

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

**COMPLAINT NO.157 OF 2024**

**30<sup>th</sup> May 2025**

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

**1. Mrs. Deepa Suraj Premi**

*R/o No.4-2-174/31/32, Urban Oaks-I,  
Flat No.403, Dhananjaya Estates,  
Kowkooor, Secunderabad,  
Medchal-Malkajgiri – 500010*

**2. Sri Suraj Premi**

*R/o No.4-2-174/31/32, Urban Oaks-I,  
Flat No.403, Dhananjaya Estates,  
Kowkooor, Secunderabad,  
Medchal-Malkajgiri – 500010*

**...Complainants**

Versus

**M/s Mehta & Modi Realty Kowkur LLP**

*(Through its Authorized representative, Sri Anand S. Mehta)  
Office at No.5-4-187/3&4, II floor,  
Soham Mansion, M.G. Road,  
Secunderabad – 500003*

**...Respondent**

The present matter filed by the Complainants herein came up for hearing on 31.01.2025 before this Authority in the presence of and Complainants in person, and Counsel Sri Manne Hari Babu & M.A. Lateef appeared on behalf of the Respondent and after hearing the arguments, this Authority passes 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 Respondent.

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

3. The Complainants submitted & raised the following issues in the Project:
  - i. Complainants submitted that the Respondent had executed the sale deed in favour of the Complainants on 04.04.2024 at SRO Malkangiri vide Document No. 2282/2024 of the flat bearing No. B-512 in Greenwood Heights bearing Reg. No. P02200001314 having validity upto 21.09.2024. Upon request of possession, Complainants were asked to join as a member of the "Greenwood Welfare Association" with a condition in the form that they have to agree to pay the maintenance charges with effect from March 2023 till March 2024. The respondent contention is that a Notice letter dated 29.12.2022 which was sent intimating, that the possession of the flats shall be handed over to from February 01, 2023 onwards subject to availability of power supply and claim that Complainants liability to pay maintenance is effective from the date mentioned in said letter.
  - ii. Complainants submitted that the Respondent has intimated them that, Complainants would be issued a post-dated letter of possession for which, they are required to sign a letter of confirmation, which contains a clause, asking Complainants to confirm that the said flat have been duly inspected by them and is completed in all respects. Further, Complainants are also required to issue a No objection certificate. Within two weeks from the signing of all the documents, it was promised that the Respondent will complete the remaining pending works such as sanitary fittings, painting, and finishing would be completed. Until such time, these works remain on hold as per the company's policy.
  - iii. The Respondent has formed an Association by the name "Greenwood Welfare Association" and registered the same under the Telangana Societies Registration Act on November 16, 2021, with registration number 687/2021 and have also issued rules and regulations. Further, the aims and objects as per the memorandum of the association refers to promotion of cultural, charitable, social, sporting etc. Nowhere in the objects, does it contain any clause, that the association is an owner's association and is exclusive for the owners of the flats and is for the maintenance of the project "Greenwood Heights". That the Respondent has formed this association in 2021 when none of the flats were complete and the registrations and possession of the units were done after February 2023 only as per their intimation letter. Complainants submitted that there

seems to be a mala fide intention on the part of the Respondent to incorporate an association with the members being the promoters and their employees, before the actual date of completion or the registration or possession of the flats.

- iv. That the Respondent has collected Rs.31,000/- (Rupees Thirty-One Thousand Only) towards Manjeera Water charges from the Complainants. That the basis and details for the same were not provided and their contention is that as per clause 6.4 of the sale agreement, they are entitled to claim the same from the Complainant on a pro-rata basis. Complainants further submitted that the provision of amenities relating to water facilities are the basic requirement of any project and the conditions forms part of the requirement under which the project is sanctioned. Even if the amount is paid as per the requirement of the water board, the cost of the same shall form part of the sale consideration. Further, no details were provided to the Complainants as to how the pro-rata amount has been calculated. The entire amount of Rs.31,000/- (Rupees Thirty-One Thousand Only) collected towards the additional water connection charges by the Respondent is an unfair trade practice and is unlawful and needs to be refunded.
- v. Complainants submitted that when they gave their acceptance for taking the possession, after the execution of the sale deed, Complainants were informed that they are also liable to pay interest on delayed payment of instalments which has been calculated 18% based as per the clause 9.1 of the sale agreement within 30 days i.e., by 25.10.2019 from the date of the booking. That the Respondent has claimed 20% of the Project cost being Rs.11,60,000/- (Rupees Eleven Lakhs Sixty Thousand Only), when the project was not yet commenced and was still under excavation stage only and within two months there was a complete lock down due to COVID the effects of which continued for up to the end of the calendar year 2020. Although, there was no activity happening at the project site, the statement shared with Complainants, claims instalment during the pandemic complete lockdown period also. Further, the basis for the instalment being due on the dates as claimed with respect to the stages of completion is also not transparent. Further, the amount of GST payable was never notified to the Complainants and in the interest statement the Respondent has computed interest on GST amount also. Even till today, the sanitary fittings and painting and finishing works remain incomplete, however still demand for the final instalment is made and also included in the interest statement

shared and interest is also calculated on the same. The method in which the interest calculation is done, is to garner the maximum benefit to the Respondent.

- vi. The sale agreement submitted with RERA at the time of project registration and the format which is actually executed by the respondent is totally devoid of many clauses. In fact, the actual sale agreement contains many clauses which are absent and does not form part of the Sale agreement format submitted to this Authority. It was further submitted that a plain reading of the executed agreement when compared to the RERA submitted agreement entails that the entire agreement is lopsided and favours the Respondent only and the same is used as a weapon against the buyers, which makes them gullible with unjustified demands being levied in the guise of agreed sale agreement.
- vii. The project has not yet received its occupancy certificate, which signifies that the project is not yet fully completed. The sale deed was executed on April 04, 2024. Further, the flat is not yet complete in all aspects as the sanitary fittings and painting works remain withheld and pending and the same is not fit for occupation in its current state. Levying of maintenance charges based on the premise that possession letter was already sent to the Complainants way back in 2023 and that is adequate enough for charging the maintenance charges is not maintainable. The maintenance charges being levied for the period even before possession and registration is not justified and the demand for the same is incorrect and not tenable. Further, the Respondent is coercing the Complainants to agree to bear the maintenance charges from March 2023, but for that the pending works and possession shall be withheld is unjustified.
- viii. Sanitary Fittings, painting, finishing works not yet completed: Complainants submitted that they have already conveyed to the Respondent to take the possession of the flat and expected the Respondent to complete all the pending works and only after satisfactory inspection, Complainants will be able to accept the letter of possession and issue NOCs as required. The Respondent contends that it is the company policy and unless and until Complainants agree and sign all the required documents, the finishing works shall not be undertaken. That this stand of the respondent amount to coercion and is an unfair trade practice and is unjustified.

- ix. Complainants further submitted that the TDS amount which was deducted and remitted to the Government account, interest on the same is also calculated as an outstanding amount. Which is illogical and incorrect.
- x. Further, that as per Rule 15 of the Rules, 2017, the interest rate applicable to the RERA registered projects is SBI rate plus two percent as applicable for the relevant period and not the rate of 18% as calculated and claimed by the Respondent.
- xi. It was also submitted that the interest is not calculated correctly. That even till today the project remains incomplete and the flat is not yet complete in all respects. Respondent has taken the benefit of pandemic and failed to complete the project which was scheduled for completion as on November 2021 as per the sale agreement. However, in spite of delay of more than 2 years from the date of completion, still the Respondent vehemently demands interest which is unfair.
- xii. The swimming pool promised in their brochures and the actual reality are highly short of the expectations that the plan of the scheduled flat as agreed as per the Sale agreement has been modified without the consent of the Complainants and the actual plan as per the sale deed has been changed for the utility area. As per the sale agreement, there is a mention of providing a choice of 2 colours for interior painting, when enquired about the two colours for selection, Complainants were informed that the two colours include the colour white. As such, only one choice of colour has been offered. The practices followed by the respondent are deceptive and inherently misleading.

**B. Relief sought:**

4. Aggrieved by the actions of the Respondent, Complainants sought for the following reliefs:
  - i. *To complete the entire project with all amenities at the earliest and apply for the occupancy certificate.*
  - ii. *The complainants prayed for peaceful possession of the flat complete with all sanitary fittings to be given to us at the earliest.*
  - iii. *The flat is not yet complete in all aspects and physical possession is not yet given / taken over, as such we pray that the maintenance charges be levied from the date of actual possession only.*
  - iv. *Refund of the arbitrarily collected amount of Rs. 31,000 towards Manjeera Water Charges.*

- v. *The project is delayed beyond two years and still neither the project is complete nor the flat is complete in all aspects i.e. sanitary fittings etc. Further, the interest calculation is done incorrectly, as such the complainants prayed that the illegally interest demand to be quashed.*

**C. Counter on behalf of the Respondent:**

5. Respondent submitted its Counter and countered each argument raised by the Complainants as under:

- i. With regards to the maintenance charges, Respondent submitted that the same were agreed to be paid by the Complainants under the agreement clause No.11.4 and also in the sale deed. As per the agreements and documents, flat/house owners are liable to pay maintenance charges to the association or to the builder until its formation towards common amenities like electricity, security, and water, regardless of occupancy status. These charges are accountable to the owners Association and the same is not for the benefit of the Respondent. Though the house/flat was completed, which was informed to the Complainants but they delayed for registration and taking possession, that does not absolve them to pay the maintenance from the date of intimation, as they agree under the contracts and the reasons stated above.
- ii. The flat was completed prior to Dec, 2022 except final touch ups and finishing touch of paints. At the time of delivery of the possession of the flat/house, the Respondent once again make the final touch ups of paints, water connections, electricity connection and sanitary connections given to avoid rusting or spooling for non- use of the same. All these arrangements are made to give good look and new look of house. The allegations that without signing the possession letter, the Respondents are not inclined to the same is false and baseless.
- iii. That the Association is Registered on 16.11.2021 and having Registration No.687/2021 under Telangana Societies Registration Act for maintenance of the “Greenwood Heights” & the objects of the Association can be changed by the Regular Association after taking charge of it. This Registration of the Association is based on the books and sales agreements, to fulfil other formalities and hand over the same immediately after handing over the flats to the owners.
- iv. Respondent further submitted that this Manjeera Water connection charges for issue of water connection is for all flat members which is mentioned in the agreement of sale at clause 6.4. The said clause also specified that the Taxes like Municipal water

etc are liable to pay by the purchaser from the date of possession offered to him. The above payment is paid by the Complainants. The water charges are paid to the concerned water works board and the Respondent has nothing to do with it.

- v. The Complainants signed the booking form, wherein it clearly mentioned the schedule of payments and in case of any delay, they agreed to pay the interest on delayed payments. Further, in the sale agreement also it was mentioned that in case of delay in payments, they are liable to pay the interest. With regard to the interest on GST payments, as per the work progress and GST payment, the Complainants liable to pay the same, as they failed to do the same, they are liable to pay the interest as per the contracts entered by them. Further the Complainants from the beginning did not pay the instalments as per the schedule mentioned in the booking form. Even though the cancellation letter was issued, the Complainants did not pay the instalments within the time. That even though the covid-19 is obstructing the construction work, the Respondent has completed the flat / house within specified time and intimated the Complainants to take the possession of the house. Even the Complainants delayed in intimating the modification/alteration in the flat, alleging due to covid etc. The other changes in timing and permission to make in the flat took several days by them. Even that the Complainants were due above Rs.5lakhs. Further, considering the covid-19 situation, the Respondent had given several concessions and also benefits to the complainants.
- vi. That the copy of the agreement submitted by the Respondent contains clauses wherein the rights of both parties are identical, along with standard provisions outlining the respective rights and liabilities of each party in clear terms.
- vii. Respondent further submitted that the flat was completed prior to Dec, 2022 except final touch ups and finishing touch of paints. At Nov & Dec, 2022, the Complainant sought for additional works and facilities including both works and the same were also completed. At the time of delivery of the possession of the flat/house, the Respondent once again will make the final touch ups of paints, water connections, electricity connection and sanitary connections given to avoid rusting or spooling for non-use of the same and should have good and new look for the house on the date of delivery. Before delivery of the possession, the purchaser can verify and sought final colour choice, sanitary fittings and other small changes and finishing touch, by signing other formality documents i.e. possession letter, no due letter, association

membership joining letter etc. All the same are in tradition in construction of flats. The said letters were not executed for the best known to them. When possession was offered to the Complainants in Dec,2021, they did not respond with regard to colour choice till April, 2024. Further, they agreed to sign all the documents by mail of February, 2024 as they intended to perform pooja etc and stated that to arrange the fittings as per tradition. That all these letters were not signed in 2021 and also not paid the balance amounts, with penalties for the delay payments, other amounts including maintenance etc for the reasons best known to him. Without completing the above formalities, he filed this case with false allegations with intention to avoid the maintenance and interest on delayed payments etc. As per the agreement the complainants have to sign the required documents, including the NOC etc. and take formal letter of possession of the property, as he was in possession of the same property as per the sale deed.

6. With respect to other issues raised, Respondent submitted that the swimming pool is ready, the association to manage it and operate the same. That there is no modification made without consent of the parties, the Complainants have verified the sale agreement and sale deed before executing the same. That as per the agreement, two colour choices including white, which is also colour, they cannot say that the white is not colour. However, if they requested it could have been provided another colour instead of white but there is no such request from the Complainants except making false claim.

7. Respondent further submitted that contrary to the above facts, the Complainants sought different reliefs and those are:

- i. The Respondent sought for completion of entire project, even though there is no reference or allegation to that effect. However, the project is completed except small portion of the project particularly on the part of the purchasers, who failed to pay the due to respondents for their houses.
- ii. Further, that the possession of the house might have been delivered if the Complainants completed the formality documents and paid dues, without doing the same, Complainants sought for delivery of possession, suppressing the real facts, i.e. they have not submitted the required documents for delivery of houses and completion of final touches of house before delivery.

- iii. That the maintenance charges, which the complainants are liable to pay as per the agreements/contract, is for the maintenance of the project.
- iv. Refund of the Manjeera water charges of Rs.31,000/-, which was paid as per the terms of the contracts and the same is paid to the concerned water works board and not to the Respondent.
- v. Respondent further submitted that it is not correct that the project was delayed due to the fault of the Respondent, but the delay was caused by the purchasers who failed to pay the consideration amounts as per the schedule mentioned booking form and contracts. The Complainants also did not pay the amounts within the stipulated time. They also made the additions and alterations for their flat which caused delay and moreover they refused to take possession of the flat for a period of 2 years even after the Respondent gave the notice of intimation to take the possession by clearing the dues.

8. In addition to the replies and answers of the Complainants allegations, Respondent bought the following facts before this Authority:

- i. That this Authority granted permission for the project on 19.10.2019 after satisfying the title of the property, plans and designs and other required documents submitted along with the application and requisite fee. Basing on the permission the Respondent started sales of the houses.
- ii. The Complainants approached the Respondent to purchase a house /flat, after verifying the documents title and plans and permissions etc physically. After satisfying the project and its details with documents and property rights, they booked flat B-512 and also paid booking amount Rs.25,000/- on 25.10.2019.
- iii. As per the booking form, the Complainants agreed to pay the consideration as per the schedule mentioned therein and in case any delay in payments, they agreed to pay the interest on the delayed payment. As per the mail correspondence of the Complainants, they requested time to pay the instalments itself against their agreed terms, which was replied suitably and as such they paid the amounts with delay, however, the Respondent did not collect / levied any interest for that delay period.
- iv. The Complainants and Respondent entered into sale agreement dated 11.11.2019. The Complainants had gone through the entire terms of the agreement and signed the same and that to they have not raised any objection with this agreement till filing this

present complaint, now at this juncture they are raising false and frivolous objections with an intention to gain unlawfully.

- v. As per the schedule, the completion has to be made by Nov, 2021, even there is Covid-19 situation the flat was almost completed except minor works though the Complainants had not made the schedule payments. The project was completed and informed to the Complainants by letters, but they did not turn up to pay the balance amounts and postponing the same for one or other reasons, moreover the last payment was made by the Complainants is on 11.03.2024 which shows that the delay is caused from the end of the Complainants.
  - vi. As the project and its houses are completing, to hand over the maintenance of the project, the Respondent had registered the house owners in the association with formal objectives, as the owners of the houses can change the object of the association etc.
  - vii. The Respondent had issued letter to the Complainants to take the possession of the flat/house, but for the reasons best known they did not come forward to take the same. As per the terms of the agreement, from the date of possession, the Complainants are agreed to pay the maintenance. Leisurely they came forward to get the registration of the flat accordingly, the same was registered on 27.03.2024. The Complainants have to take possession of the flat by executing letter of possession etc. and other formalities.
  - viii. At the time of execution of the documents for possession or prior to registration they have not raised any objection with regard to any pending works in the flat. Even though the entire flat is completed prior to execution of the possession documents. After completion of the formalities for possession of the property, the Respondent had again made final touch ups of paints, the functioning of the water connections, sanitary connections, electricity etc was verified and done to the satisfaction of the Complainants. As such they not raised any objections at any point of time except filing this complaint.
  - ix. It is not out of place to state that as per the agreements and law, the Complainants are liable to pay the GST and also liable to pay the Municipal other taxes and maintenance to the Association from the date of possession or completion of the house, whichever is earlier.
9. Accordingly, Respondent prayed to dismiss the complaint with exemplary costs.

#### **D. Rejoinder filed by the Complainants:**

10. Complainant filed a rejoinder to the Counter filed by the Respondent and submitted as under:

- i. The Respondent contends that in Clause 11.4 of the agreement of sale provides them authority to collect monthly maintenance from the purchaser from the date of intimation of possession. Very well knowing the fact that the project is not completed in all aspects and even till today occupancy certificate is not received. Further, para 11.4 does not conform to para 7.2 of the draft agreement submitted to the RERA which clearly defines the procedure of taking possession and the contention of the Respondent defies common sense and is not justifiable. Further, the contention that charges are payable to the owner's association and the same is not for the benefit of the Respondent is only a sham as the association is formed in violation of the para 19 of the draft agreement filed with this Authority where neither the occupancy certificate for the project is received nor the minimum total allottees criteria are fulfilled.
- ii. To rebut the claim of the Respondent, Complainants enclosed an email correspondence which evidences the fact and claim that only after signing the possession letter, the sanitary fitting work will be initiated.
- iii. As per Para 19 of the draft agreement filed with this Authority, the association of allottees shall be formed within 2 months from the receipt of the occupancy certificate and a minimum of 60% of the total allottees in such a project have taken possession. The Respondent formed an association in 2021 much before the completion of project, which mainly consists of members who are employees of the Respondent Company.
- iv. As per Para 1.2(ii), 1.2(iii) and 1.2 (iv) the total consideration includes taxes and water connection charges are the responsibility of the Respondent. Further, it is required that the promoter intimates and provide details of the taxes paid or demanded together with dates from which such taxes are imposed. The collection of manjeera water connection charges which is nothing but a tax is the liability of the Respondent and without providing the details of the taxes paid and the method of apportionment, the levy is not justified and needs to be refunded. This is not water charges as to be payable as claimed by the respondent.
- v. The Interest amount was intimated to the Complainants only after they completed the registration process, which signifies that all the payments have been duly made. An

email dated April 12, 2024 through which details of interest were shared with Complainants was attached for this purpose. It was further submitted that as per Para 1.11 of the draft agreement filed before this Authority, interest is payable at the rates prescribed in the rules. Further Rule 15 also specifies the rate of interest for delayed payments. The contention of the respondent that several benefits and concession were given is not true and baseless.

- vi. Further, it is contented that GST payments were not remitted. All the intimations sent mention only about the instalment due and the GST amount was never notified to the Complainants. Now the claim for interest is made which was intimated to the Complainants only when they went for the registration is not justified.
  - vii. Sale Agreement Format: A duly attested draft sale agreement filed with this Authority by the Respondent is attached which evidences Complainants' contention that the agreements clauses are not as inclined as notified under Rule 38 of the Rules, 2017.
11. Complainants further submitted that they paid the entire sale consideration along with GST and charges and the sale deed was executed on April 04, 2024. The Respondent withheld the finishing works and shared the interest calculation which is contrary to the provisions of the Act, 2016 and the Rules, 2017 and asking Complainants to sign the NOC and possession letter without completing the sanitary fitting and other works.
12. Accordingly, Complainants prayed for the following:
- a. *The complainants prayed for peaceful possession of the flat complete with all sanitary fittings to be given to us at the earliest.*
  - b. *The flat is not yet complete in all aspects and physical possession is not yet given / taken over, as such we pray that the maintenance charges be levied from the date of actual possession only.*
  - c. *Refund of the arbitrarily collected amount of Rs. 31,000 towards Manjeera Water Charges.*
  - d. *The project is delayed beyond two years and still neither the project is complete nor the flat is complete in all aspects i.e. sanitary fittings etc. Further, the interest calculation is done incorrectly, as such the complainants prayed that the illegally interest demand to be quashed.*

#### **E. Observations and directions:**

13. This Authority has considered the contentions raised by the parties along with the documents filed by them, and thereafter, following points sprout for deliberation:

- I. Whether the Respondent has violated Rule 38 of the Rules, 2017 by not adhering to the format of the Agreement of Sale as stipulated in the annexure to the said Rule? If yes, is the Respondent liable for penalty?
- II. Whether the Complainants are entitled to the reliefs as prayed for?

#### **Point I**

14. This Authority has perused the Agreement of Sale dated 11.11.2019 executed by the Respondent in favor of the Complainant No.1 and has also perused the draft Agreement of Sale uploaded by the Respondent on the project website of the registration before this Authority. On the face of it, it can be seen that draft agreement of sale uploaded by the Respondent on the website is entirely different from the agreement of sale dated 11.11.2019 which, primarily a violation of Rule 38 which mandates promoters to execute the same format as provided in the Annexure to Rule 38. Now, the promoter, i.e., the Respondent herein has uploaded, verbatim, the same draft agreement of sale on the website as that of the Annexure to Rule 38 but has executed a completely different agreement of sale with the Complainant No.1, which is impermissible. The entire point and purpose of the provision of Rule 38 is to ensure uniformity in the process of entering into agreements of sale with the allottees by the promoters which protects and balances the rights and liabilities of both the allottees and promoters. But this very act on part of the Respondent promoter in changing the format and executing a completely different agreement of sale, even though some terms may be similar, is impermissible and deplorable.

15. Further, In the said agreement, the actual sale agreement differs from the draft agreement submitted to RERA at the time of registration, lacking essential clauses and principles of transparency. Buyers are misled into facing unjust demands from the respondent. Promised amenities, like the swimming pool, are not provided, and changes to the flat layout were made without consent. Additionally, the choice of interior paint colours is deceptive, offering only white. Moreover, by Clause 7.2 of the agreement, maintenance charges are payable only upon receipt of the occupancy certificate; however, any demands for such charges before the issuance of the occupancy certificate are unjustified and in violation of the agreed terms.

16. In the considered opinion of this Authority, the conduct of the Respondent Promoter constitutes a clear act of misrepresentation, inasmuch as the Respondent has sought to create an impression that the agreement for sale being executed with the allottees is identical to the draft agreement uploaded on the project website, in compliance with the statutory requirements. However, upon examination, it is evident that a different agreement for sale one that materially deviates from the format prescribed under the Annexure to Rule 38 of the applicable Rules is being executed in practice as is evidenced from the agreement of sale dated 11.11.2019. Such conduct not only contravenes Rule 38 but also amounts to furnishing false information and deliberate suppression of material facts. Accordingly, the Respondent Promoter is held liable for penalty under Section 60 of the Act, 2016 for wilful misrepresentation and for providing false and misleading information to the Authority and the allottees, thereby violating the statutory obligations cast upon them.

17. Therefore, Point I is answered as above and the Respondent is liable for penalty under Section 60 of the Act, 2016.

#### **Point II**

18. Before going into the reliefs as prayed for, let us examine the issues raised by the Complainants:

- i. Maintenance Charges: Complainants submitted that the Respondent sought for maintenance charges with effect from date of intimation of possession of the subject flat which is impermissible. On the contrary, Respondent relied upon Clause 11.4 of the agreement of sale dated 11.11.2019 executed by the Respondent in favour of the Complainant which stipulates that *“that from the intimation as to possession or completion of the scheduled flat or date of receipt of possession of the flat, whichever is earlier, the purchaser shall be responsible for payment of all taxes, levies, rates, dues, duties, charges, expenses etc that may be payable with respect to the schedule flat including municipal taxes water and electricity charges either assessed or charged individually or collectively and such other taxes, monthly maintenance charges payable to the owners association etc payable to the government or other local bodies or any other concerned body or authority etc. The vendor shall be entitled to recover such dues if any from the purchaser”* and submitted that Complainants already agreed to make payment as per this Clause and they cannot turn back from the same. However, it has already been held in Point I above, that the Respondent, on its whims and fancies

has executed this Agreement of Sale which is not in consonance with the draft Agreement of Sale under Annexure to Rule 38 – which actually decides the rights and obligations of the parties to the agreement in accordance with the provisions of the Act, 2016.

- ii. Upon examining the draft agreement of sale under Annexure to Rule 38 regarding payment of maintenance, it can be seen at Clause 7.2 as under:

*“7.2 Procedure for taking possession- The Promoter, upon obtaining the occupancy certificate\* from the competent authority shall offer in writing the possession of the [Apartment/Plot], to the Allottee who has paid all the amounts in terms of this Agreement to be taken within two months from the date of issue of occupancy certificate. If the allottee fails to take delivery within the time specified in the notice, he shall be liable for payment of all ongoings including maintenance charges from the date of notice. [Provided that, in the absence of local law, the conveyance deed in favour of the allottee shall be carried out by the promoter within 3 months from the date of issue of occupancy certificate]. The Promoter agrees and undertakes to indemnify the Allottee in case of failure of fulfilment of any of the provisions, formalities, documentation on part of the Promoter. The promoter shall not be liable for any defect or deficiency occasioned on account of any act or omission on the part of the allottee or any authority or third party on whom the promoter has no control. The Allottee, after taking possession, agree(s) to pay the maintenance charges as determined by the Promoter/association of allottees. The promoter shall hand over the occupancy certificate of the apartment/plot, as the case may be, to the allottee at the time of conveyance of the same.”*

- iii. A bare perusal of the above goes to show that only upon receipt of the occupancy certificate, can the promoter offer in writing the possession of the flat, to the Allottee who has paid all the amounts in terms of this Agreement to be taken within two months from the date of issue of occupancy certificate. In the event of the allottee failing to take possession, then allottee is liable to pay maintenance charges from the date of receipt of the said notice of offering possession. In the facts of the present case, admittedly, as on the date of issuance of notice to pay maintenance, the Respondent did not obtain occupancy certificate for the Project, in such circumstances, in accordance

with the said Clause 7.2 as provided in the agreement of sale under Annexure to Rule 38.

- iv. Even though Section 19(16) casts obligation on the allottee to *“make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any”*, the same would entail to be in accordance with the provisions of the Act, 2016 read with Rules, 2017 and therefore, Respondent’s argument that Complainant has already agreed to pay by virtue of Clause 11.4 in the agreement of sale dated 11.11.2019 stands vitiated, and therefore, Complainant is to pay maintenance only from the receipt of the occupancy certificate.
- v. Complainants submitted that it is improper that the Respondent sought for a no objection certificate without having completed all the sanitary fittings, painting & finishing works in the flat and that it was promised on their behest to complete it within 2 weeks from the issuance of the no objection from the Complainant. To this, Respondent submitted that the subject flat was completed prior to Dec, 2022 except final touch ups and finishing touch of paints and that at the time of delivery of the possession of the flat, the Respondent shall, once again make the final touch ups of paints, water connections, electricity connection and sanitary connections given to avoid rusting or spoiling for non-use of the same. Respondent further submitted that before delivery of the possession, the purchaser has to submit the documents being possession letter, no due letter, association membership joining letter etc, that however, the same were not executed by the Complainants. In this regard, this Authority is of the considered view that only after giving possession of the flat physically and completion of the relevant works in the flat, can the promoter seek for the documents being possession letter, no due letter, association membership joining letter, as they are a subsequent action. No person with a sane mind would submit something that has not been provided to him by the promoter stating that it has been duly provided only to its detriment. Therefore, the practice adopted by the Respondent of collecting documents prior to the actual handing over of physical possession of the flat, along with completion of final works, is impermissible and ought not to be continued. The proper course of

action requires that the completion of final works and delivery of physical possession preceding with the execution and collection of such documents.

- vi. Complainants submitted that the Respondent has formed an Association by the name "Greenwood Welfare Association" and registered the same under the Telangana Societies Registration Act on November 16, 2021, with registration number 687/2021 with the aims and objects as per the memorandum of the association refers to promotion of cultural, charitable, social, sporting etc and not in relation to the welfare of the owners in the project. To this, Respondent submitted the same was created for the ease of joining each allottee in the association and that subsequently, the owners/members of the association could change the objects of the society so formed.
- vii. Complainants also raised an issue that Clause 19 of the draft Agreement of Sale under Annexure to Rule 38 stipulates that the "*promoter shall submit an application to the Registrar for registration of the Association of Allottees as a society under the A.P. Societies Registration Act, 2001 (as applicable to the state of Telangana), within two months from the date on which the occupation certificate in respect of such project is issued and a minimum of sixty per cent of the total Allottees in such a project have taken possession and the Promoter has received the full consideration from such allottees. All the Allottees on payment of full consideration shall become members of such Association of Allottees formed by the Promoter.*" That however, Respondent has formed the said association in 2021 in violation of the said provision.
- viii. In this regard, this Authority opines that Respondent, in terms of the above quoted provision, has to form the association within two months from the date on which the occupation certificate in respect of such project is issued and a minimum of sixty per cent of the total Allottees in such a project have taken possession and the Promoter has received the full consideration from such Allottees. Further, with respect to formation of association under the Telangana Societies Registration Act, 2001, it is brought to the attention of the Respondent promoter that vide Judgment dated 05.03.2013 in W.P. No.3319 of 2013, the Hon'ble High Court for the State of Telangana at Hyderabad held that objectives of the Telangana Societies Registration Act, 2001 does not include maintenance of the apartments but the objectives of the Telangana Co-Operative Societies Act, 1964 has objectives which include maintenance of apartments/gated communities for the welfare of the allottees and thereby held that associations formed

for the sole purpose and intent of maintenance of apartments/gated communities has to be registered under the latter Act, 1964. In this regard, the Respondent shall be directed to dissolve the association already formed and form a new association in line with the judgment as mentioned above read with Clause 19(1) of the draft agreement of sale as provided under Annexure to Rule 38 of the Rules, 2015.

- ix. Complainants submitted that Respondent unlawfully made the Complainants to pay Rs.31,000/- (Rupees Thirty-One Thousand Only) towards Manjeera Water charges which is impermissible as the said charges should be part of the total sale consideration and cannot be charged over and above the total sale consideration. Respondent stated that it is statutory fees to be paid to the concerned water board which has to be collected from the allottees. In this regard, the Authority holds that Clause 8(2)(vii) of the draft agreement under Annexure to Rule 38 categorically Creates a liability on the Complainants to *“Pay to the Promoter within fifteen days of demand by the Promoter, his share of security deposit demanded by the concerned local authority or Government for giving water, electricity or any other service connection to the building in which the Apartment is situated.”* In view of the same, Complainants are entitled to pay the said charges, and because they have already paid, they are not entitled to refund of the same which are statutory charges to be paid by the promoter to the concerned water board.
- x. Complainants submitted that they were informed to pay interest on delayed payment of instalments which has been calculated 18% based as per the clause 9.1 of the sale agreement within 30 days i.e., by 25.10.2019 from the date of the booking. They added that the delay on payments occurred on account of the fact that within two months of the commencement of the project, there was a complete lock down due to COVID-19, the effects of which continued for up to the end of the calendar year 2020. Although, there was no activity happening at the project site, the statement shared with Complainants, claims instalment during the pandemic complete lockdown period also. Further, the basis for the instalment being due on the dates as claimed with respect to the stages of completion is also not transparent.
- xi. The Respondent has contended that the Complainants are liable to pay interest for the delay in making payments as stipulated in the Agreement of Sale dated 11.11.2019. The Complainants, on the other hand, submit that there was a substantial delay in completing the project, and that the delay in payment, if any, was a consequence of the

Respondent's own breach in failing to complete the unit in a habitable and complete condition.

- xii. This Authority is of the considered view that a party seeking to enforce contractual terms must first demonstrate its own compliance with those very terms. The reciprocal obligations are central to such agreements, and any default on one side disentitles the other from demanding strict performance.
- xiii. Reliance has been placed on Clause 18(VII) of the said agreement (Annexure A, Page 16), which provides that the balance amount of ₹2,00,000/- (Rupees Two Lakhs only) was to be paid by the Complainants upon completion of the unit, whereas date of completion being 10.10.2021 and corroborated by the submissions and material on record, clearly indicates that the payment of the balance amount of ₹2,00,000/- was contingent upon completion of the unit. The Respondent himself has admitted that certain works, such as final paint touch-ups, provision of water connection, electricity connection, and sanitary arrangements were pending. These works are not peripheral or cosmetic but go to the very root of making the unit habitable and fit for occupation. In absence of these essential amenities, the unit cannot be said to be in a condition ready for possession or completed.
- xiv. The possession implies more than the mere handing over of keys. It denotes the delivery of a fully completed, habitable unit in accordance with the terms of the agreement and applicable building norms. The possession is not deemed complete until all essential services and connections are in place.
- xv. Therefore, this Authority finds it highly untenable for the Respondent to levy interest on the Complainants for delay in payment, when the Respondent himself failed to fulfil the precondition of completing the unit as required under the Agreement of Sale or as assured date as per Agreement of sale. A party cannot approbate and reprobate the Respondent cannot first admit that completion has not been achieved and simultaneously claim interest on an amount that becomes due only upon completion.
- xvi. Accordingly, this Authority holds that the imposition of interest on the Complainants for the alleged delay in payment is unjustified and not tenable. The Respondent's own failure to deliver a fully complete and habitable unit disentitles him from enforcing the

said clause at this stage. The balance payment obligation, being conditional upon completion, does not arise in the absence of such completion.

xvii. Complainant also raised the issue with respect to the amount of GST payable which was never notified to the Complainants and that in the interest statement the Respondent has computed interest on GST amount also. Respondent submitted that Complainants are entitled to pay GST as per provisions of the Act, 2016. Authority, in this regard, holds that Respondent has to charge GST on the total sale consideration in lumpsum or on each instalment or as agreed between the parties. No GST is applicable on the interest on delayed payments as the same is not part of the sale consideration but the statutory right of the promoter. Therefore, Respondent shall be directed not to collect GST on interest on delayed payments and that GST is applicable to be paid only on the total sale consideration whether in lumpsum or in instalments to be agreed between the parties.

xviii. Complainants further submitted that the TDS amount, which was deducted and remitted to the Government account, interest on the same was also calculated as an outstanding amount which is unjustified. Respondent did not avert to the same, however, it is opined that no interest on TDS amount can be charged.

xix. Complainants also raised issue with respect to provision of swimming pool in the amenities, whereas, the Respondent submitted that it is ready for use and operation by the association so formed.

19. In view of the above, Point II is answered accordingly.

#### **F. Directions of the Authority:**

20. In accordance with the discussions made above, vide its powers under Section 37 &38 of the Act, 2016, this Authority issues the following directions:

- i. The Respondent is directed to pay a penalty of ₹10,99,992/- (Rupees Ten Lakh Ninety-Nine Thousand Nine Hundred Ninety-Two only) for contravention of Section 60 of the Real Estate (Regulation and Development) Act, 2016, on account of having furnished false information and made misrepresentations under the Form B affidavit, as well as for executing an agreement of sale different from the one uploaded on the webpage of the Telangana Real Estate Regulatory Authority (TG RERA). The said penalty shall be

paid within thirty (30) days from the date of this Order, in favor of TG RERA FUND through a Demand Draft or online payment to A/c No. 50100595798191, HDFC Bank, IFSC Code: HDFC0007036; and

- ii. It is clarified that, in accordance with Clause 7.2 of the agreement of sale as prescribed under Rule 38 and Annexure 'A' of the Telangana Real Estate (Regulation and Development) Rules, 2017, the Complainants shall be liable to pay maintenance charges as soon the unit is completed;
  - iii. The Respondent is further directed to complete all remaining final works pertaining to the subject unit/project and hand over physical possession to the Complainant(s).
  - iv. In view of the directive issued by the Hon'ble High Court in W.P. No. 3319 of 2013, the Respondent is directed to dissolve the previously constituted association and initiate the formation of a new association strictly in accordance with the provisions of the Telangana Cooperative Societies Act, 1964;
  - v. The Respondent is also directed to refrain from collecting Goods and Services Tax (GST) on interest amounts levied on delayed payments. It is clarified that GST is applicable only on the total sale consideration whether paid in lump sum or in agreed instalments between the parties, and not on interest charged due to delay in payment.
21. Parties are hereby informed that non-adherence to the directions of the Authority shall attract penalties under Sections 63 & 68 of the Act, 2016.
22. In view of the above directions, complaint stands disposed of. No order as to costs.

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

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

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