

**BEFORE THE ADJUDICATING OFFICER,
TELANGANA REAL ESTATE REGULATORY AUTHORITY,
HYDERABAD.**

Dated, this the 8th day of JULY, 2024.

Present:- Sri Syed Lateef-ur Rahman,
Adjudicating Officer.

**Un-numbered I.A.
in
COMPLAINT No.41 of 2021/TG RERA**

Between:

Sri Boyenepally SriJayavardhan S/o Sri B.Sampath Kumar,
Aged: 30 yrs, Occ: Business, R/o H.No.1-10-145/A, Street No.8,
Ashoknagar, Hyderabad 500 020.

...Petitioner/Complainant.

and

- 1) Sri P.Raja Rao S/o late P.Nagabhushanam, aged: 70 yrs,
Occ: Business R/o C-14, Road No.10, Film Nagar, Jubilee
Hills, Hyderabad.
- 2) M/s. Sri Sai Ram Projects Limited, represented by its
Managing Director Sri S.Satyanarayana Reddy, having its
Registered Office at 8-3-678, G-1, Pearl Block, Sri Sai Ram
Manor, Sri Nagar Colony Road, Hyderabad 500045.
- 3) M/s.Vasavi Realtors LLP, represented by its partner Sri Vijay
Kumar Yerram, # 8-2-120/86/9/A/1, 12 and 2/13, First
Floor North End, Anilathmaja Housing Society, Road No.2,
Banjara Hills, Hyderabad 500 034.

...Respondents/Respondents.

This un-numbered interlocutory application came up for hearing on 01.07.2024 in the presence of Sri E.Poornachandra Rao, Counsel for the petitioner/complainant on the point of maintainability; and after hearing the arguments of learned Counsel for the petitioner/Complainant and having stood over for consideration till this day, the following order is passed:

ORDER

This un-registered interlocutory application under Or.39 Rule 1 of Code of Civil Procedure in Complaint No.41 of 2021 filed by the

petitioner/complainant to direct respondent No.3 not to allot, alienate or sell any portion of Project area, advertise or anyway deal with Project area in respect of which GHMC granted building permit order.

2. Admittedly, this petition was filed under Sections 36 and 37 of Real Estate (Regulation and Development) Act, 2016 for said interim direction pending disposal of complaint and it was returned with the following objections:

1. *The present petition filed u/s 36 and 37 of the Act, which speak about powers of the Authority and not Adjudicating Officer.*
2. *Adjudicating Officer has to consider only award of compensation or otherwise. The other powers are vested with the Authority of RERA.*

In view of above objections, return this petition to explain how this petition before Adjudicating Officer is maintainable?

3. Thereafter, the petition was re-submitted with following remarks:

1. *The copies of the photos are already given to the respondents.*
2. *Provision of law is corrected and petition is filed under Or.XXXIX Rule 1 read with Section 151 CPC seeking interim protection.*
3. *Under Section 88 of the RERA Act, 2016, provision of this Act, shall be in addition to, and not derogation of the provisions of any other law for the time being in force.*

4. Later, the petition was called on Bench and heard regarding its maintainability.

5. Since the question of maintainability of petition is in question, it is not necessary to refer the contents in petition. Suffice it to say, the petition can be considered and disposed off on the basis of contentions advanced on behalf of petitioner/complainant during the course of arguments.

6. Now the **POINT** that arises for determination is :

Whether the petition for relief sought is maintainable in a proceedings pending for compensation before the Adjudicating Officer under the Real Estate (Regulation and Development) Act, 2016?

7. POINT:

Before going to decide regarding maintainability of present petition before the Adjudicating Officer in proceedings pending for award of compensation under the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act'), it is just and necessary to refer the reliefs in Complaint in Form (M) vide Complaint No.2 of 2020 filed by the petitioner/complainant before the Authority under the Act, viz., (i) to revoke the registration under Section 7 of the Act granted in favour of Respondent No.3; (ii) To direct the Promoter/Respondent No.3 to enter into an agreement in favour of Complainant in respect of 3055.50 Sq.yards of land; and also in respect of 4944.50 Sq. yards of land, which is made part of real estate project; and (iii) to restrain Respondent No.3 from allotting, selling or advertising or in any way dealing with the project under Section 37 of the Act; and the decision rendered on the points framed therein and final order passed.

8. The Authority vide order in Complaint No.2 of 2020 dt.23.09.2023 held on points framed therein *inter alia* that the petitioner herein, who is complainant in said case, cannot be termed as an "*aggrieved person*" as referred in Section 31 of the Act and as such, he cannot maintain the complaint before the Authority; that the complainant has failed to satisfy the

Authority that respondent No.3 therein has violated the provisions of the Act and the Rules and that the petitioner herein, who is complainant therein, is not entitled for any reliefs claimed. Ultimately, the complaint was dismissed.

9. Admittedly, the petitioner/complainant assailing said order of the Authority in Complaint No.2 of 2020 has filed W.P.No.33433/2023 before the Hon'ble High Court. In this writ petition, the petitioner/complainant has also filed an I.A.No.3 of 2023 under Sec.151 CPC praying to grant stay of further transactions/alienations over the subject matter covered by Registration Certificate Nos.P02500001821 and P02500001819, dated: 20.03.2020 issued by RERA Authority in any manner pending disposal of writ petition. Hon'ble High Court after hearing both parties has passed order in said I.A., dt.04.02.2024 that any alienation made during pendency of writ petition shall be subject to outcome of the writ petition.

10. Learned Counsel for the petitioner/complainant placing reliance on the provisions in Sections 31, 36, 37,40 (2), 72 (d) and 88 of the Act contended that when the Authority has powers as envisaged under the Act, the Adjudicating Officer has also such powers to pass orders in matters pending before him. Learned Counsel submits that in the light of provisions in Section 88 of the Act, Sec.151 CPC comes into play and as such, the Adjudicating Officer has power to pass interim order as sought. According to learned Counsel, once after enquiry compensation, which Adjudicating Officer has power to grant, is granted, the petitioner/complainant will not be in a position to utilize the fruits of the

order by getting the property attached if it is sold, and as such the interim order as sought can be passed by the Adjudicating Officer. Therefore, learned Counsel submits that the petition is maintainable and it may be numbered.

11. This Authority has given serious thought to the submissions advanced and has gone through the provisions of the Act referred by the learned Counsel and also the other provisions of the Act and Rules.

12. In a relevant decision in ***“M/s.Newtech Promoters and Developers Pvt.Ltd v State of UP and others etc (Civil Appeal NO.(s) 6745-6749 of 2021), Hon’ble Supreme Court, while answering the question whether the Authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the Adjudicating Officer under Section 71 of the Act, held in Para 86 as under:***

“From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 13, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend

to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act, 2016.”

13. At the outset, it is pertinent to mention that the law makers while enacting the law have envisaged the powers of the Authorities under the Act. While doing so, the provisions have been made specifically at more than one place regarding powers of the Authority and Appellate Tribunal. Sections 36 and 37 of the Act lay down the powers of the Authority to pass interim orders and directions, whereas Sections 59 to 63, 65 and 67 of the Act speak about powers of the Authority to impose penalties and Sections 64, 66 and 68 of the Act envisage powers of Appellate Tribunal to impose penalties. When such are the specific provisions in the Act and the power of Adjudicating Officer is restricted only to the extent of enquiry regarding award of compensation and its grant or otherwise, I am unable to see any force in the said contentions advanced on behalf of the petitioner/complainant, especially when the prayer in present petition is under Or.39 R1 CPC for an order restraining respondent No.3 from allotting or alienating the subject matter etc.

14(a). Learned Counsel next contended that Section 13 (3B) of Consumer Protection Act, 1986 lays down that during pendency of any proceedings before the District Forum, the Forum, may, if it appears necessary, pass such interim order as is just and proper in the facts and circumstances of the case. Learned Counsel then referring to proviso in sub-section (1) of Section 71 of the Act read with said Section 13 (3B) of Consumers Protection Act submits that the Adjudicating Officer has also powers to pass interim

orders as sought. As such, learned Counsel submits that the petition is maintainable.

14(b). Admittedly, Sections 36 and 37 of the Act deal with powers of passing interim orders and directions by the Authority under the Act. Under these sections, such power vests only with the Authority. Authority is defined u/s 2(i) of the Act, which says that '*Authority*' means the Real Estate Regulatory Authority established under sub-section (1) of section 20.

14©. A reading of Section 20 of the Act shows that the appropriate Government shall establish an Authority as Real Estate Regulatory Authority to exercise powers conferred on it and to perform the functions assigned to it under the Act. Section 21 of the Act envisages that the Authority shall consist of a Chairperson and not less than two whole time members to be appointed by the Government.

14(d). On a combined reading of definition of Authority u/s 2 (i) and provisions of Sections 20 and 21 coupled with the provisions of Sections 36 and 37 of the Act, I am of the considered view that the said contention of learned Counsel that the Adjudicating Officer has also powers to pass interim order as sought is devoid of merits and any power, if exercised, by the Adjudicating Officer, as submitted by the learned Counsel in my considered view would amount to usurping the powers of the Authority by the Adjudicating Officer. Therefore, there is no force in the said contention on behalf of the petitioner.

15. Further, when the petitioner/complainant has sought order, as sought in present petition, before the Authority in said main Complaint No.2/2020 and when the Authority has dismissed said main Complaint No.2 of 2020, and when such matter is ceased by the Hon'ble High Court in appeal in Writ Petition No.33433/2023 by way of challenging the order of the Authority in said Complaint No.2/2020, especially when similar order as claimed in present petition was again claimed in I.A.No.3 of 2023 in W.P.No.33433/2023 under Section 151 CPC before Hon'ble High Court and Hon'ble Court passed said order, it has to be held without any stretch of imagination that the present petition again before the Adjudicating Officer is not maintainable.

16. For all the foregoing reasons, the conclusion that emerges is that the contentions advanced on behalf of petitioner/complainant on the question of maintainability of present petition before the Adjudicating Officer do not hold any water and are not tenable. Accordingly, the petition is liable to be rejected as not maintainable before numbering.

17. In the result, the petition is rejected. No costs.

Typed to my dictation, corrected and pronounced by me in open Court on this, the 8th day of JULY, 2024.

ADJUDICATING OFFICER.
TG RERA: HYDERABAD.

APPENDIX OF EVIDENCE
NIL

ADJUDICATING OFFICER.
TG RERA: HYDERABAD.

