

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

14th December 2023

**Corum: Dr. N. Satyanarayana, IAS (Retd.), Hon'ble Chairperson
Sri LaxmiNarayanaJannu, Hon'ble Member
Sri K. SrinivasaRao, Hon'ble Member**

COMPLAINT NO.390 OF 2022

Between

Sri S Suryanarayana

.... Complainant

AND

M/s Suchir India Infratech (P) Ltd.

.... Respondent

COMPLAINT NO.399 OF 2022

Between

Sri P Krishnaiah

.... Complainant

AND

M/s Suchir India Infratech (P) Ltd.

COMPLAINT NO.406 OF 2022

Between

Sri Suresh Gadalay

.... Complainant

AND

M/s Suchir India Infratech (P) Ltd.

.... Respondent

There complaints have come for hearing on 24th August 2023,19th September 2023,10th October 2023, 7th November 2023 and 23rd November 2023, before this authority, in the presence of Complainants party in persons and Advocate GVS. Prasad Rao for representing Respondent in all the complaints and after hearing both the parties, the Authority passes the following:

COMMON ORDER

2. These complaints have 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.

3. The case of the complainants in all the complaints is on similar grounds. Similarly the stand taken by the Respondent in their counters is also same. Therefore for the sake of the convenience and to avoid repetitions the pleadings from the complaint no.390/2022 are referred below.

A. Unit and project related details:

4. The particulars of the purchased villa are as follow:

S.no	Heads	Information
1.	Promoter- Project name	M/s Suchir India- Project – Timber leaf
2.	Project area	19-25.056 Gts
3.	Nature of the Project	Gated community Villa G+1 upper floor)
4.	HADA/HMDA approval	Preliminary approval- HADA – 03.01.2008 Approval of the Revised cum final layout dated, 03.02.2021
5.	RERA Registration	Not registered

B. Facts of the complaint:

5. The complainants submit the following details in the complaint against the Respondent firm, M/s Suchir India Infratech (P) Ltd.

- i. In 2006, the Respondent developed the Timber Leaf gated community project, selling approximately 80 villas, with 42 villas remaining unsold.
- ii. Upon inquiry into pending works and promised amenities, the Respondent, M/s Suchir India Infratech (P) Ltd., is allegedly threatening the allottees. A total of 28 cases have been registered against the Respondent across various police stations.
- iii. Y Kiran Kumar has reportedly created a fearful situation within Timber Leaf, indirectly obstructing the formation of meetings. Many villa owners are hesitant to engage in discussions with other members due to this intimidating environment. Furthermore, the company has not yet obtained an Occupancy Certificate. There is no water connection

from HMWS&SB, and the boundaries of the land (25-04 gts) as stated in the brochure and registered documents have not been delineated.

- iv. Additionally, the Respondents are collecting approximately 4-5 lakhs at the rate of ₹5,600/- from each villa owner. Allegedly, the services provided are subpar, expenditure details remain undisclosed and promised facilities outlined in the brochure and registered documents are not being delivered.

C. Relief(s) sought:

6. The complainants have sought following relief(s)
1. To direct the Respondent to obtain and provide Occupancy certificate.
 2. To provide drinking water through Hyderabad Metropolitan Water Supply and Sewerage Board (hereinafter referred as HMWS& SB)
 3. To provide compound wall with solar fencing above the compound wall.
 4. To form Timber leaf Villa Owners Maintenance Mutually Aided Co-operative Society.

D. Reply filed by the Respondent:

7. The respondent submits the following in reply to the contentions raised by the complainants in their complaint:

- I. The defendant/respondent company at the outset denies all the averments and allegations made by the complainant in the present complaint, and the complainant is put to strict material proof of all such averments/allegations. It is further submitted that there is privity of contract between the complainant and this respondent as it is a second purchase.
- II. The answering respondent submits that all the allegations made in the complaint are denied as false, except those that are specifically admitted or traversed hereunder, and the complainant is put to strict proof of the same.
- III. The respondent submits that the complainant has not approached this authority with clean hands; the complainant has filed the present complaint by suppressing the material facts and got filed the present

complaint with a sole motto to harass the respondent by creating a false litigation and without having any right or authority and in gross violation of the agreed terms and conditions of the agreement of sale and sale deed, as per the said terms and conditions there are no bona fide allegations/contentions in the Complaint.

- IV. That the above complaint is not maintainable, as the reliefs sought in the above complaint do not violate any of the regulations or agreed terms of the contract (agreement of sale) or the sale deed executed in favour of the complainant. It is submitted that the complainant herein has suppressed the true facts and is disentitled to any discretionary relief on the Principle. Before submitting the paragraph-wise reply, the following true facts are necessary and essential to adjudicate the relief sought in the above complaint.
- V. That it is true that the respondent company herein is the promoter of the said venture. It is further submitted that the complainant has purchased a semi-finished villa, and it is not denied that the possession of the villa was handed over to the complainant in an as-is, where-is condition.
- VI. That for the said venture vides Lr. No. 9977/LO/Plg/HMDA/2006 of the HMDA, a preliminary approval was accorded by the concerned authority, and the respondent started the works of the said project. Subsequently, the final approval of the entire project/venture for an extent of Ac. 19-25.056 gts was sanctioned and not 25 acres as alleged by the complainant, and some of the works/amenities as mentioned in the brochure are in progress. It is pertinent here to mention that there is no specific time period specified in the said agreement of sale except it is stated that all the works shall be completed as per the final approval of the competent authority and in accordance with the agreed terms and conditions of the agreement of sale. As supra stated supra the complainant herein has purchased a semi-finished villa.
- VII. After getting the final approval, the respondent has completed all the works as per the terms and conditions and in accordance with the final approval of the layout.

- VIII. The complainant has not paid any maintenance charges from the beginning till date as agreed and to satisfy his ego has formed a group of a few owners with 11 owners out of the total 122 owners.
- IX. The complainant has got an association registered under the co-operative society's Act in gross violation of the terms and conditions as per the agreement of sale and sale deed. It may not be out of place here to produce the contents of para 11(e) of the sale agreement, which reads as follows: After completion of one year from the date the project is ready for occupation, the Developer shall handover the common maintenance of the Timber leaf to the Owners association or the agency approved by the Owners association. It is the responsibility/obligation of the purchasers to form the Owners Association within one year from the date of completion of the project/possession, and the Developer will only facilitate and supplement the formation of the association. If, in the event of delay on the part of the purchases to constitute the owners association within the year, the Developers shall not be held responsible for the common maintenance of the Timber Leaf.
- X. It is further submitted that two members have filed their objections before the competent authority against the complainant, and it is further submitted the complainant has got the said association registered after filing a writ petition No. 10737/2023 before the Hon'ble High Court of Telangana. The respondent here filed a writ petition No. 10737/2023 seeking cancellation of registration of the said association under the MACS, which is pending before the Hon'ble High Court as it is formed in violation of the agreed terms and conditions between the complainant and the respondent. The allegation that there are several complainants pending against the respondent in various police stations is denied, and the complainant is put to strict material proof of all such allegations, and the respondent is at liberty to initiate appropriate legal action as per law for making such frivolous and baseless allegations against the respondent to tarnish its image.
- XI. The occupancy certificate is not provided to the complainant as admitted by the complainant himself, It is a gated community and is

not a single unit of the complainant's villa to provide a separate occupancy certificate to the complainant. As submitted above, the final approval of the layout was received on 03-02-2021, and some minor works are in progress as regards the amenities, and as such, it is delayed, and it is further submitted that the complainant has not paid a single rupee towards maintenance, though it is agreed that the respondent will take care of the maintenance of the entire villas till the completion of the entire works relating to the said gated community TL; as such, the complainant cannot blame the respondent on this aspect. It is further submitted that the villas are maintained by the respondent themselves through an agency named "Knight Frank," and the respondent is paying monthly charges of Rs. 7-8 Lakhs; a copy of the recent bill is herewith enclosed.

XII. With regard to the HMWS&SB water connection the respondent submits that once the pipeline for supply to the area (the said gated community) is completed by the HMWS&SB, the water connections will be given through the internal pipelines which this respondent has already provided.

XIII. The contention of the complainant that the respondent is causing obstructions in forming an owners' welfare association is denied, in fact, the complainant has already got a society without following the due process, and the same is questioned in the writ petition filed by this defendant, as the same is in violation of the terms and conditions between the complainant and the defendant. The allegation that there are several complaints pending against the respondent in various police stations is denied, and the complainant is put to strict material proof of all such allegations, and the respondent is at liberty to initiate appropriate legal action as per law for making such frivolous and baseless allegations against the respondent to tarnish its image.

XIV. With regard to showing the boundaries for 25 acres, the respondent reiterates that the sanction plan for the entire said project for Ac. 19-25.056 gts only, and the same is evident from the approved layout by the HMDA and not 25 acres as alleged by the complainant.

XV. It is not true to state that the respondent is not accounting for the amounts collected towards maintenance from 80 villa owners. As submitted above, the complainant is a defaulter and has not paid a single rupee towards maintenance till date. The respondent shall handover the maintenance to the society after completing all the works as per the agreed terms and conditions by and between the complainants and respondent.

E. Hearing conducted:

8. When these complaints had been taken up for hearing both the parties requested to club all three complaints and pass a common order. As such, three complaints are disposed of by a common order. Heard both the parties

9. Hearings were conducted on 24.08.2023, 19.09.2023, 10.10.2023, 07.11.2023, and 23.11.2023. During the course of hearing, complainants reiterated their contentions from the original complaints. Whereas, the respondent has reiterated the contentions raised in the counter. The complainants stated that they purchased villas from the respondent in the Timber Leaf project, under sale agreements dates ranging from 2009 to 2019.

10. The respondent allegedly failed to complete villa construction in all aspects such as internal specifications and external common facilities as promised in the executed agreements. The Complainants emphasized issues, including the non-functional solar fencing, and pleaded the authority that they would pay maintenance once specified conditions are met, such as the completion of the compound wall, solar fencing, water supply from HMWS & SB, and the construction of STP.

11. Conversely, the Respondent addressed four major issues raised by the Complainants. Firstly, with respect to the HMWS water connection, the Respondent stated that the layout of the pipeline to supply the water to the project is pending by HMWS & SB as the internal pipeline facility has already been completed by the Respondent. Secondly, regarding the Occupation Certificate, the Respondent explained that due to the project being a gated community, a separate occupancy certificate cannot be provided. The Respondent accepted delay in obtaining the certificate due to minor pending

works. In regards to the Association formation, the Respondent claimed that the complainants had formed a society without following due process, and this is being questioned in a writ petition filed by the Respondent and the same is pending before the Hon'ble High Court. The Respondent assured that they would hand over maintenance to the society after completing pending works, as per the sale deed para 11(e) executed between the complainants and respondents.

F. Observations made by the Authority:

12. On the above pleadings, the pointes that arise for consideration are:
 1. Whether the project is an ongoing project and the Respondent has violated the provisions of section 3 of the RE(R&D) Act by not registering the Project?
 2. Whether the complainant is entitled for the reliefs sought?

13. **Point 1: Whether the project is an ongoing project and the Respondent has violated the provisions of section 3 of the RE(R&D) Act by not registering the Project?**
 - a. On consideration of the documents available on record and the submissions made by both the parties, the authority notes that the project involving the allocated villas is currently underway. However, the Respondent, who is also the promoter, has failed to register the aforementioned project under the Telangana State Real Estate Regulatory Authority (TSRERA). Notably, the Respondent obtained revised HMDA layout approval on 03.02.2021, a date subsequent to the establishment of TSRERA. Additionally, the Respondent has not applied for and obtained the occupancy certificate to date, acknowledging that certain aspects of the project remain incomplete.
 - b. Accordingly to proviso to **Section 3 of the Real Estate (Regulation and Development) Act of 2016 (RE(R&D) Act of 2016)**, for projects that are ongoing on the date of the Act and for which the Occupation certificate has not been issued, the

promoter is required to submit an application to the authority for the registration of the project within three months from the commencement of the Act. The section 3(1) of the Act is reproduced herein for reference:

“3. (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act”

Rule 2(J) of the Rules defines as “Ongoing Project” means, a Project where development is going on and for which Occupancy Certificate or Completion Certificate has not been issued but 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 / TSIC as the case may be.

- c.** The legislation explicitly states that a project maintains its status as an "ongoing project" until the receipt of the occupancy certificate. As noted above the Respondent obtained revised HMDA layout approval vide 03.02.2021, the promoter/respondent has yet to obtain the occupancy certificate for the concerned project, this constitutes a violation of the RE (R&D) Act, 2016. In light of these facts and the legal framework, the Authority concludes that the Project is an ongoing project and the Respondent having failed to get the project registered violated the provisions of section 3 of the RE(R&D) Act. The point is answered accordingly.

14. Point 2: Whether the complainant is entitled for the reliefs sought?

- a. The complainants seek direction to the Respondent to obtain and provide occupancy certificate:**

It is noted that the Respondent has not yet completed the entire project, and minor works are pending. Also to be noted that the Respondent has obtained its revised final layout approval on 03.02.2021, for which the Respondent has not yet completed the work with respect to the concerned project. Hence, the complainants asking for the occupancy certificate for their individual villa is not possible, as the concerned project is a gated community villa. Occupancy certificate shall be applicable to the entire project after the completion of the entire project and not as per the individual villa construction.

b. Complainants also seek direction to the Respondent to provide drinking water through HMWS&SB:

The Authority acknowledges that the Respondents have fulfilled their obligations by installing internal pipelines. Nevertheless, it is imperative to emphasize that the initiation of the water supply pipeline to the respective area rests within the purview of the HMWS&SB department. Notwithstanding this, the Respondent is obligated to diligently pursue the concerns raised by the Complainants with the HMWS&SB department and ensure the expeditious provision of drinking water to the Complainants.

c. The complainants also seek directions to the Respondent to provide compound wall in place of dilapidated wall along with solar fencing:

In accordance with the brochure furnished by the Respondent/Promoter pertaining to the relevant project, it is apparent that the Promoter committed to the Allottees the provision of a solar fencing compound wall in lieu of the dilapidated wall. Pursuant to the Real Estate (Regulation and Development) Act, 2016, it is incumbent upon the Promoter to adhere to the commitments outlined in the prospectus or advertisement. Consequently, the Respondent would be under obligation and is hereby obligated to fulfil the aforementioned

commitment by providing a compound wall equipped with solar fencing to the Allottees.

d. The complainants also seeks direction to form Timber Leaf Villa Owners Maintenance Mutually Aided Co-operative Society:

The Authority takes note that the complainant has already initiated the formation of a welfare association. However, given that the formation of the said association is currently under pending before the Hon'ble High Court with writ petition filed. Therefore, the Authority refrains from intervening in the issue of formation of association at this juncture. The point is answered accordingly.

E. Direction of the Authority:

15. In the light of findings of the Authority as recorded above, the following directions under section 37 of the RE(R&D)Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the Authority under section 34(f) of RE(R&D) Act, are issued:

1. For contravening section 3 of the Act, this Authority, exercising its powers under section 59 of the Act, imposes a penalty of Rs. 11,33,328/-. This penalty is imposed for marketing/selling villas of the Project without registering the project before this Authority. The amount is payable in favour of TSRERA FUND through a Demand Draft or online payment to A/c No.50100595798191, HDFC Bank, IFSC Code: HDFC0007036, within 30 days of the receipt of this Order by the Respondents/Promoter. Additionally, this Authority directs the Respondent/Promoter to register the said project before this Authority within 30 days of the receipt of this Order to comply with the provisions of section 3 read with section 14(3) of the RE(R&D) Act of 2016.
2. The Respondent shall also construct a compound wall with solar fencing in the concerned project within 60 days from the receipt of this Order.

3. The Respondent is further mandated to initiate contact with the HMWS&SB department, diligently pursuing the timely provision of potable water to the Complainants
 4. The Complainants are hereby directed to pay maintenance charges to the Respondent, as the Complainants are presently in possession of and have already occupied the Villas.
16. In lieu of above findings and directions, the present complaint stands disposed off. The parties shall bear their own cost. The parties are hereby informed that failure to comply with this Order shall attract section 63 of the Act.
17. If aggrieved by this Order, the parties may approach the TS Real Estate Appellate Tribunal (vide G.O.Ms.No.8, Dt.11-01-2018, the Telangana State Value Added Tax Appellate Tribunal has been designated as TS Real Estate Appellate Tribunal to manage the affairs under the Act till the regular Tribunal is established) within 60 days from the date of receipt of this Order.

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

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

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