

**BEFORE THE HIMACHAL PRADESH REAL ESTATE
APPELLATE TRIBUNAL**

Appeal No.05/HP of 2022
Date of Decision: 27.01.2023

Sh. K. Mahesh S/o Sh. Ram Sewak, R/o 21/127, Lodi Colony,
New Delhi – 110003

2nd Address: Village Anech, Kumarhatti, Tehsil & District Solan
(Himachal Pradesh)

Appellant

Versus

1. Sh. Anil Kumar Goel,

2. Sh. Akhil Kumar Goel, S/o Anil Kumar Goel,

Both the residents of Aggarwal House, GSSS Area,
Sanjauli, Tehsil and District Shimla (Urban), HP-171006

2nd Address: Village Anech, Kumarhatti, Tehsil & District
Solan (Himachal Pradesh)

...Respondents

3. The Secretary, Town & Country Planning Dept.
Government of Himachal Pradesh, Yojna Bhawan, Block
No. 32A, SDA Complex, Shimla Bypass, Kasumpti,
Shimla, Himachal Pradesh 171009

...Pro Forma Respondent

CORAM:

Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Member (Judicial)
Member (Technical)

Argued by: Shri Kabir S. Ghosh, Advocate,
Ld. counsel for the appellant.

Shri Ajiteshwar Singh, Advocate,
Ld. counsel for the respondents.

ORDER:**ANIL KUMAR GUPTA, MEMBER (TECHNICAL):**

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act 2016 (further called as, 'the Act') by the appellant against impugned order dated 05.01.2022 passed by the Real Estate Regulatory Authority, Himachal Pradesh (for short, 'the Ld. Authority') vide which the Complaint No.HPRERA/OFL/2020-07 filed by the appellant was disposed of with the following order:

“10. Therefore, the rule is that statute creating substantive rights is prospective in operation unless expressly declared retrospective by the statute itself. Hence it is abundantly clear that the construction done in the project under contention was started much prior to the inclusion of concept of deemed planning area in the HP Town and Country Planning Act, 1977. Therefore, the project in question, when constructed was not in any planning area. The developer/ respondent at that time could not have imagined that the HP Town and Country Planning Act, 1977 will be amended later incorporating the provisions of the deemed planning area or provisions of The Real estate (Regulation and Development) Act 2016 will be enacted. Thus, it is held that project in question, was not in a planning area or deemed planning area when it was constructed. Thus, the essential ingredient for registration of a Real Estate Project to be located in a planning area is not fulfilled

Appeal No.05/HP of 2022

in this case. Therefore, the project in question does not require registration under section-3 of the Real Estate (Regulation and Development) Act, 2016 and the complaint filed by the complainant is hereby dismissed.”

2. No relief against respondent No.3 has been claimed in this appeal and is only a pro forma respondent.

3. As per the averments in the complaint, the appellant purchased a property being an apartment in Anech Village, Dagshai, Kasauli (District- Solan) situated on the ground floor consisting of one drawing room, three bedrooms, two toilets, one open kitchen measuring about 91.85 sq. mts build on portion of land comprised in khata khatuni no. 15/53, 54 & 55, khasra no. 223 min, 223 min, 223 min and 223 min kitas 4 situated at Mohal Anech, Hadbast No. 69/819, Tehsil & District Solan, in September 2019. It was further pleaded that the property was purchased by appellant along with his wife Smt. Maryam Mirsamady as co owner by way of sub lease and subsequent to the purchase of the property it had come to the knowledge of the appellant that Sh. Anil Kumar Goel, through his son Sh. Akhil Kumar, without taking permission is continuing with massive construction activities adjacent to the aforesaid property. The photographs of the same were appended as P/1 to P/9 with the complaint. It was further pleaded that the construction activities are being carried out by

Appeal No.05/HP of 2022

respondents in violation of laws, on a plot of more than 500 sq. mts. and more than 8 plots have been built without any approval and registration from the 'Authority'. It was further pleaded that it is mandatory as per Section 3 of the Act to get the project registered and, therefore, the respondents are liable for action under Section 59 and other penal provisions of the Act. It was pleaded that a survey/inspection may be ordered by the Authority against the alleged illegal construction.

4. The respondents contested the complaint on the grounds that the property in question was leased prior to coming into force of the Act. It was further pleaded that the area in question does not fall within planning area and no permission for construction was required as the construction was complete before 2017. It was further pleaded that the respondents have not constructed more than eight apartments and thus has not violated the provisions of the Act. It was further pleaded that the said property in question was initially leased to one Rama Mehta in July 2015 i.e. prior to commencement of Act. It was further pleaded that most of the construction work was complete by the year 2013. No construction has been done on the land in question after the commencement of the Act and therefore there is no violation of the provisions of the Act. It was further pleaded that twice detailed survey has already been conducted by Town and

Appeal No.05/HP of 2022

Country Planning Department Govt. of Himachal Pradesh (Further called as 'TCP HP') and all the necessary documents have been provided to them in this regard. It was further pleaded that appellant is habitual of filing baseless complaints against respondents ever since he has acquired the said property.

5. The appellant filed rejoinder to the reply filed by the respondents before the Ld. Authority by pleading that the construction made by respondents require permission under sub-section 3(A) of Section 1 of the Himachal Pradesh, Town and Country Planning Act, 1977 (for short, the 'HP TCP Act 1977') as the area in question is deemed planning area reported by the Town and Country Planner in its report dated 3.6.2020. It was further pleaded that the unauthorised construction in the project under question is made both by Sh. Anil Kumar Goel and Akhil Kumar Goel. It was further pleaded that report submitted by the Town and Country Planner, Divisional Town and Planning Office, Solan is factual report prepared after collection of facts from the site which goes to prove that Sh. Anil Kumar Goel has been constructing 18 unauthorised cottages for commercial purposes. It was further submitted that un-authorised construction was made for the purpose of selling the same in utter disregard to the provisions of the Act. It was further submitted that as per the report of

Appeal No.05/HP of 2022

Tehsildar, the total area over which both Akhil and Anil Kumar Goel are raising construction is about 9137.811 Sq. mts which is more than 500 sq. mts as per the requirement of Section 3 of the Act. It was further submitted that the report of the Tehsildar reveals that Anil Kumar Goel has executed a General Power of Attorney in favour of Akhil Kumar Goel. It was further submitted that Tehsildar in his letter dated 17.7.2020 has listed all the transactions made by Akhil Kumar Goel and Anil Kumar Goel in the said area from which it is clear that the transactions have been made from year 2011 to 2019. The submission of the respondents that the project does not fall within planning area was denied by the appellant. It was further submitted that a detailed survey has been done by the Town and Country Planner, Divisional Town Planning Office, Solan (further called as 'TCP HP') vide letter no. HIM/TCP/SLN/PA/UAC/ANCECH/Deemed Area/2020-121-22 /dated 03.06.2021 wherein it was categorically stated that the site is a deemed planning area and 18 number of cottages/ blocks are existing on a site area of more than 2500 sq. mts and, therefore, respondents were required to take permission from the 'TCP HP'. It was further pleaded that both Anil Kumar Goel and Akhil Kumar Goel have been doing construction independently and jointly with Sh. Rajan Sood and with other land owners as developers and power of attorney holders. It

Appeal No.05/HP of 2022

was further pleaded that respondents are doing construction jointly and severally with other land owners from 2012 to 2019 and some of the villas/ apartments are at completion stage. It was further submitted that report of 'TCP HP' dated 17.7.2020 reveals that construction has been going on in the years 2016, 2017, 2018, 2019 and even in 2020. It was further submitted that although 'TCP HP' in its report dated 3.6.2020 stated that 18 number of cottages/blocks have been constructed unauthorizedly and occupied on the site, which has been validated by the Tehsildar Solan and 19 registration deeds have been carried out in the project in question. However, he submitted that at present the numbers of constructions in this area are not less than 25 villas and 19 have already been registered. It was further submitted that for this purpose the respondents have uprooted the flora and fauna and exploited the ground water for construction works thereby increasing risk of landslides.

6. The respondents filed sur-rejoinder to the rejoinder filed by the appellant before the Ld. Authority and pleaded that respondents no.1 & 2 are owners in possession of separate, distinct and respective land in Village Anech, Tehsil and District Solan, H.P. which they had purchased individually in the year 2008 and 2010 respectively. It was submitted that construction work was undertaken by respondents no. 1 & 2 in

Appeal No.05/HP of 2022

their respective portions of land which was complete in the year 2012-2013, wherein number of apartments/ units was less than eight (8) in number in their respective portions. It was further submitted that area in question falls within Gram Panchayat, Anech. It was further submitted that at the time when construction was undertaken no separate permission was required from 'TCP H.P.' or any other authority for such activity as it was beyond the purview of the 'HP TCP Act 1977'. It was further submitted that most of the units had been under occupation of respective purchasers/ lessees by the year 2015. It was further submitted without conceding that the construction made was well within the norms of TCP. It was further submitted that the complaint is not maintainable and the Authority has no jurisdiction as the construction is complete well before the coming into operation of the Act. The respondents denied that any construction is being carried out on the site in question. It was further pleaded that appellant has no locus standi to file the present complaint. It was further submitted that appellant cannot be permitted to raise new pleas or make out a new case during the course of proceedings and file documents to that effect. It was further submitted that it is apparent from the reports of Town and Country Planner, Divisional Town Planning Office, Solan dated 3.6.2020 and 6.7.2020 that Director TCP has not taken note of the material

Appeal No.05/HP of 2022

facts while issuing the communication letter no. HIM/TP/PP /P.Reg/Solan-Gen-2019/Vol-1.

7. The Ld. Authority for the effective adjudication of the dispute sought clarification from the department of 'Director TCP HP' vide letter dated 23.6.2021. In response to the aforementioned letter dated 23.6.2021, 'TCP HP' submitted the report vide its letter dated 25.8.2021 to the Director 'TCP HP' which was further sent by Director 'TCP HP' to the Ld authority vide his office letter dated 16.11.2021.

8. After hearing the arguments and perusal of the report, clarification and information from the Director 'TCP HP', the Ld. Authority passed the impugned order. The relevant part of the same is already reproduced in the upper part of this order/judgment.

9. We have heard Shri Kabir S. Ghosh, Advocate, Ld. counsel for the appellant as well as Shri Ajiteshwar Singh, Advocate, Ld. counsel for the respondents and have carefully gone through the record of the case.

10. Initiating the arguments, Ld. counsel for the appellant contended that the respondents have constructed resort/township, consisting of cottages/flats, at least 19 in number in an area of 8698 sq mtrs without any approval of the 'Authority' or of the 'TCP HP'. The project has been developed and continues to be developed by the respondents by entering

into individual sale/lease deeds with the respective owners. He contended that it is an admitted fact that no completion certificate has been obtained by the respondents till date. He contended that the plea of the respondents that construction of the project in question, having commenced prior to the inclusion of the concept of deemed planning area of the HP TCP Act 1977, therefore, does not require registration under Section 3 of the Act, 2016, is not correct and is legally unsustainable as the project in question is both, larger than 500 sq. meters in size, and more than 8 apartments had been built, and therefore, the project was mandatorily required to be registered under the Act.

11. It was further contended that in this matter 'TCP HP' in its letter dated 03.06.2020 addressed to Director 'TCP HP' specifically mentioned that the area in question fell under deemed planning area within the meaning of Section 1(3)(a) of the HP TCP Act 1977.

12. It was further contended that on 23.06.2021, the Ld. Authority sent a letter to the 'TCP HP', seeking clarifications as to the dispute in question, to which various clarifications were made vide report dated 16.11.2021.

13. It was further contended that the test whether the project falls under Section 3 of the Act is to be applied on the status of the project on the date of the enactment of the Act

and not on the date when the 'HP TCP Act 1977' included the provisions of deemed "planning area".

14. It was further contended that the perusal of the impugned order makes it clear that the Ld. Authority was unsure of the date of conclusion of the project. The perusal of the impugned indicates that the ld. authority was itself unsure about the date of commencement/conclusion of the real estate project in question. In the circumstances, where the ld. authority itself was unsure about the dates of commencement and completion of the real estate project, it was incumbent upon the ld. authority to invoke its statutory powers under Section 35 of the Act and to direct the respondents to place on record the license and Completion Certificate with respect to the project in order to determine the true date of conclusion of the project. It was further contended that the ld. authority under Section 35 of the Act should have sought information / explanation from the respondents to ensure that the license and completion certificate is issued to the respondents, which was essential to determine the issue of registration of the project of the respondents.

15. It was further contended that Hon'ble Apex Court in **"M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & others etc. 2021 SCC Online SCC 1044"** has categorically held that projects in respect of which "Completion

Certificate” has not been issued would come within the purview of the Act.

16. It was further contended that the reports of the Tehsildar dated 17.07.2020 and 07.08.2020 clearly show that a large number of apartments/cottages were sold post 2015, but in fact continued up to 2020. It is beyond the tenets of reasoning that a cottage or apartment, which is build up completely before 2015 would be sold in the year 2019.

17. It was further contended that even under Section 3(1) of the Act, the sale of units is not been permissible without registration of the project under the Act.

18. It was further contended that the construction and development in a piecemeal manner, by entering into separate agreements by the respondent cannot be permitted to evade the provisions of the Act. To support his contentions, the appellant has relied upon the judgment of this Tribunal in the case of **Mohan Singh v. Haryana Real Estate Regulatory Authority, Gurugram (Appeal No. 650/2019).**

19. It was further contended that under Section 1(3a) of the ‘HP TCP Act 1977’, vide amendment in the year 2013, made the provisions of the Act applicable to any area proposed for development of apartments or colonies for the purpose of selling even outside notified planning areas and such areas would be deemed to be planning areas.

Appeal No.05/HP of 2022

20. It was further contended that even if it is accepted that the construction was completed between the years 2013 to 2015, such constructions which took place between 2013 to 2015 would be subject to the provisions of the 'HP TCP Act 1977'. In fact so far as the applicability of the "deemed planning area" provision is concerned, the same has been categorically clarified by the Town and Country Planner, Divisional Town Planning Office, Solan, vide Letter No: HIM/TCP/SLN/PA/UAC /ANHECH/Deemed Area/2020-121-22, Dated 03.06.2020, which has categorically mentioned that the area in question comes under the definition of deemed planning area as enshrined under Sub Section 3(a) of the Section 1 of the Act *ibid* as amended vide Himachal Pradesh Town and Country Planning (Amendment) Act, 2013 (Act No. 41 of 2013) and (Amendment) Act, 2015 (Act No. 14 of 2015)."

21. It was further contended that the Director, 'TCP HP' in Letter no:HIM/TP/PP/P.Reg/solan- Gen/2019/Vol-I, dated 06.08.2020 to the address 'TCP HP' has mentioned that the construction in respect of the real estate project in question involves violation of Sub-section 3(A) of Section 1 and Section 16(C) of 'HP TCP Act 1977', and necessary action under the provisions of Sec 38 & 39 *ibid* are required to be initiated.

Appeal No.05/HP of 2022

22. It was further contended that the letter No: HIM/TCP/SLN/PAUAC/ANHECH/Deemed Area/2020/586 dated 25.08.2021, submitted by the TCP Department, (pursuant to order of this Hon'ble Authority dated 23.06.2021), the TCP has mentioned that unless the practice of registration of the constructed flats and plots without approval of the TCP department and registration of the HP RERA in deemed areas by the Registrars and Sub Registrars is stopped, it is very difficult for the department to identify such cases especially in deemed areas.

23. It was further contended that as per Section 3 of the Act, the requirements are first, the area should be 500 square meter or more; secondly, the construction being more than 8 apartments; and thirdly, the purpose being 'sale'. In the present matter, all the three ingredients are present i.e., area is more than 500 square meters, the apartments are admittedly more than 8 and the apartments/cottages have been for sale, which is apparent from the report of the Tehsildar, Solan dated 17.07.2020.

24. With these contentions, it was contended that the present appeal may be allowed and the impugned order may be set aside with the following reliefs:

- ii. *“Direct that the Respondents are liable to get the Real Estate Project registered under Section 3 of*

the Real Estate (Regulation and Development) Act, 2016;

- iii. *Direct necessary penal action against the Respondents under Section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of the Real Estate (Regulation and Development) Act, 2016.”*

25. On the other hand, the Ld. counsel for the respondents contended that the construction of the project was completed by the year 2015 and all units were with respective owners before the operation of the Act commenced. It is mentioned in para 2 & 3 of Report dated 25.8.2021 of TCP Solan, that the construction at the site was complete by the year 2015. He contended that in the said report dated 25.08.2021, it is mentioned that a certificate has been issued by the Himachal Pradesh State Electricity Board Ltd. through its Additional Assistant Engineer, Electrical Section, HPSEBL, Kumarhatti, Solan that all electricity connections to the structures constructed in land comprised of khasra no. 221, 223 min, 227/2 and 229 at Mauza Anech, Tehsil and District Solan were installed during the year 2013 to 2016 from which it is clear that the structures were complete during 2013-2015.

Appeal No.05/HP of 2022

26. It was further contended that in report dated 06.07.2020 of TCP, Google images were attached which further shows that the construction was complete by the year 2015.

27. It was further contended that the concept of deemed planning area was first introduced in the year 2013 in the 'HP TCP Act 1977'. This provision was amended in the year 2015 and, therefore, at the time, when the units were being constructed there was no requirement of obtaining completion certificate. The project of the appellant is not an ongoing work as no construction has been carried out after the enactment of the act.

28. The respondents are required to register with the Authority only if the respondents construct the flats/cottages for the purpose of sale and the act does not require to register with the Ld. Authority if flats/cottages are for self-utilization

29. With these submissions, it was contended that the registration of the project with the Ld. Authority was not required. There is no merit in the appeal and the same may be dismissed.

30. We have duly considered the aforesaid contentions of both the parties.

31. The appellant along with his wife as co-owner has purchased a unit on the ground floor consisting of one drawing room, three bedrooms, two toilets, one kitchen measuring

Appeal No.05/HP of 2022

about 91.85 m² built on a portion of land owned by the respondents in the village Anech Tehsil and District Solan. It was also alleged that the project being constructed at village Anech fall within the meaning of the definition of deemed planning area as per Section 1(3)(a) of the 'HP TCP Act 1977' and respondents are carrying out construction on a plot of more than 500 sq. mts. and more than 8 cottages have been built without any approval or registration from the Ld. Authority, whereas, it is mandatory as per Section 3 of the Act to get the project registered.

32. The Ld. Authority to adjudicate upon the dispute sought clarification and information from the Director 'HP-TCP' vide letter dated 23.06.2021. In response to this letter, report dated 25.08.2021 was supplied by Town and Country Planning, Divisional Town Planner Solan which was received by the Ld. authority through Director 'HP-TCP' vide his office letter dated 16.11.2021. The para no III of the said report dated 25.08.2021 relied upon by the Ld. authority is reproduced as below:

“III. A certificate has been issued by Himachal Pradesh State Electricity Board through Additional Assistant Engineer, Electrical Section, HPSEBL Kumarhatti Solan (H.P.)vide which all electricity connection to the structure constructed in land comprised in Khasra No. 221, 223 min 227/2 and 229 located at Mouza Anech, Tehsil District

Appeal No.05/HP of 2022

Solan were installed during the year, 2013 to 2016, it is clear that said structure had been completed during the year, 2013 to 2015. The same stand submitted to your good office vide this office letter dated 6/7/2020. The images of the site under reference for the year 2013 and 2015 showing the status of construction off work wanted land had already been supplied to your good office vide this office letter No. HIM/TCP/SLN/PA/UAC/Anech/Deemed Area/2020-329 dated 6/7/2020 which are clearly showing the status of the structures constructed in said land. For ownership of the cottages constructed in land and referenced stand submitted to your good office vide this office letter dated 6/7/2020.”

33. Relying upon the above said para of the letter of “TCP HP’ it was held by the ld. authority that the construction done in the project under contention was started much prior to the inclusion of concept of deemed planning area in ‘HP TCP Act 1977’ and therefore, the project in question, when constructed was not in any planning area or deemed planning area and therefore does not require registration under section 3 of the act.

34. The definition of Planning Area is given at Section 2(zh) of the Act and the same is reproduced as under:

“(zh) “planning area” means 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

Appeal No.05/HP of 2022

*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;”*

35. In the present case, the project in question of the respondents is located in Gram Panchayat, Anech, which does not fall in any designated planning area or notified planning area. The provisions pertaining to ‘deemed planning areas’ for development of apartments or colonies outside the notified planning areas was incorporated as Section 1(3)(a) for the first time in the ‘HP TCP Act 1977’ by Govt. of Himachal Pradesh vide its Gazette Notification dated 21.09.2013 as follows:

*“1(3)(a) It shall apply to any area proposed for development of apartments or colonies outside the notified planning area of special area constituted under this Act and such areas shall **be deemed to be planning areas.**”*

36. This said provision was amended by the Govt. of Himachal Pradesh vide its Gazette Notification on 18.05.2015 as follows:

*“1(3)(a) It shall apply to any area proposed for development of apartments or colonies **for the purpose of selling** outside the notified planning area or special areas constituted under this Act and such areas shall be deemed to be planning areas.”*

Appeal No.05/HP of 2022

37. The Govt. of Himachal Pradesh vide an amendment, substituted the Clause 1(3A) of 'HP TCP Act 1977' on 22.05.2018 as follows:

“Section 1(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 building or buildings having more than eight apartments for the purpose of selling outside the notified planning area or special areas constituted under this Act and such area shall be deemed to be planning areas.”

38. In the letter of 'TCP HP' dated 03.06.2020 to the address of 'Director TCP HP' the copy of which was also sent by 'TCP HP' to the appellant, it is mentioned that the project of the appellant falls in the deemed planning area. This letter was brought into the notice by the appellant in his rejoinder in the complaint. This letter was written after joint inspection by 'TCP HP' with one of the respondents. In para 1 of this letter it is mentioned that;

“The site under reference falls in revenue village Aneach and located on link road leading to Dagshai bifurcating from Kumarhatti Nahan road and comes under the definition of deemed planning area enshrined under sub section 3(a) of Section 1 of the 'HP TCP Act 1977' as amended vide Himachal Pardesh Town & Country Planning Amendment Act,

Appeal No.05/HP of 2022

2013 (Act No. 41 of 2013 and (Amendment) Act, 2015 (Act No. 14 of 2015.

39. The Appellant has brought on record of the ld. authority one more letter dated HIM/TP/PP/P.Reg/Solan – Gen-2019/Vol-1 dated Nil (06.08.2020 as mentioned by appellant) from Director ‘TCP HP’ to ‘TCP HP’ wherein it is mentioned as:

“In this regard, it is further intimated that after perusal of the chronological facts of the instant complaint matter vis-a-vis your site inspection reports and also the report submitted by the Tehsildar Solan w.r.t. the revenue details of the land involved, it is evident that the instant case involved violation of Sub-section (3A) of Section 1 and Section 16(c) of HP TCP Act, 1977, and the necessary action under the provisions of Section 38 and 39 of the Act ibid were required to be initiated by the Divisional Town Planning Office, Solan in year 2013 itself, which, as appearing from the fact of the case, was never initiated to check the unauthorized construction in the instant case.”

40. The appellant has contended that as per the letter dated 17.07.2020 of Tehsildar Solan to A.C. (UT) Solan with copy to the Appellant, the respondent No. 1 and respondent No. 2 have sold large number of cottages and flats to various individuals up to 2019. The chart showing various sales/lease

Appeal No.05/HP of 2022

deed as mentioned in the above said report of Tehsildar is reproduced as below:

S. No.	Name of Seller	Name of Buyer	Reg. No & Date	Area of Villa/ Cottage
1	Akhil Kumar Goel on behalf of Rajan – GPA	Deepak Kumar Mittal	Sale Deed No. 1258; dated: 05.12.2011	Cottage 210.64 Sq. Mts
2	Akhil Kumar Goel on behalf of Rajan – GPA	Shail Nidhi Sharma	Sale Deed No. 307; Date:19.03.2012	Cottage 176.0 Sq. Mts
3	Akhil Kumar Goel on behalf of Rajan – GPA	Shail Nidhi Sharma	Lease Deed No. 1083; Date: 23.07.2012	Flat on 1st Floor 96.48 sq. Mts& servant quarter 16.54 Sq.Mts
4	Akhil Kumar Goel on behalf of Rajan – GPA	Rahul Satia & Rajneesh Satia	Lease deed No 1095; Date: 24.07.2012	Ground & 1st floor; 96.48 Sq. Mts
5	Akhil Kumar Goel on behalf of Rajan – GPA	Essense Obhan	Lease Deed No: 60; Date: 14.01.2013	Two Storied cottage 1171 Sq. ft
6	Akhil Kumar Goel on behalf of Rajan – GPA	Yogendra Kumar Pawa	Lease Deed 1316 Dated 29-07-2013	Flat of 96.37 Sq. Mts
7	Akhil Kumar Goel	Seema Goyal	Settlement deed No. 880 Date: 02.05.2014	Land
8	Anil Kumar Goel	Rama Ahuja	Lease Deed No. 1177 Date: 16.06.2014	Two Storied building-207.39 Sq. Mts
9	Anil Kumar Goel	Sanjiv Kumar Singh Marya	Sale Deed No.1685 Date: 13.08.2014	Land with two storied building
10	Anil Kumar Goel	Rama Mehta	Lease Deed No.1631 Date: 17.07.2015	91.85 Sq.Mts, Ground floor
11	Akhil Kumar Goel	Praveen Gureja	Lease Deed No.133 Date: 21.01.2016	2 nd Floor apartment- 206.06 Sq. Mts
12	Anil Kumar Goel	Jagdish Suneja	Lease Deed No.1331 Date: 21.06.2016	Two apartments of 87.82 Sq. Mts and 71.20 Sq. Mts
13	Akhil Kumar	Shail Nidhi	Lease Deed No.1332	Ground Floor

Appeal No.05/HP of 2022

	Goel		Date: 21.06.2016	Apartment 96.42 Sq. Mts
14	Akhil Kumar Goel	Manju Jain	Lease Deed No.1816 Date: 29.08.2016	Ground Floor:113.48 Sq. Mts. & 1st Floor: 117.80 Sq. Mts
15	Akhil Kumar Goel on behalf of Rajan Sood – GPA	Rahul Setia & Rajneesh Setia	Lease Deed No.2181 Date: 20.10.2016	Surrender of Lease
16	Anil Kumar Goel	Aman Kumar	Settlement Deed No. 2365 Date: 05.12.2017	Land
17	Akhil Kumar Goel	Shail Nidhi	Sale Deed No. 1636 Date: 03.08.2018	Ground Floor- 96.42 Sq. Mts
18	Anil Kumar	Ahmed Zahir	Lease Deed No.1975 dated 18.09.2018	Ground Floor 111.78 1 st Floor 105.07 and 2 nd Floor 91.75 sqm. Khasra No.223
19	Anil Kumar Goel	Pavan G Singh & Harmeet Bajaj	Lease Deed No. 313 Date: 13.02.2019	1 st & 2 nd Floor 164.58 Sq.Mts
20	Akhil Kumar Goel	Shail Nidhi	Sale Deed No. 1261 Date: 26.06.2019	Land 07 Biswa in Khasra No. 229/1

41. The perusal of the above report dated 17.07.2020 of Tehsildar Solan reveals that the respondent no.1 and respondent No 2 have sold and leased out various units to individuals between 2011 and 2019. There has also been sale deeds and lease deeds during the period when the provision of section 1(3)(a) regarding deemed planning Area was added for the first time on 21.09.2013 and subsequently amended on

Appeal No.05/HP of 2022

18.05.2015 and 22.05.2018. The 'HP TCP Act 1977' was amended and section 1(3)(a) and deemed planning area was added for the first time on 21.09.2013, as per which the 'HP TCP Act 1977' shall apply to apartments or colonies of any size proposed for development of apartments or colonies outside notified areas irrespective of its size or number of units or apartments being constructed for the purpose of sale or otherwise or the construction has started before or after the provision section 1(3)(a) or completed after the addition of the said provision etc. It is true that the Acts are always applicable prospectively. However, it is a settled principal of law that where the transactions are pending and the works/sales have not completed and concluded on the date of applicability of the act, the operation of the act is applicable on the pending transactions and uncompleted works/sales etc.. In the present case various parameters such as exact date of start and exact date of completion of construction of various units/apartments or the project required for registration of the project under the RERA Act and under provision of deemed planning area under 'HP TCP Act 1977' is not available on the record. Under this situation the learned authority relying on para 3 of the letter dated 25.08.2021 of 'TCP HP' to the address of Director 'TCP HP', in which it is mentioned that *"the electricity connections to the structures constructed in the land comprised in Khasra No.*

Appeal No.05/HP of 2022

221, 223 min, 227/2 and 229 at village Mouza Aneach were install during the year 2013 and 2016. It is clear that said structures had been completed during the year, 2013 to 2015. Thus it can safely be concluded that construction work of houses/apartments in this project must have started in year 2009 or 2010,” observed that structures in the land comprised in Khasra No 221 223, 227/2 and 229 in Village Aneach Tehsil and District Solan were completed during the year 2013 to 2015 and concluded that construction work of houses/apartments must have started in the year 2009 or 2010 and held that the project in question was not in deemed planning area on the date when the provision of deemed planning area was first added 21.09.2013. The report dated 25.08.2021 of ‘TCP HP’ relied by the ld. authority stipulates that the structures has been completed during the year 2013 to 2015. Also, the report dated 17.07.2020 of Tehsildar shows that that there has been number of sale deeds and lease deeds from 2011 to 2013 and from 2013 to 2015 and further upto 2019. This means that the construction was going on after the provision of deemed planning area was added for the first time on 21.09.2013. Moreover, the letter dated 03.06.2020 of ‘TCP HP’ to the address of Director, ‘TCP HP’ clearly mentions that the said village Aneach comes under the definition of the deemed planning area as enshrined under Sub Section 3(A) of

Appeal No.05/HP of 2022

Section 1 of 'HP TCP Act 1977'. It is also important to note that Director 'TCP HP' in relation to the project of the appellants has mentioned in his letter HIM/TP/PP/P.Reg/Solan - Gen-2019/Vol-1 dt Nil (06.08.2020 as mentioned by appellant) to the address of 'TCP HP' that the case involves violation of sub-section 3(A) Section 1 and Section 16(C) of 'HP TCP Act 1977' and necessary action under the provisions of section 38 and 39 are required to be initiated against the respondents. However, no action seems to have been taken by the 'HP TCP' department so far. In the circumstance when the construction has taken place in the project of respondents after the provision of deemed planning area was first added on 21.09.2013 and sale deeds and lease deeds of various units have been executed after the second amendment on 18.05.2015 when deemed planning area was connected and made dependant on sale of unit/apartment, it was not proper on the part of the ld authority to decide the matter that the project of the respondents does not fall in the definition of deemed planning area on the basis of electricity connections having been given in the year between 2013 to 2015 and presuming that the construction may have started in the year 2009 or 2010.

In this complex situation when the 'HP TCP Act 1977' has been amended and factors on which deemed

planning area depends which greatly impacts its applicability have been changed thrice and the start of construction of various units/apartments or project and its completion, sale of units/apartments have happened during the said period and further more neither the start nor the completion date of units/apartments or of the project are available, it shall be proper if the matter regarding the project of the respondents is in deemed planning area or not is decided by the competent authority of Town and Country Planning department of Himachal Pradesh particularly when Director, Town and Country Planning Department of Himachal Pradesh has already expressed his view that the project of the respondents falls in deemed planning area.

42. No other point was argued before us by Ld. counsel for the parties.

43. In view of our aforesaid discussions, the impugned order dated 05.01.2022 passed by the ld. authority is set aside and the present appeal is allowed to the extent that in the present set of circumstances, the issue regarding the project of the respondents falls under the definition of deemed planning area or not and registration of the project as per the provisions of area 'HP TCP Act 1977' is required to be decided by the competent authority of Town and Country Planning Department of Himachal Pradesh. The appellant will be at

Appeal No.05/HP of 2022

liberty to file the complaint afresh after the matter regarding the project of the respondents is in deemed planning area or not is conclusively decided by the competent authority of Town and country Planning Department of Himachal Pradesh. Needless to say, that anything observed above shall not prejudice the mind of the competent authority of 'TCP HP' in deciding the matter of the projects of respondents being in deemed planning area or not.

44. No order as to costs.

45. Copy of this judgment be communicated to both the parties/learned counsel for the parties, the learned Himachal Pradesh Real Estate Regulatory Authority, Shimla and Director Town and Country Planning Department Himachal Pradesh and Town & Country Planner Himachal Pradesh.

46. File be consigned to the record.

Announced:
January 27, 2023

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal
Chandigarh

Anil Kumar Gupta
Member (Technical)

Manoj Rana