

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

COMPLAINT NO.784 OF 2022

15th Day of November, 2023

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

Sri Jai Kumar Tawarani ...Complainant

Versus

M/s Western Constructions ...Respondent

The present matter filed by the Complainant herein came up for hearing on 27.09.2023 and subsequently on 31.10.2023 before this Authority in the presence of Complainant present in person Along with counsel Nikunj Dugar, and counsel Sai Teja appeared on behalf of the Respondent and upon hearing the arguments of both the parties, 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. Facts of the Complaint:

3. The facts of the case, in brief, are that, the complainant is one of the legal heirs of the late Sri. Vasudev Khemchand, who passed away on 27-04-

1998. Sri. Vasudev Khemchand was the owner of vast extents of agricultural land in Sy. No 335, 336, 338, 340, 341, 342, and 345 situated at Puppalaguda village, Rajender Nagar Mandal (now Gandipet Mandal), Ranga Reddy District. Sri Vasudev Khemchand was a displaced person who migrated to India from Pakistan during the partition. The lands in the aforementioned survey numbers, including the land measuring Acre 11-27 guntas in Sy. No. 341 of Puppalaguda village (hereinafter referred to as "the suit schedule property"), were declared as evacuee properties and were allotted to him by the competent authority in lieu of land lost by him in the territory of Pakistan, in accordance with the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. A title deed was issued to him on 08.12.1956, and he was inducted into possession.

4. Sri Vasudev Khemchand passed away on 27-04-1998, leaving behind his wife, Smt. Naynid Bai, and his two sons, Sri Hari Kishan Tawrani and Sri Heman Kumar Tawrani. Sri Hari Kishan Tawrani passed away on 29-02-2000, leaving the Complainant as one of his Class - I legal heirs and a successor to his estate. The Complainant, along with his family, became entitled to a 50% share in the subject land apart from other lands.

5. Mr. Mahmood Mohiuddin, one of the Promoter of the Subject Project, approached the Complainant and his family members and offered to mediate for the settlement of civil and criminal disputes pending between the Complainant and his family and Mr. Hemant Kumar Tawrani. Under these circumstances, Mahmood Mohiuddin sought to settle the disputes between the Complainant and his family members and Mr. Hemant Kumar Tawrani under a Memorandum of Understanding (MoU) dated 06/08/2005, whereby the Complainant and his family members paid significant amounts to Mr. Hemant Kumar Tawrani.

6. Mr. Mahmood Mohiuddin also extorted substantial sums of money from the Complainant and his family members through cheques and bank

transfers, claiming a threat to their lives and pressuring them into hasty decisions.

7. Mr. Mahmood Mohiuddin, in collusion with Mr. Hemant Kumar Tawrani, induced the Complainant and his family members to execute an Agreement of Sale cum General Power of Attorney (AGPA) with possession dated 07-03-2006. This AGPA was registered only in 2017 without the knowledge of the Complainant and his family members.

8. The AGPA falsely indicated that the properties covered under the agreement, including the subject property, were sold for a mere sale consideration of Rs. 1,00,00,000/-. In reality, the value of the lands was worth several crores of rupees. Mr. Mahmood Mohiuddin obtained another document, a General Power of Attorney (GPA) dated 07.03.2006, without authority to sell or dispose of the lands, including the scheduled property.

9. In 2003, a suit was filed by Mr. Mohan Singh and others for specific performance of an agreement of sale dated 21-01-1963, allegedly executed by Vasudev Khemchand in favor of Mumla Bai. The suit was instituted in the name of the sole defendant, Vasudev Khemchand, who had already passed away in 1998.

10. Mr. Mohan Singh and others obtained an ex-parte decree against the deceased Vasudev Khemchand, which is considered null and void. Subsequently, they executed sale deeds based on the void decree.

11. On the strength of these sale deeds, several sequential sale deeds, gift deeds, and other documents were created to give the impression of changing hands of the suit schedule property, even though these documents were rooted in the null and void decree. Mr. Mahmood Mohiuddin filed a suit in O.S. No.700/2007 seeking to cancel the judgment and decree dated 07-03-2003 in O.S. No. 68 of 2003, as well as the sale deeds executed in pursuance of that decree. However, this suit was later withdrawn in 2016.

12. After withdrawing the suit, Mr. Mahmood Mohiuddin engaged in the creation of multiple documents and transfer deeds, collusively, to give the appearance of legitimate transactions on the property.

13. The Complainant and his family members have filed a suit in O.S. No. 91 of 2020 challenging these transactions and seeking a declaration of their title.

14. The Respondent has submitted an application before this Authority to approve its Project titled "Western Springs" as a RERA registered project, falsely indicating that there are no pending litigations related to the Project.

15. The Respondent has concealed the fact that there is a suit filed by the Complainant and his family members bearing O.S. No. 91 of 2020, seeking declaration of title and declaring the DGPA dated 04-04-2018 as null and void.

16. The Complainant and his family members have actively contested the suit and filed complaints with the HMDA to revoke the sanction plan and cancel a Simple Mortgage Deed dated 11-10-2021.

B. Relief Sought:

17. The Complainant seeks the following relief:

- i. To revoke the Registration of Project Registration Number: P02400005326;
- ii. To debar the Promoter from accessing the RERA website in relation to the Project Registration Number: P02400005326;
- iii. To specify the name of the Promoter in the list of defaulters and display the photograph of the Authorized Officer and Partners of the Promoter on its website;
- iv. To direct the Promoters of the Respondent to pay 10% of the estimated cost of the project as damages; and
- v. To inform the other Real Estate Regulatory Authorities in other States and Union territories about such revocation of registration.

B. Reply by the Respondent

18. In response to the complaint filed by Mr. Jai Kumar Tawrani the reply filed by the Respondent, Western Constructions Windsor Park LLP are as follow:

- i. The Respondent has acknowledged that an inadvertent mistake occurred in their application for the registration of their real estate project in Sy.No.341 of Poppalguda Village, Gandipet Mandal, Rangareddy District. It was mistakenly stated that there were no pending litigations related to the project, whereas there are indeed certain litigations.
- ii. The Respondent, in their reply, expresses their sincere regret for the oversight and has assured the RERA Authority that they are taking necessary steps to rectify the error in the registration application and are prepared to face any penalties imposed by this Authority.
- iii. The Respondent has also alleged that the Complainant, Mr. Jai Kumar Tawrani, is attempting to take advantage of this lapse while trying to conceal the illegal, mischievous, and malafide actions of himself and his family members in collusion with their previous attorney and associate, Mr. Mahmood Mohiuddin.
- iv. In response to the above, the Respondent argues that the Complaint is false, speculative, and manipulative, and that the Complainant has resorted to suppression and misrepresentation of facts. The Respondent firmly denies all adverse contentions and allegations in the Complaint.
- v. The Respondent further contends that none of the issues raised by the Complainant fall within the jurisdiction of this Authority, and the related matters are sub-judice. They argue that entertaining such speculative applications would defeat the purpose of this Authority and the RERA Act, which could lead to an inundation of civil disputes better suited for adjudication by civil courts.
- vi. The land under scrutiny was originally owned by Smt. Bharatha Lakshmi, who was involved in a series of conveyance transactions.

- vii. Smt. Bharatha Lakshmi initiated a set of transfers by way of gift deeds. Initially, she conveyed an extent of Ac. 0.24 gts to her younger daughter, Smt. K. Samarajya Lakshmi, under a gift deed dated 30.10.2007 bearing document No. 7802 of 2007. Additionally, Ac. 0.30 gts were conveyed to her granddaughter, Smt. K. Tulsi Priya, under a separate gift deed, No. 7803 of 2007. Later, the remaining extent of Ac. 0.16 gts was transferred to her grandson, Kandyala Palani Karthik, under a gift deed dated 28.10.2016 with document No. 7129 of 2016. All these donees were duly inducted into possession of their respective gifted extents by Smt. Bharatha Lakshmi.
- viii. Sri Yelamanchili Ravinder Kumar, who owned Ac. 0.20 gts, opted to sell his entitlement. Accordingly, he entered into a sale deed dated 02.11.2016, documented as No. 7131 of 2016, conveying his interest to K.B. Narayan Raju and Smt. K. Jyothi, who were then duly inducted into possession of the same.
- ix. Sri P. Gangi Reddy, another landowner with an entitlement of Ac. 2.13 gts, opted for separate gift deeds. He conveyed Ac. 0.20 gts each to his grandchildren, Neha Sura and Nihal Sura, and Ac. 0.33 gts to his daughter, Smt. P. Usha Reddy, through registered gift deeds. The respective document numbers were 957 of 2011 dated 15.03.2011, 2104 of 2011 dated 20.07.2011, and 5108 of 2014 dated 18.10.2014. Following these transactions, the recipients were inducted into possession of the extents gifted to them, while Sri P. Gangi Reddy retained the remaining extent of Ac. 0.20 gts.
- x. Smt. P. Saraswathi, the wife of Sri P. Gangi Reddy and a co-owner, also engaged in a similar set of transactions. She conveyed Ac. 0.20 gts each to her above-named grandchildren and Ac. 0.33 gts to her above-named daughter through registered gift deeds. The document numbers were 958 of 2011 dated 15.03.2011, 2105 of 2011 dated 20.07.2011, and 5107 of 2014 dated 18.10.2014. Like her fellow co-owners, Smt. P. Saraswathi retained Ac. 0.20 gts after these transactions.
- xi. Subsequently, several landowners, namely Sri Sarath Sura, Sri P. Gangi Reddy, Smt. K. Samarajya Lakshmi, Smt. P. Saraswathi, Smt. Chereddy

Venkata Surya Sashikala, and others, collectively sold and conveyed an extent of Ac. 3.02 gts from their respective entitlements in Sy. No. 341 to M/s. Western Constructions under registered sale deeds. These sale deeds were documented as Nos. 3119 of 2018, 3120 of 2018, 3121 of 2018, and 3229 of 2018, all dated between 03.04.2018 and 04.04.2018.

- xii. To facilitate the development of the entire land in Sy. No. 341, the landowners and M/s. Western Constructions entrusted the project to M/s. Western Constructions Windsor Park LLP (formerly known as M/s. Ektha Western Windsor Park LLP) under a registered Development Agreement-cum-GPA dated 04.04.2018 with document No. 3230 of 2018. Notably, Mohammed Mohiuddin, who was involved in the ongoing dispute, also became one of the signatories to this agreement.
- xiii. The respondent raises the issue of a civil suit initiated by Mohammed Mohiuddin, who represented himself as well as his above-named principals, i.e., Meena Hari Kishan Tawrani, Jai Kumar Hari Kishan Tawrani (complainant herein), Savitha Hari Kishan Tawrani, and Jyothi Hari Kishan Tawarani. This suit was directed towards specific performance of an alleged agreement of sale dated 25.03.2006, said to have been executed by Mohammed Mohiuddin as the attorney of his said principals under an alleged AGPA document. The complainant is one of the main parties to this suit.
- xiv. Despite the settlement and previous legal actions, Mohammad Mohiuddin continued with illegal activities with the intention of extracting more benefits. Legal actions were initiated against him and his Principals in response.
- xv. The Complainant's family, being aware of Mohammad Mohiuddin's activities, cancelled the General Power of Attorney given to him in March 2020. However, their previous actions and commitments through their attorney are binding.
- xvi. The Complainant and their family members are attempting to use the present complaint to harass and extort money from the Respondents and their project. Respondent contend that this is an attempt to defame the project and exploit a lapse due to ignorance.

- xvii. Further, emphasize that unless there is a restraining order from a competent court, this Authority has the power to register a project irrespective of pending litigation. The complaint's intention appears to be an abuse of the system.
- xviii. Finally, the Respondent requests that the complaint be rejected in its entirety.

C. Hearing Conducted:

19. The relief sought pertains to the revocation of the registration granted to the Respondent for the project under section 7 of the RE (R&D) Act, 2016. This Authority has previously considered this matter and was of the preliminary opinion that the present complainant is not maintainable. During the Hearing the Learned counsels for the Complainant and Respondent reiterated the allegations made in the written submissions made to this Authority. However, the Counsel for the Complainant failed to provide any form of evidence or information that would satisfy the criteria for classification as an “aggrieved person” as stipulated in the RE(R&D) 2016 Act. This determination is based on the fact that the complainant does not fall into any of the specified categories, which include being an allottee, an association of allottees, or a voluntary association. Consequently, the Complainant does not meet the definition of an aggrieved person as defined in Section 31 of the RERD Act. Section 31 is reproduced below:

31. (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation. —For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

20. Further, the Complainant agreed that the said complaint maybe is a civil dispute as it pertains to the ownership dispute which is not within the

purview of this Authority's jurisdiction. But the second issue raised by them is with regard that the promoter/developer deliberately did not disclose about the pending litigations in the RERA application/Form B, relying on the title report and Form B affidavit declaration dated 04.10.2022 there are many third party rights being established. The Respondent have deliberately suppressed this information from RERA authority and also Allottees and is a clear case of misrepresentation and is in violation of section 4(2)(1)(b) of the RE(R&D) Act .

D. Observation of this Authority:

21. The observations and findings of this Authority so far as relief(a) in the complaint filed by the Complainant is concerned, though the sub section of 1 of section 7 of the Act stipulates the revocation of Registration in certain circumstances, the Authority observes that as the title dispute is yet pending before the Competent court and revocation under section 7 of the RERD Act, 2016 may be inappropriate at this stage, the authority will not be getting into the merits of the title dispute of the present project, and in cases of such disputes, the complainants first shall seek recourse with the the civil court. It is not denied that the disputed matter is already pending before the competent authority between the present complainants and the Respondent. Therefore, if the complainants perceive any form of illegal activity on the part of the Respondent regarding their right to develop the Real Estate project, they can seek redress from the Civil Court or the Appropriate Authority. This Authority cannot grant the relief in the present Complaint.

22. However, this Authority most significantly observes that the Form B and original RERA Application filed before TS RERA incorrectly stated that there are no pendency of litigation cases over the said property which is a direct violation **of section 4(2)(1)(b) of the RE(R&D) Act and Rule 14 (1) (d) of TS RE (R&D) Rules.**

Direction of Authority

23. In view of the observations and discussion made above, this Authority hereby passes order as under and issues the following direction under section 37 and 38 of RE(R&D) Act.

- i. The Respondent is directed to pay Rs. 11, 54,000/- as penalty under section 60&61 of the Act. The penalty is being imposed for furnishing incorrect information in the application to TS RERA and Form B dated 04.10.2022 stating that there is no pendency of litigations over the subject project, payable in favour of TS RERA FUNDS through Demand Draft or online payment to A/c No.50100595798191, HDFC Bank, IFSC Code: HDFC0007036 within a period of 30 days from the date of receipt of this order.

24. Given the ongoing civil litigation and the nature of the dispute, this authority is of the view that it lacks jurisdiction to adjudicate the matter at this stage. The complainant's claims are intertwined with the civil proceedings, and it is only appropriate for the civil court to decide on the ownership and possession of the property.

25. If aggrieved by this Order, the parties may approach the TS Real Estate Appellate Tribunal (vide G.O Ms.no.8, dt 11.01.2018, the Telangana State Value Added Tax Appellate Tribunal has been designated as TS Real Estate Appellate Tribunal to manage the affairs under the Act till the regular Tribunal is established) within 60 days from the receipt of this Order.

Sd/-
Sri. K. Srinivas Rao,
Hon'ble Member
TS RERA

Sd/-
Sri. Laxmi NaryanaJannu,
Hon'ble Member
TS RERA

Sd/-
Dr. N. Satyanarayana, IAS (Retd.),
Hon'ble Chairperson
TS RERA