

BEFORE TELANGANA REAL ESTATE REGULATORY AUTHORITY

[Under the Real Estate (Regulation and Development) Act, 2016]

Complaint No. 209 of 2024

25th April, 2025

Corum: **Dr. N. Satyanarayana, IAS (Retd.), Hon'ble Chairperson**
Sri K. SrinivasaRao, Hon'ble Member
Sri LaxmiNarayanaJannu, Hon'ble Member

1. Sri. Marimuthu Krishnan,

*(S/o. MuthuramalingamMarimuthu,
Aged about 47 years, Occ: Teacher,
R/o. H.No. A51 AnandaNivas, Faculty Quarters, IIIT Hyderabad,
Gachibowli, Hyderabad, Telangana-500032)*

2. Smt. Moumita Saharay

*(W/o. Marimuthu Krishnan,
Aged about 47 years, Oce: Teacher,
R/o. H.No. A51 AnandaNivas, Faculty Quarters, IIIT Hyderabad,
Gachibowli, Hyderabad, Telangana-500032)*

...Complainant(s)

Versus

1. M/s. Fortune99homes Infra Pvt. Ltd.,

*(through its Managing Directors,
Sri.MadhiralaraRosi Reddy, Sri. Kota Vijay Babu& Sri. DhanunjayaGanjikunta,
Registered Office: Cyber Heights, 1st and 2nd Floor,
Road No. 2, Banjara Hills, Beside NTR Trust Lane, Hyderabad
Telangana-500034, India)*

2. Sri. MadhiralaraRosi Reddy,

*(S/o. M. Poli Reddy,
Registered Office: Cyber Heights, 1st and 2nd Floor,
Road No. 2, Banjara Hills, Beside NTR Trust Lane, Hyderabad,
Telangana-500034, India)*

3. Sri. Kota Vijay Babu, S/o. Alfred,

*(Registered Office: Cyber Heights, 1st and 2nd Floor,
Road No. 2, Banjara Hills, Beside NTR Trust Lane, Hyderabad,
Telangana-500034, India)*

4. Sri. DhanunjayaGanjikunta,

*(Registered Office: Cyber Heights, 1st and 2nd Floor,
Road No. 2, Banjara Hills, Beside NTR Trust Lane, Hyderabad,
Telangana-500034, India)*

...Respondent(s)

This complaint came up for hearing before us on 18.12.2024, in the presence of Sri Drupad Sangwan, Advocate for the Complainants and Respondent 1 to 4 remained ex-parte;

upon perusing the material on record and hearing arguments of the learned counsel for the complainants and having stood over for consideration till this day, the following order is passed:

ORDER:

2. The present Complaint has been filed by the Complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the "Act") read with Rule 34(1) of the Telangana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the "Rules") seeking appropriate relief(s) against the Respondents.

A. The Brief facts of the case as per allegations/averments contained in the complaint are as follows:

3. The Complainants submitted that Respondent No. 1, Fortune99 Homes, represented themselves as the sole owner of a 7-acre and 22-gunta property, as per Registered Sale Deed Document No. 496/2021. They advertised their project "FORTUNE PHARMA CITY 1" as a lucrative investment opportunity. After persistent persuasion by Respondent No. 1's representatives, the Complainants agreed to purchase six open plots at Rs. 5,300 per square yard. This led to the execution of two Agreements of Sale on 11.08.2021, for a total consideration of Rs. 63,60,000/-.

4. The first Agreement of Sale pertained to the sale of Open Plot Nos. 215 to 219, covering 1,000 square yards within the "FORTUNE99 HOMES" project, located in Survey Nos. 654 and 655 at Nandiwanaparthi Village & Grampanchayat, YacharamMandal, Ranga Reddy District, as well as in Land Bearing Nos. 144, 145, 153, and 154 situated at NazikSingaram Village. The sale price for these plots was Rs. 53,00,000/-. The second agreement concerned Open Plot No. 182, covering 200 square yards, with a sale price of Rs. 10,60,000/-. The total sale consideration for both plots was Rs. 63,60,000/-.

5. The Complainants made payments totaling Rs. 31,80,000/-, which represented 50% of the total sale price. Receipts acknowledging these payments were issued by Respondent No. 1. However, despite these payments, the Respondents failed to fulfill their contractual obligations by not registering the plots within the agreed timeline.

4. The Complainants further alleged that Respondent No. 1 altered the project layout from the original plan, requiring them to purchase additional land, which increased the total area from 1,200 square yards to 1,372.20 square yards, without their prior consent. The

Respondents then coerced the Complainants into making an additional payment of Rs. 25,00,000/- under the pretense of completing the registration, which was paid via three cheques. Despite receiving these payments, the Respondents failed to proceed with the registration.

5. The Complainants also asserted that, despite promises made during the agreement, there was little to no progress on the ground concerning the development of the "Fortune Pharma City 1" project. The absence of essential infrastructure, such as roads and sewage systems, raised concerns about the Respondents' ability to complete the project as originally planned. Moreover, the promotional materials, including brochures, misrepresented the project, with discrepancies in the layout, plot sizes, and overall quality. The Complainants further claimed that the Respondents failed to disclose the lack of necessary statutory approvals, which exposed them to legal risk.

6. The Complainants highlighted that, despite repeated assurances from the Respondents that the registration would be completed soon, no progress was made. They also claimed that the Respondents used pressure tactics to force them into accepting altered sale terms and making additional payments. Furthermore, the Respondents became increasingly unresponsive to their inquiries, leaving the Complainants uncertain about the status of their investment.

B. Relief(s) Sought:

7. Aggrieved by the acts of the Respondent, the Complainants pray for the following:
- a. Direct a full refund of Rs. 56,80,000/- paid on various dates along with interest of 18% Per Annum till the date of Realisation.
 - b. Direct the Respondents to register the project with RERA.
 - c. Initiate proceedings against the Respondents for violating Section 3 of the Real Estate (Regulation and Development) Act, 2016, by engaging in the sale of units/plots in a real estate project without obtaining the required RERA permissions.
 - d. Initiate penalty proceedings against Respondents Under Section 61 of The Real Estate (Regulation and Development) Act, 2016 for not registering the project.
 - e. Grant such other relief as this Hon'ble Authority deems fit and proper in the circumstances of the case.

C. Points for Consideration

8. Upon due deliberation of the pleadings, contentions, and documents placed on record by the Complainants, the following issues arise for consideration before this Authority:

I. Whether the Complainants are entitled to the reliefs as prayed for? If yes, to what extent?

II. Whether the Respondent has violated Sections 3 and 4 of the Real Estate (Regulation and Development) Act, 2016 ["RE(R&D) Act"] by failing to register the project titled "FORTUNE99 HOMES" with this Authority? If so, whether the Respondent is liable to be penalized for such violation?

D. Observation of the Authority:

9. The factual matrix reveals that the Complainants were allotted plots bearing Nos. 215 to 219, aggregating to 1,000 square yards, in the project titled "Fortune99 Homes" promoted by the Respondent. The Agreement of Sale was executed on 11.08.2021 for a total sale consideration of Rs. 63,60,000/-, of which the Complainants have paid Rs. 31,80,000/-, constituting nearly 50% of the total consideration. The Complainants have placed on record evidence of such payments through receipts and bank statements.

10. Despite the execution of the Agreement and substantial payment by the Complainants, the Respondent has neither initiated development of the project nor obtained the requisite statutory approvals. The Agreement expressly stipulated that the necessary permissions would be procured within six months of execution; however, even after a lapse of over 3.5 years, there has been no commencement of development.

11. The Complainants, citing this prolonged inaction, have sought to withdraw from the project and have prayed for a refund of the amounts paid along with applicable interest.

13. In order to determine whether the complainant is entitled to relief under Section 18 of the Real Estate (Regulation and Development) Act, 2016 ["RE(R&D) Act"], it is imperative to examine whether the provisions of Section 18, of the Act is applicable even in cases where the project has not been registered with the Authority.

14. The Preamble to the RE(R&D) Act underscores the legislative intent to establish a regulatory authority for the regulation and promotion of the real estate sector, to ensure the efficient and transparent sale of real estate, and above all, to protect the interests of consumers in the sector. This legislative intent is pivotal to the interpretation of the scope of the said Act.

15. Chapter I of the RE(R&D) Act, which provides for its application and scope, does not circumscribe its operation to only registered projects. Section 3(1) of the said Act mandates that no promoter shall advertise, market, book, sell, or offer for sale any plot, apartment, or building without prior registration of the real estate project with the Authority. However, Section 3(2) carves out certain exemptions from the requirement of registration. Notably, these exemptions pertain only to the requirement of registration, and not to the substantive obligations under the said Act.

16. As per Section 2(zj), the term 'project' refers to a real estate project as defined under Section 2(zn), which includes the development of land into plots for the purpose of selling, inter alia. The definition is not contingent upon registration. Nowhere does the Act define a 'real estate project' as one that must be registered to fall within the ambit of regulatory oversight. The consequence is that even unregistered but registrable projects fall within the domain of the Regulatory Authority.

17. In view of the above, it is well established that if a promoter undertakes activities as defined under Section 2(zk) of the said Act without registering the project when such registration was legally required the project would nevertheless fall within the domain of the Authority. The Hon'ble Appellate Tribunal in *M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors.*, (2021 SCC OnLine SC 1044), observed that:

“The Authority has jurisdiction to entertain complaints pertaining to refund, interest, or compensation under Sections 12, 14, 18, and 19 even in the absence of registration, if such registration was otherwise required under the Act.”

18. Further, as per the definition under Section 2(zk), a 'promoter' includes a person who develops land into a project for the purpose of selling. The Respondents, having developed the land into plots and offered the same for sale, squarely fall within the ambit of the definition and are thus liable for the obligations imposed on promoters under the said Act.

19. Therefore, the relief sought by the Complainant for refund of the amount paid, along with applicable interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016, is found to be legally tenable. As the Complainant has opted to withdraw from the project which qualifies as a real estate project under the said Act and the Respondent as a Promoter, he is entitled to interest to safeguard his rights, in view of the Promoter's failure to

fulfill their statutory obligations and inability to initiate development or deliver possession of the allotted plots

20. Attention is drawn to the decision of the Hon'ble Supreme Court of India in ***Civil Appeal Nos. 3581-359 of 2022, Civil Appeal Diary No. 9796/2019, M/s Imperia Structures Limited vs. Anil Patni & Others***, wherein it was held:

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received in respect of that apartment if the allottee wishes to withdraw from the project. Such a right of the allottee is 'without prejudice to any other remedy available to him'. This right is unqualified, and if availed, the deposited money must be refunded with interest as prescribed. The proviso to Section 18(1) contemplates that if the allottee does not intend to withdraw from the project, they are entitled to interest for every month of delay until possession is handed over. The allottee may proceed under Section 18(1) or the proviso thereto."

21. Similarly, in ***Civil Appeal Nos. 6745-6749 of 2021, M/s Newtech Promoters and Developers Private Limited vs. State of UP & Others***, the Hon'ble Supreme Court observed:

"Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an 9 of 10 apartment, plot, or building in terms of the agreement for sale. The allottee/home buyer holds an unqualified right to seek a refund of the amount with interest as prescribed."

22. Therefore, considering the aforementioned case laws and the provision of Section 18 of the RE(R&D) Act, this Authority is of the opinion that the Complainants, having invested a substantial sum in anticipation of acquiring the allotted plots, has been wrongfully deprived of their rights due to the Respondent's absolute failure to execute the project. Consequently, the Complainants are entitled to the relief sought, which includes a full refund of the amount paid along with applicable interest.

23. The Respondent is directed to refund the entire amount paid by the Complainant, along with interest i.e Current Highest marginal cost of State Bank of India (9%) plus 2%

that is 11% per annum, calculated from the date of the Memorandum of Understanding (MOU) entered into with the Complainant until the date of actual

24. Further, In the present matter, the Agreement of Sale placed on record by the Complainant evidences that the Respondent had offered to sell plots in the project named “*Fortune99 Homes - Fortune Pharma City 1*”. The Agreement itself records that approvals were yet to be obtained and were expected within approximately six months. The brochure submitted by the Complainant clearly represents the layout as a residential venture.

25. It is evident from the clauses of the Agreement of Sale dated 11.08.2021 that the Respondent had marketed and sold plots forming part of a real estate project without obtaining prior registration from the competent Authority, despite the project exceeding the statutory threshold of 500 square meters as stipulated under Section 3(2) of the Real Estate (Regulation and Development) Act, 2016. Therefore, the Respondent was under a legal obligation to obtain requisite approvals and register the project with this Authority prior to executing the Agreement of Sale with the Complainant. The failure to do so constitutes a clear violation of Sections 3 and 4 of the RE(R&D) Act, 2016.

26. Further, despite repeated notices from the Authority which have been duly acknowledged, the Respondents have failed to appear or furnish any explanation. This conduct reflects gross negligence, lack of bona fides, and a clear disregard for regulatory norms and consumer interests.

27. Therefore, Respondent is liable for penalty under section 59 and 60 of the RE(R&D) Act for the violation of section 3 and 4 of the said Act respectively.

28. Accordingly Point 1 and 2 answered.

D. Directions of the Authority:

29. Therefore, vide its powers under Sections 37 and 38, this Authority issues the following directions to the Respondents:

- i. The Respondents are directed to refund the entire amount of Rs.56,80,000/- (Rupees Fifty Six Lakhs Eighty Thousands Only) along with interest at the rate of 11% per annum (SBI MCLR of 9.0% + 2%) from the date of the agreement of sale i.e., from 11.08.2021 till the

date of actual refund in accordance with Rule 15 of the Rules, 2017 within 90 (ninety) days to the Complainants;

- i. For violation of Sections 3 and 4 i.e., for non-registration of the project – “Fortune99 Homes”, the Respondent No.1 is liable for penalty under Sections 59 and 60 respectively, therefore, the Respondent No.1 is directed to pay penalty of Rs.10,38,191/- (Rupees ten lakhs thirty eight thousand one hundred and ninety one only) payable within 30 days in favour of TGRERA FUND through a Demand Draft or online payment to A/c No. 50100595798191, HDFC Bank, IFSC Code: HDFC0007036;
- ii. The Respondents hereby is also directed to take steps to file an application for registration of the project- “Fortune99 Homes” before this Authority in accordance with Section 4 of the Act, 2016 and the Rules thereunder with immediate effect and till the registration is granted by this Authority, the Respondents shall, strictly, not advertise, market, book, sell or offer for sale, or invite person/s to purchase in any manner nay units of the said project, “Fortune99 Homes”.

30. Respondent is hereby informed that failure to comply with this order shall attract Section 63 of the RE(R&D) Act.

31. The complaint is disposed of with these directions. There shall be no order as to costs.

Sd-
Sri. K. Srinivas Rao,
Hon’ble Member
TG RERA

Sd-
Sri. Laxmi NaryanaJannu,
Hon’ble Member
TG RERA

Sd-
Dr. N. Satyanarayana, IAS (Retd.),
Hon’ble Chairperson
TG RERA