

**TELANGANA STATE REAL ESTATE REGULATORY AUTHORITY**

COMPLAINT NO.678 OF 2022

Date of decision: 29.08.2023

Mr. Gaddam Sridhar Reddy & Others

...Complainants

Versus

M/s Jubilee Hills Landmark Projects Pvt Ltd. & (2) others ...Respondents

**Quorum:**

Dr. N. Satyanarayana, Hon'ble Chairperson  
Sri K. Srinivas, Hon'ble Member  
Sri Laxmi Narayana Jannu, Hon'ble Member

**Appearance:**

Mr. Gaddam Sridhar Reddy in person (Complainant)  
Mr. Anand Subrahmanyam, Advocate for Respondent Nos.1  
and 2.  
Mr. R.V.Subba Rao, Advocate for Respondent No.3.

**ORDER**

The present complaint has been filed by Gaddam Sridhar Reddy and 10  
others under Form M against Respondent Number 1, 2 and 3 as under:

**A. FACTS OF THE COMPLAINT:**

The complainants have made the following submissions:

2. That the Respondent No.1 had acquired the property admeasuring 28,303 Sq.Yards (equivalent to 23,661.77 Sq.Meters) in T.S.No.16/3 (Old Sy.No.120/Part, 403/Part), Block-II, Ward No.9, Near Jubilee Hills Check Post, situated at Shaikpet Village and Mandal, Hyderabad, Telangana from Hyderabad Urban Development Authority (HUDA) by virtue of Regd. Sale Deed bearing Doc.No.5227 of 2006 dated 19.09.2006. HUDA has handed over the possession of the property to Respondent No.1 on 30.08.2006.

3. That the Respondent No.1 (promoter) subsequently had entered into a Registered Development Agreement cum General Power of Attorney (DGPA) dated 05.05.2011 vide Doc.No.1327 of 2011 with Mantri Mansions Private Limited ('MMPL') and Avant-Garde Beverages Private Limited ('ABL'), wherein;

MMPL is the Developer for Residential Project and was entitled to 55% share in the built-up area along with proportionate undivided interest/share in the land and similarly Respondent No.1 was entitled to 45% share in the total built up area in the Residential Project along with Proportionate undivided interest/share in the land.

4. Thereafter, in connection to the aforesaid DGPA, the following registered documents are entered;

- a) Respondent No.1, MMPL and ABL have entered into Registered First (1<sup>st</sup>) Amendment Agreement dated **24.08.2011**, wherein both MMPL and Respondent became entitled for revised share of 50% each in both total built up area and undivided share of land.
- b) Respondent No.1, MMPL and ABL have entered into a Registered Second (2<sup>nd</sup>) Amendment Agreement dated 04.12.2012, wherein proposal for commercial project was withdrawn and certain terms were amended. The ABL is the Conforming party to this agreement.
- c) Thereafter, MMPL has amalgamated with Mantri Developers Private Ltd (MDPL) –Respondent No 2 in 2018 and all the rights and liabilities of MMPL were transferred to MDPL.

5. The Complainant stated that, the Respondent No.1 and MMPL have entered into a Supplementary Agreement dated 10.09.2013 with three Annexure A, B, C as under:

- a. As per Annexure-A, 59 units are for the share of Owner and the total area is coming to 3,93,745 sq. feet.
- b. As per Annexure-B, 59 units are for the share of Developer and total area is coming to 3,93,840 sq. feet.
- c. Annexure C - copy of Approved Residential Project Layout Plan.

6. That all conditions in the Supplementary Agreement are same as the Principal Agreement, Registered First (1<sup>st</sup>) Agreement and Registered Second (2<sup>nd</sup>) Agreement except the fact that Supplementary agreement has taken Approved Residential Projects layout as main basis.

7. The Supplementary agreement also said if there is a variation between Approved Residential Projects layout and GHMC Building permission, either party may propose an amendment to the supplementary agreement by taking into account the difference.

8. That Respondent No.1 and MMPL have entered into Registered Third (3<sup>rd</sup>) Amendment Agreement dated 24.01.2018, wherein the reference date was defined and deadlines for completion of the project was defined.

9. That GHMC vide Permit No.15505/HO/CS/Cir-10/2012 dated 06.10.2012 has accorded permission for construction of residential building consisting of 3 basements parking, Ground plus two upper floors.

10. Thereafter, a revised vide GHMC Permit No.53442/HO/CZ/Cir-10/2016 dated 21.02.2018 for construction of 3 cellars for parking and Ground plus Seven (7) Upper floors including club house consisting of built-up area of 66,997.12 Sq. Meters was granted.

11. Again, another revised vide GHMC Permit No.53629/HO/CZ/Cir-10/2016 dated 29.09.2021 for additional built-up area of 31577.05 Sq. Meters by way of 62 residential units on 8th to 11th floors on the top of existing G+7 floors was granted.

12. Thereafter the Respondent No.1 had registered the Residential Project under the provisions of the Real Estate (Regulation and Development) Act, 2016 (referred to as the "Act") vide Regn.Nos.P02500000549 dated 27.03.2019 with the proposed completion date of 30-09-2022.

13. Further the Respondent No.1 had obtained the registration under the Act classifying the additional floors i.e., 8th to 11th floors as Phase-II construction and to that affect, Regn. No. P025000003725 dated 20.12.2021 was issued by the RERA, with the proposed completion date of 30-09-2023.

14. The Complainant further stated that MMPL had mortgaged 50% of the constructed area in the land, measuring 11830.88 Sq. Mts. along with Super Built-up Area to be converted thereto, measuring to 4,19,999 sft., for collateral security to the avail loans facilities with Allahabad Bank (Now merged with Indian Bank) for which the Respondent No.1 & MMPL have jointly executed a Registered Memorandum of Deposit of Title Deed(MODT) bearing Doc.No.5078/2016 dated 28.09.2016 with the Respondent No.3 to avail the loan to the tune of Rs.112,00,00,000/-.

15. Pursuant to this MODT, the original documents pertaining to the Schedule Property including the Supplementary Agreement dated 10.09.2013 mentioned in Second Schedule of MODT was deposited with the Respondent No.3.

16. The complainants submit that,

- a) The developers share as per Supplementary Agreement was 59 units with built up area as 3,93,840 square feet.
- b) The developers share as per Schedule A of the MODT showed as 4,19,999 sq. feet, an excess of 26,159 SqFt.
- c) The developers share as per GHMC vide Permit No.53442/HO/CZ/Cir-10/2016 dated 21.02.2018 is 3.60.575.5 square feet only, while as per Schedule A of the MODT showed the developers share as 4,19,999 sq. feet, an excess of 59,423SqFt.

17. Similarly, the Respondent no.1 being the Promoter had approached the ILFS (now merged with YES BANK) in the year 2018 to avail loan facility by mortgaging 34 specified units, total measuring 2,36,325 sq.feet out of 50% share of the owner/Promoter as per the DGPA dated.05-05-2011, three subsequent Amendment agreements and Supplementary agreement. The respondent No.1 has failed to repay the loan amounts and the YES Bank has issued a public Notice dated.21.06.2021 cautioning the general public not to enter into any sale transactions in respect of 34 units given thereunder.

18. That the Respondent. No. 1 & 2 have executed Registered Agreement of Sale in favor of the Complainants and therefore the Complainants are bona-fide Allottees of their respective Units in 8th to 11<sup>th</sup> floors more fully detailed hereunder:

Unit No.	Floor No.	In favour of Complainants	Regd. Agreement of sale details	Agreement of Value (Rs.)	Amenities cost (Rs.)	Amount paid as of today (Rs.)	Amount due Apart from applicable taxes.
G-902	9 <sup>th</sup>	No.1 & 2	Doc.No.5869 /2022 Dt.13.09.2022	3,42,25,000	66,35,250	3,95,11,070	13,49,180
F-802	8 <sup>th</sup>	No. 3 & 4	Doc.No.2315 /2022 Dt.30.03.2022	5,25,14,340	72,75,000	2,25,00,000	3,72,89,340
D-901	9 <sup>th</sup>	No. 5	Doc.No.5870 /2022 Dt.13.09.2022	3,87,00,000	72,17,000	3,27,72,075	1,31,44,925
F-902	9 <sup>th</sup>	No. 6 to 9	Doc.No.2316 /2022 Dt.30.03.2022	8,41,70,000	72,75,500	1,08,00,000	8,06,45,500
E-802	8 <sup>th</sup>	No.10 & 11	Doc.No.3079 /2022 Dt.07.05.2022	7,48,89,575	72,78,750	3,63,00,000	4,58,68,325

19. That as stated supra, the Respondents No.1 through its POA i.e., the Respondent No.2 had applied and obtained the revised permission for construction of multi-storied residential building consisting of 8th to 11th additional floors over the permitted and existing building of 3-cellars for parking and Ground plus Seven (7) upper floors with Amenities Block, vide Permit No.53629/HO/CZ/Cir-10/2016 Dt 29.09.2021 for additional constructed area of 31577.05 Sq. Meters.

20. Based on this, the total sanctioned built-up area in Phase-I & Phase-II will be 98,574.17 Sq. Meters. That the Respondent No.2 vide its Resolution Dt 25.03.2022 has resolved to give up his rights on additional constructed area of 31577.05 Sq. Meters.

21. That it will effectively reduce the share of the Respondent No.2's from the original 50% to 33.98% of constructed area. Since the undivided share in the

land is proportional to built-up area the undivided interest in land of the Respondent No.2 will also reduce from 50% to 33.98% i.e., 11,803.88 Sq. Meters to 8,045 Sq. Meters.

22. As such, it is incumbent on the Respondent No.2 to intimate the Respondent No.3 about the reduction of Respondent No.2's Undivided Share's i.e., from 11,803.88 Sq. Meters to 8,045 Sq. Meters and shall amend the Memorandum of Deposit of Title Deeds accordingly. But, the Respondent No.2 had failed to intimate and amend the necessary documents, resulting which, the rights and interest of the Complainants who are the allottees/purchasers would be affected.

23. That the Respondent No.2 vide its Resolution Dt 25.03.2022 had confirmed that the Company will not evince interest in taking up the development of additional floors and will restrict its role to the project as per the terms of the Agreements upto 7th floors only.

24. Further, it has been confirmed that the Company will not have any objection for JHLPPL (i.e., Respondent No.1) for developing additional floors i.e., 8th to 11th floors at its own cost and as per the sanction plans approved from GHMC, Hyderabad and the said 8th to 11 floors are registered under RERA vide Approval No.P02500003725 Dt 20.12.2021.

25. Further, it is confirmed that the mortgage of the Company's share of the land and flats to Allahabad Bank now merged with Indian Bank as per MOU Dt 28.09.2016 will remain unaffected and will continue to be in force as per law of land.

26. As a matter of fact, as stated supra, the Respondent No.2 i.e., Developer's share had been reduced from 50% to 33.98% i.e., 11,803.88 Sq. Meters to 8,045 Sq. Meters.

27. However, by way of Resolution Dt 25.03.2022 had confirmed that the mortgage of the Developer's share i.e. the Respondent No.3 as per MOU Dt 28.09.2016 will be remain unaffected, which is untenable.

28. In as much, it is giving the scope for the Respondent No.3 bank to claim the Respondent No.2's share as 11,803.88 Sq. Meters instead of 8,045 Sq. Meters, which the Respondent No.2 is actually entitled to in the project.

29. Thus, if the Respondent No.3 Bank proceeds ahead with the proposed auction presuming that it had right over the claimed share of UDS and Built-up area as specified in the auction notice, the rights and interest of the allottee(s)/purchaser(s) including the Complainants herein would be defeated. As such, the rights and interest of the Complainants are to be protected by issuing necessary instructions directions to the Respondent No.3 before proceeding with the sale.

30. It is submitted that the Respondents No.1 & 2 have created charge over the Residential Projects to their respective shares i.e., 50% share each, with the banks as stated above, only in respect of 3 cellars plus Seven (7) upper floors including amenities, comprising of 128 residential flats. However, due to revised sanction plans wherein the additional 4 floors have been added to the residential projects and thereby the super built up area and undivided share of the land in the residential projects has been reduced proportionately.

31. It is respectfully submitted that notwithstanding the charge created under mortgage with the Respondent No.3 & 4 Banks by the Respondents No.1 & 2, the Complainants being the bona fide flat purchasers (home buyers) shall have to be protected under Section 11 (4) (h) of the Real Estate (Regulation and Development)



Act, 2016 and also under the provisions of the Telangana Apartments (Promotion of Construction and Ownership) Act, 1987.

32. It is submitted that the charge created in favor of the Respondent No.3 & 4 was in respect of 50% share each to the Respondent No.1 & 2 respective in the residential property, which is based on the initial sanctioned plans for 3 basements, Ground plus 7 seven floors. Later on, the Respondent No.1 had come forward to construct additional floors i.e., 8th to 11th floors in different blocks, the charge created by the Respondent No.2 is restricted only upto 7 floors. The Respondent No.2 has no claim whatsoever in nature on the additional floors i.e., 8th to 11th floors in the residential projects, as such the RespondentNo.3 who is the lender of the Respondent No.2 is also not having any claim over the same.

33. That the Respondent No.2 have defaulted in making payments of the loan amounts availed by it, consequently the Respondent No.3 had issued the Auction Notice for Sale of property, under the premise that 50% Developers undivided share right and title in the land comprised in above said property measuring 11,830.88 Sq. Mtrs., forming portion of property bearing Sy.No.16/3 (P), Block-H, Ward No.9, situated at Shaikpet Village and Mandal, near Jubilee Hills Check Post, Hyderabad, along with 50% of Super Built-Up area to be constructed thereto, measuring 4,19,999 sq. feet being the Developer's share in the project.

34. As a matter of fact, due to construction of additional of floors i.e., 8th to 11th floors, the Respondent No.2 i.e., Developer's share had been reduced from 50% to 33.98% i.e., 11,803.88 Sq. Meters to 8,045 Sq. Meters.

35. Further, vide Permit No.53442/HO/CZ/Cir-10/2016 Dt 21.02.2018, the total sanctioned saleable built-up area is 66,997.12 Sq. Meters equivalent to 721150.99 Sq. Feet. Hence, as per the sanctioned plan, the 50% of the Developer's

share comes to 360,575.5 Sq. Feet. If the Respondent No.3 Bank proceeds ahead with the proposed auction presuming that it had right over the 50% share of the Respondent No.2 being Developer in built-up area and undivided share interest in the entire project, the rights and interest of the allottees(s)/purchaser(s) including the Complainants who have paid substantial amounts would be defeated.

36. That, since the Respondents No.3 has exercised its rights over the real estate project under **Section 13** of the SARFAESI Act, it therefore becomes the assignee of the Promoter and Developer, as applicable and hence, will squarely come under the definition of 'Promoter'. As such, the Respondents No.3 Bank is necessary and party to the present application.

37. It is well settled principle of law that the rights of the allottee(s)/purchaser(s) shall have to be protected under the provisions of the Act. In case, either Owner/Promoter or Developer creates any charge or mortgage, for part or full extent of the property under Development, the Banker who has rights certainly under the provisions of SARFAESI Act would not affect the rights of the allottee(s)/purchaser(s) which are protected under the Act. Further, the Act would prevail over the SARFAESI Act and its Rules, 2002. Thus, the right and interest of the allottee(s)/purchaser(s) are safeguarded by virtue of the provisions contained in **Section 11 (4) (h)** of the Act.

38. Also by virtue of **sub-section (1) of section 15 of the Act**, the secured creditor cannot take a significant portion of the project into its possession without obtaining prior written consent of the two-third of the allottees and without the prior written consent of this Authority. This provision of the Act accords certain protections to the Allottees and therefore needs to be upheld by this Authority. Since, the Respondent No.3 who is taking recourse under the SARFAESI Rules, 2002, the complainants being the aggrieved persons are approaching the RERA

Authority praying for the necessary reliefs. No proceedings under SARFAESI Act can deprive allottees of his rights under the Act. Unless, the RERA Authority protects the right and interest of the Complainants by passing necessary interim measures and directions under Section 36 & 37 of the Act, the rights and interest of the complainants who have paid substantial amounts would be deprived and will suffer an irreparable loss.

**B. REPLY ON BEHALF OF RESPONDENT NO 1 AND 2:**

The Respondent No1 & 2 filed their reply as follows:

39. That the Respondent No 1 and 2 have reiterated certain facts as stated by the Complainant like the Sale deed executed between HUDA and JHLPL with regard to subject land, Development agreement cum GPA entered by JHLPL with MMPL, First Amendment Agreement, Second Agreement ,Supplementary agreement and Third amendment development agreement.

40. They further reiterated the first two GHMC sanctions at different time intervals as stated above.

41. In addition to the above stated documents the Respondent No 1 and 2 referred to another Supplementary agreement Dt 23-05-2018 entered between JHLPL and MMPL, under this agreement the parties revised their area sharing in terms of the above sanctions/approvals/proceedings, after which another GHMC sanction permit was given on 29-09-2021 for 8<sup>th</sup> to 11<sup>th</sup> floors.

42. They further reiterated the Registration with RERA at two different time intervals as stated above.

43. Further, they also mentioned about loans they obtained from Allahabad Bank now Indian Bank and also about auction notification issued by the Indian Bank for default of payment.

44. Respondent No 1 and 2 further replied to the allegations raised by the complainant as under.

45. The Complainants' Agreements of Sale are of the year 2022 i.e., post all the Agreements between these Respondents and Respondent No.3 as also all the sanction plans ( 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> ).

46. That for the purposes of adjudication of a complaint under section 31 of the Act, to the knowledge of the Respondents and subject to correction, no such adjudicating authority has been constituted as per the Act and Rules. Thus, notice Dt. 30-11-2022 is untenable and without jurisdiction on many counts.

47. The alleged violation under Section 11(4) (h) of the Act, 2016 has been misapplied in as much as such provision is only applicable when mortgage/charge is created by the promoter after the execution of Agreement of Sale. In the present situation this is not the case as elaborated herein before and after.

48. That the RERA would not apply in relation to the transaction between borrower and banks/financial institutions in cases where security interest has been created by mortgaging the property prior to the introduction of the Act.

49. The complainants are guilty of forum shopping in as much as a writ petition seeking identical reliefs as has been sought in the present complaint that has been filed before the Hon'ble Telangana High Court. As such the complainants are not entitled to any relief from this Hon'ble Authority.

50. Further, the respondents No.1 & 2 made submission in respect to the loan obtained from respondent No.3, subsequent proceedings under the SARFAESI Act including the Sale auction and also stated about their dispute with Respondent No.3.

51. In view of the submission the respondent No.1 & 2 state that, first and foremost, the present proceedings purportedly under section 31 of the Act r/w. Rules framed thereunder for the alleged violations, are without jurisdiction and that the specific reference to section 11(4)(h) concerning the functioning the duties and functions of the promoter are not applicable to the present case in view of the fact that:

- a) RE (R&D) Act came into force in 2017;
- b) Telangana State Real Estate (Regulations and Development Rules 2017) was notified/came into force on 31-07-2017.
- c) All loan documents executed by and between the them Respondent no 3 are prior to 2017.
- d) The RE (R&D) Act, 2016 and RE (R&D) Rules 2017 are prospective and not retrospective.
- e) The Complainant's agreement of Sale are of year 2022 i.e post all the agreements between answering respondents and respondent no 3 as also all the sanction plans ( first, second, third).

52. Therefore, the above stated complaint must fail factually and legally.

**C. REJOINDER FILED BY COMPLAINTANTS:**

The Complainants filed a rejoinder on 10-07-2023, wherein he mentioned certain aspects that were originally not mentioned in their complaint, as under;

53. That the promoter and developer have already received considerable amount (more than 70% and some have paid 95%) from homebuyers and yet 25% of work only is completed. It is a classic case of fund diversion and misappropriation. Further delays will be death-knell to the project.

54. That the inspite of issuing notices the respondent No.3 (bank) proceeded with two rounds of auction and when the present complaint was submitted to there was no adjudicating body to conduct hearing and decide on our complaint. Since the sale auction (22 Nov 2022) is impending on them, the writ petition was filed by them before the Hon'ble High court. Therefore the allegation of the respondent No.1&2 that, the complainant is guilty of forum shopping is frivolous and inconsequential.

55. That, the Hon'ble High Court vide its order Dt. 22 Feb 2022 has issued direction that *"TS RERA to consider the complaint lodged by the petitioners on 14-11-2022 by giving due opportunity to all the parties and decide the matter as expeditiously as possible, preferably with a period of eight weeks from the date of receipt of copy of this order. Till a decision is made by TS RERA, the respondent Bank (i.e Indian Bank) shall not go for conducting of auction."* The respondent No.3 conducted sale auction twice on 22 Nov 2022, 31 Jan 2023 and inspite of the said direction of Hon'ble High Court the Respondent No.3 proceeded with auction again on 14 March 2013, but these auctions were unsuccessful as there were no bidders.

56. That, the objection of the respondent No.1 and 2 in respect of the maintainability of complaint is untenable. The complainant cited some judgments

of Hon'ble Supreme court , orders of RERA, reference of notification in support of their case as under;

*A) Vide notification dtd 26 April 2016, the central government has appointed 1st May 2016 as the commencement date of RERA Act 2016.*

*B) Odisha RERA in its order dtd. 02/12/2021 in Complaint 04 of 2021, has observed (in Para 9 of its order) that - The RERA Act, 2016 got Presidential assent on 25-3-2016 and published in the Gazette of India on 26-3-2016 and any ongoing real estate project which did not get completion certificate prior to commencement date of RERA Act 2016, would be subject to the provisions of the Act.*

*C) The Hon'ble Supreme Court vide its judgement dtd 11 November 2021, in the case of Newtech Promoters and Developers Private limited vs. The State of UP and others, has held that The RERA Act, 2016 is retroactive in its application and covers all ongoing projects for which completion certificate has not been issued.*

*D) The Hon'ble Supreme Court vide its judgement dtd in the case of Union Bank of India Vs Rajasthan Real Estate Regulatory Authority &Ors, has ruled that the RERA Act would have a retrospective application if the security interest is created fraudulently or in collusion with the Bank/Financial Institutions.*

*E) Haryana RERA in Puneet Gupta v. International Infratech Private Limited observed that RERA is an enactment subsequent to SARFAESI and has been enacted to protect the interest of the allottees in real estate projects. They observed that by the virtue of investment being made by the allottees and execution of a builder buyer agreement, a vested right is created for an allottees and the same cannot be taken away by a*



*financial institution. It is further observed that RERA is an enactment subsequent to SARFAESI and has been enacted to protect the interest of the allottees in real estate projects.*

57. That, Mortgage Security Interest was created in Collusive and Fraudulent Manner and these unscrupulous actions of the MDPL (Developer) and Indian Bank (Secured Lender) done behind the backs of existing stakeholders of Mantri project would adversely jeopardize and infringe upon the interest of allottees who have invested substantial amounts in the project.

58. The action of Indian Bank is malafide in as much as no due diligence was done by it while executing MODT to ensure that the UDS and Built-up figures are specified in Schedule A of MODT match the figures from sanctioned plan. Further, in view of all the changes to the project subsequent to the original MODT executed in 2016 where in the promoter-developer applied and obtained additional built-up area, both the lender and borrower are contractually obligated to amend the original MODT revising the UDS and built-up area figures, which both parties have failed to do.

59. The Complainant further stated that the promoter/developer deliberately did not disclose about the Loan facilities availed from the Allahabad Bank (now Indian Bank) and Yes Bank in the RERA Form B affidavit Dt. 30th Nov 2018, although the MODT with the Allahabad bank was entered in September 2016. Only in the subsequent Form B Dt. Dec 2019, there was a cursory mention of these charges without specifying any details. Some home buyers have already made the payments and entered into sale agreements by March 2019 itself relying on the Title report and Form B affidavit declaration dtd. 30th Nov 2018 which does not mention any charges/encumbrances. The home buyers became aware of these liens/mortgage charges only when Yes Bank issued public notice in June 2021



and subsequently when Indian Bank issued Sale Auction Notice in Oct 2022, due to default of MDPL and JHLPL in servicing these loans.that the promoters have deliberately suppressed this information from RERA authority and also Allottees and is clear case of misrepresentation and is in violation of **Section 4(2)(1)(B) of the Act and also Rule 14 (1) (d) of TS RE (R&D) Rules.**

60. That there are lapses in the periodic quarterly update of the project on TSREERA Website. The last update for Phase1 was on 13th October 2022. No project progress photographs are updated as mandated. Form 1 - Architect Certification was last uploaded on 09-10-2021 and is not updated quarterly and Form 3- CA Certificate (cost incurred and valuation of the sold inventory) is completely missing, which is violation of **Section 11(1) of act 2016 and Rule 14(1) of TS RE (R&D) Rules.**

61. That the Promoter is required to inform the Allottees at the time of agreement as to existence of any prior encumbrances, no such disclosure was made. There was no mention of any prior loans/credit facilities availed by the promoter and/or developer nor of any charges on Mantri 'A' property mortgaged against such credit facilities to secured creditors in Allotment Letter nor Sale Agreement nor in any other communication by JHLPL-MDPL to its customers, amounts to breach of **Clause 16 and Clause 6.1(iv)** of agreement of sale.

62. That the action of MDPL & Indian Bank is mala fide in as much as no due diligence was done by it while executing Memorandum of Deposit of Title Deeds (MODT) to ensure that the UDS and Built-up figures specified in Schedule A of MODT match the figures from GHMC sanctioned plan. Further, in view of all the changes to the project subsequent to the original MODT executed in 2016 where in the promoter-developer applied and obtained additional built-up area, both the lender and borrower are contractually obligated to amend the original MODT

revising the UDS and built-up area figures, which both parties have failed to do. It is incumbent on the MDPL to intimate its secured lender (Indian Bank) about the reduction of MDPL's built-up area and UDS area as a result of GHMC sanctioned figures being less than the indicative figures and to amend the MODT accordingly. But, MDPL had failed to intimate and amend the necessary documents, resulting which, the rights and interest of the other unit buyers would be affected. Same amount to the breach of **Clause 1.15 and 6.1 (vii) of Sale Agreement.**

63. That the promoter instead of promptly approaching DRT/DRAT to contest Indian Bank SARFAESI proceedings, JHLPL-MDPL has been a mute spectator and has deliberately failed to initiate any remedial steps, which amply points to the lack of serious intent on their part in settling the outstanding liabilities. These unscrupulous actions of the JHLPL-MDPL (promoter-developer) and Indian Bank (Secured Lender) done behind the backs of existing stakeholders of Mantri A project would adversely jeopardize and infringe upon the interest of 60+ allottees who have invested substantial amounts in the project, therefore it is **breach of Clause 1.13 of Sale Agreement.**

64. That the home buyers though opposing the move, respondent no.1 (JHLPL) has decided to opt for 12% GST (instead of 5%) and they were given assurances that ITC (Input Tax Credit) benefit will be passed on to home buyers. Subsequently, when requested for periodic updates on actual Taxes paid and ITC benefit availed, they were not provided with these details. This is a violation of **Clause 1.3 (iv) of Sale Agreement.**

65. That as per third Amendment to Development Agreement cum GPA (DGPA), the MDPL has failed to fulfill its obligation within stipulated time of 48 months (by Feb 2022) from reference date of 21-02-2018 and completed only less than 50% of phase I project. Also the MDPL has defaulted in respect of loan(s) obtained on

security of Scheduled property. Therefore MDPL (Residential Developer) is in breach of **Clause 7.7 (a) and (b) of DGPA** and hence the owner (JHLPL) is very much entitled to invoke **Clause 7.7 (i) and (ii) of DGPA** and terminate DGPA with Residential Developer.

66. That it is evident from Encumbrance Certificate (Annexure 2), Conveyance Deed/Sale Deed for a total of 31 units was executed in favor of NCC Ltd (17 units), RNRL LLP (14 units). Although the project is an ongoing with 75% of the works yet to completed however the conveyance deed for these 31 units are executed without mandatory completion certificate or occupancy certificate, which is a clear violation of **Section 17(1) of the Act**. It is very disconcerting as this whole exercise was done behind the backs of existing Allottees/Homebuyers and they are not made aware of this nor was their consent taken. Further there is no clarity about nature of the association of NCC and RNRL with Mantri A Project.

67. That in 2018, JHLPL has availed project loan from Yes Bank and has mortgaged 34 units of this project as security. However mysteriously the project loan was sanctioned by the bank to Propcare Mall Management India Pvt Ltd, although the funds were meant to be used for JHLPL towards Mantri A project. This entity 'Propcare' is neither the promoter nor the developer of Mantri A project and is not connected to Mantri A project. Therefore it is clear case of fund diversion and potential money laundering. The diversion of loan funds for unapproved purposes violates the provisions of RERA, various guidelines of RBI and also provisions of PMLA. Post RERA, it is mandated that any promoter/developer can mortgage land/units of the project only to raise project/construction loan exclusively to be used in the project only. Further the borrower has defaulted in making repayments of loan sanctioned by the bank and Yes Bank has already

initiated Insolvency Proceedings against MDPL and its entities. Also since promoter has defaulted on loan, it is breach of **Clause 1.15 of Sale Agreement**.

68. That the promoter has siphoned-off customer funds and project loans for other purposes, which is the primary reason for project delay. It is estimated that JHLPL has received customer funds to the tune of 400 crores from the sale of units. However the promoter has only infused less than 150 crores into the project since inception. Further the promoter and developer have raised loans worth 250+ crores by pledging Mantri A assets/units and they failed on repayment of these loans, thereby jeopardizing the assets of the project.

**D. THE MEMO DT 26-07-2023 OF THE RESPONDENT NO.1 TO THE REJOINDER:**

The respondent No.1 in the above said Memo submits that:

69. The rejoinder/addendum cannot be received on record as it is noticed that 'Mantri A Denizens Guild' which is not even a complaint in the said case and is now surreptitiously attempting to join the present case as complainant No.12 and therefore cannot be permitted to take up the case on behalf of the complainants.

70. The petition filed by the financial creditor i.e., M/s India Bulls Housing Finance Limited bearing C.P.(IB) No. 94/BB/2022 under section 7 of I & B code, 2016 R/w rule 4 of I & B (AAA) Rules, 2016, before Hon'ble NCLT, Bengaluru Bench and the adjudicating authority passed an order Dt.28-03-2023 against the corporate debtor i.e., Respondent No.2 herein ( M/s Mantri Developers Private Limited), admitted the said petition and declared moratorium under Section 14 of IBC. The respondent No.1 further stated about the subsequent Appeal filed against

the said NCLT order, and about the other proceeding in connection to the said NCLT order before the Hon'ble High Court of Karnataka and the Hon'ble Supreme court of India. Finally, the respondent No.1 states that, the present proceeding has to be adjourned sine die in view of the moratorium which is in force. In the reply Dt. 10-08-2023 filed on behalf of the respondent No.1 to the rejoinder of the complainant, it is submitted that, the said proceeding before NCLT was withdrawn vide order Dt.07-08-2023. Therefore, the said issue is not necessary for consideration by authority now.

**E. THE REPLY DT.10-08-2023 OF THE RESPONDENT NO 1 TO THE REJOINDER:**

The respondent No.1 in the above said Reply submits as hereunder:

71. That Mantri A Denizens Guild has no *locus standi* to participate in the present proceedings by filing pleadings, being a third party. Since the present proceeding was instituted originally by 11 persons being co-owners of 5 apartments out of total 63 apartments (constituting less than 8% of total allottees), the said third party entity cannot be permitted to take a back door entry and drive the proceeding in as much as under the Rule 2(i) of the TSRERA Rules, a complainant only means any aggrieved person making a complaint. In the present case, Mantri A Denizens Guild has not filed the Complaint and cannot be treated to be a complainant. The Rejoinder/Addendum Dt 15.07.2023 has been signed by the said third party and therefore cannot be taken on record.

72. The said Mantri A Denizens Guild which claims to be an association of the homebuyers / allottees has no legal sanctity and mandate of majority of allottees. Out of the total 63 allottees, only 5 allottees (11 Complainants) who are

relatives) have preferred the present complaint and formed such association to further their personal agenda and blackmail / arm-twist the Answering Respondent to succumb to their demands. The actions of these allottees are detrimental to the interest of all the stakeholders. Neither the said Guild nor these Complainants represent the will of all the allottees and cannot be said to be their representatives.

73. The amended interim reliefs which have been sought in the Rejoinder / Addendum from 'a' to 'k' are beyond the mandate of the Act and therefore cannot be maintained.

74. The Complainants have sought to transpose Indian Bank (Respondent No.3 herein) to assume the role of the promoter by substituting the Answering Respondent. Such a prayer is premised on an erroneous assumption by importing and reading the provisions of SARFAESI Act into the Act which is impermissible under law. Assuming without admitting, if at all the Complainants are entitled to any final reliefs, they can at best be granted, by way of return of amount and compensation U/s. 18 of the Act, which is of course, subject to further adjudication U/s. 71 of the Act that stipulates for holding an enquiry in the prescribed manner by the adjudicating officer.

75. The drastic step of revocation of registration under prayer 'a' and consequential reliefs under prayer 'b' and 'c' that has been sought by the Complainants cannot be done without following the process prescribed U/s. 7(2) of the Act. In any event, no grounds have been made out by the Complainants for exercising such drastic powers by this Authority which would be jeopardizing the entire fate of the project thereby prejudicing the rights of all the stakeholders including those who are not parties to the present proceeding.

76. All the loan documents executed by and between the Answering Respondent and the financial institutions were prior to 2017 before the Act came into existence and also prior to execution of the respective agreements of sale entered into with the Complainants. Therefore, the Complainants have misled the Authority by stating that mortgage security interest was created in a collusive manner behind the back of the Complainants. As such, there is no violation U/s.11(4)(h) of the Act which governs the functions and duties of the promoter, like the rest.

77. In regard to the allegations that, the Promoter has received 70% to 95% consideration from the home buyers. The said allegation is baseless and they have no *locus standi* to make the said allegation in representative capacity because they have booked only 5 Apartments out of total 63 Apartments booked. The Complainants are only Agreement holders of 5 Apartments and they cannot speak on behalf of rest of the home buyers who are not even parties to the present proceeding. The core allegation that the project was completely halted is false and misleading in as much as retro-fitting and de-watering works are ongoing in the project even as of date. Though the project commenced in 2014, as stated in the rejoinder/addendum, however on account of force-majeure events that were beyond the control of the Answering Respondent, the project could not maintain the pace. In this regard, it must be stated that the Government of Telangana's proposal to build flyovers and walk ways near the Jubilee Hills Check post Junction taken under SRDP which resulted in the project being halted for almost 3 years i.e., from 2015 to 2018, since there were plans in taking over part of the project land for SRDP. Later on the GHMC gave Building permit for 3 Basement + Ground + 7 Upper floors. Furthermore, the global pandemic COVID-19 resulted in



the project being halted for almost 2 years. This global pandemic affected all the sectors and business and real estate sector was seriously affected due to migration of labor which was a vital clog in the construction industry. Further, essential raw material supply was also severely affected the Real Estate Sector in general and Mantri A project in particular. There were various government orders factoring such events and advisories were issued for extension of timelines under RERA.

78. The Complainants entered into their respective registered Agreements of Sale in the year 2022 being absolutely cognizant of the developments from 2014 onwards. As such, the events prior to 2022 were within the knowledge of the Complainants and they cannot make an issue at this stage. Obviously, the Complainants found the project profitable and lucrative and therefore, have chosen to invest in the project out of their own free will and volition. It is important to note that at this stage, the Complainants have not sought for refund of amounts which goes on to show that the Complainants are not short-changed in the project. Therefore, it may be concluded that the Complaint is malafide and deserves to be dismissed.

79. In response to the 'applicability of RERA Provisions', the Answering Respondent challenged the jurisdiction of the Authority in the context of the prayers made by the Complainants and not the adjudicatory jurisdiction of the Authority. The said objection still holds good. The allegations with regard to creating mortgage security interest in collusive and fraudulent manner, non-disclosure of loan facility, mortgaging the assets in a fraudulent manner are outright baseless and contrary to records. It must be stated that all the financial



arrangements availed by the Answering Respondent were prior to the Agreements for Sale with the Complainants. Moreover, these facilities were availed even prior to the Act coming into force. All the disclosures that were required to be made by the Answering Respondent under the Act were duly complied with. The statements made in the corresponding paragraphs of the rejoinder are misleading and contrary to the records.

80. In respect to the stance that the 'Lender assumes the role of promoter if exercising rights under Section 13 of SARFAESI Act', it is reiterated that the provisions of the SARFAESI ACT cannot be imported and read into the provisions of the Act as the object and scope of the respective enactments are different. In any event, since the Complainants have directed such relief against Respondent No.3, it is for the said Respondent No.3 to answer. It must however be submitted that no occasion has arisen for such type of reliefs to be granted.

81. In respect to the 'Forum Shopping', it is submitted that the Answering Respondent maintains its stance that the Complainants are indulging in Forum Shopping for their ulterior gains.

82. In response to the allegation that 'Collusion between Promoter-Developer-banker', it is submitted that the Complainants were well aware of the collaboration between the Developer and the Answering Respondent and their arrangement with the Banker. Such arrangements are not uncommon in real estate projects and cannot be by any stretch of imagination being termed as fraudulent. These arrangements are backed by contracts and are legally recognized and valid. In a malafide manner, this collaboration has been termed

as 'collusion'. Since the Respondent No.3 was acting unreasonable with regard to the facility extended to the Respondent No.2, steps were taken by Respondent No.2 before the appropriate judicial forums like Commercial Court and NCLT. It is therefore misleading to contend that the Respondent No.2 has done nothing with regard to the finance facility with Respondent No.3. It is not out of place to mention here that the Respondent No.2 is in active talks with Respondent No.3 to settle their dispute which is borne by the fact that in response to the OTS that was offered, a revised OTS is being negotiated. The Answering Respondent is hopeful that soon, a quietus could be achieved in this regard and the project will be developed at the intended pace.

83. In response to the contention that 'Homebuyers interests and rights to be protected', it is submitted that there cannot be any quarrel with such proposition, however, with a disclaimer that such provisions are meant for bonafide customers and not unscrupulous litigants.

84. In response to that the 'RE (R&D) Act taking precedence over SARFAESI Act, 2002', It is submitted that such submission does not exist anymore in the context of moratorium which has now been lifted in view of settlement between the parties and the NCLT proceedings having been closed vide order Dt 07.08.2023 passed by the NCLAT.

85. In response to contention that 'Construction Works halted and Project Abandoned', It is submitted that the allegations made in the corresponding para is heresay and denied. It is emphasized that the project has not been abandoned as falsely claimed by the Complainants. In fact, the respondents have taken requisite proactive actions to ensure that there is no compromise in structural

integrity and basic maintenance / upkeep and security of the project is intact.

86. In response to the contention that Lack of communication from Promoter and/ or failure to respond to customer correspondences with respect to project status (Breach of Sec 19(2) of the Act), it is submitted that the averments made in this para are not reflecting the correct facts most of the communication addressed by one Mantri A Denizens Guild which is neither a customer nor recognized legal entity as such, soliciting no response. The respondent has always attended to individual customers and addressed all their issues and concerns. In fact, the higher officials of the Answering Respondent have been regularly attending to the calls of the customers. The present complainants are only 5 members and they cannot represent the other majority customers and thus making allegations which are not borne by facts. The customer relationship department of the Answering Respondent has always shared the periodical status of the project and other information.

87. In response to the Breach of Chapter-IV Rule 14(1)(d), Rule 14(1)(c) of TSREERA Rules, Section 4(2)(1)(8) and Section 11(1) of the Act, 2016, the allegations are denied as false. The Answering Respondent has diligently met the requirements under the rules as there are enough safeguards under the Act and Rules to enforce such requirements. Such compliance is evidenced by the fact that the concerned Authority has not raised any objection in this regard being privy to such records furnished by the Answering Respondent from time to time. The allegations have been made only to prejudice the Authority and the Complainant is put to strict proof of the same.

88. In response to the Breach of Clause **16, Clause 6.1(iv,vii,viii, ix,)**, **Clause 1.13 and Clause 1.15** of Sale Agreement, such allegations are only cosmetic in as much as if there has been any breach of the agreement, the Complainants always had an option of rescinding the contract and seek refund. This itself shows that such make-believe breaches are highlighted only to prejudice this Authority for ulterior motives. Except the Complainants covering 5 apartments, the rest have not alleged any such breaches. This in itself shows that all disclosures were made by the Answering Respondent to the satisfaction of the customers.

89. In response to the Breach of Section 13(1) of the Act of 2016 (Promoter failing to register Sale Agreement), it is submitted that in the present case, the Complainants' agreements have been registered and the allegations with regard to the rest is only here say in as much the customers have not approached this Authority with any such grievance.

90. In response to the Breach of Clause 1.3(iv) of Sale Agreement (Tax paid - GST figures not provided), it is submitted that the project was initially registered under the old GST scheme and the Answering Respondent continued under the same scheme.

91. In response to the Non-Termination of Development Agreement by the Promoter (Breach of 6.1 (vii) of Sale Agreement), it is submitted that it is the prerogative of the Answering Respondent to enter into agreements and continuance thereof. The Complainants cannot advise in this regard. If at all there are any issues between the parties to the development agreement, they would be only inter-se. Having stated thus, the Answering Respondent is not averse to ending the contractual relationship with Respondent No.2 and is proactively considering and

exploring the same.

92. In response to the breach of Section 17(1) of the Act, such impression of the Complainant is unfounded in as much as the Answering Respondents have not executed any such sale deed and the Complainants are put to strict proof of the same.

93. In response to Diversion of YES Bank Project Loan (Breach of RERA/RBI and PMLA Provisions and Clause 1.15 of AoS, it is submitted that the allegations made in this para by the complainants are false and not borne out of facts, the allegation of diversion of fund is also not correct since the said bank has not provided loan to the Answering Respondent but to a sister concern namely Propcare Real Estate Management Pvt. Ltd. It is obvious that the Complainants have narrated misleading facts to prejudice this Authority.

94. In response to Diversion of Customer Funds (Breach of RERA/RBI), it is false, baseless and contrary to records in as much as the quarterly reports filed by the Answering Respondent before this Authority in compliance with the provisions of this Act amply demonstrates that there is no diversion of funds as alleged or at all.

**F. THE COUNTER AND WRITTEN SUBMISSION FILED ON BEHALF OF  
RESPONDENT NO.3 (BANK):**

The respondent No.3 in the counter and written submission submits as hereunder:

95. That the respondent No.2 i.e., M/s Mantri Developers Primate Limited mortgaged its 50% share in the building along with undivided share in land in favour of the respondent No.3 bank.

96. That the respondent No.3 reiterated certain facts as stated by the Complainant like the Sale deed executed between HUDA and JHLPL with regard to subject land, Development agreement cum GPA entered by JHLPL with MMPL, First Amendment Agreement , Second Agreement ,Supplementary agreement and Third amendment development agreement.

97. That the respondent No.3 further mentioned about the respective notice issued by it hereunder;

04-08-2021	Demand Notice U/Sec.13 (2) of SARFAESI Act 2002
18-01-2022	Possession notice
17-10-2022	First Sale notice putting the property for auction 22.11.2022 .
13-01-2023	Second Sale notice putting the property for auction 31.01.2023 .
24-02-2013	Third sale notice putting the property for auction 14.03.2023 .

98. That as there no bidders the auctions could not be materialized and the secured asset was not sold.

99. That even according to the complaint;

- a. There is no amendment in respect of the mortgaged 50% share of the respondent No.2 created in favour of respondent No.3.
- b. The respondent No.3 never at any stage released part of mortgaged property created by respondent No.2.

100. That the following is the schedule of the property mortgaged in favour of the respondent No.3 by respondent Nos.1 and 2 as per Memorandum of Deposit of Title Deeds No.5078 of 2016 dt:28.09.2016.

(PROPERTY BEING DEPOSITED BY WAY OF FIRST CHARGE UNDER  
THE DEPOSIT OF TITLE DEEDS)

*The 50% of developers undivided share right and title, in the land comprised in the Schedule A Property measuring 11,830.88 sq.mts forming portion of property bearing T.S.No.16/3 (P) Block -H Ward No.9 situated at Shaikpet Village and Mandal, near Jubilee Hill Check Post, Hyderabad along with 50% of super built up area to be constructed there to measuring to 4,19,999sq.ft being the developer's share in the project and bounded by:*

*North by: Road (Jubilee Hills Check Post)*

*South by: KasuBrahmananda Reddy Park*

*East by : Road No.2 Banjara Hills*

*West by : Road No.1 Jubilee Hills.*

101. That the respondent No.1 and 2 in terms of the development agreement-cum-general power of attorney demarked the constructed area by way of Supplementary Agreement dt: 10.09.2013.

102. That the undivided share of land and corresponding to built up area mortgaged to the bank.

Undivided share in land	Corresponding to constructed super built up area
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11,830.88 sq.mts	4,19,999sq.ft.
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103. That after creating mortgage of 50% of the share by the respondent No.2 the respondent No.1 and 2 obtained permission for construction of additional floors from the GHMC and started constructing.

104. That it may be noted that by the date of the said resolution dt.25.03.2022 the respondent No.3 bank initiated proceeding under the SARFAESI Act and taken possession of the secured asset.

105. The contention that the mortgage is restricted to the flats/units mentioned in the supplemental agreement. It is submitted that the said contention is baseless.

106. That the undivided share of the land corresponding to the flats claiming by the complainants is out of the 50% of the undivided share mortgaged to the bank by the respondent No.2.

107. That the respondent No.3 as per the procedure published the possession notice in the newspapers much earlier to the agreement of sale entered by the complainants with the respondent Nos. I and 2.

108. That the relief sought by the complainants in 5.(a) and (b) of the complaint, as the proceedings were initiated by the bank under SARI'AESI Act, 2002 the Honorable Debt Recovery Tribunal, at Hyderabad is the proper Tribunal to decide the same. Hence the said reliefs are not maintainable before this Honorable Authority.



109. That the respondent No.3 already taken possession of the 50% of the project mortgaged in its favour under the provisions of SARFAESI Act,2002 on 18.01.2022 any interference by any third party is nothing but trespassing into the property.

110. That the respondent No.3 is a nationalized bank dealing with public funds and duly following the procedure under the Act to recoveries out standing's from the respondent No.2 by enforcing the securities as per law.

111. That the bank is proceedings further as per the provisions of SARIAESI Act, 2002 to sell the secured asset.

**I. COMPLAINANTS REPLY TO THE COUNTER AND WRITTEN SUBMISSION OF RESPONDENT NO.3 (BANK):**

112. The complaint raised the objection against the delay in filling Written Submission by Indian Bank.

113. The complainants further reiterated his submission in respect of MODT entered between Respondent No.1 & 2 with Respondent No.3, the synopsis of contentions in brief are as under:

- a. MODT area figures are not in concurrence with GHMC sanctioned area.
- b. MODT area figures not in concurrence with Supplementary Agreement.
- c. Respondents failed to Amend inconsistent MODT area figures.

- d. MDPL development rights (and therefore Indian Bank rights) limited to G+7 Floors.
- e. Purchased Units by the complainants are out of JHLPL share and not from MDPL share.
- f. The MODT charge is limited to G+7 Floors.
- g. MDPL has defaulted in developing the project and therefore is not vested with any substantive rights.
- h. The JHLPL is the landowner and has appointed MDPL as developer of Mantri A project vide Development agreement executed b/w these two entities. Under JDA, only development rights were granted to the developer - MDPL & therefore it does not accrue any right over the land in question. MDPL would have been vested with ownership rights of its share of build-up area/units only after it completes the development activities of the whole project as per the agreed terms of JDA and handover the fully developed units to the land-owner JHLPL as per terms of area sharing.
- i. MODT is Defective, Flawed and Created in Fraudulent Manner.
- j. UDS rights in Land are derived from and in proportion to Built-up area, the sum of all the flat owners UDS has to be equal to the property land size.

**J. ISSUES FOR ADJUDICATION:**

On the above pleadings/contentions, the Point that arises for consideration is:

*Whether the Complainants are entitled for the reliefs sought?*

114. Copies of all the relevant documents have been filed and placed on the record by complainants and respondents No.1 and 2. The respondent No.3 didn't file any documents on its behalf. There is no dispute in respect of the said copies of documents filed. As such the complaint can be decided on the basis of these undisputed documents and submissions made by the respective parties at length.

**K. RELIEF SOUGHT:**

115. The complainants have prayed for grant of following reliefs:

- a) *To direct the Respondents No.3 to conduct the Sale Auction on 22.11.2022 limiting the proposed sale only to an extent of 360,575.5 Sq. Feet & Undivided Share of Land 8,045 Sq. Meters, towards the share of the Developer's share (i.e., Respondent No.2) upto 7th floor in the Property, forming portion of property bearing Sy.No.16/3 (P), Block-H, Ward No.9, situated at Shaikpet Village and Mandal, near Jubilee Hills Check Post, Hyderabad, instead of proceeding with the sale of 50% Developers (i.e., Respondent No.2) undivided share right and title in the land comprised in above said property measuring 11,830.88 Sq. Mtrs., forming portion of property bearing Sy.No.16/3 (P), Block-H, Ward No.9, situated at Shaikpet Village and Mandal, near Jubilee Hills Check Post, Hyderabad, along with 50% of Super Built-Up area to be constructed thereto, measuring 4,19,999 sq. feet being the Developer's (i.e., Respondent No.2) share in the project.*
- b) *To direct the Respondents No.1 to 3 not to affect any of the rights and interests of the Complainants herein, in contravention of the terms and conditions of the Agreement of Sale entered between the Complainants herein and the Respondents No.1 & 2, including all common areas, common amenities, car parking etc*

- c) *To direct the Respondents No.1 & 2 to complete the project duly in compliance of the terms and conditions which have been agreed under RERA provisions?*
- d) *To revoke the registration granted to the project U/s sub section 1 of section 7 of RERA Act, for not complying with the requirements of the Act or the Rules.*
- e) *To decide further course of actions to be taken for carrying out the remaining development in the project U/s 8 of the RERA Act 2016, the measure may include handing over the project to the existing stakeholders and /or outside interested builders.*
- f) *To issue any such direction in interest of the buyer or in the public interest at large u/s section 7 Clause (d) of Sub-section (4) of the Act*

Are they entitled to any other relief/reliefs in the circumstances of the complainant's case?

**L. OBSERVATIONS AND FINDINGS OF THE AUTHORITY:**

- A. The observations and findings of this Authority so far as the relief (a) is concerned, Since the auctions proceedings conducted by Respondent No 3 on 22.11.2022, 31.01.2023 and 03.03.2023 inspite of the directions of the Hon'ble High Court in WP No.41976/2022. On 22.02.2022 has become unsuccessful as no bidders have participated.
- B. Further, the authority has observed that the MODT (enclosed Supplementary Agreement) dated 28.09.2016 was signed based on approved residential plan and not sanctioned plan. However, in the Supplementary agreement second part of clause (2) stated as under:

*As such, in the event of any difference variation of any nature between the approved Residential Project Plan and the Residential sanctioned plan, either party may propose an*

*amendment to this agreement consequent to which the parties shall amend this agreement taking into account the difference between approved residential project plan and residential sanctioned plan.*

- C. This authority has observed that, inspite of the said clause neither the Respondent 1 nor Respondent No 2 has made any attempt to execute another amendment agreement.
- D. While the matter stood like this, though the supplementary agreement dated 10.09.2013 clearly shows the super built up area to an extent of 3,93,480 square feet was the share of the Respondent No 2 , the Respondent No 3 has executed a MODT dated. 28.09.2016, for an extent of 4,19,999 square feet. Further, it is pertinent to submit that no supporting documents were filed by either of the parties to show how the Respondent No 1, 2 and 3 entered into the MODT for an extent of 4,19,999 square feet.
- E. This authority also observes that vide permit Number. 53442/HO/CZ/Cir-10/2016 dated 21-02-2018 where the total sanction saleable built up area is 7,21,150.99 square Feet as such 50% of the developers share comes to 3,60,575.5 square feet.
- F. The observations and findings of this Authority so far as the relief (b) is concerned, as per the agreement of Sale entered between the respective Complainants with Respondent No 1 and 2 , it is sole obligation on the Respondent No 1 to protect the Rights and interests of the complainants herein.
- G. The observations and findings of this Authority as far as the relief (c) is concerned, as per the RERA registration certificate the Project completion date is 30.09.2023. The said deadline date is approaching. Further, in the Memo

filed by the Respondent No 1 dated 30.08.2023, 31.78 % of work is completed as on 30.08.2023. However, as per the Complainant in his rejoinder dated 10.07.2023 has stated only 25% of the work is completed. This authority without going into the correctness of the figures is of the opinion that approximately 70% of the work is still pending.

- H. The observations and findings of this Authority so far as the relief (a) in the rejoinder filed by the Complainant is concerned, though Sub section 1 of section 7 of the Act encourages revocation of Registration in certain circumstances and also considering the deviations(shielding encumbrances in FORM B and also in agreement of Sale) stated by the Complainant , this authority keeping in view the interest of larger allottees in the entire project, is not inclined towards the said revocation as the primary objective is to protect the Rights and Interests of allottees with stipulated timelines.
- I. The observations and findings of this Authority so far as the relief (b) in the rejoinder filed by the Complainant is concerned, since this Hon'ble Authority is of the considered opinion that Revocation may be inappropriate at this stage, the relief sought for at this juncture does not arise.
- J. The observations and findings of this Authority so far as the relief (c) in the rejoinder filed by the Complainant is concerned, in the circumstances of the said case this authority deems it appropriate to invoke Section 7(3) of the Act in the larger interest on the allottees.
- K. So far as the Interim Reliefs sought for by the Complainant is concerned, in view of the orders passed by this Hon'ble authority the issue of interim relief does not arise.
- L. In addition to the point wise observations and findings for the relief sought for by the complainant, this Hon'ble authority has also made certain additional observations like the Respondent No 1 and 2 did not disclose the encumbrance

with the Respondent no 3 and Yes Bank and the same has come to the notice of the Complainant herein after Respondent No 3 issued a auction notice dated 17.10.2022.

- M. This Hon'ble Authority most significantly observes that the Form B dated 30.11.2018 filed before RERA incorrectly stated that there are no encumbrances over the said property which is a direct violation of Section 4(2)(l)(B) of the Act.
- N. This Hon'ble Authority during the course of the oral arguments questioned Respondent No.1 about suppressing the information related to the loan obtained from the Allahabad bank in the year 2016 in Form-B Dt. 30-11-2018 filed before RERA. In response the Counsel for Respondent No 1 urged time to file Memo, which was never clarified in subsequent Memo filed.
- O. This Hon'ble Authority most significantly also observes that in the Agreements of Sale executed with the Complainants in the year 2019 and subsequently again in the year 2022 the Respondent No 1 and 2 vaguely mentioned about the encumbrance with the bank, however the details of such encumbrance have not been stated in detail which is which is a direct violation of Section 4(l)(B) of the Act.
- P. This Hon'ble Authority also observes that the Respondent No 1 has completely failed to comply with Section 11(1) of the Act which dictates to upload quarterly Chartered Accountant Certificate.
- Q. This Hon'ble Authority further observed that so far as the objections raised by Respondent No 1 that a rejoinder was filed by "Mantri A Denizens Guild" on behalf of all the Complainants is concerned, though the Rejoinder was filed by "Mantri A Denizens Guild" the subsequent Written arguments were filed by all the Complainants. This is a technical and procedural objection and does not have any affect on the result of the case.



- R. This Hon'ble Authority further observed that so far as the objections raised by Respondent No 1 that all the Development agreements, all Amendment Agreements, Supplementary Agreement and MODT came into existence prior to the Act is concerned, it has to be noted that the very project comes within the definition of on-going project and as such the subject property is very much under the purview of RERA.
- S. This Hon'ble Authority also observes that the conduct of the Respondent No.1 and 2 is detrimental to the interests of the allottees and project accomplishment.

**M. DIRECTIONS OF THE AUTHORITY:**

116. In view of the observations and discussions made above, this Hon'ble Authority hereby passes orders as under and issues the following directions under Sections 37 and 38 of the Act:

1. Respondent No 1 is directed to pay **Rs.6,50,00,000/- (Rupees Six Crores and Fifty Lakhs Only)** as penalty under Section 60 & 61 of the Act payable in favour of TS RERA FUNDS through Demand Draft or online payment to A/c No.50100595798191, HDFC Bank, IFSC Code: HDFC0007036 within a period of 30 days from the date of receipt of this order. The penalty is being imposed for furnishing incorrect information in FORM B dated 30.11.2018 stating that there are no encumbrances over the subject project, not uploading quarterly update status of the Project audit report.
2. Respondent No 1 is directed to deposit fresh equity of the Promoter Company (Respondent Nos.1 & 2) of Rs.200,00,00,000/- (Rupees Two Hundred Crore Only) in a separate designated bank account as stated in Section 4 (2)(l)(D), within a period of 30 days from the date of receipt of this order; and furnish compliance report. It is imperative to state that the said deposits may only be utilized for the construction of the subject project



considering the prolonged delay in the construction to safeguard the interests of the allottees.

3. Respondent No.1 is directed to strictly upload project status phase wise reports on the RERA website on quarterly basis as required under Section 11 (1) of the Act and Annual Accounts Audit Report as required under Section 4(2)(l)(D), 3<sup>rd</sup> proviso.
4. Respondent No.1 is directed to take all necessary steps to deliver hindrance free property to the respective complainants/prospective buyers in accordance with the Agreement of Sale.
5. Respondent No.3/Indian Bank is directed not to conduct any auction of the subject matter of property as per Memorandum of Deposit of Title-deeds, dt.28.09.2016 (Document No.5078/2016) over and above ground + 7 floors where permission has been obtained subsequently.

117. In lieu thereof, the present complaint stands disposed of. The parties are hereby informed that failure to comply with this Order shall attract action under Section 63 of the Act.

118. 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. Srinivasa Rao, Hon'ble Member**  
**TS RERA**

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

**Sd/-**  
**Dr. N. Satyanarayana, Hon'ble Chairperson**  
**TS RERA**