

COMPLAINT NO.508 OF 2022

4th Day of October 2024

M/s Ambara Township Mutually Aided
Co-operative Housing Society Ltd.,
represented by Sri P. Adivappa, IFS (Retd.) ...Complainant

1. State of Telangana,
Represented by its Chief Secretary
2. Special Chief Secretary, Department of Housing
3. Managing Director, Telangana Rajiv Swagruha Corp. Ltd.
4. Director, Town and Country Planning
5. District Collector, Jogulamba Gadwal District
6. Municipal Commissioner, Gadwal

The present matter filed by the Complainant herein came up for hearing on 14.09.2023 and 15.11.2023 before this Authority in the presence of Authorized Representative of the Complainant Society, Sri P. Adivappa and Sri Narender Reddy, Authorized Representative of Telangana Rajiv Swagruha Corp. Ltd, and upon hearing the arguments, 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 “Act”) read with Rule 34(1) of the Telangana Real Estate (Regulation and Development) Rules,

2017 (hereinafter referred to as the “Rules”) requesting appropriate action against the Respondent.

Brief facts of the case:

3. The Complainant submitted that Respondent No.3 i.e., Telangana Rajiv Swagruha Corporation Limited, (TRSCL) has been dealing with a real estate venture at GADWAL having 622 open residential plots in an area of 80 acres, since 2013. That 420 open residential plots were sold during 2013. It was advertised during February 2022 and the balance 202 plots were put up for sale through open auction, and 201 plots were sold in favour of H1 bidders through the sales held during March 2022.

4. It was submitted that Respondent No.3 has not obtained 'sanctioned plan' from the competent authority and not developed the layout since 2013 as per norms. Respondent No.3 is relying on T.L.P.No.05/2017/H/dt.25-01-2018. It was submitted that Respondent No.3, as a corporate body, being a promoter has not obtained registration certificate of project in Form C under rule 5(1) of the Rules, 2017. That Respondent No.3 has advertised, marketed, and sold open plots through open auction on commercial lines, and not executed Agreement of Sale even though it has collected more than 10% H1 bid amounts, contravening the Act & Rules, adversely affecting the interests of allottees.

5. It was submitted that there exists a T.L.P No.05/2017/H/dt.25-01-2018 of DTCP, and as per the Telangana Municipal Land Development (Layout and Sub-Division) Rules 2021 and the MA & UD G.O. Ms No.105 dated 05-07-2021 (issued in exercise powers conferred by Section 172,174,175,176,177,178,180

and 238 of the Municipalities Act, 2019, and Section 6 of TSbPASS Act 2021, the Respondent No.3 is obligated to provide amenities, layout, safeguards, etc, and more specifically, Rule 8(1) in which it is stipulated that the developer shall complete the infrastructure and amenities within a period of 2 years from the date of approval of tentative layout plan and as per Rule 11, the Rule 12, the Final Layout Plan & 15% of plotted area mortgaged at the time Tentative sanction of layout shall be released only after the due process of development of all amenities and infrastructure etc, and then only the owner is permitted to go for sale of plots.

6. It was submitted that Respondent No.3 has not obtained registration certificate of project in Form- C under rule 5(1) of Rules, 2017 from TG RERA when the Authority has come into operation or thereafter.

7. That subsequently, it was notified through Auction Notification G.O. Rt. No. 23 dt.09-02-2022 and E1/980/2021 dt. 11-02-2022 for sale of remaining (202) plots in Rajiv Swagruha Corporation Ltd, Telangana Sate in 'AMBARA TOWNSHIP' at Gadwal. The open auction was conducted from 14th March 2022 to 17th March 2022. As per Section 3(1) no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building in any real estate project or part of it, in any planning area, without obtaining 'Registration Certificate of Project' in Form C issued from TG RERA.

8. It was submitted that the government reserve upset price was Rs.5,500/- per Sq Yard vide Press Notification dt. 17-02-2022, however, the Letter of Offer

contains unilateral, arbitrary conditions of schedule of payments in contravention of Section 13(1) of the Act incorporating payment of more than 10% of cost of plot, hence, liable for quashing/restrained, all excess amounts, including penalties, to be refunded with interest, till agreement of sale is executed by the Promoter.

9. He submitted that the auction held during March 2022 has fetched an amount of Rs.51,92,24,400/- as against the expected revenue of Rs.32,89,22,000/- therefore, Respondent No.3 has fetched an excess revenue of Rs. 19,03,02,400/-. Further, that Final Layout Plan No.& date of sanction from the competent authority was not included in advertisement or notification. Similarly, details of Certificate of registration under RE (R&D) Act, 2016 were not given.

10. It was submitted that as per Section 4(2) (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees is not made available and that as per Section 4 (2) (1) (D), 70% of amounts realised is not deposited in a separate account etc.

11. It was also submitted that no real estate agents were registered under Section 9 of the Act, and the District Collector, Jogulamba Gadwal has facilitated functions of a real estate agent under Section 10 of the said Act and under Rule 8 of Rules 2017. That no web page on the website of the Authority is operative as per Section 11 & Rule 14. That, the purchasers of plots are denied of updates of progress, development of the project from time to time. That the Promoter has not furnished information on time schedule of completion of project etc under

Section 11(3) (a) (b), not executed an agreement of sale after payment of 33% of the H1 bid price of plot, to enable protection under Section 11(4)(h) of the Act.

Relief sought:

12. The Complainant Society, in light of the above-mentioned violations, prayed for the following:

- a. *“That Letter of Offer contains unilateral, arbitrary conditions of schedule of payments in contravention of Section 13(1) of the Act incorporating payment of more than 10% of cost of plot, hence, liable for quashing/restrained, all excess amounts, including penalties, to be refunded with interest, till agreement of sale is executed by the Promoter.*
- b. *The demands & Schedule of Payments raised with a timeline, punitive/ adverse conditions incorporated, such as forfeiture of 1st instalment of 33% of H1 bid amount paid, cancellation of sale orders, re- sale of such plots, imposition of penal interest for the purported 'delay' in payment of instalments etc., as indicated in Confirmation Cum- Allotment Letters issued by the District Collector, Jogulamaba Gadwal District to the allottees/purchasers of plots during March, 2022 may kindly be quashed/restrained as illegal, arbitrary, violation of the extent Acts/Rules/Norms, as the open plots should not have been sold without obtaining Final Layout Approval in accordance with Section 6(4) of TSbPASS Act 2020, and a Completion Report/Certificate (r / w definition u/s 2(q) of RE (R&D) Act) on development & providing of infrastructure facilities etc., of layout by the District Layout Approval TSbPASS Committee as per Rule 11(3) of Telangana Municipality Land Development (Layout and Sub-division) Rules 2021 (TMLD Layout & Sub- division) Rules 2021).*

- c. The promoter has advertised through media, off- line & on-line, marketed, booked, sold and offered, invited persons to purchase open plots in the real estate project without registering the real estate project with the Telangana Real Estate Regulatory Authority, contravening Section 3 (1) of the Act, which attracts penal provision of Section 59(2) of the Act.
- d. That the notices already levying penalties, issued/directed by Respondent Nos.3 & 4 herein, may please be quashed/restrained, be directed not to issue further such notices, and refund penalties paid by the allottees/purchasers of plots with interest.
- e. Respondents may please be directed to keep continuity of sustainability of intent of interest to purchase the plot as H1 bidders, as per the Section 11(4) till the agreement for sale is executed by the Promoter as per re-scheduling of timeline after the Promoter obtains Registration Certificate of Project in Form C under rule 5 (1) from TS RERA.
- f. Such purchaser who had paid EMD, (and refrained from paying 33% of 1st instalment so far, irrespective of the reason) may be permitted to pay next payable amounts with due notice to such purchaser/allottee.
- g. That no Layout Approval was obtained from the competent authority, duly following procedure established by law, sale of un-developed plots in an unfair/illegal way was purely with sole objective of monetization of assets and hence, Respondent No.3 may please be directed to obtain tentative and Final Layout Approval as per TSbPASS Act 2020, and Telangana Municipal Land Development (Layout and Sub-division) Rules 2021.
- h. The respondents may please be directed to execute an Agreement of Sale as per Section 13 (1) & (2) of the RERA Act 2016, and rule 38 of Telangana real Estate (Regulation and Development) Rules, 2017, (TRE-R&D Rules) duly

incorporating: (a) re- scheduling the time-line of payments; (b) providing for 2% of discount; (c) issue of NOC; (d) providing quarterly time-line of information of: (i) details of different estimates showing quantities, rates and amounts of cost of the project; (ii) obtaining of mandatory sanctions from competent authorities; (ii) progress of development of layout as per sanctions; (iii) providing of infrastructure facilities etc., after the Promoter complies with registration of the real estate project.

- i. The promoter may please be directed to open, maintain and operate a separate account in a scheduled bank u / s 4(2) (1) (D), and 70% of amounts realized from time to time, including from the amounts already paid by purchasers in the project and be used for development etc., instead of the present practice of all the proceeds are remitted into treasury of TS government.*
- j. That if web page of the real estate project of the promoter is not operative for any reason, quarterly progress of hard copies may be furnished to the allottees/ association.*
- k. To direct the respondents to do latest technological DGPS survey of the project, digitize with Geomatics, in place of the present mere sketch of linear distances, which do not suffice.*
- 1. Respondents may please be directed to construct a compound wall as a gated community, with an inner ring road for safety and security, patrolling, movement of men and material, lay infrastructure like IT cables, sewerage, water pipelines etc. as the project is in an isolated place.”*

Reply on behalf of Respondent No.3:

13. This Authority perused the record and observed that the main relief was prayed against the Respondent No.3. Hence, notice for hearing as well as to file a Reply in the matter has been issued to Respondent No.3 for adjudication of the present dispute. Accordingly, Respondent No.3 filed a Reply dated 27.09.2023 and submitted that the land to an extent of Ac 80.00 in Sy No.633/part to 641 /part, 643/part and 646/ part at Industrial Park, Gadwal was taken over from Zonal Manager, APIIC Limited, Shamshabad Zone. That the layout was prepared for 622 plots in Ac 80.00 and submitted to DTCP for its approval on 21.10.2013. That accordingly, the draft layout approval received from DTCP vide Lr No.ROC. No.10621/2013/H dated 01.03.2014 from Director Town and Country Planning.

14. That further, the Allottees at the time of auction/allotment have given undertaking to reduce the price of the plot and to develop the layout with semi-developed plots limiting its activities to the extent of (i) Preparation of Layout, (ii) Marking plots, (iii) Form the gravel roads, (iv) Assignment of plot number by lottery. Accordingly, preparation of layout, laying of gravel road, marking of plots etc has been done by the department and the roads, open spaces aces and civic amenities were handed over to the Gadwal Municipality vide reference 4th cited through a registered gift deed to the Municipality.

15. That in Ambara Township, Gadwal the layout was prepared for 622 plots and put up for sale prior to 2016. Out of which, 420 plots allottees have paid full amount and 202 allottees have not paid and hence allotment cancelled. Now, the leftover/ defaulter plots of 201 are put to auction through District Collector/HMDA. Accordingly, the 1st phase of auction was conducted in the

month of March 2022 and 2nd phase of Auction Conducted on 17.03.2023 & 18.03.2023. Out of 201 plots, 190 plots were sold, and 11 plots are unsold.

16. That at the time of auction through the District Collector, it was mentioned in the brochure that minimum basic infrastructure facilities will be provided by the government as per the layout norms. Accordingly, the Government has sanctioned an amount of Rs.3.34 crores for providing basic infrastructure facilities such as WBM Roads, Drains and Electrification to the Township. The infrastructure facilities works have been taken up by the District Collector through District level agencies i.e., Gadwal Municipality and work is under progress.

17. That the Rule 1(2) of Rules, 2017 reads as "*These rules are applicable to all Real Estate Projects whose buildings permission approved on or after 01.10.2017 by the competent authorities viz., UDA's/ DTSCP/Municipal Corporation/ Municipalities/ Nagar Panchayats/ TSIIC.*" Since the layout is approved and sale of plots started prior to 01.01.2017, this project does not fall under the purview of RERA. Further, Sri P. Adivappa has also approached the Hon'ble Court vide WP No.7291 of 2023 and W.P. No.29698 of 2023 for applicability of RERA and Respondent No.3 has filed counter in Hon'ble High Court reporting the fact that this project does not fall under the purview of RERA.

Observations and Directions of the Authority:

18. This Authority has perused the material on record and heard the contentions raised by the Complainant as well as the Respondent No.3. The Complainant is mainly relying on the layout permission obtained by the

Respondent No.3 i.e., T.L.P No.05/2017/H/dt.25-01-2018 of DTCP. From a simple perusal of the said layout permit, it is apparent that the same has been procured after enactment of the Act, 2016 and as per proviso to Section 3, which stipulates that *“Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act”*, the Respondent No.3 ought to have registered the Project with this Authority.

19. In this regard, it is also pertinent to note that as per the definition of a Promoter under Section 2 (zk), *a promoter is also any development authority or any other public body in respect of allottees of (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots.* Therefore, the Respondent No.3 falls well within the definition of a Promoter and ought to have registered the project “Ambara Township” in line with the provisions of Sections 3 and 4 of the Act, 2016. The very fact that, admittedly, the Promoter issued allotment letters without having registered with RERA is in utter disregard and violation of the above-mentioned provisions, thereby attracting penalty under Sections 59 & 60 of the Act, 2016.

20. During the course of hearing, the Complainant’s main contention was of non-registration of the Project with this Authority and subsequent violations of

the provisions of the Act, 2016 such as Section 4(2)(l)(D) – creation of separate bank account for the purpose of deposit of amounts from allottees, Section 13(1) – not accepting sum more than 10% of the total sale consideration, etc. In this regard, the Respondent's submission is noted that the amounts to be paid by the allottees are still pending and the said matter is pending adjudication before the Hon'ble High Court vide W.P. No.7291 of 2023 as well as in W.P. No.29698 of 2023. The Hon'ble High Court, vide Order dated 18.11.2023 in W.P. No.29698 of 2023, submitted vide Memo before this Authority by the Respondent No.3, issued following interim directions:

Having regard to the submissions made and also the order passed by this Court in similar circumstances and since, in the facts of the present case, petitioner Nos.2 to 71 herein are due the second and third installments payable in respect of the plots purchased by them to the 4th respondent, this Court is of the view that petitioner Nos.2 to 71 are to be directed to deposit the due amounts under the second and third instalments in respect of the plots purchased by them with the Registrar (Judicial-1), High Court of Telangana, Hyderabad, on or before 15.12.2023.

On the petitioner Nos.2 to 71 depositing the due amounts in respect of their respective plots, the Registrar (Judicial-1) is directed to keep the aforesaid amount in a fixed deposit with the State Bank of India, High Court Branch, Hyderabad, to the credit of the Writ Petition.

On petitioner Nos.2 to 71 depositing the amounts with the Registrar (Judicial-1), as directed above, the respondents shall not take any further

action with regard to the cancellation of plots allotted in favour of the petitioners.

21. In this regard, it is observed that the very relief prayed for by the Complainant before this Authority is *sub-judice* before the Hon'ble High Court. Therefore, except the fact of whether the present project falls within the jurisdiction of this Authority, other reliefs may be pursued by the Complainant before the Hon'ble High Court and comply with the Orders thereof in the above-mentioned Writ Petitions as Hon'ble High Court has already taken cognizance of the matters and issued appropriate directions thereof.

22. Therefore, while exercising its powers under Sections 37 and 38 and considering the peculiar facts and circumstances of the case, this Authority directs as under:

- a. For violation of Section 3 and 4 i.e., for non-registration of the Project "Ambara Township" and selling of plots by the Respondent No.3, this Authority deems it fit to impose penalty vide its powers under Section 38 read with Section 59 and 60. Penalty of Rs.2,16,000/- (Rupees Two Lakh Sixteen Thousands Only) is imposed on the Respondent No.3 payable within 30 days in favour of TG RERA FUNDS through Demand Draft or online payment to A/c No.50100595798191, HDFC Bank, IFSC Code: HDFC0007036; and
- b. Respondent No.3 is also directed to register the Project – 'Ambara Township' with this Authority at the earliest and strictly comply with the provisions of Section 4(2)(l)(D), Section 13(1), and such other provisions as mandated under the provisions of Act, 2016.

23. In lieu thereof, the present Complaint stands disposed of. Respondent No.3 is hereby informed that non-compliance of the orders of this Authority shall attract penalty under Section 63 of the Act, 2016.

24. If aggrieved by this Order, the parties may approach the Telangana Real Estate Appellate Tribunal in accordance with Section 44 of the Act, 2016.

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

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

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

