

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

**I.A. No.34/2024**  
**in**  
**COMPLAINT NO.16 OF 2024**

**25<sup>th</sup> Day of July 2024**

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

Tumpi Shome & Ors.

...Complainants

Versus

M/s Countryside Realtors India Pvt. Ltd.

...Respondent

The present Application has been filed by the Respondent herein came up for hearing on 25.06.2024, wherein the Counsel for Complainant, Sri A Chandrasekhar and Sri G. Venugopal appeared along with complainants in person and Counsel for Respondent, Sri Drupad Sangwan and Sri Pavan Reddy, and upon considering the contentions of the parties hereto, this Authority passes the following **ORDER:**

**Contentions of Respondent in I.A. No.34/2024**

2. The Respondents mainly asserts that (a) the Complainants failed to specify the provision/ section under which reliefs have been claimed/prayed, (b) the Complainants do not have locus standi to file the present complaint as the same has not been filed by any registered resident welfare association of the allottees

nor filed by an individual representing in an individual capacity, (c) the complaint is not maintainable as this Hon'ble Authority lacks jurisdiction to adjudicate upon any issues arising from individual sale deeds entered into between parties in relation to West End Greens developed by the Respondent and (d) that the Project is not an "Ongoing Project" as per Rule 2(j) which clearly establishes that since the building permission has been approved prior 01.01.2017, the Respondent herein cannot be subjected to the Act or Rules and more particularly, the jurisdiction of the Authority.

**Reply to the I.A. by Complainants:**

3. *Per contra*, the Complainants, vide their reply to the said Application, submit that (a) the complaint has been filed under Section 31 of the Act, (b) & (c) the complainants being individually aggrieved by the actions of the Respondent who has failed to comply with the provisions of the Act and the Rules thereunder have come forward to file the present complaint. It was submitted by the Complainants that "Person" is inclusive in nature as such the complainants in their individual capacity and also jointly are having locus to maintain the present complaint. It was further submitted that the complainants as such come under the ambit of Section 2 (zg), sub-section (vi) which includes definition of a person as an association of person or a body of individual whether incorporated or not. They also relied on the definition of "person" under Section 3(42) of the General Clauses Act, 1897 which includes any company or association or body of individuals, whether incorporated or not and on the decision of the Hon'ble Supreme Court in *Bikram Chatterji & Ors. vs. Union of India & Ors.*, Writ Petition (C) No. 940 of 2017. (d) It was submitted that HMDA approval was obtained on 6/6/2011, bearing No. 1140/LO/ZO-SKP/HMDA/2011, which expired on

3/11/2017. Subsequently, the respondents applied for revalidation of the draft approval on 20/12/2019; however, this revalidation was not approved by HMDA. That the expired Draft approval status and subsequent application for Revalidation of the Westend Greens project was also confirmed by management of the Respondent Company.

4. It was explicitly submitted that there exist no Occupancy Certificate or Completion Certificate for the Westend Greens project which makes it clear that as per proviso to Section 3, projects that are ongoing i.e., for which development is still going on and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project, however the Respondent has failed to do so.

#### **OBSERVATION & FINDINGS:**

5. It is observed that the Respondent has admittedly obtained permission on 6/6/2011, vide HMDA Permit bearing No. 1140/LO/ZO-SKP/HMDA/2011. As per submission of the Complainants, the same expired on 03/11/2017, i.e., after the commencement of the Act. As on the date of commencement of the Act i.e., on 01.01.2017, the HMDA permission of the Project was still valid as can be seen from the documents filed by the Complainants. Vide Letter dated 31.10.2019, the HMDA issued a letter to the Respondent explicitly stating that the permit issued expired on 03.11.2017 and thereby directed the Respondent to apply for revalidation and submit plans as per ground position. Therefore, the Respondent ought to have registered the Project under the provisions of the Act, 2016 by virtue of the proviso to Section 3.

6. Further, the Respondent avers that as per the definition of an on-going project as per Rule 2(j) of the Rules, 2017, the project cannot be categorized as on-going as the permission was obtained in 2011. It is a well settled law that in case of conflict between the act and the rules, the provisions of the Act will prevail. Therefore, as per proviso to Section 3, the project falls well within the jurisdiction of this Authority. To complement this, the Hon'ble Supreme Court, in the case of Newtech Promoters & Developers (P) Ltd. v. State of U.P., (2021) 18 SCC 1, categorically held that provisions of the Act have a retroactive effect meaning to include projects that have commenced prior to the commencement of the Act and for which completion certificate/occupancy certificate has not been obtained. This squarely covers the issue at hand before this Authority.

7. Relevant portion of the judgment is extracted herein below for ease of reference:

*“36. Looking to the scheme of the 2016 Act and Section 3 in particular of which a detailed discussion has been made, all “ongoing projects” that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stakeholders, including allottees/homebuyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate Authority.*

41. What the provision further emphasises is that a promoter of a project which is not complete/sans completion certificate shall get the project registered under the Act but while getting the project registered, the promoter is under an obligation to prescribe fresh timelines for getting the remaining development work completed and from the scheme of the Act, we do not find that the first proviso to Section 3(1) in any manner is either violative of Articles 14 and 19(1)(g) of the Constitution of India. Parliament is always competent to enact any law affecting the antecedent events under its fold within the parameters of law.

46. The legislative power to make the law with prospective/retrospective effect is well recognised and it would not be permissible for the appellants/promoters to say that they have any vested right in dealing with the completion of the project by leaving the allottees in lurch, in a helpless and miserable condition that at least may not be acceptable within the four corners of law.”

8. Therefore, a careful perusal of the judgement would clearly stipulate that the intention of the Parliament is unambiguous to include all projects for which completion certificate has not been obtained so as to protect the interests of the allottees through this beneficial legislation. In the facts of the present case, the Complainants have been awaiting their villas and amenities for the last 12 years but the Respondent, apparently, has taken no pain to complete such works to the detriment and suffering of the allottees/complainants which cannot be permissible under law.

9. Regarding the issue of whether the Complainants have the locus to file the present case, it is apparent that the Complainants are aggrieved by the promoter's failure to comply with the terms of their sale deed, as well as the provisions of the Act. As the Respondent has abandoned the project midway, the obligation to form an association, as mandated under Section 11(4)(e), has not been fulfilled, thereby compelling the Complainants to seek redress from this Authority under Section 31 of the Act, 2016. Therefore, it is held that the Complainants have locus to file the present complaint, and by virtue of Section 3 and the judgment of the Hon'ble Supreme Court in "Newtech Promoters", it is apparent that this Authority is well within its jurisdiction to entertain the present complaint. This Authority is also of the opinion that the Respondent has resorted to filing such application merely with the intent to delay and lag the proceedings and harass the complainants which is not permissible.

10. Therefore, the I.A. No.34/2024 is dismissed on the afore-mentioned grounds.

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

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

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