

BEFORE TELANGANA REAL ESTATE REGULATORY AUTHORITY
[Under the Real Estate (Regulation and Development) Act, 2016]

COMPLAINT NO.664 OF 2023

5th September, 2024

Corum: **Dr. N. Satyanarayana, IAS (Retd.), Hon'ble Chairperson**
 Sri Laxmi Narayana Jannu, Hon'ble Member
 Sri K. Srinivasa Rao, Hon'ble Member

Ms.Neelima Vanguru

...Complainant

Versus

M/s Trendset Jayaberi Projects LLP,
Dr.K.L.Narayana
Kaza Kavya

...Respondent(s)

The present matter filed by the Complainant herein came up for final hearing on 06.04.2024 before this Authority in the presence of Complainant counsel Sri Pranay and Counsel Rajesh Maddy and Respondent counsel, Sri Syed Adil Ahmed & M.V.Durga Prasad and upon hearing the arguments of the party, this Authority passes the following **ORDER:**

2. The present Complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "RE(R&D) Act" read with Rule 34(1) of the Telangana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the "Rules") seeking directions from this Authority to take action against the Respondent.

A. Brief Facts on behalf of the complainant:

3. The Complainant respectfully submits, that, the 1st Respondent is a Limited Liability Partnership firm. The 2nd & 3rd Respondent is landlords. The 1st Respondent had taken the land for development from the 2nd & 3rd Respondents. The 1st, 2nd & 3rd Respondents entered into Development Agreement cum General Power of Attorney, dated 10.02.2016 (hereinafter referred as DAGPA). Under the said DAGPA, the Developer agreed to develop

multistoried residential apartment complex under the name and style of Trendset Jayabheri Elevate (hereinafter referred as Project). Pursuant to DAGP, on 09.02.2018 a supplementary agreement was entered. As per the Supplementary Agreement the flats shown in schedule A fell in the share of the 2nd & 3rd Respondent. Accordingly, Flat No. B1004, 10th floor, Block B admeasuring 4094 sq. Ft. of saleable area which comprises 2842 sq. Ft of carpet area, exclusive Balcony area admeasuring 397 sq.ft and proportionate common area admeasuring 856 sq. ft along with allotment of 3 car parking fell in the share of the 2nd Respondent (herein after referred as Flat 1), and Flat No. F1402, 14th Floor, Block F, admeasuring 2832 Sq. ft, of saleable area which comprises of 1988 Sq. ft., of carpet area, exclusive Balcony area admeasuring 191 Sq, ft and Proportionate common area admeasuring 656 sq. ft along with 3 car parking fell in the share of 3rd Respondent (herein after referred as Flat 2).

4. The Complainant respectfully submits that based on the prospectus of the 1st Respondent and the Promises made by the 2nd & 3rd Respondent the Complainant intended to buy the above- mentioned flats, the details of the same are mentioned hereunder:

- a. The Complainant and the 2nd Respondent had entered into Agreement of Sale, dated 25.11.2021, in respect of Flat 1 and 2nd Respondent agreed to sell the Flat 1, for total sale considerations of Rs.2, 41, 32,000/- (Rupees Two Crore, Forty-One Lakh and Thirty two Thousand only). Accordingly, as on the date of the Agreement of Sale the Complainant had paid an amount of Rs.40, 00,000/- to the 2nd Respondent and the balances amount was agreed to be paid as per the Payment plan mentioned therein in schedule C, On 11.04.2023, after receiving entire amounts as per the said Agreement, a sale Deed, dated 11.04.2022 was executed between the parties, and the same is registered before the Joint Sub Registrar, Ranga Reddy District. Complainant, as on date, the Respondents failed to handover the flat in livable condition.

- b. Similarly, in respect of in respect of Flat 2, another Agreement of Sale, dated 03.11.2020 was entered between the Complainant and the 3rd Respondent. Accordingly, the 2nd Respondent agreed to sell the scheduled flat for total sale consideration of Rs.1, 89,55,000/- (Rupees One Crore, Eighty-Nine Lakh, Fifty-Five Thousand Only). As on date of the Agreement of Sale the Complainant has paid an amount of RS.80,00,000/- to the 2nd Respondent. Complainant respectfully submits that consequent to the Agreement of Sale, dated 03.11.2020 the Complainant paid further amounts towards balance sale consideration of Rs.50,00,000/- (Rupees fifty Lakh) on 16.01.2021, Rs.10,00,000 (Rupees Ten lakh), and Rs.15,00,000/- (Rupees Fifteen Lakh). Thus the 2nd Respondent had received a total sum of Rs.1,55,00,000/- (Rupees One Crore Fifty-Five Lakh.) However, as the Project is getting delayed, with assurance from the 3rd Respondent, that the 3rd Respondent will execute and register the Sale Deed by honouring Agreement of Sale, dated 03.11.2020, in favour of Complainant, and till such time, the 3rd Respondent returned the payment made by the Complainant. It is pertinent to submit that, the Complainant filed Suit for specific performance, vide O.S.No.38 of 2023 of the files of the Honourable VI Addl. District Judge, Ranga Reddy District.
- c. The Complainant respectfully submit, that, as per Clause 5.1 of the said respective Agreement of Sales, the 2nd & 3rd Respondents, assured to handover possession of the Apartments along with ready and complete common area with all specifications, amenities, and facilities of the project in place on or before 30.6.2022 & 30.11.2021, respectively. Though as per the Sale Deed Flat 1 Possession was handed over the Complainant, the Respondents have filed to complete the project, in time, as promised in the Agreement of Sale. Further, Respondents did not adhere to the Commitments made in the Agreement of Sale and prospectus.

d. The Complainant respectfully submit, that, as per clause 7.1 of both the Agreement of Sales, it was specifically agreed that 'ready to move in possession', means that the apartment shall be in a habitable condition which is complete in all respects including the provisions of all the specifications, amenities and facilities as agreed to between the parties, and for which occupancy certificate and completion certificate, as the case may be, has to be issued by the competent authority, i.e. the Respondents have to full fill this clause on or before the 30th June, 2022, in respect of Flat 1 and 30.11.2021 in respect of Flat 2. The Respondents could get the occupancy certificate only on 06.06.2023. On perusal of occupancy certificate, it is found that the Respondents have applied for the revised plan, without the consent of the allottees. The said act of the Respondents applying for the revised plan is in contravention of Section 14 of the RERA Act

e. e) The Complainant respectfully submit, that, the Respondents did not update on the status of the project, uploaded on the official website of the TS RERA shows that substantial works are to be completed.

5. The Complainant respectfully submits that, there is delay of nearly about 12 & 19 months in completing the project in respect of Flat 1 & 2 respectively. As there is a delay in completing the Project the Complainant is entitled for the compensation as envisaged in Section 18 of the Act.

6. The Complainant respectfully submit that apart from the compensation mentioned, supra, the Complainant is entitled for compensation/damages for not constructing the Project as promised in the Agreement of Sale and Prospectus. The Respondents did not provide the following amenities, specifications and facilities as promised in the Agreement of Sales and Prospectus:

i. The Respondents specified in Schedule D of the Agreement of Sale that, French doors and windows will be of fenista/kommerling or equivalent make with tinted glass and mosquito mesh. However, the Respondents without using the said brand or equivalent brands,

have used much inferior, substandard, low grade quality products for French doors and windows.

- ii. The Respondents specified in brochure that imported Marble/Premium Vitrified Tiles of best brand Large Format 800MM X 800MM will be laid in drawing, living/ and dining room. However, the Respondents have laid ordinary low-grade tiles.
- iii. The Respondent Prospectus specifications explicitly states Master Bedroom and Home Theatre Room with laminated wooden flooring. However, the said specification has not been provided.
- iv. The Respondent Prospectus specifications explicitly states all Balconies with Anti-Skid tiles of the best brand. However, the tiles used are neither Anti-Skid nor branded. The Complainants has not received any reply from the Respondents upon enquiring which tiles brand is laid.
- v. The Complaint respectfully submits that huge amounts were spent to relaying the tiles with Marble in the drawing, living, and dining room.
- vi. The Complainant respectfully submit, that, the Respondents though claimed in their Prospectus that the Project will ELEVATE, TO THE “ LIFE NEXT LEVEL”, they have miserably failed to maintain the high standards in construction and providing all the specification, amenities, and facilities as promised by them. It is pertinent to submit that the facilities provided in the clubhouse are of inferior quality and not in resonance with the prospectus.
- vii. The Complainant respectfully submits that, the Respondents did not provide the jogging track.
- viii. The Complainant respectfully submits, that, safety grills for window were not provided.
- ix. The Complainant respectfully submits that, when they have approached the Respondents and requested them to provide specifications, amenities and facilities as promised in the Agreement of Sale and prospectus, the Respondents gave evasive response and avoided discussing and when asked about compensate for delay in

handing over the Flat in accordance with clause 7.1 of the Agreement of Sales, to move in and reside in the Flat, the Respondents were rude, abrasive. It is pertinent to submit, that, the Respondent did not complete the project as committed in the application made for RERA registration.

- x. In addition to the above, the Respondents charged for additional common area. Though it is specifically mentioned in the Agreement of Sales that Proportionate common area of 857 sq. Ft, and 656 Sq ft in respect of Flat No.1 & 2 respectively, the Respondents had charged more than Proportionate share. An expert committee has to be appointed to ascertain the total livable area and common area, available in the project to bring in the day light Robbery of Respondents from the allottees. Further, the Respondents have charged the same price for the carpet area/constructed area as well as common area. Charging the same price for carpet area/constructed area and common area is illegal and contrary to Act.

7. The Complainant respectfully submits that, the Complainant is entitled for compensation for delay in handing over the Flat 1 in habitable condition and also compensation/ damages for deviating from the specifications by using inferior, substandard, and low-grade quality products.

8. It is pertinent to submit, that the Respondents have obtained revised building Permission on 23.05.2023, without the consent of the flat owners needless to say that the act of obtaining permission without the consent of the flat owners is a blatant violation of the RERA Act.

9. In view of the above submissions, the Complaint reasonably believes that the Respondents have violated sub Clause (D) of clause (1) of sub-section 2 of section 4 and diverted our payments towards flat cost, as such, they could not complete the project in time. In order to ascertain truth for delay, the Authority may conduct investigation in accordance with Sub-section 2 of Section 35. It is pertinent to submit that, the Respondents instead of completing the residential blocks in time, diverted our payment towards the commercial blocks owned by the Developers, at the same premises.

10. Apart from the above, the Respondents totally failed to comply with the provisions of Section 11 of RERA Act. The details that Respondents violated of Section 11 of RERA Act are mentioned hereunder:

- a. The Respondents did not upload the quarterly up-to-date list of number and types of apartments booked, as required under clause a of Subsection 1 of section 11 of RERA Act. In fact, even as on the date the complainant Flats are shown as not booked.
- b. Similarly, quarterly up to-date list of number of garages booked are also not uploaded, as required under clause c of subsection 1 of Section 11 of RERA Act.
- c. The Respondents project status uploaded on the website shows that the substantial works are pending for completion to hand over the actual Possession of the Flats.
- d. The Respondents must strictly adhere to sanctioned plans and project specifications. The Respondents are prohibited from making any changes to the project's sanctioned plan without prior written consent of two-thirds of all allottees in the project. It is pertinent to submit that the Respondents have deviated from the sanctioned plan without taking approval as mandated under clause ii of subsection 2 of Section 14 of RERA Act.
- e. The complainant reserves the right to file an additional affidavit and documents to substantiate the Claims made herein

B. Reliefs sought:

11. In view of the facts mentioned in paragraph 4 above, the complainant prays for the following reliefs:

- a) To conduct enquiry about the irregularities committed by the Respondents and take appropriate action against the Respondents, by imposing maximum penalty for contravention of section 4 of RERA Act;

b) To impose penalty for deviating the sanction plan without obtaining prior Written permission as mandated under Section 14 of RERA Act;

c) To conduct enquiry for diverting the fund of allottees in contravention to Sub-clause (D) of clause (1) of sub-section 2 of section 4 of RERA Act, and Impose penalty.

d) And to pass other order or orders as this Authority may deem fit and Proper in the interest of justice.

C. Interim Orders:

12. Pending adjudication of the complaint, the Honourable Authority may call for record of bank accounts of the Respondents in relation to the project, as required to maintain under sub-clause (D) of clause (1) of sub-section 2 or section 4 of RERA Act, accounts book of the project and statement of accounts duly certified and signed by the chartered accountant, of every financial year from the date of commencement of project to till date.

D. Counter filed by the Respondents:

13. These Respondents denies the various allegations in the Complaint as being absolutely false and untenable and craves the leave of this Hon'ble Authority to submit the following preliminary observations before traversing the allegations in the Complaint.

1. Preliminary objections:

I. The project was completed by 06.06.2023 and the application for OC was applied on 22.02.2023, and the competent authority has issued an occupancy certificate in respect of the project on 06.06.2023. The Act is a central Act, and the matters governed by State or local law like HMDA Act, GHMC Act, Telangana Municipalities Act, 2019, etc., and within the jurisdiction of the Authorities under those State Acts, are outside the purview of the Act, which is also evident from the scheme of the Act and

underlying the Sections 2 (p), (q), (zc), and (z(f), Sec.3 (1), 11(4) (b) and (e), Sec.17, Sec.27(1), and 50(1) (a) etc. Hence, the complaint is incompetent.

- II. Even otherwise, in view of the Occupancy Certificate, the power under Section 34 for giving directions has worked out itself. The complainant filed another complaint No.663/2023/TSRERA, posted before Adjudicating Officer, for compensation, on the basis of the same documents, camouflaging her claim and suppressing the Civil Suit. The complainant has played fraud on the respondent No. 2 and 3 and filed OS No.38 of 2023 on the file of the learned VI Additional District Judge, Kukatpally in respect of F.1402 and the said suit was dismissed, on rejection of the plaint in IA.No.663 of 2023, by order dated 09.08.2023, and this was suppressed by the complainant. Therefore, her fraudulent claim stands rejected by the competent civil court. She cannot charge the claim in respect of the said flat before this honorable authority, which is essentially of civil nature.
- III. The complainant has not purchased the flat No.F.1402 and flat No.B1004 from the 'promoter' within the meaning of section 2 (zk) of the Act, but from the share of the landowners and therefore the complainant is not an 'allottee' within the meaning of section 2 (d), and hence, it is not maintainable.
- IV. The complainant has taken the handing over letter of the flat No.B1004, without demur, for the purpose of interior works on 16.05.2022 and made alterations of her own, beyond recognition and therefore, she is estopped by conduct to make any complaint against the promoter in any manner. The Complaint is filed on 02.08.2023, beyond reasonable time from taking possession in context of the facts and the complaint is barred by laches.
- V. The alleged delay on the part of the promoter is false. In fact, the complainant is aware that the government has issued several orders in exercise of its powers under the Disaster Management Act, 2005, during the pandemic period. The government of India and the government of Telangana have treated the outbreak of novel coronavirus (Covid -19) as force majeure circumstances and in order to facilitate the Real Estate Sector, TSRERA had decided to extend the validity of the completion dates

granting extension sporadically by 6 months each time, for about 1 ½ years (one year 6 months) by virtue of the order No.14 dated 13.05.2020, No.15 dated 29.09.2020, and No.16 dated 01.06.2021 due to the unexpected departure of the laborers to their native places. Accordingly, TS RERA issued a fresh registration from 12.03.2019 to 08.05.2023 in the place of the initial registration from 12.03.2019 to 30.06.2021. The project was completed during the period of registration and the possession of the flat was taken by the complainant on 16.05.2022 after being satisfied about the completion as per the terms and conditions and acknowledging by letter dated 16.05.2022 that "Trendset Jayabheri Projects LLP" has completed the construction in compliance to all the terms and conditions; and specifications as referred above." Hence, the complainant is estopped from making claims to the contrary, after more than one and half year which is motivated and fraudulent.

- VI. The complaint is not maintainable as the complainant has sought the same relief under Form N filed before the Adjudicating officer. The two applications are under Section 31 of the Act, which provides for a Complaint with authority or adjudicating officer as the case may be. It uses the expression "or" but not "and" and it is further qualified as the case may be. Therefore, parallel proceedings before both the Authorities are not permissible. Further, Rule 34 prescribes Form M for complaint with the authority for any violations of the Act or rules thereunder. Rule 35 provides for filing of a complaint with the adjudicating officer in Form N for the interest or compensation as provided in Section 12, 14, 18 & 19. It is to be noted that the Adjudicating Authority is appointed for the said purpose under Section 71 by the RERA and cannot be treated as either independent or a separate entity. Hence, there cannot be concurrent proceedings before both the Authorities. The complainants have approached before this Hon'ble Authority by playing fraud and seeking a penalty through fraudulent means. The filing of multiple complaints on the same frivolous grounds, before the Adjudicating Officer, shows the ill conduct of the complainants, and the present complaint shall be dismissed on this ground alone. The complainant has suppressed these material

facts in her complaint and hence the complainant is liable to be dismissed in limine, on this ground alone, in view of the Judgment reported in (2010) 14 SCC 38 and as reiterated in AIR 2013 SC 523. Further, the complaint is filed in gross abuse of the process of law. The complainant and her brother have conspired to defraud the respondent promoter in a similar manner, to avoid payment of dues, as fully described hereunder. Hence, before traversing the allegations made by the complainant it is necessary to bring to the notice of this Hon'ble Authority, the true facts as under:

4. True facts:

- VII. We have constructed a project named "Trendset- Jayabheri Projects Elevate" called TJP Elevate for short in Sy.No.5 of Kondapur, Serilingampally Mandal, Ranga Reddy District, for which OC was granted by GHMC on 06.06.2023. The brother of complainant Mr. Nikhil Reddy Vanguru S/o. Narayan Reddy, approached us in August 2019 and introduced himself as a builder being a partner of Ishta Homes LLP and expressed his appreciation for our project and interest to book a Flat for himself and his sister in our project. He has initially booked Unit No. A 1904 (Floor area 2,730 sq. ft) in Project "Elevate" on 17.08.2019 for a total sale consideration agreed was Rs.2,14,40,475/- including GST for which he entered into an Agreement on 17.12.2020. He applied for a home loan from the Axis Bank, Tarnaka branch, who insisted on a tripartite agreement for the said flat, and bank collected originals. Mr. Nikhil Reddy made some payments through the bank for the flat A.1904 and got changed the standard floor plan and thereafter changed his booking for a bigger flat Unit No. E 1601 and entered into a fresh agreement of sale and tripartite agreement in respect of Unit No. E 1601 which was collected by the Bank and then induced the promoter to register the sale deed by giving photocopies of the balance payable, altered the interiors, and sent letters with false allegations and after obtaining the original Sale deed on representation of getting original DDs, he dishonestly got DDs canceled to downsize his home loan in collusion with Bank officials and when this was detected, we threatened to file a criminal case, Nikhil Reddy and his father

settled the matter by making payment. The same modus operandi was adopted by the Complainant, who along with her father, Sri V. Narayana Reddy approached one of the landowners, Dr. K. L. Narayana, respondent No.2 herein, has initially chosen flat bearing Unit No. F1402 admeasuring 2835 sft belonging to his daughter respondent No.3 and entered into an Agreement of Sale on 03.11.2020 and requested for customization of the said flat, changing the standard floor plan and thereafter, requested the respondent No.2 herein to sell a bigger flat bearing Unit No. B1004 admeasuring 4095 sft, belonging to the second respondent, getting the agreement for Unit No. F1402 canceled. The complainant and her father brought the letter dated 06.10.2021 and requested a refund of the entire consideration in respect of Flat No.1402 after she opted for a bigger flat.

VIII. The respondent No.2 in good faith has accepted the same and accordingly, his daughter, the 3rd respondent herein, refunded back the consideration amount of Rs.1,55,00,000/- paid in respect of flat No.1402 by the complainant through RTGS on 02.03.2022 and 06.04.2022 as the transaction under the agreement was canceled at her request. There is no dispute about the refund and the letter dated 06.10.2021 and the civil court has given a clear-cut finding in the judgment dated 09.08.2023 in IA.No.663 of 2023 in O.S.No.38 of 2023 filed by the complainant that, "As per the plaint the amount of advance sale consideration was refunded on 06.04.2022 and the plaintiff filed suit on 13.02.2023". But, with dishonest and fraudulent intention, the complainant avoided returning the original agreement dated 03.11.2020. The copy of the Agreement of Sale dated 03.11.2020, Plaint and Judgment in OS.No.38 of 2023 are annexed to this counter.

IX. In the circumstances, a fresh agreement was entered into respect of Unit No. B1004 admeasuring 4095 sft on 25.11.2021. As the second and third respondents believed her and her family members, in view of booking of two flats, they did not suspect them. The copy of the Agreement dated 25.11.2021 is annexed to this counter. As the second respondent in good faith believed the complainant and her family members, as her brother purchased another flat and did not suspect their evil designs.

- X. The second respondent executed the Sale Deed dated 11.04.2022 registered as Doc No.5886/2022 in respect of flat B- 1004 without receiving the entire consideration payable in respect of B1004, believing their promise to pay the same. The copy of the Sale Deed dated 11.04.2022 registered as Document No.5886/2022 is annexed to this counter. On verification of the documents and accounts pertaining to transactions made by the complainant herein and to the shock and surprise, it came to light that she also cheated and in the same way by playing confidence trick on Respondents No.2 and 3.
- XI. The consideration payable under the agreement is Rs.2,41,32,000/-, which includes the GST amount. In addition thereto, they have to pay corpus fund and upfront maintenance charges for 2 years with GST payable thereon. The complainant and her father Sri V. Narayana Reddy requested persuaded Respondent No. 2 not to mention the outstanding GST amount of Rs.5,85,750/-, out of the agreement price, with a view to making gain in terms of stamp duty registration, (saying it amounts double taxation) promising to pay the said GST amount separately. Believing their statements, the sale deed was drafted as per their requirement, reciting only Rs.2,35,46,250/- as the sale price payable under the agreement (contrary to the Agreement) and accordingly the total consideration as recited was shown as paid, which is not true. The respondents paid GST to avoid penalties and entitled to refund with interest and compensation. The complainant misused the agreement dated 03.11.2020 fraudulently retained by her and filed OS No.38 of 2023 on the file of the learned VI Additional District Judge, Kukatpally for specific performance in respect of F.1402 and therefore the respondents filed applications for rejection of the plaint and after hearing both sides, the said suit was dismissed, on rejection of the plaint in IA.No.663 of 2023, by order dated 09.08.2023.
- XII. Thus, the complainant played fraud on us and we reserve our rights and remedies in this regard against her and her father, both civil and criminal and are entitled also for compensation. In fact, in the plaint filed by her in O.S.No.38 of 2023, she has categorically admitted the refund of the entire amount received from her in respect of the F.1402. Thus, her fraudulent

claim stood rejected by the competent civil court. She cannot re-agitate the civil claim in respect of the said flat again before this honorable authority, which is essentially of civil nature. The copy of the order dated 09.08.2023 in IA.No.663 of 2023 is annexed to this counter.

- XIII. The Complainant tried to evade the amount payable in respect of corpus fund, 2 year upfront of maintenance, GST on such maintenance charges payable under the sale deed to the association and when we threatened her for filing a criminal case for non-payment, she immediately made the payment of corpus fund, 2yr upfront of maintenance, GST on maintenance payable under the Agreement to the Association and still she is in default of Rs.5,85,750/- with interest payable thereon at the rate of 18% per annum from and therefore she being a defaulter under Section 19 (6) of the Act is not entitled for any relief and on the other hand, she being a defaulter is liable pay interest under section 19 (7) of the Act with effect from the date of sale deed on 11.4.2022 on the delayed payment of corpus fund & 2yr upfront maintenance charges, GST on maintenance charges and also the defaulted amount. The Respondents reserve their rights and remedies in this regard.
- XIV. The Complainant and her father requested the second respondent to permit them to carry out the interiors in the Flat B1004 and as per their request gate passes were issued to their supervisor. The complainant also signed the letter dated 16.05.2022, accepting and acknowledging that the builder firm has completed the construction in compliance with all the terms and conditions and further undertaking that she should abide by the terms and conditions specified by the builder firm, for carrying out the interiors, which she signed on the same day. But, the complainant and her father started violating the said undertaking, particularly condition No.7 and 10 thereof. As per the said letter, the occupation would be handed over only after obtaining the occupancy certificate.
- XV. The complainant, without paying the balance amount including the amounts payable to the Association, namely corpus fund and upfront maintenance charges for 2 years as above, as per the terms of the sale deed and tried to take occupation of the flat, for which we did not permit.

Then the complainant once again requested for possession and we agreed to deliver possession, subject to certain terms that possession given would be without prejudice to our right to recover the balance, on her payment of the corpus fund and up front maintenance charges payable to the Association.

- XVI. The copy of the letter dated 16.05.2022 is annexed to this counter. In view of the said letter, she cannot make any claim contrary and allegedly seek compensation. The complainant is liable to pay/refund the amount of Rs.5,85,750/- towards GST on sale price with interest 18% till date which she and her father induced us not to mention in the registered sale deed, by changing its draft, contrary to the agreement and which amount she has not paid till date and to avoid that amount she falsely filed the present case. Hence, being a defaulter, she cannot maintain a complaint under Section 18 and is liable to be directed to the sum of Rs.7,17,545/- and dismiss the complaint with exemplary costs.

5. Allegations traversed:

- XVII. The allegations in the complaint are absolutely false, baseless and invented for the purpose of the false claims of the complainant. In fact, the present complaint is filed in utter desperation, after the complainant was exposed in the civil suit. The specific allegations in the complaint are traversed as under:

6. Alleged Delay:

- XVIII. The allegations are false, bald and devoid of any material particulars. The respondent completed the flat in advance in all aspects and handed over the flat to Complainant on 16.05.2022, 1 month 4 days from the registration, after she has expressed her satisfaction about the completion. She has signed the handing over letter dated 16.05.2022, accepting the contents thereof and she would not have kept quiet, for more than one year 2 months since then, if there were any defect or deficiency. Therefore the allegations are an afterthought, invented for the purpose of her false claim.

XIX. The alleged delay on the part of the promoter is false. As already stated, the Flat was completed and handed over to much in advance, at her request and she cannot have any grievance in this regard. So far as the project is concerned, the government has issued several orders extending time in exercise of its powers under the Disaster Management Act, 2005, during the pandemic period. The government of India and the government of Telangana have treated the outbreak of novel coronavirus (Covid -19) as force majeure circumstances and in order to facilitate the Real Estate Sector, TSRERA had decided to extend the validity of the completion dates granting extension sporadically by 6 months each time, for about 1 ½ years (one year 6 months) by virtue of the order No.14 dated 13.05.2020, No.15 dated 29.09.2020 and No.16 dated 01.06.2021 due to unexpected departure of the laborers to their native places. Accordingly, TS RERA issued a fresh registration to us extending from 12.03.2019 to 08.05.2023 in the place of the initial registration from 12.03.2019 to 30.06.2021. The project was completed during the period of registration and the occupation of the flat was taken by the complainant much before, on 16.05.2022 after being satisfied about the completion as per the terms and conditions, which she acknowledged in the handing over letter dated 16.05.2022 that "Trendset Jayabheri Projects LLP" has completed the construction in compliance with all the terms and conditions; and specifications as referred above."

XX. Hence, the complainant is estopped from making claims to the contrary, after more than one and half year which is motivated and fraudulent. The COVID-19 pandemic has had a significant impact due to regulatory changes, travel restriction, workforce disruption, supply chain disruption and

7. Alleged Non-uploading of details on the website:

XXI. The allegation that the status was not uploaded is false. No developer in Telangana is uploading any status and even when the developer tried to upload the details, the same was not processed, due to a server issue in the RERA Website.

8. Diverted funds towards commercial block:

XXII. There is no such violation done as alleged by the complainant. The complainant is trying to cook up false stories in order to defame the respondent No.1 and to escape from their liability, without their being any basis and proof for the same. Therefore, the section 4 has no application. It is therefore prayed that this Hon'ble Authority may be pleased to dismiss the Complaint with exemplary costs.

E. Rejoinder to the Counter of the Respondents

14. At the Outset, it is submitted that the Respondents Counter is misleading, with bundle of lies, frivolous contentions/allegations, and based on Created, forged and fabricated documents. The Respondents have misrepresented and misled this Honourable Authority and are guilty of suggestion falsi suppressio very. All the contents in the counter are false and are denied, except those that are specifically admitted herein. Merely because if it is Specially not traverse, it is cannot be deemed to have been admitted. The Complainant is limiting the rejoinder to the extent of factual aspects. It is 14.05.2022, 12.04.2022, filed along with the counter, the Respondents are put to strict proof that they were served upon the complainant.

15. It is respectfully submitted that the complainant had filed a Complaint No.663/2023/TS RERA before the Adjudicating Officer for compensation under Section 18 of RERA Act read with Rule 15 and other reliefs. Wherein the Respondent filed Counter along with documents alleging that the Complainant has written a letter dated 06.10.2021 to the GPA Holder of the 2nd Respondent i.e., the 1st Respondent asking for cancellation of Agreement of Sale, dated 03.11.2020. The Complainant has taken serious objections about the alleged letter, dated 06.10.2021 and filed applications to call for the Original letter, dated 06.10.2021 and to send the same for comparing the signature therein with the admitted signatures of the Complainant to expert. It is pertinent to submit that in the current proceedings though the

Respondent had referred to the letter dated 06.10.2021 they have conveniently not filed the said alleged letter dated 06.10.2021. This gives strength to the complainants contentions that the signature on the letter dated 06.10.2021 is forged. The Respondent has deliberately avoided filing the alleged letter dated 06.10.2021 which clearly shows that the said letter was never issued by the Complainant. Similarly, apart from the letter dated 06.10.2021 the Respondents did not file the letters, both dated 14.06.2023, which clearly shows that such letters were never in existence. The conduct of the Respondents has to be taken very seriously and appropriate action has to be taken against the Respondents for misleading the Honourable Authority by filing false and frivolous Counter. This also confirms that the Respondents had played fraud on the Adjudicating Officer by filing the false and fabricated documents. The Complainant reserves the right to make appropriate applications to call for the record from the Adjudicating Officer.

16. The contentions raised by the Respondent has to be proved by the by way of positive evidence, in the absence of proof the same has to be rejected.

17. The Respondents are put to strict proof that they had make application for OC on 22.02.2023. The other averments are legal aspects which will be addressed at the time of the hearing.

18. It is respectfully submitted that merely obtaining the Occupancy Certificate will not exonerate the Respondents from their statutory obligations.

19. It is respectfully submitted that the Complainant had not suppressed about the civil suit. It is further submitted that the reliefs sought before the Adjudicating Officer is different, and the reliefs sought herein are different, and both the Complaints are filed under different provisions of law, which is also permitted to file two different complaints for two different Complaints.

20. It is denied that the Complainant played fraud on Respondents No.2 and 3 and filed O.S No. 38 of 2003 on the file of the learned VI Addl. District Judge, Kukatpally in respect of F.1402 and it is further denied that the complainant had suppressed the Orders, dated 09.08.2023, in I.A No.663 of 2023 rejecting the Complaint in O.S No. 38 of 2023. It is relevant to submit, that, the Complainant filed the complaint on 02.08.2023, hence the question of

suppression will not arise, it is the Respondents who are making false averments in the counter and trying to mislead the Honourable Authority. The Complainant has received certified copy of the Orders, dated 09.08.2023 and filed appeal before the Honourable High Court against the said Orders. As such, the Orders, dated 09.08.2023 have not attained finality.

21. Submit, that, in unambiguous terms, the definition of Promoter as defined in Section 2 (zk) of the Act included the landowner. The Landowner and the developer/promoter are jointly liable for the functions and responsibilities specified under the Act or the Rules or Regulations made thereunder. In the commentary on RERA Act, which was authored by the Counsel for the Petitioner/Respondent at page 58 as under;

“(iii) Act Covers land owner: There is no direct regulation of land owner giving the land for development, as such in the Act. But, it appears land owner is covered by the owner, also in respect of construction of Apartments and Buildings. The GPA holder of landowner is expressly covered. The Act imposes stringent liability in respect of title to land and conveyance thereof, though if dose not use the expression landowner, as such. The obligation and timelines under the Act cannot be performed, unless the landowner is also a promoter. The involvement of landowner in the development and legal accountability will be felt significantly and he is no longer a passive player.....”

22. Submit, that, apart from the above submissions, various authorities and courts held that the definition of 2 (zk) includes landowner.

23. It is denied that the Complainant had taken handing over letter of the flat No. B 1004 without any demur, and is further denied that the complainant had made alterations beyond recognition. It is pertinent to submit that, the Complainant had to undertake certain works as the Respondents utterly failed to fulfil their promises, commitments made in the prospectus and Agreement of Sale. Since the Respondents provided substandard, 2nd grade material, the Complainant had to undertake work.

24. Of the counter, it is denied that the complaint was filed beyond a reasonable time from taking possession, i.e. 16.05.2022. Without prejudice,

it is pertinent to submit, that, actual possession even according to the so-called letter is only to carry out interior works. The actual occupation can only take place after receiving the Occupation Certificate from GHMC. And in the present case even according to the Respondent Occupation Certificate was granted on 06.06.2023, hence there is no delay in filing the complaint as alleged.

25. It is submitted that, entire contents made therein are denied, the Respondents are put to strict proof of the same. It is further pertinent to submit, that, the Respondents entered into Agreement of Sales on 25.11.2021 and 03.11.2022, both the dates are after the pandemic was declared. The Respondents cannot take shelter of any of the Government Orders, even if were in existence, as the Respondents with an anxiety to sell the flats, at clause 5 of the agreement, dated 25.11.2021 made commitment to the complainant, that the possession of the Flat B 1004, would be on or before 30.06.2022. Further, at clause 7 of the Agreement, in unequivocal terms it is mentioned that, 'ready to move in possession 'shall mean that the apartment shall be in a habitable condition which is complete in all respects including the provision of all specifications, amenities and facilities, as agreed to between the parties, and for which occupation certificate, as the case may be, has to be issued by the competent authority. Even according to the Respondents, it is only on 06.06.2023 occupancy certificate was issued, as such, there is clear delay in completing the project and delivering actual possession in livable conditions. As already mentioned above, taking shelter from the alleged GOs, even if any, is nothing but malicious conduct of the Respondents, which cannot be permitted. In respect of the letter, dated 16.05.2022, the complainant was forced to sign without making any remarks, otherwise the Respondents threatened that they would not give flat for interior works. As the Complainant was paying an amount of Rs. 58,000/- (Rupees Fifty Eight Thousand only) towards rent, plus, Rs. 10,000/- (Rupees Ten thousand only) towards maintenance, plus, EMI towards new flat of Rs.1,13,294/- (Rupees One Lakh Thirteen Thousand Two Hundred and Ninety Four Only) totaling an amount of Rs. 1,81,294/- (Rupees One Lakh Eighty One Two Hundred and Ninety Four Only), the

Complainant could not protest at the time of taking flat for interiors. It is pertinent to submit, that, Respondents are not committing before the Authority that they have completed the project with all the agreed terms, but they are relying on the letter which was obtained under threat.

26. The contents therein are legal aspects which will be addressed at the time of hearing. The Respondents have made unnecessary, unrelated comments against the Complainant and her brother. The Complainant brother is not concerned with issues pending before the Honourable Authority. It is Respondents who are fraudsters, and cheaters, who have enriched themselves by deviating commitments made in prospectus (broacher) and agreement of sale. The Respondents claim that the project will be an elite project, but, however, failed to maintain any standards that are required in any elite project. In spite of charging very high amounts towards the cost of the flat, the Respondents have provided substandard, 2nd grade material/facilities in the project. The alleged True facts are nothing but bundle of lies, through which the Respondents are trying to mislead the Honourable Authority.

27. It is true that the Complainant brother entered into Agreement of Sale in respect of the Flat No. A. 1904 in Project "Elevate", believing the false reputation and prospectus of the Respondents in the market that they would adhere to their commitments, and agreed terms. However, the Complainant was shocked looking at the substandard quality used by the Respondents for the Project Elevate.

28. The contents therein are partially correct to the extent that, the Complainant brother had changed his booking for bigger Flat unit No. E 1601. The other allegations made therein are utterly false, concocted, created and are unrelated to the present proceedings. However, it is just and necessary to revert the baseless allegations of the Respondents. On enquiry with the Complainant brother, the Complainant came to know that, the Respondent illegally demanded the amount more than actual balance payment that is to made at the time of Registration of Flat. On several occasions the Complainant brother has approached the Respondent for reconciliation of Accounts, however, they dogged for reconciliation and the

Respondent through E-Mail dated 13.07.2023 and 25.07.2023 demanded Complainant brother to pay Rs. 27,78,157/- (Rupees Twenty Seven Lakhs Seventy Eight Thousands One Hundred and Fifty Seven only) without showing statement of payment of payments to the Complainant brother. Finally, on 09.09.2023, after reconciliation of Accounts, the Respondent received an amount of Rs. 13,42,802/- (Rupees Thirteen Lakhs Forty Two Thousands Eight Hundred and Two only). This clearly shows that the Respondent had made a false claim and tried to extort additional amounts from the Complainant brother. The Respondents are fraudsters, cheaters, makes unreasonable demands and extorts money from innocent person hard earned monies. If a proper independent enquiry is conducted on the transaction made by the Respondents in respect of the project, the conduct of the Respondents will come to the light. It is true that the Complainant brother downsized the loan as funds are available with him. It is denied that the complainant brother induced the promoter to register the sale deed by giving photo copies of balance payable, altered the interiors and sent letters with false allegations and after obtaining the original sale deed on representation of getting original DDs, he dishonestly got DDs cancelled to downsize his home loan in collusion with Bank officials and when this was detected, the Respondents threatened to file criminal case, Nikhil Reddy and his father settled the matter by making payment. The Respondents are put strict proof that on their threatening to file case, against Nikhil Reddy, his father settled the matter by making payment.

29. It is denied that, the complainant had adopted the same modus operandi, and approached one of the land owners, Dr. K.L. Narayana Respondent No.2, along with her father and got the agreement cancelled for Flat No. F 1402. It is vehemently denied that the complainant and her father gave a letter, dated 06.10.2021 to the 2nd Respondent to cancel the Agreement of Sale, dated 03.11.2020, as the complainant wanted to take a bigger size of flat in the project and to refund the amount to her bank account duly acknowledging the same by affixing her signature. It is pertinent to submit that in the counter filed in complaint 663/2024/TS RERA pending before the Honourable Adjudicating Officer the Complainant

did not state that the Complainant father was also present at the time of handling the alleged letter dated 06.10.2020. It is further denied that , Respondent No. 2 in good faith has accepted the same and accordingly, Respondent No.3 refunded back the consideration amount, as the transaction under the agreement was cancelled at her request and that with dishonest and fraudulent intention, the complainant involved to return the original agreement ,dated 03.11.2020. The true facts are that, when the complainant demanded the Respondents either to receipt balance sale consideration, thereby to execute sale deed with possession or to compensate for delay, the Respondent assured that she will execute and register the Sale Deed by honouring Agreement of Sale , dated 03.11.2020 in favour of the complainant and till such time the Respondent proposed to return the advance paid amount of Rs.1,55,00,000/- (rupees One Crore Fifty Five Lakhs only) to retain the same with the complainant till she get communication from the Respondent. The Complainant never sent the alleged letter, dated 06.10.2021 for cancellation of Agreement of Sale, dated 03.11.2020. The Respondents have created the said letter, dated 06.10.2021. by forging the Complainant signature. It is pertinent to submit, that, the Respondents never referred the said letter, dated 06.10.2021 in I.A.No.663 of 2023 in O.S. No. 38 of 2023 of the files of the VI Additional District Judge of Kukatpally, filed under Order 9, Rule I I of the code of Civil Procedure, 1908. The Respondents are trying to play fraud not only on the Complainant, but, also on the Honourable Authority by relying on such forged document and trying to defeat the Complainant legitimate claims. Since, I took a specific stand that the letter, dated 06.10.2021 is forged, fabricated and created document, as such, the Respondents conveniently avoided to place it before the Honourable Authority the alleged letter, dated 06.10.2021. The Complainant reserves its right to call for the alleged original letter dated 06.10.2021 and also reserves its right to make appropriate applications, criminal complaint against the Respondents for mentioning the forged, fabricated documents before the Honourable Authority. It is specifically denied that the letter dated 6.10.2021 is seriously disputed, as already submitted above the Respondent No. 2 had mentioning about the letter

dated 06.10.2021 in I.A. No.663 of 2023 in O.S .No.38 of 2023.

30. It is submitted that, the transaction in respect of the 2nd Flat, i.e., B 1004 is independent of the earlier Agreement of Sale, dated 03.11.2020. The Complainant has taken housing loan towards payment of the sale consideration in respect of Flat No. B 1004. It is pertinent to submit that, on 04.03.2022 the Complainant had paid the stamp duty and registration charges in order to get the Flat B. 1004 registered, however, the 2nd Respondent did not come forward to register the Flat. Similarly, again on 17.03.2022 once again the complainant was ready with the last tranche of payment with the banker cheque (housing loan) of 1,00,00,000/- (Rupees One Crore Only) the Respondent dogged to register Flat No. B 1004 also, with an ulterior motive to extract more money. On repeated requests and after completely satisfying their unreasonable demands Respondent registered the Flat B 1004. It is further submitted, that, in respect of Flat No. F 1402 amounts were returned with an understanding as mentioned in the preceding paragraph. It is the Complainant who believed and did not suspect the evil design of the Respondents. The complainant never imagined that the Respondents would take U-turn from their commitments. Believing the false reputation of the Respondents, the complainant fell into their trap. It is denied that, the 2nd Respondent executed the Sale Deed, dated 11.04.2022 registered as Document No. 5886/2022 in respect of Flat No. B 1004 without receiving the entire consideration payable in respect of B 1004.

31. At the outset, it is denied that the Complainant has to pay an amount of Rs. 5,85,750/- (Rupees Five Lakhs Eighty Five Thousands Seven Hundred and Fifty only) towards GST. The Complainant has paid all the amounts as agreed between the parties. In fact, there is no need for the 2nd Respondent to collect the GST amounts, as the 2nd Respondents who is landlord sold his share in the project. The amounts collected by the 2nd Respondent for GST are liable to be returned to the complainant with interest. The unjustified demand for GST, shows the fraudulent collection of huge amounts from their buyer towards GST, which is nothing but cheating As submitted earlier the Respondents are fraudsters, who enrich themselves by collecting huge amounts from their innocent customers. The 2nd and 3rd Respondents are

put to strict proof that they had paid amounts towards GST to the government in respect of the flats sold being by the landowners. At the cost of repetition, the Complainant once again submits that entire amounts were paid to the 2nd Respondent and that there is no due. The contentions that the complainant requested not to mention in the sale deed about the GST amounts etc., are all created, Concocted by the Respondents for enriching themselves. The Respondents are put to strict proof that they had demanded earlier for alleged unpaid amounts towards GST.

32. The further contentions that the Complainant has to pay corpus fund and upfront maintenance charges for 2 years with GST payable thereon and that , the Respondents threatening the Complainant with criminal case for non-payment of amounts towards corpus fund and maintenance is all false and are created. The Respondents are put to strict proof that only on threatening to file criminal case the Complainant paid amounts toward maintenance and corpus fund after they obtain Occupancy Certificate and the same was accepted by the Respondents without protest of non-payment of amounts towards GST, or whatsoever. Hence, the Complainant is not the defaulter, and the she need not to pay an amount of Rs.7,17,545/- (Rupees Seven Lakhs Seventeen Thousands Five Hundred and Forty Five only) to the Respondents.

33. As submitted earlier that the Complainant has filed appeal against the Orders, dated 09.08.2023 have not attained finality.

34. As submitted earlier, the said letter, dated 16.05.2022 was signed under threat. The Respondents cannot take advantage of the letter which was signed under threat. The Respondents in their counter did not independently meet the allegations with proof in respect of deviation from the prospectus and agreement of Sale. The Respondents conduct in taking advantage of the letter given under threat, without proving independently that they have met all the commitments made in the prospectus, agreement of Sale and all other statutory requirements as mandated by the RERA Act, proves that the contentions of the Complainant that the Respondent had violated the commitments made in the prospectus and agreement of Sale.

35. It is submitted, that, the Complainant never violated any condition as

alleged by the Respondents. In respect of other contents, the same are repetitive in nature, for the sake of brevity; the same are not being repeated.

36. It is denied that the allegations made in the complaint are absolutely false, baseless and invented for the purpose of the false claims, and that, it is filled in utter desperation, after the complaint was exposed in the civil suit.

37. The contentions raised therein are repetitive in nature and the same are already traversed, for the sake of brevity, the same are not being repeated.

38. As per the RERA Act, the Respondents are to strictly adhere to the sanction plan without deviation, whatsoever in nature. Having deviated from the sanction plan the Respondents cannot take shelter that for the benefit of the project, they had to deviate.

39. The contentions that no developer in Telangana are uploading any status, is very strange submission. Once an Act specifies to do an act in a specified manner, which has to be followed scrupulously, especially when such acts are to benefit the public at large. The intent of legislation of RERA Act is to ensure greater accountability, and significantly reduce frauds and delays and to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, among various others. Being one of the known builders in twin cities, it is strange to see such sort of casual response. Further contentions that there were server issues are not correct; the Respondents are to put strict proof of the same.

40. It is fact that the Respondents have diverted funds. The same will be dealt with in detail at appropriate time.

41. It is pertinent to submit that the Respondent are selling the parking lots which is prohibited under the Act, by selling the parking lots the Respondent had extracted Crores of rupees from the buyers. The Respondents have to appropriate the collected towards car parking charges.

42. In view of the above submissions, this Honourable Authority may be pleased to allow the compliant with exemplary costs

F. Observations of the Authority on IA filed by Respondents

43. During the hearings, the Respondents, have filed an IA (Interlocutory Application) seeking the dismissal of the complaint made by the Petitioner/Complainant. The Respondents contends that the complaint is incompetent and not maintainable based on various grounds outlined in the affidavit dated October 30, 2023.

Grounds for Dismissal submitted by Respondents

- a. *The Respondent alleges that the Complainant had filed a civil suit (O.S.No.38 of 2023), which was dismissed on August 9, 2023. The dismissal was due to the rejection of the plaint in IA. No. 663 of 2023. The Respondent argues that the Complainant suppressed this information and cannot re-litigate the matter.*
- b. *The Respondent asserts that the Complainant did not purchase the flat from the 'promoter' within the meaning of the relevant act but from the share of landowners. Therefore, the Complainant is not considered an 'allottee' within the statutory definition, making the complaint non-maintainable.*
- c. *The Respondent claims that the Complainant took possession of the flat and made alterations without objection, thus being estopped from making subsequent complaints against the promoter.*
- d. *The Respondent argues that matters governed by state or local laws, such as HMDA Act, GHMC Act, and Telangana Municipalities Act, fall outside the purview of the central Act under which the complaint has been filed.*
- e. *The Respondent contends that the complaint, filed on August 2, 2023, is beyond a reasonable time from the date of possession (May 16, 2022), and the Complainant is barred by laches.*
- f. *The Respondent points out that the Complainant filed two complaints with similar allegations, seeking relief under the same provisions of law. The Respondent argues that pursuing*

parallel remedies is impermissible.

- g. The Respondent asserts that the Complainant, being a defaulter in consideration/price, is not entitled to make any complaint under Section 14 and 4 of the Act.*
- h. The Respondent claims that delays in project completion were due to force majeure circumstances, specifically the government's orders related to the Covid-19 pandemic, and that the Complainant is estopped from challenging the completion after acknowledging it.*
- i. The Respondent alleges that the Complainant filed multiple complaints on frivolous grounds with the intent to defraud. The Respondent argues that this deliberate action justifies the dismissal of the present complaint.*
- j. The Respondent contends that the Complainant deliberately suppressed material facts in the complaint, warranting dismissal on this ground alone.*
- k. The Respondent prays for the dismissal of the complaint as being incompetent and not maintainable. Additionally, the Respondent requests the Hon'ble Authority to pass such orders as deemed fit, just, and proper.*

44. The Authority, having duly considered the Interlocutory Application dated 20.10.2023 submitted by the petitioner/respondent, hereby rejected the same on 30.10.2023, deeming the matter to be maintainable and within its jurisdiction. The petitioner contended that the allottee, being the complainant, acquired the property from the landowner's share rather than from the promoter/developer, and therefore, argued that the present matter falls outside the jurisdiction of this Authority.

45. Upon review, the Authority found that a plain reading of Section 2(zk) of the Real Estate (Regulation and Development) Act indicates that any individual who constructs or causes the construction of an independent building or a building comprising apartments for the purpose of sale, etc., is

to be considered a promoter. In this case, the landowner is also deemed to have caused the construction of the project in question. Consequently, the respondent's plea asserting the inapplicability of this matter to the Authority's jurisdiction is rejected.

46. Furthermore, it is observed that the reliefs sought by the complainant fall within the subject matter jurisdiction and are, therefore, maintainable. Accordingly, the respondent's counsel is directed to file a counter to the main complaint lodged by the complainant.

G. Observations of the Authority on IA filed by Complainant:

47. Subsequently, on 05.03.2024, the complainant filed an interlocutory application along with an affidavit dated 05.03.2024, seeking the production of the letter dated 06.10.2021. This letter has been referenced by the respondents in their counter for the purpose of comparing the signature with the admitted signature of the petitioner/complainant. The complainant contends that the said signatures have been forged and fabricated and asserts that they never issued such a letter requesting the cancellation of the agreement of sale.

48. The Authority observed that the said application filed on 05.03.2024 by the complainant erroneously addressed the Adjudicating Authority instead of the Authority in the application. The complainant did not subsequently file any correction petition or memo. Pursuant to Section 2(i) of the Real Estate (Regulation and Development) Act, "Authority" refers to the Real Estate Regulatory Authority established under subsection (1) of Section 20. Under Section 2(a) of the RE(R&D) Act, "Adjudicating Officer" refers to the Adjudicating Officer appointed under subsection (1) of Section 71. These definitions clarify that the powers vested in the Authority to issue directions cannot be exercised by the Adjudicating Officer, and vice versa. Consequently, the Authority rejected the application/petition filed.

H. The points for determination on the reliefs sought in the main complaint are as follows:

- a. Whether the present complaint is maintainable before the Authority.
- b. Whether the complainant is entitled to the relief(s) sought and, if so, to what extent. Relief(s) Sought are as follow
 - i. To conduct enquiry about the irregularities committed by the Respondents and take appropriate action against the Respondents, by imposing maximum penalty for contravention of section 4 of RERA Act;
 - ii. To impose penalty for deviating the sanction plan without obtaining prior Written permission as mandated under Section 14 of RERA Act;
 - iii. To conduct enquiry for diverting the fund of allottees in contravention to Sub-clause (D) of clause (1) of sub-section 2 of section 4 of RERA Act, and Impose penalty

50. **POINT a:** During the hearing, the Respondents contended in their interlocutory application dated 30.03.2024, and in the reply filed, that the present matter is not maintainable before this Authority. The Authority, in paragraphs 44-45 of this order, has provided a brief explanation as to why the application dated 30.10.2023 was prima facie rejected. However, as the Respondent has raised the same issue in the main reply filed, the Authority will now provide a detailed analysis of all the grounds raised by the Respondent.

51. The Respondent argued that the Complainant purchased the flat from the landowner and not the promoter, and therefore, the matter is not maintainable. As previously stated, the landowner, who is also responsible for the construction of the concerned project, shall be considered a promoter in the eyes of this Authority. According to Section 2(zk), any person who is responsible for the construction is defined as a promoter.

52. Further, the Respondent raised that the Complainant had already filed a complaint in O.S No.38 of 2023 before the learned VI Additional District Judge, Kukatpally, in respect of flat No. 1402, and the said suit was dismissed. The Respondent alleges that this was suppressed by the Complainant, and therefore, her fraudulent claim stands rejected by the civil court. Consequently, she cannot pursue the same claim before this Authority, as it is a matter of civil nature.

53. The Authority observes that the reliefs sought by the Complainant herein are different and fall within the provisions of the Real Estate (Regulation and Development) Act, thereby granting this Authority the jurisdiction to adjudicate the subject matter of the present suit limited to the reliefs sought. Furthermore, regarding the alleged suppression of the dismissal of the suit, the Authority notes that the Order is dated 09.08.2023, which is after the complaint was filed on 02.08.2023. Hence, this counter-argument cannot be considered.

54. Next, it is observed that the matter before the Adjudicating Officer relates to the claim of refund and payment of compensation by the Complainant. The matter before this Authority seeks action against the Respondent for violations of the Act. This issue cannot be addressed by the Adjudicating Officer. Therefore, the Authority is of the view that parallel proceedings on the same cause of action cannot be allowed to continue. However, since the reliefs sought are entirely different, there are no issues to be raised.

55. For all the foregoing reasons, the conclusion that emerges on Point A is that the present complaint is maintainable. Point A is answered accordingly against the Respondent and in favor of the Complainant.

56. **POINT b(i) and b(iii):** The Complainant, in their reliefs, requested that an inquiry be conducted into the irregularities allegedly committed by the Respondent and for diverting funds of allottees. However, it is observed that the Complainant has not submitted any substantial evidence that may raise suspicions to this Authority to warrant an investigation against the alleged irregularities by the Respondent.

57. **Point b (ii):** The complainant has alleged a deviation from the sanctioned plan without obtaining the consent of two-thirds of the allottees. During the hearing, the Respondent submitted that no deviation was conducted, as the Occupancy Certificate (OC) obtained in 2023 is self-

explanatory. However, upon examination of the records and documents uploaded on the RERA website, the Authority has observed discrepancies.

58. In regard where complainant alleged that the Respondent has failed to take consent of 2/3rd allottees as per section 14 of the RE(R&D) Act. Section 14 reads as follow:

Section 14: Adherence to sanctioned plans and project specifications by the promoter.

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

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

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

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

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

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

Explanation.—For the purpose of this clause, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked

in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

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

59. A bare perusal of the aforementioned provision makes it abundantly clear any additions/alterations in the sanctioned plan with respect to a particular flat that has been allotted to a particular allottee can only be made subsequent to a written consent taken in advance from the said allottee. Similarly, where promoter seeks to make any additions/alterations in the entire project, the consent of two-third allottees is mandated.

60. Keeping this in view, the submissions of the complainant and the Respondent with respect to this aspect are relevant to be noted. Complainant submits that, initially the Respondent has uploaded a building on RERA website, specifically Permit No. 53212/HO/WZ/Cir-11/2016 dated 9th May 2017, which designates the Amenities Block as Ground + 2 floors. Similarly, the layout plan copy uploaded corresponds to the aforementioned permit. The layout plan copy uploaded corresponds to the aforementioned permit. Contrarily, the Occupancy certificate uploaded under permit no. 1774/GHMC/SLP/2023 dated 6th June 2023 references a different building permit number, namely 53653/HO/WZ/Cir-11/2016, which was obtained on 26th May 2023, and indicates that the Amenities Block is Ground + 3 floors. In this regard, the complainant vehemently argues that Respondent has obtained revised building permission on 23.05.2023, without the consent of two-third allottees and that the same is in violation of section 14(2). In accordance thereof, the complainant prayed to impose penalty.

61. This Authority is of the preliminary view that the Respondent uploaded the Occupancy Certificate bearing Permit No. 1774/GHMC/SLP/2023 dated 6th June 2023 but failed to upload the revised plan bearing Permit No.53653/HO/WZ/Cir-11/2016, which was obtained on 26th May 2023, citing reasons such as a server issue is in gross violation of the Section 11(3) which categorically puts a mandated obligation on the promoter to make available to the allottee the sanctioned plans, layout plans, along with specifications, approved by the competent authority, and also the stage wise time schedule of completion of the project including such revised permissions which had been taken during the completion of the project. Providing incomplete information to the allottees and this Authority is a gross violation of the RE(R&D) Act. Further, it is also a mandated obligation of the Respondent, under Section 14(2), to obtain written consent of at least two-third allottees in the project before making any additions/alteration in the project.

62. Per contra, the Respondent has failed to deny this very allegation. He neither denies nor assents to taking any such revised building permission. The Authority has conducted due diligence and has come to know that Respondent has indeed submitted an application to the Greater Hyderabad Municipal Corporation (GHMC) on 18th March 2023 under Sections 388, 428, and 433 of the Hyderabad Municipal Corporation Act, 1955, the Andhra Pradesh Urban Areas (Development) Act, 1975, and the Andhra Pradesh Building Rules, 2012. This application was approved by GHMC vide Approval No. 53653/HO/WZ/Cir-11/2016 dated 25th May 2023 for Amenities Block being Ground + 3 floors instead of the erstwhile plan having amenities block as Ground + 2 floors, as mentioned above. However, issue herein is not with respect to whether Respondent has taken subsequent permission or not, issue is with respect to whether Respondent has taken prior written consent from two-third allottees in the Project before applying for such revised building permission. When the Complainant alleged such violation on part of the Respondent, it was incumbent upon the Respondent to have substantiated whether any consent was taken or not. Merely not producing

any averment or document to the said allegation, cannot absolve the Respondent from his liability towards the Complainant or the particular act of alleged violation.

63. The Hon'ble Supreme Court in Thangam & Anr. Vs. Navamani Ammal (Civil Appeal No.8935/2011), after finding that there is no specific admission or denial by the appellant/defendant with reference to the allegation in different paras of the plaint, categorically held as under:

"Order VIII Rules 3 and 5 CPC clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order VIII Rule 5 CPC provides that even the admitted facts may not be treated to be admitted, still in its discretion the Court may require those facts to be proved. This is an exception to the general rule. General rule is that the facts admitted are not required to be proved"

65. The Hon'ble Apex Court recorded that in line with Order VIII Rules 3 & 5 CPC, it is the bounded duty of the Respondent to deal specifically with each allegation of fact of which he does not admit the truth.

66. The Court also relied on Badat and Co. Bombay vs. East India Trading Co., (1964 SCC 538). where the Hon'ble Supreme Court, while referring to Order VIII Rules 3 & 5 opined that the said Rules formed an integrated code dealing with the manner in which pleadings are to be dealt with. Relevant para is extracted hereunder:

"These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written statement must deal with specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being, no other proof is necessary."

67. The Hon'ble Supreme Court in *Lohia Properties (P) Ltd. Tinsukia. Dibrugarh As Atmaram Kumar* ((1993) 4 SCC 67, also held as matter

"What is stated in the above it, what amounts to admitting a fact on pleading while Rule 3 of Order VIII requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth Rule 3 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule states, is, that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted"

68. Although the provisions of the Code of Civil Procedure (CPC) may not be directly applicable, the Respondent is nonetheless obligated, under the fundamental principles of legal procedure, to either admit or deny the fact of having obtained consent from two-thirds of the allottees prior to submitting the revised plan.

69. In light of the above-quoted law of the Hon'ble Supreme Court, it can be reasonably established that the Respondent herein had the bounded duty to avert to each and every allegation, more specifically the allegation in relation to taking consent of two-third of the allottees before obtaining such sanctioned plan. Since the Respondent has failed to avert to the said specific allegation, it is presumed that the Respondent has admitted the allegation. Nothing prevented the Respondent to produce a detailed and comprehensive reply towards the said allegation and therefore, mere evasive denial cannot be taken into consideration.

70. Therefore, the Respondent is liable for violation of Section 14(2) by not taking two-third consent from the allottees in the project before obtaining revised sanctioned plan and is liable for penalty under Section 61 for the said violation.

71. However, merely imposing penalty does not mean to regularize the violation of the provision on part of the Respondent. It is a deterrent and it is for all the promoters to strictly comply with the provisions of the act without any deviation to the detriment of the allottees. If it is provided in the Act to do a particular act in a particular manner, it should be done in the said manner only. The promoter has no discretion to conduct the said act at its own whims and fancies. The Hon'ble Supreme Court in OPTO Circuit India Ltd. vs. Axis Bank & Ors. (Criminal Appeal No. 102 of 2021) categorically held that if the statute provides for a thing to be done in a particular manner, it has to be done in that manner alone and in no other manner.

72. This omission on the part of the Respondent also constitutes a clear violation of Section 11 of the Real Estate (Regulation and Development) Act, 2016 (RE(R&D) Act), which stipulates as follows:

11. (1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of [section 5](#), as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of [section 4](#), in all the fields as provided, for public viewing, including—

- (a) details of the registration granted by the Authority;***
- (b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;***
- (c) quarterly up-to-date the list of number of garages booked;***
- (d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;***
- (e) quarterly up-to-date status of the project; and***
- (f) such other information and documents as may be specified by the regulations made by the Authority.***

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

(3) The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:—

- (a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;***

(b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.....

73. As per Section 11(3)(a) of the RE(R&D) Act, it is the promoter's duty to prominently display all sanctioned plans and layout plans approved by the competent authority, making them available to the allottees by displaying them at the site or such other place as may be specified by the Authority's regulations. Accordingly, it is apparent that Respondent 1 failed to provide such information and misrepresented the allottees by not uploading the revised plan vide Permit No. 53653/HO/WZ/Cir-11/2016 dated 25.05.2023

74. In view of the above observations, the Authority also finds that the Respondent has failed to comply with Section 11(1) of the Real Estate (Regulation and Development) Act, which mandates the upload of quarterly updates. Respondent 1 is specifically instructed to diligently upload the project status report on the RERA website, as mandated by Section 11(1) of the Real Estate (Regulation and Development) Act, 2016. This obligation must be fulfilled within one week from the date of receipt of this order. Failure to comply will result in subsequent action being taken by this Authority.

75. To decide the quantum of penalty in the peculiar facts and circumstances of the present case, it is pertinent to note the very act of violation committed on part of the Respondent. A bare perusal of the revised sanctioned plan dated 25.05.2023 makes it clear that the Respondent has built another floor in the club house floor without taking consent from two-third allottees as required under the Act, 2016. Section 11(4)(f) read with Section 17 provides that it is the responsibility of the Respondent to handover the undivided proportionate title in the common areas, including the above-mentioned club house with the additional floor so constructed, to the association of allottees. Therefore, this Authority, deems it fit to impose a penalty payable by the Respondent within 30 days from the date of this Order failing which appropriate action under Section 63 will be initiated. It is reiterated, yet again, that the imposition of this penalty is not intended to

regularize the Respondent's violation. Rather, it serves as a deterrent to discourage similar infractions in the future.

76. The Point b is answered accordingly.

77. For contravention section 11 & 14 of the RE(R&D) Act, the Authority exercising its powers under Section 60 & 61 of the RE(R&D) Act, imposes a penalty on Respondent 1 of Rs. 27,50,00/-. The amount is payable in favor of TGRERA FUND through a Demand Draft or online payment to A/c No. 50100595798191, HDFC Bank, IFSC Code: HDFC0007036, within 30 days of receipt of this Order by the Respondents/Promoter.

78. The Respondent 1 is hereby informed that failure to comply with this Order shall attract Section 63 of the RE(R&D) Act.

79. In the result, the complaint is dismissed. However, having regard to facts and circumstances of the case, the parties shall bear their own costs.

80. If aggrieved by this Order, the parties may approach the Telangana Real Estate Appellate as per Section 44 of the Act, 2016.

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