

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

COMPLAINT NO.66 OF 2024

12th Day of March 2025

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

Vazhraa Prathik Flat Owners Co-Op. Maintenance Society
Represented by its Managing Committee,
President, Sri P. Naresh Kumar Reddy,
Secretary, Sri P. Bharadwaj, and
Treasurer, Sri Sanjiva Rao Arava

...Complainant

Versus

M/s Vazhraa Nirmaan Pvt. Ltd.
Represented through its Joint MD,
Sri M. Srinivasa Rao

...Respondent

This present complaint is coming on this day i.e., on 29.11.2024 before this Authority in the presence of Sri Praveen Kumar Challa and Sri Mohan Dhvaj Yadav, Counsel for Complainant Society, and Sri Unnam Ravi and Sri Unnam Sravan Kumar, Counsel for Respondent Company, and upon hearing the arguments, this Authority passes the following;

-.:ORDER:-

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

Brief facts of the case of the complaint as per the allegations contained in the complaint are as follows:

3. That the members of the Complainant Society are the flat owners of Vazhraa Prathik Apartments situated at Nizampet Village, Bachupally Mandal, Medchal-Malkajgiri District-90. That the Respondent herein started construction of Vazhraa Prathik apartments having been obtained permission from the HMDA for the development of residential flats. At the time of sales of flats the Respondent assured the that amenities block will be provided to residents of 8 blocks of an extent of 60,000/- Sq.Ft towards consisting of G+ 4 floors), (2) at the time of obtaining permission the Respondent assured that the ground floor in club house is for super market, 1st floor is meant for local commercial and 2nd floor is meant for guest rooms for the Society and 3rd & 4th Floors are meant for function hall, gym and yoga for the Society members. The Complainant further submitted that contrary to the said permission the Respondent herein has separated the amenities block from the Society by constructing a compound wall on the southern side of the amenities block thereby prohibiting the entry of the members of the Complainant Society into ground, 1st and 2nd floor of club house / amenities block. The Respondent herein removed the greenery before the amenities block, and it has been kept open to the public.

4. The Complainant submitted that as per the advertisement and project permission, the Respondent has to provide 60,000/- sq.ft. built up area for the club house / amenities which is to be exclusively for the society members. But the respondent herein by prohibiting the entry of members to the ground floor, 1st floor and 2nd floor completely violated the project norms and moreover now the Respondent is making attempts to sell away the ground, 1st floor and 2nd floor to third parties. The Complainant Society accordingly submitted that it is just and necessary to remove the wall separating the club house from the members of the Complainant Society and construct the compound wall around the club house as the same to be accessed exclusively by the society members and prohibit the Respondent from creating the third party interest over the amenities block area of ground floor, 1 floor & 2nd floor as the entire area is exclusively meant for the enjoyment of the flat owners/members of the Complainant Society.

5. That the Respondent did not provide the Solar Lighting and Solar Water Heating System. The Respondent constructed the 6 Blocks and almost majority families occupied the flats. That each block is consisting of G + 14 Floors. As such

this is high rise building and as per G.O.Ms.No.168 MA & UD Dated 07.04.2012 it is mandate for the developer to provide solar lighting and solar water heating system. But whereas the Respondent herein even after completion of majority portion of the development did not initiate any step for providing solar lighting and solar water heating. Hence, the complainant seeking the following reliefs:-

Reliefs Sought:

6. The Complainant Society sought for the following relief(s):
 - i. *Construct the compound wall around the club house / amenities block and lay the greenery in front of the club house*
 - ii. *The Club house / amenities block to be restricted for the enjoyment of members of the Complainant Society only.*
 - iii. *Remove the wall prohibiting the entry of members of the Complainant Society in to the ground, 1st and 2nd floor of club house/ amenities block*
 - iv. *To take necessary step for installation of Solar Lighting and Solar Water Heating System in the project.*

The Respondent has filed counter on its behalf and contested the complaint:

7. In the Counter affidavit, the Respondent submitted that the Complainant Society has suppressed actual true facts before this Authority, especially with regard to the title of the Ground, First & Second Floors of the Amenities Block. There is no violation of any of the provisions of the Act, or Rules. It was submitted that the Complainant is seeking a direction from this Authority in the nature of a 'declaratory' relief on ownership which is beyond the jurisdiction of this Authority under Section 31. Nothing in the entire Complaint elucidates any specific violation of any of the provisions of the Act or the Rules. Deciding upon the ownership / title of an immovable property is admittedly beyond the scope and jurisdiction of this Authority.

8. The Respondent submitted that every member of the Complainant Society, who are the Flat Owners in Blocks A, B & C of the ongoing project of 'Vazhraa Prathik' have acknowledged contractually, in-writing, by way of the offer document (Brochure), Agreement of Sale and the consequential Sale Deed that the ownership of Ground + 1st + 2nd Floors did not get vested with the Flat Owners and that the Promoter / Builder and the Landowners have exclusive ownership of the same. And now, in breach of the terms of the Agreement of Sale and the consequential Sale Deed, the Flat Owners are espousing a false narrative and seeking a declaration of

ownership of the Ground + 1st + 2nd Floors of the Amenities Block unto their Society. The same is barred under doctrine of promissory estoppel.

9. Regarding the Contractual Terms in Agreement of Sale & Sale Deeds:

Clause 31 of the Agreement of Sale is thus:

31. Club House (Amenities Block): Ground/ Stilt Floor (excluding common areas such as ramp and pool area), First Floor and Second Floor area along with proportionate common areas, car parking spaces shall be exclusive property of the Developers. In case of third floor and fourth floors, the built-up area along with the proportionate common areas, car parking spaces will be transferred to the Association with ownership rights.

32. The maintenance of the club house and swimming pool shall be taken care by the Association only. The developers or its nominees, tenants will pay the maintenance charges for Ground / Stilt Floor (excluding common areas such as ramp and pool area), First Floor and Second Floor in proportionate to their usage of the common facilities and services as per SFT basis to the Association. The association, members of association or residents of Vazhraa Prathik on their part will allow access to common public other than the residents of Vazhraa Prathik, to the common facilities / amenities provided in the Ground / Stilt Floor (excluding common areas such as ramp and pool area), First Floor and Second Floor. The parking for such common public is provided in open space in front of the Amenities Block (South & East sides).

Clauses 'j' & 'k' of the Sale Deed is thus:

j. Club House (Amenities Block): Ground / Stilt Floor (excluding common areas such as pool area), First Floor (above the stilt floor) and Second Floor area along with the proportionate common areas and car parkings, shall be exclusive property of the Developers. In case of Third Floor and Fourth Floor, the built-up area along with the proportional common areas and car parkings will be transferred to the Association with ownership rights.

k. The maintenance of the Club House and Swimming Pool shall be taken care by the association only. The Developer or its nominees, tenants will pay the maintenance charges for Ground / Stilt Floor (excluding common areas such as pool area), First Floor and Second Floor in proportionate to

their usage of the common facilities and services on per SFT basis to the Association. The Association, members of the Association or residents of Vazhraa Prathik on their part will allow access to the common public, other than the residents of Vazhraa Prathik, to the common facilities / amenities provided in the Ground/Stilt Floor (excluding common areas such as pool area), First Floor and Second Floor, The parking for such common public is provided in open space in front of the Amenities Block (South & East sides).

10. The Respondent submitted that a bare reading of the above contractual terms in the Sale Deed unequivocally establishes that the very allegation made by the Complainant Society regarding the Amenities Block is false and incorrect. Further, regarding the visual representations in the Brochures / Advertisements regarding the Amenities Block, the Respondent submitted that in all of the visual representations of the proposed project, especially in the brochures / advertisement, which can be construed to be an offer document along with the 'Agreement of Sales', categorically and unequivocally represent that the Amenities Block can be accessed from the Public Road. Therefore, there is no misrepresentation or false statement made by the Promoter.

11. Regarding the ownership and share of the Flat Owners / Members of the Complainant Society in the undivided share of land proportionate to the exclusive ownership of the Promoter & Landowners in Ground, First & Second Floors of the Amenities Block, the Respondent submitted that as per Section 17, the Promoter shall execute a 'conveyance deed' in favor of the Allottee(s) along with the undivided proportionate share of title in the common areas to the association of the allottees. The total built-up area of the Amenities Block is 65,949 Sq. Feet as per the sanctioned plan. This area is not taken into consideration by the Promoter while calculating the common areas for the entire project for Blocks A to H. The calculation of the actual common areas being included into the saleable area by the Promoter in Blocks A to H is as follows –

- Total Saleable Area = 15,71,720 Sq. Feet [A]
- Total Plinth Area = 12,41,521 Sq. Feet [B]

12. Therefore, Common Areas being in the Saleable area in the entire project = [A] [B] = 15,71,720 (minus) 12,41,521 = 3,30,199 Sq. Feet. However, in actuals, the

Common Areas in the entire project, excluding the Amenities Block area is 3,66,328 Sq. Feet, which is being conveyed to all the Flat Purchasers in their respective sale deeds. Therefore, in total, the Flat Purchasers in Vazhraa Prathik (Blocks A to H) are benefitted by an extent of more than 36,129 Sq. Feet of common area, for which the Promoter did not charge the customer as it is not included in the saleable area.

13. The Respondent submitted that in addition to the same, out of the total area of 65,949 Sq. Feet of built-up area in the Amenities Block, an extent of 30,870 Sq. Feet will be conveyed exclusively to the Society after the completion of the entire project including the ongoing construction of Blocks E, F, G & H, for the common exclusive usage and enjoyment of the members / flat purchasers. That, the remaining area of 35,079 Sq. Feet in the Amenities Block belongs exclusively to the ownership of the Promoter and Landowners. This built-up area of 35,079 Sq. Feet on the Ground, First & Second Floors of the Amenities Block admeasuring "35,079 Sq. Feet" is owned exclusively by the Promoter and the Landowners, which are not merged into the common areas of the Project for the entire Blocks A to H.

14. Regarding usage of Amenities Block and removal of the wall to access the Ground Floor directly by the Residents, the Respondent submitted that the instant project 'Vazhraa Prathik' is a gated community comprising of Blocks - A, B, C, D, E, F, G & H along with Amenities Block. According to the settled law amenities are commercially saleable by the Developer and the Landowners. They do not form part of the common areas as per the municipal laws and building rules. But in order to have a value addition to the Apartments in the instant project and also to secure a proper sale consideration, the Promoter had partially allocated the Ground Floor of the Amenities Block for a swimming pool with entrance lobby, 3rd Floor for Function hall with 2 guest rooms, 4th Floor for a Gym, Yoga Room, Indoor Games, Library cum Reading Room. All the above facilities and floors have an entry from inside the gated community itself and are for the exclusive use of the members of Vazhraa Prathik Apartments. As part of their 'contractual consensus' (Sale Deed), the Developer / Promoter and the purchasers of the Flats (members of the Complainant Society) agreed to the above arrangement which is evident from a bare reading of the recitals of each and every Sale Deed executed with each and every individual purchaser. Therefore, the Respondent submitted that, the Complainant Society, which is primarily incorporated for the sole purpose of maintenance of the common areas and other features of the project, cannot make this type of false complaints

contrary to the binding terms and conditions of the Sale Deeds executed by each of its members.

15. It was submitted that the separation wall on the southwest corner of the Supermarket being run on the Ground Floor of the Amenities Block was built to avoid outside customers of the supermarket from entering into the gated community by bypassing the main gate security. Therefore, this measure cannot be construed to be a deviation. In addition to that, the allegation that the residents have to go out of the main gate and enter into the supermarket is incorrect and false. If the sanctioned plan is perused, this allegation would be rejected at the threshold. From the northeast corner of the Amenities Block, the residents can enter into the supermarket by coming to the southeast corner, without having to go out of the main gate. Therefore, the allegation that the separation wall is a hindrance for them is totally incorrect and false.

16. It was submitted that as per the said contractual terms enshrined in all of the Agreement of Sales and the Sale Deeds, the planning of the entire project is done in such a manner that the Amenities Block is built in 5 floors and was separately planned on the South-East corner of the entire project so as to enable the Landowners and the Developer to either retain the commercial areas in the amenities block or to sell it to any third parties, who can use that commercial area as per the designated use in the permission plan. This Amenities Block has direct access to the South main public road. If such an access from the main road is not allowed, the commercial viability of the above said commercial property would be diminished and the same would not be feasible. Without commercial feasibility no business will be set up. All the members of the Complainant Society, agreed to the above said arrangement and purchased their respective Flats.

17. The Respondent further submitted that the Promoter applied for a Revised Plan under Section 23(1) of the HMDA Act, 2008, by way of an Application vide File No.012799/BP/HMDA/2855/MED/2023 (Rev) Dt.17/11/2023, by paying the requisite fees. Therefore, this small separation wall which has been in existence for the past 2 years cannot be construed to be an un-authorized development nor can it be considered to be a deviation or a violation of any of the provisions of the RERA Act or the Rules. The small separation wall cannot be construed to be endangering to human life as per the mandate of law under Section 178(7) of the Telangana

Municipalities Act, 2019. This has no bearing on any of the setbacks or ventilation aspects of the gated community. This is only a curable deviation under Section 23 of the HMDA Act, 2008 and therefore the revised permission which is already applied by the promoter is pending consideration as on date.

18. The Respondent also submitted that regarding the access to the facilities on the Ground, First & Second Floors of the Amenities Block belonging exclusively to the Promoter and the Landowners, the residents of Vazhraa Prathik project can unabatedly access and use the facilities / services being rendered on the Ground, First & Second Floors. That currently, there is a Supermarket, Hair Cutting Salon, a Dental Clinic and Laundry Services on the Ground, First & Second Floors, that are commercially operating their businesses in the Amenities Block. The residents of Vazhraa Prathik (Blocks A to D and future Blocks E to H) can use these facilities / services. The remaining Floors i.e., Swimming Pool with Entrance Lobby on the Ground Floor and the entire Third & Fourth Floors can be exclusively used by the residents of Vazhraa Prathik project. Therefore, the requirement under G.O.Ms.168 Dt.28/04/2012 regarding the provision of common amenities and facilities under Rule 15 is duly complied, in-fact in excess. The Complainant Society is trying to claim 'exclusivity' on all the common amenities and facilities by misinterpreting the relevant rules, which is impermissible.

19. Regarding the suppression of various facts by the Complainant Society, the Respondent submitted that the project 'Vazhraa Prathik' is an ongoing project and as of now, Blocks A, B, C & D are completed, and the Occupancy Certificates are also obtained for these blocks. The construction of Blocks E & F is ongoing as on date and the permission is already applied for Blocks G & H. These above facts about the stage / progress of the project are deliberately suppressed by the Complainant Society.

20. Regarding the non-filing of any resolution or authorization to file the present complaint, the Respondent submitted that the Complainant Society cannot espouse the present complaint on behalf of the entire residents / flat purchasers of Blocks A, B & C, without there being any 'Specific Resolution' to that effect from all of its members. The fact that the instant Complaint is not accompanied either by the bylaws of the Society, or a Resolution empowering the Executive Committee of the

Society to espouse the present frivolous cause, establishes that the present complaint is misguided and is filed for extraneous reasons.

Additional Counter filed on behalf of the Respondent

21. By way of an additional affidavit, the Respondent submitted that in pursuance of the submission made before this Authority that the Respondent had submitted an application for revision and for permission for Blocks G & H on 17/11/2023 and is bona fide pursuing its applications before the HMDA Authority and the same are under consideration. When some shortfalls were pointed out, the same are also duly rectified / complied on 15/07/2024. Solely due to the harassment of a few avaricious members of the Complainant Society, the same are also being stalled, including the permissions for Blocks G & H of the Project. Further, that the entire compliances for obtaining the permission / revision from HMDA are duly complied by the Respondent Company and they are only awaiting the release of the Letter.

22. Further, that as per Section 31, an aggrieved person may file a complaint before this Authority for 'any violation or contravention of the provisions of this Act or rules and regulations made thereunder against any Promoter'. Nothing in the entire Complaint, elucidates any specific violation of any of the provisions of the Act or the Rules. Deciding upon the ownership / title of an immovable property is admittedly beyond the scope and jurisdiction of this Authority.

Hearing conducted:

In the written arguments filed by the Ld. Counsel on behalf of the Complainant, it is submitted that:-

23. That the Respondent herein completed construction of 4 blocks of the Project and also obtained occupancy certificate and received total sale consideration from the members of the Complainant Society and formed the society and handed over maintenance to the society. That, however, the Respondent failed to execute the conveyance deed in favour of association in respect to undivided proportionate title in the common area in the said project. On the other hand the Respondent contrary to the concept of gated community and also contrary to the sanctioned plans demolished the wall in front of the amenities block and raised wall between Block C and amenities block prohibiting the access to the allottees and also made attempts to sell the common areas to third parties and more over the Respondent did not

adhere to follow the guidelines of G.O.Ms.No.168 MA & UD Dated 07-04-2012 in providing the solar lighting and solar water heating system in the project till today.

24. It was further submitted that any part of the land on which project is developed by the promoter shall be the project land in the said real estate project. That in fact, the promoter under the guise of contract cannot claim any exclusive property over any exclusive right over the common area and he cannot act beyond the provisions of the act. That the areas claiming exclusive right by the promoter are the common areas. As per Section 2(n) of the act defines "common areas" *as the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase including all other portions of the project necessary or convenient for its maintenance, safety, etc., and in common use.* The Respondent's claim to exclusive rights over any part of the common areas is therefore legally untenable. The alterations made by the Respondent, such as demolishing the wall in front of the amenities block and constructing a new wall between Block C and the amenities block, are further violations of the provisions governing common areas.

25. In support of their contention, they have relied upon the judgment of the Hon'ble High Court of Orissa in W.P. (C) No. 18799/2021 in *Bimalendu Pradhan Vs. State of Odisha & Others*, wherein the Hon'ble Court observed thus:

"It is, therefore, plain that the Registering Authority is bound to refuse to register an instrument for transfer of immovable property the 'alienation or transfer of which prohibited at any State and Central Act'. With the RERA Act mandating that the transfer of common areas should only be effected in favour of an Association of Apartment Owners, sale deeds presented for registration which contain clauses contrary thereto cannot be allowed to be registered by the IGR. It should not be difficult, therefore, for the IGR to issue instructions that Section 22-A of the Registration Act, 1908, shall be strictly complied with by all the registering authorities in Orissa."

26. They added that this judgment reinforces the legal position that promoters cannot retain or claim exclusive rights over common areas and any sale or transfer of these areas in contravention of the Act, 2016.

27. It was also submitted that the Act, 2016 defines common areas of a real estate project as the entire land of a real estate project along with all the amenities and facilities and requiring the same to be conveyed to the Association of Allottees and handing over physical possession of the same is mandatory on the part of the promoter to comply with the requirement mandated under Section 17 of act by transferring the common areas to the Association. Claiming any exclusive right over the common areas by the promoter is contrary to law as such the said clauses of the agreement of sale and sale deeds highlighted by the Respondent in its counter (as detailed herein above in para Nos.9 & 10) are not having any sanctity before the law. As such the promoter is not vested with any right or power over the enjoyment of common areas and demolishing of the wall before the amenities block and constructing the wall between block C and amenities block is nothing but violation of Section 14 of Act, 2016.

28. It was also submitted that as per the Act, 2016, it is imperative that any clauses incorporated into an agreement of sale adhere to a standardized format prescribed by the regulatory authorities. This standardization serves the purpose of ensuring uniformity, transparency, and fairness between all parties involved whether buyers or sellers. The core intent of the RERA Act is to safeguard the interests of consumers, uphold accountability in the real estate sector, and foster greater confidence in transactions.

29. It was also further submitted as follows:

- a. Compliance with Approved Format: The Act, 2016 mandates that agreements for sale be drafted in accordance with the prescribed standard format, which is designed to ensure consistency and clarity across real estate transactions. This is critical for reducing disputes and protecting the rights of both parties.
- b. Principles of Transparency and Fairness: The primary objective of RERA is to establish transparency and fairness in real estate dealings. Any clause that is inconsistent with the spirit or provisions of the Act such as terms that unduly benefit one party, impose unreasonable burdens on the other, or contravene the buyer's rights will be deemed invalid.
- c. Invalid Clauses: If any clause incorporated into an agreement of sale is found to be in direct contradiction with the objectives or specific

provisions of the RERA Act, such clauses may be legally unenforceable. This serves as a safeguard against exploitation and ensures that developers or sellers cannot impose terms that violate consumer protection standards.

30. It was finally submitted that any clauses in an agreement of sale that deviate from the prescribed standard or contravene the fundamental principles of the RERA Act, such as fairness and transparency, lack legal validity. These clauses cannot be enforced by law, as they undermine the consumer protection mechanisms established under the Act. As such Respondent's assertion of exclusive rights over areas such as the ground/stilt floor, first and second floors, and common areas (including car parking) is untenable under the Act, 2016 as it conflicts with the rights of the allottees and the principle of shared ownership of common areas.

31. It was also submitted that in regard to providing the solar system, as per G.O.Ms.No.168 MA & UD Dated 07-04-2012 it is mandated to provide the same and Respondent cannot simply say that are not mandatory. That as per said GO, Rule 15(b) for high rise building where there are Group Housing Buildings of 100 units and above providing of solar system shall be complied with. However, the Respondent herein under the guise of non-viability appears to have not complied with the said guidelines.

32. It was accordingly prayed to direct the Respondent herein to comply with Section 17 by duly executing the conveyance deed in favour Complainant herein in respect to common areas and construct the walls as per sanctioned plans and follow the guidelines of G.O.Ms.No.168 MA & UD Dated 07-04-2012 in providing the solar lighting and solar water heating system in the project.

In the written arguments submitted on behalf of the Respondent, it is submitted:

33. That a perusal of the reliefs prayed by the Complainant goes to show that the Complainant failed to establish in the complaint as to which promise made by the Respondent was breached. As per Section 31, an aggrieved person may file a complaint for any violation or contravention of the provisions of this Act or rules and regulations made thereunder against any Promoter'. Nothing in the entire Complaint elucidates any specific violation of any of the provisions of the Act or the Rules.

34. That as per GOMS 168 of 2012 [Amendment 15 of GOMS 7 of 2016], it is specifically provided that -

“15(x). In case of Group Housing Buildings where there are 100 units and above, upto 3% of the total built up area (or) 50,000 Sft. whichever is lower shall be planned and developed for common amenities and facilities like convenient shopping, committee hall/ club house, crèche, gymnasium etc. as per National Building code of India (NBC)2005. Amenities block shall not be part of the residential blocks.”

35. It is further submitted that from the perusal of the entire complaint it becomes evident that the sole allegation that has been made against the Respondent is that the builder should provide a built-up area of 60,000 Square Feet for the amenities block. It is humbly submitted that the amenities block that is constructed and completed as per the sanctioned plan of HMDA consist of 65,949 Sq. Feet. Even the 3% of the total built-up area comes to approximately 45000 Sq. Feet, which is also less than what is actually provided by the Developer.

36. That the complaint is made by suppressing the "terms and conditions" that have been expressly agreed between the parties under each and every Agreement of Sale (Clause 31 & 32) and also the registered Sale Deed (Clause 'j' & Clause 'k') executed in favor of each and every flat purchaser.

37. It was submitted that in all the Agreement of Sales of every purchaser, it is categorically covenanted that the "Developer" is entitled for applying for any 'revisions' to the existing Building Plan, including the addition of additional residential blocks in the abutting land. In addition to the same, the Developer has duly obtained "No Objection Certificates" (NOCs) from all the purchasers of Blocks A to D (439 Nos') enabling the Developer to apply for a 'revision' of the existing plan including for the purpose of adding more residential blocks (E,F,G & H) and also reassuring that the amenities block will be available for all the flats owners including such purchasers of the newly added blocks.

38. Based on the above specific consent of all the purchasers of Blocks A to D, the Developer applied for a 'revision' for sanction of Building Permission for Blocks E to

H and as already stated above, got the plan revised in respect of the 'wall' in front of the Amenities Block, which is now approved by the HMDA permitting the Developer to erect the Gates.

39. It is therefore submitted that, the entire construction of the Developer is in accordance with the Sanctioned Plans of HMDA and it is also pertinent to note that the HMDA also inspected the completed construction of Blocks A to E and also the 'Amenities Block' and issued "Occupancy Certificate". The said OC coupled with the sanctioned 'Revision' issued by HMDA, conclusively establishes that the project is constructed in accordance with all applicable regulations and there is no violation, whatsoever.

40. It is also submitted that each Flat Purchaser, who is now a Member of the Complainant Society, had categorically and unequivocally, in clear and unambiguous terms, accepted and acknowledged that -

- a. Ground Floor (excluding common areas such as pool area) + First & Second Floors, along with the proportionate common areas and car parking, shall be exclusive property of the Respondent.
- b. The pool area on the Ground Floor + Third & Fourth Floors shall be transferred / conveyed to the Flat Owners' Association (Complainant Society).
- c. That outsiders / public will have unrestricted access to the Ground Floor (except Pool area) + First & Second Floors of the Amenities Block. In other words, the Amenities Block will have direct access from the South main public road. This is specifically and categorically acknowledged and agreed by each and every Flat Purchaser who is consequentially a member of the Complainant Society. Therefore, the reliefs sought in the present complaint [i.e., to construct a compound wall around the Amenities Block and restrict the access only to the residents of Vazhraa Prathik] are in complete contravention and breach of the agreed terms of contract executed between the parties.
- d. It is further reiterated that the sanctioned plan issued by the HMDA also confirms to the erection of Gates towards the South Main Road. Therefore, if the prayers sought in the present complaint are entertained or allowed, the same would result in violation and breach of the agreed terms of the Agreement of Sales and the Sale Deeds and also violates the sanctioned plan approved by HMDA.

- e. All the members of the Complainant Society, specifically agreed that the Amenities Block shall have a direct access from the South main public road to outsiders / common public as well. This arrangement and consensus was categorically captured and recited in each of the Agreement of Sales and the consequential final Sale Deeds executed by the Promoter and the Landowners in favour of the Flat Purchasers / Members of the Complainant Society. Having done so, expressly, in writing, the members of the Complainant Society do not have any locus to turn volte-face and try to disturb and create loss to the Developer and their purchasers of the commercial spaces in the Amenities Block.
- f. It is further submitted that the "Agreement of Sales" were duly submitted to RERA at the time of the project registration and after the same are duly approved by RERA, the same are uploaded unto the RERA registered project website.

41. It was submitted that the project - 'Vazhraa Prathik' is an ongoing project, and the entire project consists of Blocks A to H along with Amenities Block. This aspect is also duly provided on the RERA Registered Project Website. In fact, the Complaint also briefly states at Para 4(c) that the project consists of Blocks A to H and Amenities Block. However, in the remaining part of the Complaint, it is portrayed as if the Amenities Block is for the exclusive usage of the purchasers of Blocks A to D.

42. It was submitted that a 'revision' is already applied by the Developer to revise the earlier plan of the wall surrounding the Amenities Block. (However, all the pictorial representations of the project in the Brochures, which were provided to the Flat Purchasers in Blocks A to D clearly show direct access to the Amenities Block from the South main public road for outsiders). The 'revision' is already approved by HMDA after following due process, including the invitation of objections for such revisions. The objections raised by the Complainant Society is also considered in detail by HMDA and the same is disposed of vide Proc. No. 1026/MED/PLG/HMDA/2024 Dt.06/11/2024. That the occupancy certificate obtained for Blocks A to D are only partial occupancy certificates, to enable the Flat Purchasers to occupy their respective flats.

43. Regarding other issues such as the Development scheme of the entire project and the permissions, offer documents / brochures, it is submitted that Respondent

is holding Development Agreement cum GPAs executed in respect of a total extent of Ac.8- 25Gts forming part of Sy. Nos. 148 to 155, 157 to 162 & 167 to 171 of Nizampet Village, Bachupally Mandal, Medchal-Malkajgiri District. The Developer is also independently holding an extent of Ac.0-37.35Gts of land as a landowner. This extent of land is combined with the remaining extent of Ac.6-33.65Gts under the aforementioned 12 DAGPAS for the purpose of developing an apartment complex by name "Vazhraa Prathik" consisting of Residential Blocks A to H and an Amenities Block.

44. It was submitted that the DAGPAs had categorically covenanted in clear terms the understanding between the Landowners and the Developer regarding the 'commercial areas' in the 'Amenities Block'. For instance, the attention of this Authority is drawn to Clause 1(f) of the DAGPA Doc. No. 4255 of 2017 Dt.06/05/2017, whereunder it is covenanted as follows -

"1(f) - The developer intends to develop a commercial area in amenities block shown in the legend, which will not fall in the "common areas" by investing its funds. Therefore this commercial portion shall also be shared between the first part and second part in the same lines as a developed space in the same sharing ratio of 36:64. This "commercial portion" can be either sold or leased by the land owners and the developers at their own choice. Whereas the "amenities portion" is for the exclusive use of the residents' association and the amenities portion will provide the common utilities as per HMDA permission and both the parties herein should obey the norms set by HMDA. All the residents are entitled to use the facilities provided in the amenities block."

45. As can be seen from the terms of the DAGPA, the Landowners and the Developer had mutually agreed to demarcate the Amenities block into two categories, i.e., (1) commercial portion and (2) amenities portion. The commercial portion is agreed to be shared between the Landowners and Developer in the same sharing ratio and separate ownership can be claimed over the same by either the Landowner(s) or the Developer. This commercial portion can also be sold or leased by the respective Landowner(s) or Developer. However, the amenities portion shall be for the exclusive usage of the residents of the project. That the residents of the project are entitled to use the facilities provided in the entire amenities block, which includes the commercial portion to which the Landowners or the Developer are the exclusive owners.

46. It was submitted that as per the sanctioned plan, the Developer has constructed the Amenities Block with a super built-up area of 65,949 Sq. Feet, which can be accessed and used by all the residents of the project. That the entire amenities block of 65,949 Sq. Feet is not included in the 'common areas' of the entire project; which means that the Developer did not collect any consideration for the construction of the said Amenities Block from the flat purchasers.

47. It was submitted that by virtue of the said DAGPA, the Developer is unequivocally entitled to obtain the requisite permissions and sanctions from HMDA, and such empowerment granted by the Landowners is still valid and subsisting. That the Landowners and the Developer had a clear consensus to claim exclusive ownership over the 'commercial portion' of the Amenities Block, and all the scanned copies of every DAGPA are duly uploaded / submitted to the RERA Authorities at the time of obtaining the 'Project Registration'.

48. That, in lieu of their absolute ownership over the specified extent of space in the commercial portion of the Amenities Block, the same was alienated by the Landowners' or the Developer through Registered Sale Deeds as under:

- i. The entire Ground Floor admeasuring 11,025 Sq. Feet of the 'commercial portion' in the Amenities Block, is alienated in favour of Mr. M Srinivas Rao & Mrs. M. Sudha vide Regd. Sale Deed Doc. No. 18944 of 2022 Dt.29/06/2022. In the said Sale Deed, it categorically covenanted at clauses 'k' & 'l' that the Third & Fourth Floor of the Amenities Block along with proportionate common areas and car parking shall be transferred to the Residents' Association with ownership rights. It is also covenanted that the maintenance charges are payable to the Association even for the area which is alienated.
- ii. Likewise, an extent of 4750 Sq. Feet on the First Floor of Amenities Block is allocated towards the exclusive share of the Landowners i.e., S. Narsing Rao, G. Vengal Rao, G. Janardhan Rao, G. Neelamma, S. Praveen, D. Raghava Rao & K. Padma Rao under the Regd. DAGPA Doc. No. 4255 of 2017 Dt.06/05/2017.
- iii. Likewise, an extent of 2515 Sq. Feet on the First Floor of Amenities Block is allocated towards the exclusive share of the Landowners i.e., K. Shilpa under the Regd. DAGPA Doc. No. 13301 of 2019 Dt.29/05/2019.

- iv. And an extent of 1480 Sq. Feet on the First Floor of Amenities Block is alienated in favour of M. Sita Devi vide Regd. Sale Deed Doc. No. 10818 of 2023 Dt.27/04/2023 from out of the Developer's share.

49. It is further submitted that the Landowners and the Developer, since the inception of their contractual relation, categorically covenanted and agreed to share the commercial portion of the amenities block to their exclusive ownership. However, the facilities or features that may come up in such commercial areas, can be utilized by the residents of the project as well.

50. It was added that these documents i.e., the DAGPAs are duly uploaded / submitted to RERA for the purpose of obtaining the Project Registration and the same are publicly available for every customer to review and understand the arrangement between the Landowners and the Developer in regard to the Amenities Block. These DAGPAs in addition to the 'Agreement of Sale' which are also approved by RERA form part of the publicly available documents in respect of the instant project on the RERA Registered Project Website, which are specifically made available for the customers to review and understand the terms and conditions of their proposed purchase.

51. It was submitted that each-and-every 'Agreement of Sale' executed in favour of the Flat Purchasers, including the current members of the Complainant Association, categorically covenant in clear terms that the Ground / Stilt Floor (excluding common areas such as ramp and pool area), First Floor and Second Floor area along with proportionate common areas, car parking spaces shall be exclusive property of the Developers. That it was also specifically agreed in the Agreements of Sale that the association on their part will allow access to common public, other than the residents of Vazhraa Prathik, to the common facilities / amenities provided in the Ground / Stilt Floor (excluding common areas such as ramp and pool area). First Floor and Second Floor. The parking for such common public is provided in open space in front of the Amenities Block (South & East sides). That therefore, in such clear terms the members of the Complainant Association have categorically agreed to allowing the public (other than the residents of the project) to access the commercial portion of the Amenities Block. In addition to the same, the members / flat purchasers, in clear terms have accepted to providing the parking for such public in the open space in-front of the Amenities Block.

52. It is also submitted that this is an express and clear consent for ensuring that the outside public can directly access the commercial portion of the amenities block and also use the space in-front of the Amenities Block for parking. That however, as the previous sanctioned plan, which showed a wall in-front of the Amenities Block was sought to be revised by the Developer by making an application for 'revision' before the HMDA. The same is now sanctioned and a 'Fee-intimation Letter' along with a 'Draft' of the 'Building Permit Order' (which includes the new permission for Blocks G & H) is issued by HMDA vide Application No. 007737/BP/HMDA/1887/MED/2024. The HMDA also released the revision / extension 'Plan' along with the said Fee Intimation Letter Dt.03/12/2024 which clearly shows a gate of 7.31Meters for direct access to the Amenities Block from the southside main road abutting the project.

53. It was also submitted that, "commercial portions" in a gated project are saleable by the Developer. They do not form part of the common areas as per the municipal laws and building rules. [Reported Judgment of Supreme Court - *DLF Limited Vs. Manmohan Lowe & others*; Citation - (2014) 12 SCC 231]. It is submitted that it was categorically held by the Supreme Court that there is a marked difference between "common areas & facilities" and "commercial areas & facilities" and it is also specifically held that the apartment owners are not entitled to an undivided interest or possession over the commercial facilities, unless otherwise specifically provided by the Developer. It was also held by the Hon'ble Supreme Court in the said "DLF Case" that the Developer has the right to alienate / transfer the commercial areas within the gated community project. The Supreme Court at Para 57 also specifically observed that the 'shops' which are inside the boundary walls can have their opening from outside to enable the shopkeepers to cater to the customers not only from these apartments, but outsiders as well.

54. Regarding Offer Documents / Marketing Materials, it is further argued on behalf of the Respondent submitted that in all of the visual representations of the proposed project, especially in the brochures / advertisement, along with the 'Agreement of Sales', categorically and unequivocally represent that the Amenities Block can be accessed from the Public Road with a parking space in-front. Therefore, there is no misrepresentation or false statement made by the Respondent/Promoter. That the current revision approved by the HMDA vide Application No. 007737/BP/HMDA/1887/MED/2024, is in consonance with the said representation

made to the customers / flat purchasers. That HMDA, which is an independent authority to scrutinize applications and grant technical permission, had already sanctioned the 'revised building permit order', the Developer is duty-bound and entitled to carry out the revisions as specified in the revised building permit. As the revised sanctioned plan is approved, the entire complaint of the Complainant becomes futile and hence not maintainable, as the instant subject matter of technical approval of the plans falls within the purview of the sanctioning authority i.e. the HMDA.

55. Regarding the ownership and share of the Flat Owners / Members of the Complainant Society in the undivided share of land proportionate to the exclusive ownership of the Promoter & Landowners in Ground, First & Second Floors of the Amenities Block, it is submitted that as per Section 17, the Promoter shall execute a 'conveyance deed' in favour of the Allottee(s) along with the undivided proportionate share of title in the common areas to the association of the allottees. That the total built-up area of the Amenities Block is 65,949 Sq. Feet as per the sanctioned plan. This area is not taken into consideration by the Promoter while calculating the common areas for the entire project for Blocks A to H. The calculation of the actual common areas being included into the saleable area by the Promoter in Blocks A to H is as follows -

- Total Saleable Area = 15,71,720 Sq. Feet [A]
- Total Plinth Area = 12,41,521 Sq. Feet [B]

56. It was submitted that Common Areas being in the Saleable area in the entire project = [A] - [B] = 15,71,720 (minus) 12,41,521 = 3,30,199 Sq. Feet. However, in actuals, the Common Areas in the entire project, excluding the Amenities Block area is 3,66,328 Sq. Feet, which is being conveyed to all the Flat Purchasers in their respective sale deeds. In total, the Flat Purchasers in Vazhraa Prathik (Blocks A to H) are benefitted by an extent of more than 36,129 Sq. Feet of common area, for which the Promoter did not charge the customer as it is not included in the saleable area.

57. It was submitted that in addition to the same, out of the total area of 65,949 Sq. Feet of built-up area in the Amenities Block, an extent of 30,870 Sq. Feet will be conveyed exclusively to the Society after the completion of the entire project including the ongoing construction of Blocks E, F, G & H, for the common exclusive usage and

enjoyment of the members / flat purchasers. The remaining area of 35,079 Sq. Feet in the Amenities Block belongs exclusively to the ownership of the Respondent. This extent is clearly beyond the scope of the mandate as mentioned in Section 17. This built-up area of 35,079 Sq. Feet on the Ground, First & Second Floors of the Amenities Block is owned exclusively by the Respondent, which are not merged into the common areas of the Project for the entire Blocks A to H.

58. Regarding usage of Amenities Block and removal of the wall to access the Ground Floor directly by the Residents, the Respondent submitted that the said wall is already removed at the behest of HMDA. Therefore, this relief is satisfied. In-fact, this separation wall on the southwest corner of the Supermarket being run on the Ground Floor of the Amenities Block was built to avoid outside customers of the supermarket from entering into the gated community by bypassing the main gate security.

59. That HMDA had granted permission to this developer under Section 20 of the HMDA Act 2008. Under section 23 of the HMDA act, if any deviations during the development works are realised, the same can be revised by the HMDA Authority. Owing to this statutory mandate, the Respondent Developer /Promoter applied for a Revised Plan under Section 23(1) of the HMDA Act, 2008, by paying the requisite fees. The same is processed in accordance with law vide Application No. 007737/BP/HMDA/1887/MED/2024. While processing the said revision application, HMDA also invited objections from the interested persons or general public for granting such technical sanction to the revised building plan, including the erection of gates in-front of the Amenities Block.

60. Regarding the access to the facilities on the Ground, First & Second Floors of the Amenities Block belonging exclusively to the Promoter and the Landowners, it is submitted that the residents of Vazhraa Prathik project can freely access and use the facilities / services being rendered on the Ground, First & Second Floors. Currently, there is a Supermarket, Hair Cutting Salon, a Dental Clinic and Laundry Services on the Ground, First & Second Floors, that are commercially operating their businesses in the Amenities Block. The residents of Vazhraa Prathik (Blocks A to D and future Blocks E to H) can use these facilities / services. The remaining Floors i.e., Swimming Pool with Entrance Lobby on the Ground Floor and the entire Third & Fourth Floors can be exclusively used by the residents of Vazhraa Prathik project.

61. That, therefore, the requirement under G.O.Ms.168 Dt.28/04/2012 regarding the provision of common amenities and facilities under Rule 15 is duly complied, in fact in excess. The Complainant Society is trying to claim 'exclusivity' on all the common amenities and facilities by misinterpreting the relevant rules, which is impermissible.

62. In regard to the provision of solar powered common area lighting, it is submitted on behalf of the Respondent that the project is still ongoing, and such provision will be provided by the Builder. Therefore, the present complaint is pre-emptive and premature. For high-rise buildings, especially for residential apartments, the provision of solar water heating system is not feasible and even as per GO Ms. 168, the same is not a mandatory condition to be implemented for residential apartments project. A Bank Guarantee is already issued in favour of HMDA as per the condition laid down in G.O.Ms. 168 MA & UD Dt.07/04/2012 (15(ix)) in this regard. Moreover, this facility is not even advertised or offered to the customers of the instant project. Therefore, such a demand by the Complainant Society for providing solar water heating to every flat is baseless and outrageous.

Points for consideration:

63. After due deliberation of the contentions of both the parties, the documents filed in support of their contentions, and the arguments submitted during the course of arguments on both sides, the points that arise for consideration by the Authority are as follows:

- I. Whether the Respondent violated provisions of Section 17 of the Act, 2016?
- II. Whether the Complainant is entitled reliefs (i), (ii), (iii) & (iv) as prayed for? If so, to what extent?

Observations of the Authority:

Point I

64. The Complainant Society vehemently argued that, when common areas is defined under Section 2(n) of the Act, 2016 to include "*the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase*" including such other ancillary amenities as stipulated under Section 2(n), then the Respondent is bound to transfer all such parcel of land that falls within the "entire land for the real estate project" in

accordance with Section 17 of the Act, 2016. While so as can be gathered from the material available before us and as also can be clear from the narratives contained in the forgoing paras, it will be clear and evident that the Respondent failed to convey the portion of amenities block to the Complainant Society, he is in violation of Section 17 of the Act, 2016. In this context, it is to be noted that the Respondent at the time of obtaining permission assured that the ground floor in club house is for supermarket, 1st floor is meant for local commercial and 2nd floor is meant for guest rooms for the Society and 3rd & 4th Floors are meant for function hall, gym and yoga for the Society members when that is so, it is clear that now the Respondent is prohibiting the entry of members to the ground floor, 1st floor and 2nd floor, as such, this Authority is of the considered view that the Respondent appears to have completely violated the project norms.

65. In the circumstances, the contention of the Complainant Society that it is just and necessary to remove the wall separating the club house from the society and construct the compound wall around the club house as the same to be accessed exclusively by the society members and prohibit the Respondent from creating the third party interest over the amenities block area of ground floor, 1 floor & 2nd floor as the entire area is exclusively meant for the enjoyment members of the Complainant Society.

66. *Per contra*, the Respondent has categorically contended that at the time of entering into agreement of sale and sale deed with the allottees i.e., the members of the Complainant Society, the Respondent in respective clauses of the sale deed as well as the agreement of sale made it very clear that the said area over and above the amenities block is for the exclusive use of the Respondent and that the Respondent also did not charge any amount from the allottees for the said “commercial” over and above the amenities block. The Respondent also contended that he included common areas in the saleable area for Blocks A to H, calculated as follows: Total Saleable Area – 15,71,720 sq. ft. [A] and Total Plinth Area – 12,41,521 sq. ft. [B]. Thus, the common areas within the saleable area amount to 3,30,199 sq. ft. (A - B). However, the actual common areas in the entire project, excluding the Amenities Block, total 3,66,328 sq. ft., which is conveyed to all flat purchasers in their respective sale deeds. And that this built-up area of 35,079 Sq. Feet on the Ground, First & Second Floors of the Amenities Block is owned exclusively by the Respondent,

which are not merged into the common areas of the Project for the entire Blocks A to H.

67. In lieu thereof, the Respondent contended that Complainant Society cannot claim exclusivity over the entire amenities block and that they are barred by the doctrine of estoppel i.e., their agreements and sale deeds specifically state their consent to such arrangement by the Respondent.

68. Now, the question is as to whose contentions can be sustained. In this regard, it is pertinent to note the definition of common areas as defined under Section 2(n):

“(n) "common areas" mean—

- (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;
- (ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;
- (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;
- (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;
- (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
- (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
- (vii) all community and commercial facilities as provided in the real estate project;
- (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;”

69. A plain reading of the above-quoted definition would go on to show that the entire area of the real estate project including all the community and commercial facilities as provided in the real estate project will fall under the definition of common areas. The Planning Authority i.e., HMDA, in its wisdom, in the plan approval, categorically identified the entire block as “amenities” block. The amenities block is

situated adjacent to the other blocks and is in “common use” by virtue of the definition stipulated above. Therefore, when the same is in common use, this Authority is of the considered view that the same falls within the “common areas” to be accessible by the Complainant Society and in fact, to be conveyed to the Complainant Society by the Respondent.

70. Section 17 provides that *“the promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws.”*

71. When common areas include **“all community and commercial facilities as provided in the real estate project”**, in all probability it has to be presumed that the Respondent is bound to convey the same on “as it is” basis and cannot be permitted to change the nature of the common areas to its own benefit. Hence, it will be clear that the amenities block in the Project consisting of ground + 4 floors has to be conveyed to the association of allottees in accordance with Section 17 read with the definition of common areas under Section 2(n) of the Act, 2016.

72. Coming to, the Respondent’s contention that it has allocated more than the mandated area of common amenities to the Complainant Society as per the HMDA Act, 2008 and therefore, the said area, for which the Respondent has not charged any amounts from the allottees, cannot be considered as “common areas”. It is pertinent to note that as per G.O.Ms No. 168 dated 07.04.2012, all builders and developers are mandated to allocate 3% or 50,000 square feet, whichever is lesser, of the total built-up area as an amenities block in projects with more than 100 units.

73. Further, according to the Annexure to Rule 38 of the Telangana Real Estate (Regulation & Development) Rules, 2017, which outlines the format of the Agreement of Sale, Clause 17 explicitly provides that *“The Promoter undertakes that it has no right to make additions or to put up additional structure(s) anywhere in the Project after the building plan, layout plan, sanction plan and specifications, amenities and facilities*

has been approved by the competent authority(ies) and disclosed, except for as provided in the Act.” Furthermore, within three months upon issuance of the occupancy certificate, the builder/developer is obligated to form an association and hand over the amenities block to the said association and execute a conveyance deed in favour of the association of allottees in accordance with Section 17 of Act, 2016. In accordance with Section 2(n) of the Real Estate (Regulation & Development) Act, 2016, all areas, except for the flats or plots sold to individual buyers, are classified as "common areas."

74. As per the discussion made in the foregoing paras and reasons given by us therein, the conclusion that can be drawn it that the Respondent has violated the provision of Section 17 of the Act, 2016 thereby attracting penalty under Section 61 of the Act, 2016. Point I is answered accordingly.

Point II

75. With respect to Relief (i) sought for by the Complainant, it is necessary to look into the provision of Section 14(1) which stipulates to the effect that *“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.”* A careful reading of the same will make it clear that the sanctioned plan to be followed by the promoter in the *stricto sensu*, no deviations whatsoever can be permitted in this regard.

76. However, on this aspect, the Respondent submitted that as the Respondent had applied for a Revised Plan under Section 23(1) of the HMDA Act, 2008, by way of an Application vide File No.012799/BP/HMDA/2855/MED/2023 (Rev) Dt.17/11/2023, by paying the requisite fees, and that therefore, this small separation wall which has been in existence for the past 2 years cannot be construed to be an un-authorized development nor can it be considered to be a deviation or a violation of any of the provisions of the RERA Act or the Rules.

77. It is also further submitted that Respondent is *bona fide* pursuing its applications before the HMDA Authority and the same are under consideration and when some shortfalls were pointed out, the same were also duly rectified / complied on 15/07/2024. That solely due to the harassment of a few avaricious members of the Complainant Society, the same are also being stalled, including the permissions

for Blocks G & H of the Project. Further, that the entire compliances for obtaining the permission / revision from HMDA were duly complied by the Respondent Company and they are only awaiting the release of the Letter.

78. As has become clear from the provisions of Section 14(1) of the Act, 2016, when the sanctioned plan is given, the same has to be followed in its strict sense, and no deviations whatsoever can be allowed as per Section 14(1). However, the Respondent has submitted that HMDA has 'permitted' it to construct the "wall" in front of the amenities block by way of Fee Intimation Letter and Draft of Building Permit Order vide Application No.007737/BP/HMDA/1887/MED/2024 which clearly shows a gate of 7.31 meters for a direct access to the amenities block from the Southside main road abutting the project.

79. Therefore, in the circumstances, the Respondent is required to comply with the revision permission from HMDA as stipulated above.

80. Regarding relief (ii), as discussed in Point I above, the Respondent shall have to convey the entire amenities block on 'as it is' basis to the Complainant Society in accordance with Section 17 read with Section 2(n), definition of common areas. While so, however, the Respondent has submitted that it has created third party rights on the 3rd, 4th and 5th floors of the amenities block by duly conveying a sale deed in their favor which has been filed along with the written arguments. Even if the submissions of the Respondent are taken into consideration, the Respondent cannot claim any immunity from complying with the provisions of Section 17 of the Act, 2016. Therefore, the Respondent has to be directed to comply with Section 17 and approval issued by the Planning Authority i.e., HMDA in its strict sense. However, the Authority, in the interest of natural justice, is of the considered view that it cannot stop or object for the collection of funds by the Respondent from the allottees for the expenditure made for the amenities block. The relief (ii) is answered accordingly.

81. Regarding relief (iii), as discussed above, the Respondent shall be directed to strictly comply with Section 14(1) and follow the sanction plan and such revised sanction plan "as it is" and no deviations whatsoever shall be made for its benefit and to the detriment of the Complainant Society. Further, the Developer is required to obtain consent from two-third allottees before proposing any change, additions, alterations to the already existing sanctioned plan.

82. Regarding relief (iv), the Complainants categorically submitted that the Respondent did not provide the Solar Lighting and Solar Water Heating System in violation of G.O.Ms.No.168 MA & UD Dated 07.04.2012. *Per contra*, the Respondent submitted that the project is still ongoing, and such provision will be provided by it. It has also added that for high-rise buildings, especially for residential apartments, the provision of solar water heating system is not feasible. A Bank Guarantee is already issued in favour of HMDA as per the conditions laid down in G.O.Ms. 168 MA & UD Dt.07/04/2012 (15(ix)) in this regard. Moreover, this facility is not even advertised or offered to the customers of the instant project.

83. In accordance with the undertaking given by the Respondent to provide the Solar Lighting and Solar Water Heating System, the Respondent shall be directed to provide the same in the project within a reasonable time.

84. Point II is answered accordingly.

Directions of the Authority:

85. In light of the discussions made herein above and findings given on Point I & II, this Authority, by virtue of the powers vested in it under Section 37 & 38, issue the following orders & directions:

- i. The Respondent, for having violated Section 17 is hereby directed to pay penalty of Rs.10,60,318/- (Rupees Ten Lakhs Sixty Thousand Three Hundred and Eighteen Only), within 30 (thirty) days in favor of TG RERA FUND through a Demand Draft or online payment to A/c No. 50100595798191, HDFC Bank, IFSC Code: HDFC0007036; and
- ii. The Respondent is hereby ordered to strictly comply with provisions of Section 14(1) and follow the sanction plan “as it is” and no deviations whatsoever shall be made for its benefit and to the detriment of the Complainant Society;
- iii. The Respondent is directed to provide Solar Lighting and Solar Water Heating System in the Project within a reasonable time in accordance with the undertaking given by it to the Authority; and
- iv. The Authority hereby directs the Respondent to comply with Section 17 read with Section 2(n) of the Act, 2016 in consonance with the sanctioned plan issued by the Planning Authority i.e., the HMDA and for the same, this

Authority shall not stop or object to the collection of additional amounts by the Respondent from the allottees.

86. As a result, the complaint is disposed of. No order as to costs.

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

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

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

