

**BEFORE TELANGANA REAL ESTATE REGULATORY AUTHORITY**

*[Under the Real Estate (Regulation and Development) Act, 2016]*

**Complaint No. 267 of 2024**

**Dated: 07<sup>th</sup> March 2026**

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

- 1. Vegesna Varun Teja S/o V S Rama Raju**  
(Rep by GPA Holder V S Rama Raju)
- 2. V S Rama Raju S/o V sub Raju**  
(R/o Flat No. 102, Block-4, Buddha Vertex  
Classic Apartments, Shilpa Avenue Colony,  
Near Sirla Park Pride, Hydernagar, Hyderabad-500 033)

**...Complainants**

*Versus*

- 1. M/s. Aditya Constructions Company Pvt Ltd.**  
Rep by Its Director Managing Director
- 2. Shri Thota Satyanarayana(Executive Director)**  
M/s. Aditya Constructions Company Pvt Ltd.
- 3. Shri Satti Raju(CEO)**  
M/s. Aditya Constructions Company Pvt Ltd.
- 4. Shri Ajay Bejugam (Head/Customer Relations)**  
M/s. Aditya Constructions Company Pvt Ltd.  
( Aditya Mansion, Plot No. 29/A, Road NO. 5,  
Jubilee Hills, Hyderabad- 500 033)
- 5. PNB Housing Finance Ltd (Branch Head)**  
(B V Raju Bhavan, 4<sup>th</sup> Floor, Banjara Hills, Hyderabad-500 034)

**...Respondents**

The present matter filed by the Complainants herein came up for hearing before this Authority in the presence of the Complainant No.1 through GPA and Complainant No.2 in person, and the learned Counsel M/s P.V. Aruna Kumari and others appearing for Respondent Nos. 1,2, and 4 and Sri. J. Pradeep Kiran and others leaned Counsel appearing for Respondent

No. 5. Upon hearing the submissions of all the parties, this Authority proceeds to pass the following **ORDER**:

2. The present Complaint has been filed by the Complainants 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 Respondents.

***A. Brief facts of the case:***

3. The Complainant No.2 submitted that he is a retired Central Government officer and has purchased the subject property for his son, i.e., Vegesna Varun Teja, Complainant No.1. coming across an advertisement regarding one of the project named Aditya Capitol Heights developed by M/s Aditya Construction Company Pvt Ltd, at Hafeezpet, Serilingampally, Ranga Reddy District, Hyderabad, It is submitted that the complainants trusted the Respondent considering the size of the project, looking at the brochures etc (approximately 660 flats in 4 towers with 16 floors in each tower and each valued at about 1 crore and above) with number of amenities and had conversation over the phone and in person with the respondents, who lured them by promising competitive price, amenities, construction quality, delivery time, reputation of their firm and mostly based on their information regarding pre EMI payment until the "Intimation of Flat Completion" under Pre –Emi scheme, Pre-Emi means the interest charged by the Bank towards the loan disbursed, which should be paid by the builder (Aditya Construction Company) to the complainants. This amount does not include the principal amount.

4. After the discussion with the Respondents, they(Complainants) have booked a flat in the said project. The details of the same are Flat No. 1602 in "A" block of Aditya Capitol Heights at Hafeezpet/Hyderabad, with the hope of getting their dream house. At the time of booking of the flat, five floors (7 slabs, including cellar slabs) work completed, after paying his life-saving amount as an advance and the remaining amount as a home loan and even though the flats are very much available at the rate, below the respondents offered under standard payment scheme on the date of my booking of flat, the Complainants have booked the flat at the rate of Rs 4400/- per Square feet plus Rs.6,50,000/-towards two car parking, Electricity &water charges, Club membership, all amenities, etc, under the pre-EMI scheme, with the hope of getting Pre-Emi reimbursement from the builder, but the Respondent No.1 reimbursed only one-month Pre-Emi amount to them and did not pay any pre-EMI from June'2018 onwards.

The stages of payment under the pre-EMI scheme are linked to the progress of work, as outlined in Para No. 6 on page 4 of the agreement of sale. The complainants paid the instalments as per the schedule of payments promptly within the stipulated time, in consideration of the down payment, bank loan, pre-EMI amount (which was not paid by the builder, despite several communications through registered letters, Emails, Phone calls, and no response from the builder except sending demand letters).

5. The Complainants booked said flat on 04.01.2018 and paid Rs. 9,23,000/- as 10% of the total value of the flat as a down payment on 17th & 23rd of Feb'2018 and entered into an Agreement of Sale on 23.03.2018, and the total sale consideration as per the Agreement of Sale, dated 23.03.2018, was Rs. 92,30,000/-. Subsequently, entered into a Tripartite Agreement with M/s. Aditya Construction Company(p) Ltd and Punjab National Bank Housing Finance Limited on 23.03.2018, and then PNB Housing Finance Limited has disbursed an amount of Rs. 54,00,000/- (Rupees fifty-four lakh only) against the loan sanctioned amount of Rs. 81,85,000/- (Rupees Eighty-one Lakhs Eighty-five thousand only) to M/s. Aditya Construction Company(p) Ltd, as part of the loan disbursement. M/s. Aditya Construction Company (p) Ltd and PNBHF misled them and entered into an agreement without a delivery date, which is an unfair contract, and at the time of the Agreement of Sale/Tripartite Agreement, only 7 slabs (5th floor slab) were completed, i.e. Less than 30% completed. The Respondent Nos. 1 to 4 had received approximately 70% of the total cost before the stage of such construction is achieved. The Respondent No. 5, has disbursed the said amount without verifying the progress of construction.

6. The clause No. 5 of the principal agreement, which was executed on 23.03.2018, reads thus: "*Under the Pre EMI scheme, the party of the second part/developer would pay the Pre EMI payments till the period of completion of the flat (possession for interiors)*". Even though an agreement of sale was executed on 23.03.2018, the respondent was simply sending payment reminder letters before the agreement. Then PNBHF released a loan amount of Rs. 54,00,000 on 27.03.2018 (As on 27.03.2018, total Rs. 63,23,000/- paid to the respondent, including Booking Advance of Rs. 9,23,000/-), by that time, as per the stage of construction, only Rs. 46,15,000/- had to be paid. It shows that Rs. 17,08,000/- excess payment has been made, but the Respondent No. 1, represented by Respondents No. 2 to 4, has not reimbursed any Pre EMI amount and did not respond to any communication made by them, except by sending demand letters. At any stage of construction, the complainants were not due for any payments.

7. The Respondent No.1, represented by Respondents No. 2 to 4, has paid One Month's pre-EMI and did not pay any pre-EMI amount. Whereas the Respondent No.5 is claiming EMIs from the Complainant's bank account every month, and claimed an amount of Rs. 34,26,613/- from the Complainant's account as Pre-EMI till date, and the same still continues.

8. Details of payments made to M/s. Aditya Construction Company (P)Ltd as on 30.06.24 against the total cost of the flat, Rs. 92,30,000/- is detailed below

- a) Down payment (10% of total cost) Rs. 9,23,000.00
- b) Bank disbursed loan amount Rs. 54,00,000/00
- c) Pre-emi amount to be paid by Respondent No.1 is Rs. 34,26,613
- d) Total amount paid by the Complainant is Rs. 97,49,613/-

9. The Complainants submitted that from the above payment details, it is clear that approximately 5 (Five) lakhs in excess was paid by them, and they are not liable to pay delay charges, as there was no delay on their part in making payments, and, more specifically, delay charges are not attracted to construction delays.

10. The Complainants submitted that they have received an Email dated 12-02-2020 from the Respondent No.1 stating that the Aditya Capital height 'A' block will be handed over to the Complainants for interiors by June'2021.

- i) A lot of correspondence was made with M/s. Aditya Construction Company (P)Ltd regarding;
  - a) Reply to their demand notices. In those replies, it was clearly mentioned that failure of payment of the Pre EMI amount, requesting an appointment to discuss the issues regarding payment of the Pre EMI amount, and a change of their residential address in their records. But they (Respondents) never responded to any emails, registered letters, phone calls, etc. Instead, they were sending the one-sided demand letters without any clear breakup of dues or payment of Pre EMI amount issues.
  - b) Completion of the project and handing over of the Flat.

11. The Respondent No.1, i.e., M/s. Aditya Construction Company (P)Ltd obtained building permission vide file no 38072/30/04/2013/HO permit No-40195/HO/WZ/Cir-12/2015 dated 19-Mar-2015, which was completed/expired on 18th March 2020. The Complainants are unaware of whether the Respondent/Builder has further taken permission or not.

12. The Complainants submitted that, as on date, the project has not been completed in all respects. While it is contended that the structural work may have been completed, the Promoter has failed to provide essential amenities such as proper drainage, water supply, lifts, and electricity. It is further submitted that the Promoter is not in a position to hand over possession of the subject unit, as the Occupancy Certificate has not been obtained

13. The Complainants submitted that, despite RERA came into force on 4th Aug 2017 in Telangana, as per Section 3 of the RE(R&D) Act, all ongoing projects that have not received a completion certificate as of the date when RERA came into force must be registered with the RERA authority, but Aditya Construction Company till now has not been registered with RERA.

14. The Complainants submitted that in spite of paying the demanded amounts without any dues, the Complainants have suffered a lot mentally, physically apart from financially due to the acts done by the promoter as stated above. The said acts of the Aditya construction Company amount to a deficiency of service apart from negligence and renders for payment of compensation apart from the claimed amounts.

15. The Complainants further submitted that the terms of the agreement for sale are one-sided in favour of the respondents, lack specific dates for the progress of construction, and no target date for completion of the project and handing over of the flat to the purchaser was mentioned in the agreement. No clause was there in the agreement with regard to payment of compensation for the delay of construction of the building and handing over of the flat, but whereas if the purchaser failed to make payment as per the schedule, delay charges were levied at the rate of 18% and 24% respectively. In this, Respondent No. 5 also collided with Respondents 1 to 4 and made a one-sided agreement.

16. The Complainants submitted that the Respondents No.1 to 4 collected excess payment in advance before completing the slabs as mentioned in the schedule of payment scheme mentioned in the agreement of sale by giving false information that they have completed the particular milestone of the payment schedule even though the same was not completed as revealed by the photographs sent by the respondents to the complainant. For example, as per the photograph sent by the respondent dated 13.06.2018 shows only ten slabs/floors were completed, but the amount collected was for 12 slabs. Wrongly showing the 2 cellar slabs also in the floor slab.

17. The Respondent No.1 Represented by Respondent No.2 failed to complete the project by Dec-2019 as promised verbally (as per building permission letter Construction to be completed by 18th March 2020) while booking and as per email dated 12.02.2020 the construction of flat would be completed and handover the possession by June-2021 but the builder failed to comply this target also and the said building is ongoing project only as per the RE(R&D) act as the completion of project is not completed till now and O.C, not obtained and builder did not get the project registered with this authority.

18. The Complainants further submitted that by the time they entered into the agreement (i.e. 23.03.2018), the RE(R&D) Act had come into force, despite the same, the Respondent No.1 did not follow the provisions of the RE(R&D) Act and did not execute the agreement of sale in the format prescribed under the provisions of the RE(R&D) Act and rules made there under. As per the RE(R&D) Act, “ongoing projects” were required to be registered with this authority by the developers.

19. As per tripartite Agreement date 23.03.2018, page No-2, Item-C, 45.11sq yards of land is allotted against UDS. In recent days, it was noticed that the project site compound wall is shifted towards the main building side. Due to this, if UDS allotted area effects, then necessary compensation may also to be given to complainants.

20. The measurements of the carpet area are not mentioned in the agreement, and only the super built-up area is mentioned and even though project construction was started by the builder in the year 2015, after a lapse of more than 9 years, the project was not completed, and the flat was not handed over.

21. The Complainants submitted that it is a settled law that the builder should complete the project within 3 years of the beginning of the construction, and despite their correspondence and personal visits to the office of the builder, no proper reply was given to them till date, and the completion of the Project is abnormally delayed.

22. The Complainants submitted that no agreed pre-EMI amount, as stipulated under Paragraph No. 5 at Page No. 3 of the Agreement of Sale, has been paid. It is further submitted that the cause of action is continuous and subsisting from the date of booking of the subject flat.

23. The Complainants further submitted that the negligence and omission of Respondents amount to a deficiency of service, breach of rules, and agreements. Promises, trust and unfair trade practices, as a consumer within the purview of the RE(R&D) Act and it further submitted that, having been left with no other efficacious remedy, the Complainant has constrained to approach this Hon'ble Authority seeking appropriate reliefs in the interest of justice.

***B. Relief(s) Sought:***

24. Therefore, aggrieved by the actions of the Respondents, Complainants prayed as under:

- i. To direct the respondents to register the project with the TGRERA forthwith.
- ii. To direct the respondents to furnish carpet area dimensions within the walls as defined under RE(R&D) Act Obligation to disclose Carpet Area section 13(2).
- iii. To pay the Pre EMI amount of Rs 34,26,613/- to Complainant (from June 2018 to 31.07.24) and further until handed over. The interest at the rate of 24% per annum to be paid on the amount pre-EMI amount till date
- iv. To pay the Interest for the amount of Rs 97,49,613/- from the date of deposition which Complainant have paid on time but the project was delayed abnormally.
- v. To direct the respondents to register the flat immediately, duly providing an occupation certificate without any further delay.
- vi. The measurements of the carpet area, Common area etc., are to be given
- vii. Clarification regarding the allotment of the UDS area as per the agreement.
- viii. To pay the rental amount of private house taken for my family accommodation. I have been staying in a private house by paying a rent of Rs 26, 500/- and maintenance charges of Rs 2, 000/- per month due to the abnormal delay in construction of the flat. An amount of Rs 28,500/- per month to be paid to me from 1.07.2021 to till date by the developer as the delay is on his account.
- ix. To direct the respondent to pay an amount of Rs 5,00,000/- (Rupees Five Lakhs only) for mental agony and for following unfair trade practices.
- x. To direct the respondent to pay Rs.3,00,000/- (Rupees Three Lakhs only) for executing unfair contract
- xi. To register and hand over the flat with all facilities promised as per the Agreement to the complainant immediately for occupation.

***C. Respondent Nos. 1,2 and 4 Reply:***

25. The Respondents No. 1, 2 and 4 categorically denied all allegations made in the Complaint, except those expressly admitted herein. It has been submitted that the Complaint has been filed against the Respondent on false, speculative, and baseless grounds, and with an ulterior motive to harass the Respondent without any substantial proof.

26. The present complaint was filed against the Developer and its Employees. The Respondent No.2 is the Director of the company and he is not directly involved with the complainant in his personal capacity. The company alone is responsible to the transaction between the complainant No.1 and the company. In the present complaint, the complainant sought all the reliefs against the Respondent No.1 only. The Respondent No. 4 is an employee of the company, and any employee of a company cannot be made personally liable in a case without substantial proof or a liability on his part. Thus, the complainant filed the present complaint against the Respondents No. 2 & 4 without any bona fide proof and is liable to be dismissed against those Respondents.

27. It is respectfully submitted that the Complainant has suppressed the fact that previously the Complainant filed a consumer case against the company, and an Order was passed in that complaint and allowed the reliefs asked by the Complainant. (CC No. 451 of 2022). The complainant again filed the present complaint before this Hon'ble Authority, seeking almost the same reliefs, which is totally against the principle of natural justice. The complainant, after getting the relief from a competent authority under the Consumer Protection Act, again approached this Hon'ble Authority for the same relief, which is not maintainable. The Complainants make contradictory statements in the complaint that no complaints/cases are pending with any other court/ authority, which is false. The complainant has already filed an EA No. 37 of 2024 before District Consumer Redressal Commission - III, Hyderabad for the implementation of the order in CC No. 451 of 2022. While that EA is still pending the complainants filed the present complaint before this authority is nothing but a gross abuse of law. Thus, the complaint filed by the complainants is not maintainable and is liable to be dismissed.

28. It is respectfully submitted that the Subject Flat was booked by Complainant No.1, a Non-Resident Indian and his father, Complainant No.2, a retired senior railway employee.

29. It is respectfully submitted that the Respondent categorically denies the averments made in Para 2 of the Complaint. It is submitted that the Complainants booked the Subject Flat i.e, Flat No. 1602 ("Subject Flat") in "A" Block- Aditya Capitol Heights of Aditya Construction Company Pvt. Ltd., (Aditya Capitol Heights is hereinafter referred to as the "Project"), out of their free choice and will, after privately enquiring about the Respondent in the market and are put to strict proof of their baseless allegations of being lured by promises of the Respondent Company before booking the Subject Flat and the Complainant's version of events and payments. It is submitted that the Pre-EMI scheme eligibility was subject to the Complainants' compliance with a set of pre-conditions, i.e, firstly, a lump sum payment of 85% and secondly, payments in a timely manner, as per the agreed schedule of payments. It is submitted that the Complainant failed to comply with both of the above preconditions. The Respondent contends that the Complainant has been a chronic defaulter since the inception of his booking of the Subject Flat in the Project, having paid only Rs. 63.23 Lakhs against the total outstanding amount of Rs. 117.45 Lakhs. It is submitted that the Complainants have paid only until the 10th slab of the construction stage, with the last payment having been made on 27.03.2018. The Complainants failed to make any subsequent payment for almost six years causing leading to the Respondent company having to borrow funds at a higher cost from Bank(s)/NBFC(s) to continue fulfilling its commitment despite the Complainants want on delay in making payments as per the terms, conditions, and obligations that the Complainants were fully informed of, and consented to under the Agreement of Sale dated March 23rd, 2018. The Complainants' attempt to evade these obligations is wholly untenable. The Respondent company did not receive the sale consideration as agreed by the Complainants under the Agreement of Sale and the Complainants have been a chronic defaulter in payment of the sale consideration towards purchase of the Subject Flat.

30. It is humbly submitted that the Complainant's averments of the Complaint are devoid of a complete and whole set of facts. The averment made by the Complainants that flats were available at a much lower rate is a figment of their imagination, and they are put to strict proof of the same. It is further submitted that the Complainants booked the Subject Flat in the Project and entered into the Agreement of Sale dated 23rd March, 2018, out of free will, being fully aware of the sale consideration payable. It is submitted that the Complainant was disqualified from the Pre-EMI payment scheme due to consistent defaults in payments. The habitual delays by the Complainant-spanning months across several instalments, rendered him ineligible for any benefits under the scheme. It is false and audacious for the Complainant to allege that the

Respondent failed to pay Pre-EMIs, especially when the Complainants failed to comply with their obligations under the terms and conditions of payment under the Agreement of Sale. The Complainant has malfaide and intentionally omitted to mention that clause 5 of the Agreement of Sale clearly stipulates that "If the Purchaser fails to make the payments as per the demand letters issued by the company and becomes a defaulter, the purchaser shall not be entitled for pre-emi payments. "It may be noted that the Complainants lost their eligibility of Pre- EMI payment due to their defaults in making the timely payments and as such the Complainant is not entitled to any benefit under the Pre-EMI scheme, as the same was extended as an incentive for purchasers who make prompt payments and not for the defaulting purchasers.

31. It is submitted that the Respondent denies the baseless allegations by the Complainant in Para 4 of the complaint in respect of the Tripartite Agreement dated 23rd March, 2018. The accusation made by the Complainants of being misguided by the Respondent company is utterly false and baseless and the Complainants are put to strict proof of the same. The Complainants, out of their free will, opted to finance their home loan through Punjab National Bank and thereafter entered into the Tripartite Agreement as part of the loan process, which was mandated by the bank.

32. It is respectfully submitted with respect to averments made in Para 5 of the Complaint that the Complainants were required to pay 85% of the cost of the Subject Flat, i.e, Rs. 78,45,500/- under the Pre-EMI scheme, but failed to do so.

33. It is respectfully submitted with respect to averments made in Para 6 and 7 of the Complaint that the Complainants ceased to be eligible to receive any reimbursement of EMI payments upon repeated defaults in making payments under Clause 5 of the Agreement of Sale dated 23rd March, 2018.

34. The Complainants are liable to pay delay charges as required under Clause 6 of the Agreement for Sale dated 23rd March, 2018, which stipulates that "In case of payment is not received within the time frame i.e, as per the schedule of payment attached with the Agreement of Sale, a penal interest of 18% P.A would be levied on the delayed payment for the delayed period. In case of delay in making payments for the first 30 days, an interest of 18% P.A will be levied and beyond 30 days will attract an interest of 24% P.A". It is submitted that the Complainants are liable to pay delay charges amounting to Rs. 15,54,383/-. The Payment Schedule with dates of payment and delay charges are filed herewith as Annexure-1 for the kind perusal of this Hon'ble Regulatory Authority.

35. The Complainants ceased to make any payment after 27th March, 2018, for no reason, leading to a severe financial burden on the Respondent. It is submitted that the Complainants are attempting to cast a negative light on the Respondent Company and victimizing their position by cleverly failing to make any reference to obligations that they have failed to fulfill.

36. It is respectfully submitted with respect to averments made in Para 10 and 11 of the Complaint that the Respondent was granted an extension of time for completion of the Project automatically pursuant to the permission granted by the State Government vide G.O.Ms No.107 as part of a suomotu extension due to the force majeure event of the COVID-19 pandemic. It is further submitted that the Project has been completed and the Respondent Company has already made an application for an occupancy certificate. It is submitted that the flats in the Project are ready for possession as the installation of lifts is also completed by the Respondent Company.

37. It is respectfully submitted with respect 12, 17 and 18 of the Complaint that the Project is an old project and was excluded from applicability under RERA as per the definition of "Ongoing Project" provided under Section 2 (1)(j) of the Telangana Real Estate (Regulation and Development) Rules, 2017 which excludes such Projects for which building permissions were approved prior to 01.01.2017 by the Competent Authorities viz., UDAs/ DTCP/ Municipal Corporations/ Municipalities/ Nagar Panchayats/ TSIIC as the case may be. It is humbly submitted that retroactive application of the RE(R&D) Act requiring the registration of ongoing projects was addressed only in 2023 by the Supreme Court in Civil Appeal No(s). 6745-6749 of 2021, Newtech Promoters and Developers Private Limited Vs State of Uttar Pradesh and others. Therefore, to make allegations that the Respondent did not follow the provisions of the RE(R&D) Act, 2016, is only to create contempt for the Respondent before this Hon'ble Authority and an attempt to implicate the Respondent for acts that were neither voluntary nor intended in any way to violate the provisions of the RE(R&D) Act, 2016.

38. The Complainants failed to promptly make payments under the Agreement of Sale, causing distress to the Respondent company, and are attempting to victimise themselves before the Hon'ble Authority by conveniently avoiding any reference to their shortcomings.

39. The Agreement of Sale was signed by the Complainants after mutual discussions between the Complainants and the Respondent company, out of free will and consent, after reading and being fully aware of the terms and conditions contained therein.

40. It is respectfully submitted that the averments made in Para 15 of the Complaint are false and misleading, and the Complainants are put to strict proof of the same. It is submitted that payments are disbursed by banks only after verification of the stage of progress by the bank manager or any other person appointed by the bank and as per the report submitted by them. It is also submitted that the disbursement of any loan amount would have been made only after authorization from the Complainants.

41. It is respectfully submitted with respect to averments made in Para 16 that the Respondent strongly denies making any promise or commitment to complete the Project by December 2019. The Respondent has made every reasonable effort to complete the Project despite the challenges posed by the defaults of allottees such as the Complainants, and it is the Complainants who have to make the balance payment due to the Respondent company and get the sale deed registered in their favour.

42. It is respectfully submitted that the averment made in Para 19 is false and misleading, and the Complainants are put to strict proof of the same. It is humbly submitted with respect to averments made in Para 20 that only the super built-up is specified in the Agreement of Sale dated 23<sup>rd</sup> March, 2018, pursuant to mutual discussions between the Respondent and the Complainants.

43. It is respectfully submitted with respect to averments made in Para 21 and 22 that the Project has been completed and the Respondent Company has already made an application for an occupancy certificate. A copy of the application made for the issuance of the occupancy certificate is enclosed herewith as Annexure-3, for ease of reference. The Complainants may make payments of all outstanding dues and take possession of the Subject Flat.

44. It is respectfully submitted that the averments made in Para 22 and 23 are false and baseless and the Complainants are put to strict proof of the same. It is further submitted that the Complainants' claim that the Respondent Company failed to reply to the Complainants is utterly false as they engaged in discussions through personal discussions and e-mails to the Complainant.

45. It is respectfully submitted that the averment made in Para 24 of the Complaint is utterly false and an attempt to villainize the Respondent company. The completion of the Project was delayed due to reasons beyond the control of the Respondent, firstly due to repeated defaults in payments by allottees such as the Complainants and secondly, due to the lockdown restrictions and pandemic situation prevailing due to COVID-19 for a period of 2 years. It is

also humbly submitted that the Government having recognized woes of the builders had passed a G.O.107 dated 08.07.2020 granting extension for completion of projects. A copy of G.O. 107 is attached herewith as Annexure-2 for the kind reference of the Hon'ble Authority. It is also humbly submitted that COVID-19 was recognized as a 'force majeure circumstance' by Telangana State RERA vide Order No.16 dated 01.06.2021, wherein TG RERA recognized the unexpected labour shortage due to the second wave of COVID-19. The TG RERA Order is attached herewith, Annexure-4, for the kind perusal of the Hon'ble Authority.

46. It is respectfully submitted again with respect to the averment made in Para 25 that the Complainants are not eligible for reimbursement of any subsequent Pre-EMI amount under Clause 5 of the Agreement of Sale dated 23rd March, 2018 as they have repeatedly failed to make prompt payments under the Agreement of Sale.

47. It is respectfully submitted that the averments made in Para 26 of the Complaint are utterly false and baseless and the Complainants are put to strict proof of the same and it is humbly submitted that all relief claimed by the Complainants particularly for rental accommodation, mental agony and unfair trade practices under Section 18 of the Act is without basis and is a mockery of the legislation made with a righteous objective to provide an exclusive forum for the grievances of buyers, if any, as there cannot be any delay much less inordinate delay attributable to the Respondent company. The Respondent has made every reasonable effort to complete the Project despite the challenges posed by the Complainant's defaults and it is the Complainant who has to make the balance payment due to the Respondent company and get the sale deed registered in his favour, and as such the Complainant should not be entitled to any relief or benefit under the Act as the Complainant did not approach this Hon'ble Regulatory Authority with clean hands and with an ulterior motive. It is also submitted that the Complainants ought to have filed an application before the Hon'ble Adjudicating Officer for compensatory relief under Section 18 of the Act.

48. It is respectfully submitted that it is highly deplorable that the Complainant, for his own benefit, made these baseless allegations affecting the other buyers' faith and trust in the Respondent company, which could lead to severe business losses to the Respondent company. Therefore, the Respondent company prays that the allegations made by the Complainant are far fetching and intimidating the business prospects and sentiments of many home buyers unless rejected as unfounded and false by this Hon'ble Authority.

49. It is respectfully submitted that in light of all the facts and circumstances as stated above, the Complainant has consistently defaulted in making the timely payments to the Respondent Company and has invented these baseless, false and unfounded allegations for the purpose of this complaint.

50. The Respondents therefore prayed that this Honourable Real Estate Regulatory Authority may be pleased to dismiss this Complaint with costs under the circumstances of the case by considering the facts and submissions made by the Respondent, with substantial reasoning as to why the Complainant is not entitled to any of the reliefs prayed therein, in the interest of justice.

***D. Counter Filed on Behalf of Respondent No. 5***

51. The Respondent No. 5 in his counter submitted that it is not a proper and necessary party to the above-said complaint, as there is no relief claimed specifically against Respondent No.5; as such, the above Complaint is liable to be dismissed in limine against Respondent No.5.

52. It is submitted that most of the averments/allegations made in the complaint, which are not specifically admitted hereunder, are denied, and the Complainants are put to strict proof of the same.

53. It is submitted that the averments made in Para No.1 of the complaint are true and correct.

54. It is further submitted that the averments made in Para No.2 are partly true. However, the allegation that under the Pre-EMI scheme, the Builder, i.e., Respondent No.1, is required to pay the interest charged by Respondent No.5 towards the loan disbursed to the Complainants is false. It is pertinent to mention that the Complainants, Respondent No.1 and Respondent No. 5 entered into a Tripartite Agreement dated 23.03.2018 and as per 'Clause 4' of the said agreement, Borrowers are irrevocably bound to fulfil their repayment obligations to Respondent No. 5, regardless of the stage of construction of the Project and irrespective of the date of handing over possession of the Property by Respondent No. 1.

55. It is submitted that most of the averments made in Para No.3 is not within the knowledge of the Respondent No. 5 and, therefore, Respondent No. 5 cannot reply to the same. It is further submitted that the Complainants are responsible for bearing the Pre-EMI payments on a monthly basis as per the Tripartite Agreement dated 23.03.2018. Respondent No. 5 has no

involvement or obligation in determining who is responsible for making the Pre-EMI payments and cannot be held liable for any claims arising from the same.

56. It is submitted that the averments made in Para No.4 are false and hence denied. The Respondent No. 5 submits that it has not misguided the Complainants and asserts that it has acted strictly in accordance with the terms of the agreement. The Respondent No. 5 has fulfilled its contractual obligations in good faith by disbursing an amount of Rs. 57,35,935/- (Rupees Fifty-Seven Lakhs Thirty-Five Thousand Nine Hundred and Thirty-Five only) out of the total sanctioned loan amount of Rs. 81,85,000/- (Rupees Eighty-One Lakh Eighty-Five Thousand only) to Respondent No. 1 as part of the loan disbursement. It is further submitted that there were no ill intentions on the part of Respondent No.5, as it merely performed its role under the agreement as and when required.

57. It is submitted that the averments in Para No. 5 are false and hence denied. The Respondent No. 5 submits that it is not a party to the Principal Agreement (Agreement of Sale dated 23.03.2018 between the Complainants and Respondent No. 1) and, therefore, has no connection with or obligation arising therefrom. The Respondent No. 5 is only a party to the Tripartite Agreement and is bound solely by the terms stipulated therein. As stated above, the Respondent No. 5 has merely fulfilled its obligations under the agreement by disbursing the loan amount as per the agreed terms. The claims thereof are between the Complainant and Respondent No. 1, and Respondent No. 5 is not a party to the Principal Agreement.

58. In reply to the averments made in Para No.6, Respondent No.5 submits that it is exercising its rights by claiming the payments from the Complainants' bank account every month as per the agreed terms and conditions. It is further submitted that Respondent No.5 is not involved in or responsible for the actions of Respondent No.1.

59. It is submitted that the averment in Para No. 7 that the Respondent No. 5 had disbursed an amount of Rs. 57,35,935/- (Rupees Fifty-Seven Lakhs Thirty-Five Thousand Nine Hundred and Thirty-Five only) to Respondent No. 1 is true.

60. Respondent No. 5 further submitted that it has no knowledge regarding to the averments made in Para Nos. 8 to 28. It is pertinent to mention that as per Clause E of the Tripartite Agreement, the Complainants had provided an irrevocable undertaking that they would not default on loan repayments for any reason, including concerns or disputes between the Complainants and Respondent No.1. Further, Clause F of the Tripartite Agreement explicitly states the Complainant's obligation to repay the loan is a continuing and independent

responsibility, unaffected by any issues such as delays in construction or other grievances against the Builder. According to the Respondent No. 5, the repayment obligation is absolute and unconditional, and it is not contingent upon the performance of Respondent No. 1, including delays in construction, non-payment of Pre-EMI, or any other alleged breaches by Respondent No. 1. Therefore, Respondent No. 5 is not liable for the Respondent No. 1's failure to fulfil its obligations. The Complainants' repayment obligation to the Respondent No.5 remains absolute, and any disputes with the Respondent No. 1 must be resolved separately without impacting their loan repayment commitment.

61. Respondent No. 5 further submitted that it is legally entitled to receive the loan amount along with the interest from the Complainants since the Complainant herein is the duly designated payee as per the terms of the agreement. Thus, the Complainants are legally bound to pay the EMIs to the Respondent No. 5. The Complainant is trying to project the tragedy and the conflict with the Respondent No. 1 as a means to not make payments due to this Respondent No. 5.

62. Respondent No.5 further submitted that the Complainants have not been making regular payments towards the loan account. It is stated that the current outstanding loan amount is Rs. 30,01,562/-. The Respondent No. 5 reserves its right to recover the due amounts from the complainant.

63. In view of the above submissions, Respondent No.5 prayed that this Authority may be pleased to dismiss this complaint against Respondent No. 5 with costs in the interest of Justice.

***E. Rejoinder filed by the Complainant:***

64. In the Rejoinder filed by the Complainants, they have reasserted the pleas taken by them in the complaint filed against the Respondents and stated that the submission made by the Respondents in their counter filed by them is false and untenable.

65. They have further contended in their rejoinder that the Respondent No.1 failed to implement the order passed by the District Consumer Forum, Hyderabad. Had the Respondents implemented the orders passed by the said commission, then there would have been no necessity for them to approach this authority or any other forum. It is stated that they were initially unaware of this authority and its role in providing speedy redressal of the disputes. Subsequently, upon being aware of the same, approached this authority, and it is submitted that the Complainants became aware that proceedings before RERA are maintainable even if

proceedings before the Consumer Forum have been initiated, as held by the Hon'ble Supreme Court of India in M/s. Imperia Structures Ltd. vs. Anil Patni & Others.

66. They further prayed this authority to adjudicate on other issues, such as registration of the ongoing project under TG RERA, expeditious completion of the project, registration of the flat in favour of the Complainants, disclosure of carpet area and common area details, and clarification regarding the undivided share of land (UDS), which reliefs were not sought before the Consumer Forum.

67. They submitted that the allegation of the Respondents that they failed to make timely payments as per the mutually agreed stages under the Agreement of Sale is wholly false, baseless, and unsubstantiated, and reflects a harassing approach towards the customers. Respondents mentioned in the Agreement of Sale, as the Pre EMI scheme eligibility was subject to the complainant's compliance with a set of pre-conditions, i.e. firstly, a lump sum payment of 85% and secondly, payments in a timely manner. The Complainant submitted that such conditions are false, non-existent, and are being projected only to mislead this Authority, and it submitted that the Agreement of Sale provides that the timely payment of instalments by the purchaser as per the work progress is mandatory. Hence, it is contended that the Respondents are projecting incorrect and misleading information.

68. They reiterate that all the conditions stipulated under the Agreement of Sale have been duly complied with and that no amount is due or payable from them as alleged by the Respondents. It is submitted that the default, if any, lies solely on the part of the Respondents, who failed to pay the pre-EMI amounts as agreed under the Agreement of Sale, which specifically provides that under the Pre-EMI payment scheme, the party of the Second Part/Company shall pay the pre-EMI payments till the completion of the flat, as reflected in the said payment table.

69. The Complainants submitted that Para No. 8 of the Flat Booking Letter dated 04.01.2018 states that the allotment of the residential flat was to be confirmed upon execution of the Agreement of Sale in the Company's standard format. Accordingly, on 23.03.2018, the Respondents executed the Agreement of Sale and also entered into a Tripartite Agreement between the Complainants, the Respondents, and PNB Housing Finance Limited.

70. They submitted that the Respondent's home loan department approached the Complainants for submission of documents as per their prescribed checklist, which were duly furnished. Thereafter, the bank sanctioned a home loan to the extent of 85% of the total flat

cost on 13.03.2018 and disbursed an amount of Rs. 54,00,000/- to M/s. Aditya Construction Company, and it is submitted that the booking amount is only a token or advance paid for the reservation of the flat, and that the payment milestones are governed by the Agreement of Sale. Once the Agreement of Sale is executed, it becomes a binding contract, and any alleged delay in payment prior to execution of the Agreement of Sale is not legally enforceable.

71. They have further submitted that as on the date of execution of the Agreement of Sale and disbursement of the loan, only up to the 7th slab of construction had been completed, for which the Respondents were entitled to collect only Rs. 46,15,000/- as per work progress. However, instead of adhering to the stage-wise schedule, the Respondents, allegedly in collusion with PNB Housing Finance Limited, collected a total amount of Rs. 63,23,000/- (Rs. 54,00,000/- towards loan disbursement and Rs. 9,23,000/- towards booking advance), resulting in an excess collection of approximately Rs. 17 lakhs. It is contended that this clearly establishes that no amount was due from the Complainant and that the Complainant was fully eligible for the Pre-EMI scheme. It is further submitted that, prior to disbursement, the Respondents themselves requested the bank to disburse only Rs. 54,00,000/-, and not the alleged 85% lump-sum amount, the request letter for which has been enclosed. The Complainants contended that once 85% of the flat cost was sanctioned by the bank, the Respondents' assertion that the Complainant was ineligible for the Pre-EMI scheme is untenable and only an attempt to mislead the Authority by raising false and fabricated allegations.

72. The Complainant submitted that the Respondents themselves, in their written statement at Paragraph No. 5 on Page No. 3, have admitted that an amount of Rs. 63.23 lakhs was collected up to the 10th slab stage of construction. This admission clearly establishes that, upon completion of the 10th slab, the Respondents had already collected an excess amount of Rs. 7,85,000/-, thereby demonstrating that no further amount was due or payable by the Complainant at that stage and it is submitted that the next payment milestone was linked to the completion of the 12th slab, which was completed only on 25.11.2019 and despite there being no payment due from the Complainant, the Respondents failed to pay the pre-EMI amount of Rs. 8,20,694/- up to November 2019, covering a period of approximately one and a half years, as mandated under the Agreement of Sale. Taking into consideration the amounts already available with the Respondents, namely, the booking amount of Rs. 9,23,000/-, the loan disbursement of Rs. 54,00,000/-, and the unpaid pre-EMI amount of Rs. 8,20,694/-, a total

excess fund of Rs. 6,82,694/- was available with the Respondents. Even at that stage, it is evident that the Complainant was not in default of any payment obligation.

73. The Complainant submitted that the next payment milestone was linked to the completion of the 14th slab, which was completed on 13.02.2021. It is stated that the pre-EMI amount payable by the Respondents stood increased to Rs. 15,04,580/- up to 13.02.2021. It is further submitted that, as reflected in the said table, a total excess fund of Rs. 7,02,948/- was available with the Respondents, including interest of Rs. 2,59,368/- on the pre-EMI amount payable at that time. This, according to the Complainant, clearly establishes that no amount was due or payable by the Complainant, that there were no late payments, and that the Complainant continued to be eligible under the Pre-EMI scheme. It is further contended that the Respondents failed to pay the pre-EMI amounts in terms of the Agreement of Sale, and the Complainant further submits that, as per the relevant clauses of the Agreement of Sale, all applicable taxes and charges are required to be paid prior to registration of the flat. It is stated that the Agreement of Sale was executed on 23.03.2018, by which time Goods and Services Tax had already been introduced with effect from 01.07.2017. However, the Respondents are stated to have remained silent, and there is no stipulation in the Agreement of Sale that GST will attract interest., Respondents submitted a document showing fictitious fabricated delay charges for GST, which were submitted to the Authority, deliberately misleading the Hon'ble Authority.

74. The Complainant submits that it has come to their knowledge that the Respondents have not paid Goods and Services Tax (GST) to the GST Department till date. It is further submitted that GST came into effect from 01.07.2017, and if the Respondents were required to levy GST, the same could only be charged on instalments payable from 01.07.2017 onwards, after duly considering the input tax credit, and only upon furnishing relevant documentary details before raising any such demand. Even assuming GST is taken into consideration, the Complainant submits that the excess funds available with the Respondents at every stage of work progress clearly establish that no amount is due or payable by the Complainant, and that the Respondents' assertion regarding the Complainant's ineligibility for the Pre-EMI scheme is baseless, false, and intentionally made.

75. The Complainant submits that, even after commencement of brickwork, an excess amount of Rs. 11,01,931/- was available with the Respondents. It is further submitted that, as on date, despite the flat not having been handed over even for interior works and in the absence of an Occupancy Certificate, the Respondents are liable to return an excess amount of Rs.

19,87,276/- to the Complainant. It is stated that all the calculations have been made by applying interest at the rate of 12% per annum only, whereas the Respondents are liable to pay interest at the rate of 18% (or) 24%, as applicable.

76. In view of the aforesaid circumstances, the Complainants submit that substantial amounts continue to remain with the Respondents on account of non-payment of pre-EMI along with interest, despite the Complainants being fully eligible under the Pre-EMI scheme, and the Complainants seek further disbursement of funds from PNB Housing Finance Limited in the absence of commensurate progress of construction. It is further submitted that PNB Housing Finance Limited has also refused to release further amounts due to the delayed progress of construction.

77. The Complainants submit that the Agreement of Sale does not clearly define the term “slabs.” In the absence of any specific definition, it is contended that the slabs ought to be construed as floor slabs only and not as slabs inclusive of cellars. It is further submitted that when the amounts payable are calculated strictly based on the progress of work and completion of floor slabs, the excess funds available with the Respondents stand substantially increased.

78. The Complainants submitted that M/s. Aditya Construction Company has been issuing demand notices containing incorrect information regarding the progress and completion of construction. By way of illustration, the demand letter dated 13.02.2021 claims completion of the 14th floor, whereas the photograph enclosed therewith clearly shows that only the 12th slab had been completed. This, according to the Complainants, demonstrates that the Respondents have been projecting incorrect construction status and raising demands for amounts in excess of what is actually payable based on the stage of work completed. It is further submitted that the Complainant had duly intimated M/s. Aditya Construction Company, through email and registered post, about the change of residential address from West Venkatapuram, Alwal (old address) to KPHB Colony, Kukatpally (new address) due to personal reasons. Despite such intimation, the Respondents continued to send demand notices to the old address, of which only one or two could be collected from the occupants after the Complainant’s relocation. In view of the above, the Complainants submit that they cannot be held responsible for any demand notices allegedly issued to the old address.

79. The Complainants submitted that the monthly Pre EMI amount, which was supposed to be reimbursed to the complainants from the date of the Agreement sale, is not paid by the respondents, and that amount, with interest @12% was accumulated/nearing RS. 50 Lakhs.

From this, it is clearly evident that the complainants are not due for any payments/delays, etc, but respondents are, baselessly and wrongly, portraying the Complainants as a defaulter. It is further submitted that under the Agreement of Sale, the Respondents themselves have stipulated interest at the rate of 18%/24% for delays, and if the same rates are applied to the amounts due from the Respondents, the accumulated liability would exceed Rs. 50 lakhs.

80. The Complainants further submit that, in terms of Section 13 of the RE(R&D) Act, the Respondents are prohibited from demanding or accepting more than 10% of the total cost of the apartment prior to execution of the Agreement of Sale. It is contended that the Respondents acted in contravention of the said statutory provision. It is further submitted that, based on the enclosures filed by the Respondents themselves, delay charges have been fabricated from the very date of booking of the flat, which renders the calculations wholly baseless and false. The Complainant alleges that the Respondents have filed fictitious and fabricated delay-charge documents with a deliberate intent to mislead this Hon'ble Authority. From the above, it is contended that no amount towards payments, delay charges, or penalties is due from the Complainant, whereas substantial amounts are due and payable by the Respondents.

81. In view of the above facts and circumstances, the Complainant submits that the Respondents cannot attribute their borrowing of funds or financial liabilities to the Complainant. It is contended that such financial issues are a consequence of the Respondents' abnormal delay in construction and completion of the project and their failure to adhere to the terms of the Agreement of Sale, which has caused mental agony to the Complainant and has allegedly resulted in health issues.

82. The Complainant reiterates that, as explained in the preceding paragraphs, all the conditions of the Agreement of Sale have been duly complied with and that no amount towards payments or delay charges is due from the Complainant, who remains fully eligible under the Pre-EMI scheme. The Complainant further questions why the Respondents failed to reimburse the pre-EMI amounts despite having collected approximately Rs.17 lakhs in excess of the work-progress stage after disbursement of Rs.54 lakhs by PNB Housing Finance Limited; why the Respondents have neither repaid the pre-EMI amounts nor refrained from issuing demand notices branding the Complainant as a defaulter; why repeated attempts made by the Complainant through phone calls, emails, registered post, and requests for personal meetings were not responded to; and contends that only upon timely reimbursement of pre-EMI amounts, if at all, would the Respondents have any right to raise claims relating to alleged late or delayed

payments and it is submitted that the Complainant did not independently opt for PNB Housing Finance Limited and that the said lender was suggested by the Respondents, which the Complainant accepted.

83. A copy of the email received from the Respondents' loan section is appended herewith. The Complainant submits that the said email clearly demonstrates the Respondents' tendency to attribute responsibility to others in relation to each and every issue, without any justifiable cause.

84. The Complainants submitted that, despite having retained approximately Rs.17 lakhs in excess of the amount payable as per the stage of construction, the Respondents have, without any strict or cogent proof, alleged that the Complainant failed to make payments and was ineligible for pre-EMI reimbursement. It is further submitted that due to the delay and lack of construction progress, PNB Housing Finance Limited did not release the balance loan amount. Owing to the Respondents' continuous failure to pay the pre-EMI amounts from 2018 onwards, the accumulated pre-EMI liability, together with interest calculated at 12%, has grown to nearly Rs. 50 lakhs, which exceeds the balance amount otherwise payable by the Complainant. As explained in the preceding paragraphs, at no stage of construction progress was the Complainant in default, and even after considering GST, excess funds of the Complainant remained with the Respondents. In these circumstances, the Complainant contends that he/she cannot be compelled to make any further payments, as the same would result in severe financial hardship and mental agony. The Complainants further submits that if any amount were legitimately due, supported by proper proof and in accordance with the Agreement of Sale, the Complainant is ready and willing to pay, but not on the basis of fictitious and fabricated delay-charges documents allegedly filed by the Respondents to deliberately mislead this Hon'ble Authority. The Complainant therefore submits that the Respondents' act of disregarding the aforesaid facts and branding the Complainant as a defaulter while failing to complete the balance works is wholly untenable and malafide.

85. The Complainants submitted that the stipulated project completion date was 18.03.2020, as per the building permission. It is further submitted that the nationwide lockdown due to COVID-19 was implemented in India from 24.03.2020, by which time only 12 floors of the project had been completed. It is contended that the construction from the 7th floor to the 14th floor took more than three and a half years, and even if a period of six months is attributed to COVID-19, the Respondents completed only seven floors within a span of approximately three

years. This, according to the Complainant, clearly demonstrates abnormal delay in completion of the project. The Complainants further submits that the Respondents are seeking to take undue advantage of the COVID-19 situation.

86. The Complainant submits that although the RE(R&D) Act, 2016 came into force in the State of Telangana on 04.08.2017, the Respondents have failed to register the subject project under RERA, despite the project being an ongoing project which had not received a completion certificate as on the said date. It is contended that such registration is mandatory under Section 3 of the RE(R&D) Act. The Respondents' reliance on State RE(R&D) Rules to justify non-registration is untenable, as the RE(R&D) Act, 2016, is a Central legislation enacted by Parliament and constitutes the primary statutory framework, whereas the State Rules are subordinate legislation framed only to implement the provisions of the Act within the State. It is submitted that in the event of any inconsistency or conflict between the provisions of the Act and the State Rules, the Act shall prevail, and the Rules cannot override or dilute the mandatory requirements of the Act. While State-specific Rules may govern procedural aspects so long as they are consistent with the Act, they cannot be relied upon to defeat or circumvent the statutory obligation of project registration under Section 3 of the RE(R&D) Act.

87. In addition, thereto, the Complainants place reliance on the judgment of the Hon'ble Supreme Court in *Newtech Promoters and Developers Limited v. State of Uttar Pradesh*, wherein it has been categorically held that the RE(R&D) Act has a retroactive application and extends to all ongoing real estate projects for which a completion certificate has not been issued. A Bench comprising Hon'ble Justice U.U. Lalit, Hon'ble Justice Ajay Rastogi, and Hon'ble Justice Aniruddha Bose observed that, by enacting RERA, Parliament intended to bring ongoing real estate projects within the wide ambit of the statute so as to protect the interests of consumers and homebuyers.

88. That they have sought clarification regarding the undivided share of land (UDS) allotted to their subject flat. They further submitted that if all flat owners were allotted the prescribed or proportionate extent of land, as applicable, there would be no dispute; therefore, they seek clear clarification in this regard.

89. That they have no mutual discussions were held with the Respondents with regard to the carpet area or related aspects. It is further submitted that under Section 13(2) of the Real Estate (Regulation and Development) Act, 2016, read with the relevant provisions of the RERA

Model Rules, it is mandatory for the promoter to disclose and include details relating to carpet area, along with approved plans, layout, and specifications.

90. In view of the foregoing submissions, they have prayed this Authority to grant the reliefs sought for by them, having due regard to the facts and submissions placed on record by the Complainants, in the interest of justice.

**F. Points for Consideration:**

91. Upon a careful perusal of the record and the submissions advanced by both parties, oral as well as written, the following issues arise for determination in the present complaint:

*I. Whether the Respondent No. 1 has violated any provision of the RE(R&D) Act, 2016?*

*II. Whether the Complainant is entitled to the reliefs as prayed for? If yes, to what extent?*

***Point – I***

92. As can be gathered from the material available on record before this authority the principal grievance No. (i) of the Complainants pertains to Non registration of the project under Sections 3 and 4 of the Real Estate (Regulation and Development) Act, 2016, in respect of the project “Aditya Capitol Heights,” on the ground that the project is an ongoing project.

93. It is pertinent to note that the aspect of relating to registration of the said project was already examined by this Authority in suo motu proceedings in Case No. D6/3163/TGRERA. Upon consideration of the Respondent’s explanation, this Authority held that the project constituted an ongoing project within the meaning of the Act and directed the Respondent Promoter to apply for registration under Section 4. In view of the said adjudication, the question of re-examination of the same issue in the present proceedings does not arise. Accordingly, Point I is answered

***Point – II***

94. With regard to reliefs detailed herein under: -

- iii. To pay the Pre EMI amount of Rs 34,26,613/- to Complainant (from June 2018 to 31.07.24) and further until handed over. The interest at the rate of 24% per annum to be paid on the amount pre-EMI amount till date,
- iv. To pay the Interest for the amount of Rs 97,49,613/- from the date of deposition which Complainant have paid on time but the project was delayed abnormally,

- v. To direct the respondents to register the flat immediately, duly providing an occupation certificate without any further delay,
- ix. To direct the respondent to pay an amount of Rs.5,00,000/- (Rupees Five Lakhs only) for mental agony and for following unfair trade practices,
- xi. To register and hand over the flat with all facilities promised as per the Agreement to the complainant immediately for occupation.

Prayed for in the present complaint, from a perusal of the order dated 30.12.2022 passed in Consumer Complaint No. 451 of 2021 enclosed by the Complainant with the present Complaint, it will be evident that he had already prayed for these reliefs apart from other reliefs in the said consumer Complaint, filed by him before the Hyderabad District Commission –II and the said commission has granted the said reliefs and other reliefs prayed for therein by allowing the said consumer complaint partially vide the said order dated 30.12.2022, by directing the Opposite parties No. 1 and 2 therein who are Respondents No. 1 & 2 herein in the present complaint and Respondent No.3 who is Respondent No.5 herein., as under,

- i) To register the Flat No.1602 in A-Block of Aditya Capitol Heights at Hafeezpet, Serilingampally, Ranga Reddy District in favour of the complainant along with the occupancy certificate within four months.*
- ii) To pay Rs. 23,93,497/- (Rupees twenty three lakh ninety three thousand four hundred and ninety seven only) to the complainant (total amount that the complainant paid to opposite party No.3 towards pre-EMI) with 12% interest p.a from 23.03.2018 till the handing over of the possession of the subject flat.*
- iii) To pay Rs. 2,00,000/- (Rupees two lakhs only towards compensation for mental agony*
- iv) To pay Rs. 20,000/- (Rupees twenty thousand only) towards the cost of the complaint.*
- v) The Opposite party No.3 is directed to release the balance sanctioned loan amount in favour of opposite party Nos. 1 and 2 with immediate effect for completion of pending works.*
- vi) Complainant and opposite parties 1 and 2 are not entitled for other reliefs prayed in their pleadings as they are not proved with cogent evidence.*

95. Highlighting the above said orders passed by the District Consumer Disputes Redressal Commission-II, Hyderabad, the Respondents have contended that the present complaint is not maintainable in view of the earlier proceedings initiated by the Complainant before the District Consumer Disputes Redressal Commission-II, Hyderabad, in Consumer Complaint No. 451 of 2021. It is their submission that the present proceedings are barred by the principles of res

judicata and that the Complainant is precluded from re-agitating the same cause of action before this Authority.

96. At the outset, it is to be observed that the doctrine of res judicata applies where the matter directly and substantially in issue in a subsequent proceeding has been finally adjudicated between the same parties by a competent forum. A perusal of the operative portion of the order passed by the Consumer Commission reveals that the reliefs granted therein primarily pertain to registration of the subject flat, refund of pre-EMI amounts with interest, compensation for mental agony, and certain consequential directions. Accordingly, this Authority refrains from re-examining or re-adjudicating upon the reliefs already granted by the Consumer Commission, as extracted hereinabove in Para no. 94.

97. With regard to the reliefs sought for as mentioned herein below

viii. To pay the rental amount of private house taken for my family accommodation. I have been staying in a private house by paying a rent of Rs 26,500/- and maintenance charges of Rs 2,000/- per month due to the abnormal delay in construction of the flat. An amount of Rs 28,500/- per month to be paid to me from 1.07.2021 to till date by the developer as the delay is on his account.

98. Insofar as this relief is concerned, the Complainant is required and is at liberty to pursue it before the Learned Adjudicating Officer under "Form N", since the said officer is competent to adjudicate upon such reliefs.

99. In the present complaint, on careful examination of the reliefs insofar for it will be evident that the Complainant has also sought additional reliefs which are statutory in nature and arise directly under the provisions of the Real Estate (Regulation and Development) Act, 2016, including compliance with statutory disclosures, clarity regarding carpet area and undivided share (UDS), and adherence to obligations mandated under the Act.

100. The said statutory compliances fall squarely within the supervisory and regulatory jurisdiction of this Authority under the RE(R&D) Act and were neither specifically adjudicated nor granted by the Consumer Commission. Therefore, the present complaint, to the limited extent of such distinct statutory reliefs, cannot be said to be barred.

101. Hence, this Authority shall proceed to examine and adjudicate upon the reliefs mentioned hereunder prayed for by the Complainant in the present complaint, which fall within

its jurisdiction under the provisions of the Real Estate (Regulation and Development) Act, 2016.

- ii. To direct the respondents to furnish carpet area dimensions within the walls as defined under RE(R&D) Act Obligation to disclose Carpet Area section 13(2).
- vi. The measurements of the carpet area, Common area etc., are to be given
- vii. Clarification regarding the allotment of the UDS area as per the agreement.

102. Accordingly, this Authority confines its adjudication strictly to above three detailed reliefs which arise under the statutory framework of the RE(R&D) Act and which have not already been granted or determined by the Consumer Commission.

103. The Complainant contends that the Agreement of Sale dated 23.03.2018 executed between the parties is not in conformity with the provisions of the Real Estate (Regulation and Development) Act, 2016. Upon careful perusal of the said Agreement, this Authority observes that the subject apartment is described as “Flat No.1602 measuring 1950 sq. ft. including common areas.” The Agreement does not distinctly specify the carpet area of the apartment as defined under Section 2(k) of the RE(R&D) Act.

104. The description of the apartment on a consolidated “including common areas” basis reflects a super built-up area mode of sale. Such a description does not satisfy the statutory requirement mandating disclosure of the net usable carpet area. The RE(R&D) Act specifically defines “carpet area” under section 2(k) of the RE(R&D) Act and makes its disclosure mandatory to ensure transparency, uniformity, and informed consent of the allottee.

105. Section 13(2) of the RE(R&D) Act mandates that every Agreement for Sale shall be in such form as may be prescribed and shall specify the particulars of development of the project, including construction specifications, internal and external development works, and the date and manner of handing over possession, etc. The omission of a clear specification of carpet area, coupled with the absence of a definite date or period for handing over possession, renders the Agreement deficient in essential statutory particulars.

106. The legislative intent underlying the RE(R&D) Act is to eliminate vagueness, opacity, and one-sided contractual drafting practices which historically operated to the detriment of allottees. Agreements describing apartments merely in terms of super built-up area without transparent disclosure of carpet area defeat the object and purpose of the RE(R&D) Act. A

generalized assertion that such terms were based on mutual discussion cannot override statutory compliance requirements.

107. With regard to the allegation that the Respondent is constructing a wall which may affect the Complainant's proportionate Undivided Share (UDS) it will be evident from the material available on record that no documentary, technical, or survey material has been placed before this authority to establish any actual reduction, alteration, or encroachment upon the UDS allotted to the Complainant. In the absence of cogent evidence, no finding of violation of relevant provisions in respect of the UDS can be recorded at this stage.

108. Nevertheless, it remains the statutory and contractual obligation of Respondents No.1 and 2 to convey and register the agreed proportionate UDS corresponding to the apartment. In the event of any demonstrable reduction in the agreed UDS at the time of conveyance, the Respondent shall be liable to rectify the same in accordance with the law.

109. The Respondent is directed to clearly specify the carpet area of the apartment as defined under Section 2(k) of the RE(R&D) Act in the manner prescribed under Annexure 38 of the RE(R&D) Rules, the practice of describing the apartment merely on a consolidated area basis, "including common areas," is impermissible under the RE(R&D) Act and shall not be continued and the intent and purpose of bringing such Draft Agreement of Sale is to ensure transparency and uniformity in the process of allotment and to avoid any ambiguities for the allottees.

110. Therefore, the Respondent is hereby directed to align the Draft Agreement of Sale with the model format prescribed under Annexure-38 of the Telangana Real Estate (Regulation and Development) Rules, 2017, and to ensure strict compliance with the provisions of the Real Estate (Regulation and Development) Act, 2016, by specifying the carpet area of the apartment as defined under section 2(k) of the RE(R&D) Act.

111. The relief (x) sought for by the Complainant lacks clarity. In the absence of clarity and as also specific evidence, this authority is of the considered view that no findings can be given in respect of this relief.

112. The Respondents No. 1 & 2 shall henceforth execute Agreements for Sale with prospective allottees strictly in the format and manner prescribed under the Act and the Rules, to ensure transparency, uniformity, and the avoidance of future discrepancies.

113. Upon perusal of the counter filed by Respondent No.5, this Authority observes that Respondent No.5 seeks to absolve itself entirely from the disputes arising between the Complainant and the Promoter, by relying upon Clauses of the Tripartite Agreement which declare the borrower's repayment obligation to be absolute and unconditional and contends that no relief is sought against it.

114. The Complainant has alleged that the disbursement was made disproportionate to the actual stage of construction and submits that Respondent No.5, being a housing finance institution, is expected to exercise with due diligence before disbursing stage-linked loan amounts in real estate projects. Disbursement of loan amounts in excess of actual construction progress, if established, would reflect a lack of proper verification mechanisms.

115. In the present case, except for making general allegations, the Complainant has not placed independent technical evidence to conclusively establish that Respondent No.5 acted in collusion or in violation of any statutory mandate under the RE(R&D) Act.

116. However, this authority observes that financial institutions financing real estate projects are expected to act transparently and ensure in the future that disbursements are strictly in accordance with the certified construction stages.

117. Accordingly, this Authority holds that no case against Respondent No. 5 is made in the present proceedings.

118. Therefore, the point-II stands answered in the above terms.

#### **J. Directions of the Authority**

119. In light of the discussions and findings made hereinabove, this Authority, vide its powers under Sections 37 and 38, issues the following directions to the Respondent:

a) The Respondent No.1 is hereby directed to align the said Agreement of Sale with the format prescribed under Annexure 38 of the Telangana Real Estate (Regulation and Development) Rules, 2017 within 45 days from the date of this order and also disclose the carpet area of the apartment as defined under Section 2(k) of the Act, and ensure strict statutory compliance in all future agreements executed with prospective allottees.

b) Insofar as compensation is concerned, the Complainant is at liberty to pursue appropriate proceedings before the Learned Adjudicating Officer under "Form N".

120. Failure to comply with above said directions by the Respondent shall attract penalty in accordance with Section 63 of the RE(R&D) Act, 2016.

121. The complaint is disposed of with these directions. There shall be no order as to costs.

**Sd/-**

**Sri K. Srinivasa Rao,  
Hon'ble Member,  
TG RERA**

**Sd/-**

**Sri Laxminarayana Jannu,  
Hon'ble Member,  
TG RERA**

**Sd/-**

**Dr. N. Satyanarayana, IAS (Retd.),  
Hon'ble Chairperson  
TG RERA**

