

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

COMPLAINT NO.63 OF 2024

28th August, 2024

Corum: **Sri Laxmi Narayana Jannu, Hon'ble Member**
 Sri K. Srinivasa Rao, Hon'ble Member

Mr. Prasenjit Das

...Complainant

Versus

M/s Mehta & Modi Realty Knowkoo LLP
Mr. Suraj Prakash Pandey

...Respondent(s)

The present matter filed by the Complainant herein came up for final hearing on 02.05.2024 before this Authority in the presence of Complainant and counsel M.A.Lateef for Respondent 1 and no representation made on behalf of Respondent 2, upon hearing the arguments of the both the parties, this Authority passes the following **ORDER:**

2. The present Complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "RE(R&D) Act" read with Rule 34(1) of the Telangana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the "Rules") seeking directions from this Authority to take action against the Respondent.

A. Brief Facts on behalf of the complainant:

3. The Complainant, an individual, purchased a residential flat, Flat No. 506, on the fifth floor in Block B, through an agreement of sale executed on the 11th day of November 2019 and a sale deed on the 9th day of December 2022. The flat is part of the layout developed by Respondent No. 1 under the name and style of "Greenwood Heights," consisting of 119 flats, further comprising Block A and Block B in the layout located in Sy No. 196, Hislop Road, Kowkur, Alwal Mandal, Medchal Malkajgiri District, Secunderabad-

500010. The "Greenwood Heights" project is a "Housing Project" registered by Respondent No. 1 under the provisions of the RERA Act. The said Housing Project is ongoing and proposed to be completed by 21/09/2025.

4. The Complainant took possession of the aforementioned flat on 25th February 2023, as evidenced by the possession letter dated 25/02/2023 (Annexure-I) issued by Respondent No. 1. After taking possession, the Complainant discovered the unauthorized installation of a toilet drainage pipe passing through his balcony, which is private space meant exclusively for the Complainant's use. It is submitted that Respondent No. 1 constructed a toilet in the portion earmarked for the balcony on the seventh floor of Flat No. 706, which is located directly above the Complainant's Flat No. 506 in the same block (Block B). This flat is owned by Respondent No. 2, and the said drainage pipe from the toilet installed by Respondent No. 1 passes through the Complainant's balcony without any legal authorization or consent from the Complainant.

5. Respondent No. 2, in an email dated 17th June 2023 (Annexure-II), admitted to the Complainant that he had requested Respondent No. 1 to construct a toilet in the portion earmarked for the balcony, for which he paid an additional amount. The construction of this additional toilet on the balcony is wholly illegal, as it deviates from the original sanctioned plan.

6. It is further submitted that Respondents No. 1 and No. 2 have made an unauthorized deviation from the original sanctioned plan by constructing a toilet in the portion earmarked for the balcony. Moreover, a drainage pipe from this toilet has been installed, passing through the Complainant's balcony, causing significant inconvenience and discomfort. The said drainage pipe obstructs the Complainant's use and enjoyment of his property.

7. Respondent No. 1 provided the Complainant with the sanctioned plan approved by the GHMC during the sale of the property, in which no communication regarding the construction of an additional toilet on the balcony was given. It is submitted that the toilet was constructed and the

drainage pipe installed after the property had been sold to the Complainant, rendering such construction wholly illegal and without proper authorization or consent from the Complainant. This unauthorized construction constitutes trespass and interference with the Complainant's exclusive rights over his property. The installation of the drainage pipe infringes upon the Complainant's rights as the property owner and violates applicable building regulations framed by the GHMC and the Government. The installation of the drainage pipe poses potential risks of sewage water leakage, damage, and compromise of the structural integrity of the building, which may lead to further damage and liabilities. Additionally, it not only has the potential to affect the health of the Complainant and his family members but also violates the Complainant's religious sentiments. Such unauthorized construction may also pose difficulties in finding a potential buyer if the Complainant wishes to sell his flat in the future.

8. Section 14 of the RERA Act, 2016, mandates that all construction projects must be developed and completed by the promoter in accordance with the sanctioned plans, layout plans, and specifications approved by the competent authorities. Furthermore, any additions or alterations to the sanctioned plans, layout, and specifications require the prior consent of the owner. The construction of the additional toilet and the installation of the drainage pipe through the Complainant's property are clear violations of this section.

9. It is further submitted that, as per the National Building Code of India, 2016, all construction projects must adhere to the sanctioned plans, layout, and specifications approved by the competent authorities. Any additions or alterations to these plans and specifications require the prior consent of the owner. The installation of the drainage pipe through the Complainant's property is a violation of these regulations. Additionally, the National Building Code specifies that all pipes carrying wastewater to a drain should be taken through the external wall of the building by the shortest practical route. The current construction, which passes through the Complainant's balcony instead of the external wall, further violates the Complainant's property

rights. Moreover, the drainage pipe poses significant threats to the Complainant's health, peaceful use of his property, and the environment.

B. RELIEF(S) SOUGHT:

10. In view of the facts mentioned in paragraph 4 above, the Complainant prays for the following relief(s):

1. Removal of the unauthorized drainage pipe passing through the Complainant's balcony.
2. Demolition of the toilet that has been constructed in violation of the sanctioned plan.
3. Restoration of the affected areas to their original condition, ensuring no damage during the removal process.
4. Adherence to the original plan as sanctioned by the GHMC.
5. Compensation of Rs. 50,000/- towards legal expenses, for hurting the Complainant's religious sentiments, and for wasting valuable time.
6. Pass such other order or orders as this Authority deems fit.

C. Respondent Reply:

11. It is submitted that all the allegations and averments mentioned in the complaint, and they deny the same, except where specifically admitted herein. The complaint is not maintainable, either on facts or in law, and has been filed with false and frivolous allegations. Therefore, the complaint is liable to be dismissed with exemplary costs.

- i. The Respondent is a reputed developer with over 30 years of experience in the construction of houses and flats in and around the twin cities of Hyderabad and Secunderabad.
- ii. It is submitted that by a letter dated 29-12-2022, this Respondent informed the Complainant that the flat was ready for possession. The Complainant inspected the flat and requested certain corrections by email dated 30th January 2023. Furthermore, the Complainant sent another list of corrections by email dated 24th February 2023.

- iii. It is submitted that by December 2022, the work on Flat No. B-706 was fully completed. The civil work on Flat No. B-606 was completed; however, the finishing works were not undertaken as the flat was unsold. The pipeline that the Complainant refers to in the present complaint was already in existence in his flat as of December 2022.
- iv. It is submitted that the Complainant took possession of his flat by way of a possession letter dated 25-02-2023. The Complainant further signed a letter of confirmation, wherein he clearly confirmed in Point No. 4, "We have no claim of whatsoever nature against the developer." In Point No. 6, the Complainant also confirmed that he had no objection to any development being carried out by the developer in and around the said flat. Additionally, in Point No. 7, the Complainant confirmed that he had no objection to changes in the design of the housing project, including other flats or blocks of flats.
- v. It is submitted that the Complainant raised an objection about the sewage pipe passing through the balcony of his flat for the first time on 22nd March 2023, almost a month after taking possession of the flat.
- vi. It is submitted that the Complainant issued a legal notice dated 30.05.2023 through his advocate, for which this Respondent provided a befitting reply dated 21.06.2023.
- vii. It is submitted that Greenwood Heights is a "group housing scheme" as per the permit received from statutory authorities. The group housing scheme consists of 119 apartments with two basements for parking and seven upper floors. Such a group housing scheme necessarily includes several common amenities and facilities for the joint use of its occupants, which cannot be separated or made for exclusive use.
- viii. It is submitted that stormwater pipes, sewage pipes, and water supply pipes cannot be made for exclusive use. These pipelines in an apartment complex or group housing scheme are provided as part of a common infrastructure. They necessarily crisscross throughout the complex, including common areas like passages, terraces, external walls of flats, along internal walls of flats, from the ceiling of bathrooms and utility areas, basement floors, setback areas, etc. It is impossible to

- provide exclusive pipelines for each flat that do not pass through other areas of the housing complex.
- ix. It is further submitted that the sewage lines of the flat above each flat pass through the roof of the flat below it (copy of photo enclosed). This is by design and is the most common practice. Similarly, several sewage and water supply lines pass through the utility area of all the flats. The stormwater line to drain water from each balcony passes through the balconies on all floors. Strangely, the Complainant is objecting to the sewage line passing through his balcony but has no objection to the stormwater line passing through his balcony next to the sewage line (copies of photographs are attached).
- x. It is submitted that this Respondent, on several occasions, offered to enclose the sewage pipe with granite on all three sides to make it 100% waterproof and leakproof, as has already been done in other flats in the same row of the building (copy of photo enclosed). However, the Complainant has not agreed to the same.
- xi. It is submitted that the construction has been completed in accordance with the permitted plans (copies of plans enclosed). There is no unauthorized construction or deviation by this Respondent. For the kind satisfaction of your respected authority, we request the appointment of a technical person to inspect the site and provide a report.
12. The entire allegations in the complaint and pleadings are made without any basis. The Complainant has made baseless allegations against the Respondent and approached this authority with unclean hands, with the intention of gaining unlawfully and harassing this Respondent. Therefore, respectfully request that authority dismiss the present complaint with exemplary costs.

E. Rejoinder

13. The Complainant, in their rejoinder, has vehemently denied all factual assertions made by Respondent No.1 in their reply dated 13.03.2024,

deeming them to be misleading, false, and devoid of truth. The Complainant specifically refutes the Respondent's characterization of the present case as "false and frivolous," arguing that this assertion is an attempt by the Respondent to expedite the sale of unsold flats by constructing additional toilet facilities without proper authorization.

14. The Complainant has provided evidence (Annexure-I) showing that additional toilets have been constructed within the same block (B) on portions designated as balconies, which were enclosed and converted into toilets. Further, the Complainant contests the Respondent's claim that construction was completed according to the permitted plans, pointing out that other residents, such as the owners of Flat B106 and Flat B406, have also raised objections to unauthorized installations of toilet pipes passing through their balconies (Annexure-II and Annexure-III).

15. Additionally, the Complainant denies the Respondent's claim that the pipeline referenced in their reply was in existence as of December 2022, asserting that it was installed after the property was purchased but before possession was taken. The Complainant argues that the possession letter dated 25.02.2023 should not be construed as an authorization for the unsanctioned installation of a toilet drainage pipeline through their balcony, which is considered private property, not a common area.

16. The Complainant further disputes the Respondent's references to the Greenwood Heights housing scheme's common infrastructure, asserting that while such infrastructure may traverse common areas, this does not justify the installation of a toilet drainage pipe through a privately owned balcony. The Complainant emphasizes that this installation violates both their property rights and the sanctioned plans, which did not include an additional toilet or the associated drainage pipeline (Annexure-IV).

17. In support of their position, the Complainant refers to Section 14 of the RERA Act, 2016, which mandates that construction projects must be developed in accordance with sanctioned plans, and any alterations require

prior consent from the owner. The Complainant contends that the Respondent has violated this section by installing the toilet drainage pipe without consent.

18. The Complainant also references the National Building Code of India, 2016, highlighting that it mandates strict adherence to sanctioned plans and requires that wastewater pipes be directed through external walls, not private property like a balcony. The Complainant underscores the potential health risks associated with the unauthorized installation, including concerns related to COVID-19 transmission, as supported by a research paper enclosed as Annexure-VII.

19. The Complainant concludes by urging the Honorable Authority to consider the evidence and arguments presented, asserting that the Respondent's actions have violated their property rights and pose potential health hazards. They seek a resolution in accordance with the law to rectify the infringements on their rights.

F. Observations and Directions of the Authority:

20. Upon hearing the submissions of the parties and thoroughly examining the record, it is evident from the possession letter dated 25.02.2023, a copy of which has been furnished by the Complainant, that the Respondent transferred possession of the concerned property to the Complainant in the year 2023. This fact remains uncontroverted by either party.

21. The Complainant has raised a grievance regarding the Respondent's 1 failure to rectify deficiencies in the subject unit, specifically alleging that the Respondent has unauthorizedly installed a drainage pipeline that traverses through the balcony.

22. In support of this contention, the Complainant has relied on a sanction plans obtained by the Respondent 1 which pertains to concerned project. The Complainant has also annexed photographic evidence depicting the drainage pipeline placed in his balcony and unit 706 balcony which he asserts was illegally installed by the Respondent.

23. Based on the Complainant's assertions, it appears that the drainage pipeline passing through the balcony is not in accordance with the sanctioned plan obtained by the Respondent 1. The Complainant's attempts to address this issue with the Respondent 1 through emails, legal notices, and other communications have, as per the record, elicited no remedial action from the Respondent to date. In its reply submitted to this Authority, the Respondent 1 contended that stormwater pipes, water supply pipes, and sewage pipes in an apartment complex or group housing scheme are common infrastructure elements that must, of necessity, crisscross throughout the complex and no deviations as alleged by the Complainant has taken place.

24. After a careful examination of the complaint, the counter affidavit filed by the Respondent, and the rejoinder submitted by the parties, this Authority observes the following:

a) The sanctioned plan of the project does not authorize the construction of a powder room in Unit 706, yet the Respondent 1 has constructed such a room, resulting in the installation of a drainage pipeline that traverses the Complainant's balcony. The Respondent's actions are therefore in clear deviation from the sanctioned plan.

b) The Authority is of the considered opinion that the presence of the drainage pipeline in the Complainant's balcony poses potential future risks, including but not limited to leakage, health hazards, and other related issues. Such a deviation is manifestly unfair to the Complainant, who did not consent to any alterations from the sanctioned plan.

25. In accordance with Section 14(1) of the Real Estate (Regulation and Development) Act, 2016, it is incumbent upon the Promoter to develop and complete the project strictly in conformity with the sanctioned plans, layout plans, and specifications as approved by the competent authorities.

26. Accordingly, this Authority concludes that Respondent No. 1 has deviated from the sanctioned plan, thereby contravening the provisions of Section 14 of the Real Estate (Regulation and Development) Act, 2016. It is further determined that the placement of the drainage pipeline in the

Complainant's balcony is a direct result of such deviation. Consequently, Respondent No. 1 is hereby directed to remove the drainage pipeline from the Complainant's balcony within 30 days from the date of this Order.

27. The Authority observes that the complainant is seeking compensation in the present complaint. It is essential to understand that the Act clearly distinguishes between interest and compensation, providing them as distinct entitlements available to allottees. This Authority does not possess the jurisdiction or authority to grant compensation as specifically sought by the complainant. The complainant shall have the liberty to approach Adjudicating Officer under Form N.

28. For contravention section 14 of the RE(R&D) Act, the Authority exercising its powers under Section 61 of the RE(R&D) Act, imposes a penalty on Respondent 1 of Rs.9,81,506/-. The amount is payable in favor of TGRERA FUND through a Demand Draft or online payment to A/c No. 50100595798191, HDFC Bank, IFSC Code: HDFC0007036, within 30 days of receipt of this Order by the Respondents/Promoter.

29. The Respondent 1 is hereby informed that failure to comply with this Order shall attract Section 63 of the RE(R&D) Act.

30. In the result, the complaint is disposed of. However, having regard to facts and circumstances of the case, the parties shall bear their own costs.

31. If aggrieved by this Order, the parties may approach the Telangana Real Estate Appellate as per Section 44 of the Act, 2016.

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

Sd/-
Sri. Laxmi NaryanaJannu,
Hon'ble Member
TG RERA