

BEFORE TELANGANA REAL ESTATE REGULATORY AUTHORITY

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

Complaint No. 579 of 2025

Dated: 23rd June, 2026

Quorum: **Sri K. Srinivasa Rao, Hon'ble Member**
 Sri Laxmi Narayana Jannu, Hon'ble Member

Between

Dr. BM Naidu,

R/o. Gitam University, Rudram,
Hyderabad- 502329.

...Complainant

And

M/s Ista Homes Builders & Developers LLP

represented by Sri G. Sandeep Reddy (Partner),
C/o. Flat No. 201, Plot No. 545, Road No. 11,
Kakateeya Hills, Gutala Begumpet,
Madhapur, Hyderabad- 500081.

...Respondent

The present matter filed by the Complainant mentioned herein-above came up for hearing before this Authority. Upon hearing the submissions of all the parties, this Authority proceeds to pass the following **ORDER**:

1. 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 Respondent.

A. Brief facts of the Case as per Form M filed by Complainant

2. It is submitted by the Complainant that him along with his spouse Mrs. A. Yamini, jointly own a property admeasuring 556 sq. yards, held since the year 1990. The Complainant entered into a Development Agreement-cum-General Power of Attorney (DAGPA) with M/s ISTA Homes Builders & Developers LLP, through registered Document No. 15986/2022 dated 21-09-2022, for the construction of a stilt + 5 floors residential building. Subsequently, a Supplemental Deed was executed vide Document No. 8573/2023 dated 02-06-2023, wherein

(a) Italian marble flooring was replaced with vitrified tiles, and (b) the mortgage obligation earlier placed on the builder's share was shifted to the Complainant's share.

3. It is submitted that the builder, M/s ISTA Homes Builders & Developers LLP, registered the project under Telangana RERA bearing Registration No. P02400006260 on 07-07-2023, with its office situated at Flat No. 201, Plot No. 545, Road No. 11, Kakateeya Hills, Guttala Begumpet, Madhapur, Hyderabad-500081.

4. It is further submitted that, in violation of the terms of the DAGPA, the builder sold two flats from his share, one on 23-10-2024 and another on 23-05-2025, prior to obtaining the Occupancy Certificate (OC). The OC was issued only on 10-06-2025. The said sales are reflected in Encumbrance Statement, demonstrating that flat registrations were undertaken before issuance of the OC.

5. It is further submitted that the agreed timeline for completion of the project was October 2024. However, the construction remains incomplete to date, and the builder has failed to provide any update on progress or furnish a revised completion schedule in writing. Additionally, under the DAGPA, the builder is liable to pay monthly rent at the rate of ₹25 per sq. ft. for the Complainant's (being land owner) share of flats from November 2024 onwards. Despite this contractual obligation, no rent has been paid till date, and the builder has not responded to the Complainant's repeated email communications and reminders.

B. Relief(s) Sought:

6. The Complainants accordingly sought the following reliefs:

- I. Complete all pending works in the building including common amenities such as power generator for 100% power back-up, and hand over the landowners share of flats in the habitable condition.*
- II. RERA authority may instruct the developer to pay rental dues from November 2024 till actual handover by completing all the pending works, with interest for delayed payment.*
- III. Impose penalty for sale of flats prior to the issuing Occupancy Certificate, in accordance with RERA provisions.*

C. Counter filed by the Respondent

7. The Respondent vehemently contends that the present Complaint is not maintainable under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (RERA), as the Complainants lack the fundamental locus standi of an “Allottee” as defined under the Act. The Complainants, being the original owners of land admeasuring approximately 556 Sq. Yards, entered into a Development Agreement-cum-General Power of Attorney (DAGPA) bearing Document No. 15986/2022 with the Respondent. Under the said arrangement, the Complainants contributed the land, and the Respondent contributed development, cost, and construction expertise in exchange for a specified share of the constructed apartments. This arrangement is unequivocally a Joint Development Agreement (JDA), thereby establishing the Complainants as Co-Promoters or Landowner-Promoters, deriving benefit as consideration for land contribution, and not as “Allottees” who purchase property from a Promoter.

8. The definition of “Allottee” under Section 2(d) of RERA strictly refers to a person to whom an apartment is sold or otherwise transferred by the Promoter. A landowner who surrenders land for development in exchange for a share of constructed area does not fall within the ambit of this definition, as the transaction is one of partnership in development and not one of sale and purchase. The Hon’ble Telangana RERA Appellate Tribunal has consistently held in a catena of judgments that landowners under Development Agreements are co-promoters and cannot invoke the specialized protections and remedies reserved for allottees under RERA. Consequently, the Complainants, being partners/co-promoters in the project, cannot maintain the present Complaint before this Hon’ble Authority. The dispute, if any, is purely contractual in nature and must be adjudicated before the competent Arbitral Tribunal, thereby ousting the jurisdiction of this Hon’ble Authority.

9. Without prejudice to the above preliminary objection, the present Complaint involves interpretation and enforcement of specific clauses of the registered DAGPA, particularly those concerning rental compensation. The DAGPA bearing Document No. 15986/2022 contains a specific Arbitration Clause mandating reference of all disputes arising under the Agreement to Arbitration. Section 88 of RERA preserves the applicability of other remedies and laws, including arbitration. The Complainants have sought redressal for alleged non-payment of rent, which is a purely contractual monetary obligation governed by the DAGPA and not a statutory remedy under RERA. The determination of market rate rent, as sought in the interim prayer, requires detailed evidentiary appreciation and valuation evidence, which falls squarely within

the domain of an Arbitral Tribunal. Accordingly, applying the Doctrine of Election, the Complainants must pursue their contractual remedies before the agreed forum of Arbitration.

10. DAGPA further confers sole and exclusive jurisdiction upon Courts situated at Hyderabad to entertain proceedings arising out of the Agreement. The entire subject matter of the present Complaint alleged non-payment of rent, alleged delay, and alleged penalties pertains to contractual interpretation. The principles underlying Sections 88 and 89 of RERA and the Doctrine of Election mandate that this Hon'ble Authority direct the Parties to the agreed Arbitral Tribunal.

11. The dispute must be examined strictly within the framework of the registered Development Agreement-cum-General Power of Attorney dated 21st September 2022 bearing Document No. 15986/2022. The Complainants represented themselves as the absolute owners of the Scheduled Property (556 Sq. Yards), relying upon registered Sale Deeds and necessary statutory clearances. Under Clause 7.1, the Complainants furnished express Representations and Warranties assuring that the property was free from encumbrances and that they possessed good and marketable title. They further warranted that the property was not subject to acquisition or alignment under any law. The Respondent entered into the Agreement relying upon these solemn representations.

12. The Parties agreed to construct a Stilt plus Five Upper Floors project under a Joint Development Arrangement. The 60:40 sharing ratio expressly recorded the Complainants' 60% share as "consideration for contributing the Scheduled Property," thereby affirming their status as Co-Promoters and not purchasers. The Building Permit of 2023 contains an express condition that if the land is found to be subject to title dispute or court proceedings, the applicants would be solely responsible and the GHMC may revoke permission without notice. This highlights the Respondent's reliance upon the Complainants' warranty of clear title.

13. During active construction, third parties (Smt. Dappu Laxmamma & others) instituted O.S. No. 28 of 2023 before the VI Additional District Court, Ranga Reddy District, seeking declaration of title, recovery of possession, and cancellation of the DAGPA and Building Permit. The Complainants were arrayed as Defendant Nos. 13 and 14 and the Respondent as Defendant No. 15. This suit directly contradicts the Complainants' warranty of clear title and

constitutes breach of Clause 7.2(c). The pendency of the suit and interim applications (I.A. Nos. 55 and 58 of 2023) impeded construction.

14. Upon repeated assurances by the Complainants that they would resolve the dispute and in the absence of any operative injunction, the Respondent resumed construction.

15. The Respondent secured mandatory RERA registration for the Project titled “NR SQUARE BY ISTA HOMES” bearing Registration No. P02400006260, valid until 27 May 2026. The registration demonstrates compliance with statutory requirements and establishes 27 May 2026 as the legally sanctioned completion date.

16. Under a registered Supplemental Deed dated 02 June 2023, unit allocations were revised and specifications modified. Despite cost implications, the Respondent upgraded flooring in Flats 501 and 502 to Italian Marble at the Complainants’ request. However, the Complainants have failed to pay the additional amounts due. The Respondent achieved physical completion of the Project by 22 March 2025, well before the RERA deadline of 27 May 2026.

17. An application for Occupancy Certificate (OC) was submitted on 09 April 2025. GHMC initially rejected the application on 29 April 2025 citing W.P. No. 11197/2025 pending before the Hon’ble High Court. The Writ Petition arose from the same title dispute attributable to the Complainants’ breach of warranty. The Respondent engaged with GHMC authorities and successfully secured the Occupancy Certificate (OC Proceedings No. 000521/GHMC/00431/SWOC/SLP2/2025) on 10 June 2025. The Occupancy Certificate records the building completion date as 22 March 2025, confirming physical completion nearly 14 months prior to the final RERA deadline.

18. The facts clearly demonstrate that:

- a. The Complainants are Co-Promoters and not Allottees.
- b. The Complaint is not maintainable under RERA.
- c. The dispute is purely contractual and subject to Arbitration.
- d. Any delay, if at all, arose solely from litigation concerning title, which was the Complainants’ contractual responsibility to resolve.

e. The Respondent completed construction well within the statutory RERA timeline.

19. The Respondent state that it cannot be penalized for delay arising from litigation caused by the Complainants' breach of warranty of clear title. In view of the above, the Respondent prays to dismiss the Complaint as not maintainable and devoid of merit, with costs.

20. The Respondent admits execution of the original DAGPA (21.09.2022) and Supplemental Deed (02.06.2023) but rejects the Complainants' portrayal that specification changes (Italian marble to vitrified tiles), unit reallocation, and mortgage obligations were unilateral acts.

21. The allegation that sale of two flats before issuance of Occupancy Certificate (OC) violates RERA is legally incorrect. The Complainants claim delay beyond October/December 2024 and demand rent from November 2024. The Respondent refutes this:

22. The GHMC issued the Occupancy Certificate on 10.06.2025, certifying structural compliance and habitability. The Complainants acknowledged receipt of keys (29.08.2025). RERA is not the forum for adjudicating minor defect liability disputes. The Complainants have already leased/inducted tenants into their share of flats.

23. Property tax liability arises only after new assessment post-construction; old structure assessment ceased upon demolition. The core dispute concerns title warranty breach and indemnity obligations, which fall under arbitration/civil jurisdiction, not RERA.

D. Rejoinder Filed by the Complainant

24. The Complainants states the following:

25. The Complainants deny the Respondent's counter in its entirety, except for admitted execution of the DAGPA (21.09.2022) and Supplemental Deed (02.06.2023), and submit that the defence is legally untenable, factually incorrect, and an attempt to evade statutory liability under the Real Estate (Regulation and Development) Act, 2016.

26. The Complainants assert that landowners receiving constructed area in exchange for land qualify as “allottees” under Section 2(d) of RERA, as the built-up area is “otherwise transferred” to them. They deny being co-promoters and clarify that they had no role in financing, marketing, approvals, or execution of the project. The Respondent alone acted as promoter and is fully liable under Sections 11 and 18 of the Act. Execution of a DAGPA does not dilute statutory protections.

27. The plea for arbitration is rejected as misconceived. Statutory violations, delay compensation, penalties, and regulatory compliance under RERA are matters of public law and are not arbitrable. Contractual clauses cannot override the statutory jurisdiction of the RERA Authority.

28. The Complainants deny that any title defect or litigation caused delay. No court has passed any adverse finding or injunction affecting construction. Mere pendency of suits does not constitute a legal impediment. The allegation that delay arose from third-party litigation is described as an afterthought and, in fact, the timing and nature of certain proceedings raise serious doubts about their bona fides. The Respondent cannot rely on alleged or self-created impediments to escape liability.

29. The Complainants contend that the delay is solely attributable to the Respondent’s conduct, including failure to pay building permit fees despite GHMC intimation dated 29.11.2022, illegal demolition of the existing structure in December 2022 without a valid building permit, deliberate delay in obtaining approvals until 27.05.2023, imposition of coercive conditions, including specification changes and shifting of mortgaged portions to the Complainants’ share, suppression of material information and lack of transparency regarding timelines.

30. The Respondent’s reliance on RERA registration and the outer deadline of 27.05.2026 is rejected as irrelevant to contractual timelines. Under the Supplemental Deed, the project was to be completed by October 2024. The Occupancy Certificate was obtained only on 10.06.2025, establishing clear delay beyond the agreed timeline.

31. The Complainants deny that “physical completion” occurred in March 2025 in a legally valid sense. They assert that their flats were incomplete and handed over floor-wise only

between September and November 2025. Tenants were inducted only after belated completion of works to mitigate losses. Mitigation of loss does not amount to waiver or estoppel, nor does it extinguish entitlement to compensation. They claim rent from November 2024 until actual completion of respective flats.

32. The Respondent's allegation that keys were received as acknowledgment of completion is denied. Keys were allegedly withheld and used as leverage to demand approximately ₹18.91 lakhs towards GST, which the Complainants state is not legally payable by landowners. They deny acceptance of possession in a lawful or unconditional manner.

33. The Complainants strongly challenge the legality of the Respondent executing and registering sale deeds prior to issuance of the Occupancy Certificate on 10.06.2025. They argue that execution and registration of sale deeds before obtaining OC constitutes per se violation of Section 17 of RERA. The distinction between registration and physical possession is termed legally unsustainable. With respect to property tax, the Complainants clarify that they only seek confirmation that no tax liability be fastened upon them during the construction phase when the Respondent was in possession and control.

34. They deny that the complaint is not maintainable and reiterate that the dispute concerns statutory violations including delay, illegal demolition, pre-OC sales, coercive conduct, and non-compliance with Sections 11, 17, 18, and 19 of RERA. Arbitration clauses or civil proceedings do not oust RERA jurisdiction.

35. The Complainants also allege that the Respondent unilaterally allocated parking slots without consultation, despite the Complainants being entitled to six out of ten parking slots under the Development Agreement. Written objections were ignored.

36. Further, the Respondent has failed to inform whether an Association of Allottees has been formed despite obtaining the OC. No steps have been taken to transfer statutory documents, approvals, common area records, HT transformer, water connections, electricity connections, warranties, manuals, or other essential project assets to the Association, constituting violation of Sections 11(4)(e), 17, and 19 of RERA.

E. Points for Consideration

37. After considering the facts stated and submissions made by both parties, the following question arises before this Authority:

- I. *Whether the present Complaint is maintainable before this Authority, having regard to the nature of the relationship between the Complainants and the Respondents, and whether the Complainants fall within the definition of "allottees" under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016?*
- II. *Whether the Complainants are entitled to the reliefs sought? If so, to what extent?*

F. Observations of the Authority

Point I

38. The preliminary question before this Authority is whether the present Complaint is maintainable before this Authority, having regard to the nature of the relationship between the Complainants and the Respondents and whether the Complainants fall within the definition of "allottees" under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016.

39. Before examining this question, it is necessary to set out the factual matrix as it emerges from the pleadings. The Complainants are the owners of:

- a) House bearing No. 1-65/43/22/A, on Plot No. 22/A, IN Sy. Nos. 26 and 27, admeasuring 305.5 Sq. yards situated at Guttala Begumpet Village, Serilingampally Mandal and Municipality, Ranga Reddy District.
- b) House bearing No. House bearing No. 1-65/43/23/A, on Plot No. 23/A, in Sy. Nos. 26 and 27, admeasuring 305.5 Sq. Yards situated at Guttala Begumpet Village, Serilingampally Mandal and Municipality, Ranga Reddy District.

40. Therefore, as per the Development Agreement-Cum- General Power of Attorney dated 21.09.2022, the Complainants herein, are the joint owners of Plot Nos. 22/A, and 23/A in Sy. Nos. 26 and 27, totally admeasuring 556 Sq. Yards, situated at Guttala Begumpet Village, Serilingampally Mandal and Municipality, Ranga Reddy District., (hereinafter referred to as "Schedule Property"). Pursuant to the Development Agreement-cum- General Power of Attorney (DGPA) dated 21.09.2022 the Complainants handed over the Schedule Property to the Respondents for the purpose of developing a residential project comprising of stilt plus five (5) upper floors with all facilities and common areas. Under the said DGPA, the Complainants

were allocated 60% of the saleable area/units in the project along with all common areas/amenities including terrace rights and 40% of the total saleable areas/units in the project allocated to the Respondent herein. Further, the parties have also entered into a Supplemental Deed dated 02.06.2023, after mutual discussions and negotiations, the Complainants have been allocated with Flat Nos. 101, 102, 401, 402, 501, and 502 in the project namely "NR Square by ISTA HOMES".

41. This Authority now examines the definition of "allottee" under Section 2(d) of the RE (R&D) Act, 2016, which reads as follows:

"allottee", in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."

42. The definition of "allottee" under Section 2(d) of the Act contemplates a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter in the course of a real estate transaction. The rights and remedies conferred upon an allottee under the Act are intended to protect persons who acquire units from a promoter and stand in the position of homebuyers vis-à-vis the project.

43. In the present case, the entitlement of the Complainants to Flat Nos. 101, 102, 401, 402, 501 and 502 does not arise out of any Agreement of Sale executed by the Respondents in favour of the Complainants, nor does it arise from consideration paid by them for purchase of the said units. The material on record establishes that the said flats were allocated to the Complainants pursuant to the Development Agreement-cum-General Power of Attorney dated 21.09.2022 and the Supplemental Deed dated 02.06.2023, under which the Complainants contributed the Schedule Property for development and, in consideration thereof, became entitled to a specified share in the developed area.

44. The relationship between the parties is therefore not that of a promoter and allottee in the conventional sense contemplated under the Act. Rather, it is a development arrangement under which the landowners and the developer agreed to share the developed area in agreed proportions. The rights asserted by the Complainants emanate from the contractual obligations

contained in the DGPA and the Supplemental Deed and not from any allotment made by the Respondents in favour of the Complainants as purchasers of units in the project.

45. In this context, it is also essential to examine the definition of "promoter" under Section 2(zk) of the RE (R&D) Act, 2016. The relevant portion of Section 2(zk) reads as follows:

"promoter" means,—

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale.

Explanation.— For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder."

46. This Authority further finds that the Explanation to Section 2(zk) of the Act squarely applies to the facts of the present case. The said provision expressly stipulates that where the person who develops or constructs the project and the person who sells apartments or plots are different persons, both shall be deemed to be promoters and shall be jointly liable for the functions and responsibilities prescribed under the Act. In the present case, the Complainants, being the landowners who contributed the land for development and became entitled to a substantial share of the constructed area for disposal in their own right, fall within the ambit of the said explanation. Consequently, the Complainants are required to be treated as co-promoters of the project along with the Respondents and not as allottees within the meaning of Section 2(d) of the RE(R&D) Act, 2016.

47. In view of the foregoing discussion, this Authority holds that the present dispute arises out of rights and obligations flowing from the Development Agreement-cum-General Power of Attorney dated 21.09.2022 and the Supplemental Deed dated 02.06.2023 between the landowners and the developer. Such dispute is essentially an inter se dispute between co-promoters and does not constitute a grievance of an allottee against a promoter under the RE(R&D) Act, 2016.

48. Accordingly, Point I is answered in the negative.

Point II

49. In view of the finding recorded under Point I that the Complaint is not maintainable before this Authority and that the Complainants do not fall within the definition of "allottees" under Section 2(d) of the RE (R&D) Act, 2016, the question of entitlement to the reliefs sought does not survive for consideration and is accordingly left open, without prejudice to the rights and remedies available to the Complainants before the appropriate forum.

50. Accordingly, the present complaint is dismissed. There shall be no order as to costs.

Sd/-
Sri K. Srinivasa Rao,
Hon'ble Member,
TG RERA

Sd/-
Sri Laxmi Narayana Jannu,
Hon'ble Member,
TG RERA

