been raised for the first time in the year 2023, by way of filing this complaint, which has been filed after a period of twelve years. Therefore, their claim cannot be adjudicated upon being barred by time under the provision of section 14 (3). In view of the above the individual claims of the complainant for defects in workmanship, quality and provision of services or for other obligations cannot be adjudicated upon.

43. Relief-

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

a. The project as a whole is developed in twenty eight blocks having mutual 'common areas' and being a gated society is required to be registered under Section 3 of the RERD Act,

2016. The promoters are directed to apply for registration within one month from passing of this order.

b. The RERD Act, 2016 commenced on 01.05.2017 and this being an on going project, the promoters were required to register the project with HPRERA in time. For failing to do so they are liable for a penalty of Rs three lakhs under Section 59 of the RERD Act,2016.

c. The individual claims filed by the complainant cannot be adjudicated upon being time barred under the provision of section 14 (3).

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Dr. Shrikant Baldi
CHAIRPERSON