

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

5th Day of September 2024

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

COMPLAINT NO.647 OF 2022

Sri Katakam Santosh

...Complainant

Versus

1. M/s Sahiti Infratec Ventures India Pvt. Ltd.
represented through its Managing Director,
Sri Boodati Laxminarayana
2. M/s SVN Infra
Represented through its Managing Partner, Sri
Chandur Rajender & Sri Kalvakuntla Naveen
Kumar
3. Inspector of Police/Station House Officer,
Central Crime Station
4. Jt. Commissioner of Police (Crimes & SIT),
Central Crime Station

...Respondents

COMPLAINT NO. 778 OF 2022

Akshay Jain & Anr.

...Complainant

Versus

1. M/s Sahiti Infratec Ventures India Pvt. Ltd.
represented through its Managing Director,
Sri Boodati Laxminarayana
2. M/s SVN Infra
Represented through its Managing Partner, Sri
Chandur Rajender & Sri Kalvakuntla Naveen
Kumar

3. Inspector of Police/Station House Officer,
Central Crime Station
4. Jt. Commissioner of Police (Crimes & SIT),
Central Crime Station

...Respondents

COMPLAINT NO. 254 OF 2023

Vishwanathan Keshetti & 47 Ors.

...Complainants

Versus

1. M/s Sahiti Infratec Ventures India Pvt. Ltd.
represented through its Managing Director,
Sri Boodati Laxminarayana
2. M/s SVN Infra
Represented through its Managing Partner, Sri
Chandur Rajender & Sri Kalvakuntla Naveen
Kumar
3. Inspector of Police/Station House Officer,
Central Crime Station
4. Jt. Commissioner of Police (Crimes & SIT),
Central Crime Station

...Respondents

COMPLAINT NO. 226 OF 2023

Rama Bommakanti

...Complainant

Versus

1. M/s Sahiti Infratec Ventures India Pvt. Ltd.
represented through its Managing Director,
Sri Boodati Laxminarayana
2. M/s SVN Infra
Represented through its Managing Partner, Sri
Chandur Rajender & Sri Kalvakuntla Naveen
Kumar
3. Inspector of Police/Station House Officer,
Central Crime Station

4. Jt. Commissioner of Police (Crimes & SIT),
Central Crime Station

...Respondents

COMPLAINT NO. 524 OF 2024

Vishnu Vardhan Keerthi

...Complainant

Versus

1. M/s Sahiti Infratec Ventures India Pvt. Ltd.
represented through its Managing Director,
Sri Boodati Laxminarayana
2. M/s SVNR Infra
Represented through its Managing Partner, Sri
Chandur Rajender & Sri Kalvakuntla Naveen
Kumar
3. Inspector of Police/Station House Officer,
Central Crime Station
4. Jt. Commissioner of Police (Crimes & SIT),
Central Crime Station

...Respondents



This Authority is in receipt of complaints above-mentioned under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “Act”) read with Rule 34(1) of the Telangana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the “Rules”) requesting appropriate action against the Respondents. Whereas, after hearing the Complaints together, this Authority directed the Complainants to form an Association and therefore, the Complainants are jointly termed as the “**Sahiti Sishta Abode Welfare Association, Kompally**” registered vide Registration No.789 of 2022 represented through:

S.No.	Position	Name
1.	President	Sri O. Krishnam Raju

2.	Vice President	Sri B. Karunakar
3.	General Secretary	Sri Ch. Raghupathi Reddy
4.	Joint Secretary	Sri Vithoba Chouty
5.	Treasurer	Sri B. Mahipal Reddy
6.	Executive Members	Sri ASN Raju, Sri D. Krishna, Sri U. Padmanabha Rao, Sri Surendra Kumar Upadhyaya, Sri G. Kuchi Reddy, Sri M. Surender, Sri N.A. Lakhani, Sri K. Uday Kiran, Sri K. Vishwanadham, Sri V. Mahipal Reddy, Sri Narayana Rao Deshmukh, Sri G. Anjaiah, Sri B. Rajendra Prasad, Sri K. Ranga Chary

2. Accordingly, hearing was conducted by this Authority in the present matter on 02.08.2023, 10.08.2023, 12.09.2023, 18.10.2023, 02.11.2023, 18.01.2024, 21.03.2024, 23.04.2024, 06.06.2024 and 01.08.2024 in the presence of the Office Bearers of the Complainant Association along with its members, and Authorised Representative of Respondent No.2 i.e., the landowners and Authorized Representative on behalf of Respondent Nos.3 & 4 and none for the Respondent No.1, and upon hearing the arguments, this Authority passes the following **ORDER:**

A. Brief facts of the case:

3. Respondent No.1 is the Developer/Builder of the Project titled “**Sahiti Sishta Abode**” situated in Survey Nos.41/1/AA and 41/4, Gundlapochampally Village, Medhcal Mandal, Medchal-Malkajgiri District, Telangana (hereinafter referred to as the “Project Land”). Respondent No.2 is the landowner in the Project Land.

Ownership of Land

4. That the Respondent No. 2 are owners of the immovable property by virtue of a registered Sale Deed No.14307/2018 admeasuring Ac.2.00 Gts, Sale Deed No.13394/2018 admeasuring Ac.2.00 Gts, in total, Ac.4.00 Gts respectively, registered with SRO, Medchal, Medchal-Malkajgiri situated at Survey Nos.41/1/AA and 41/4, Gundlapochampally Village, Medhcal Mandal, Medchal-Malkajgiri

District, Telangana and further, the schedule land was converted into non-agricultural land vide proceeding No.B2/586/2018 dt. 26.03.2019 in office of the Competent Authority and RDO, Keesara Division, Medchal-Malkajgiri District.

Development Agreement

5. The Complainants submit that the Respondent No.1 Builder entered into a Development Agreement Cum Irrevocable General Power of Attorney (hereinafter referred to as the "Development Agreement") on 31.01.2020 vide **Document** No.1265/2020 at SRO, Medchal with Respondent No.2. In the said Agreement, the Respondent No.1 agreed to construct a multi-storeyed residential apartments complex with 01 (one) Cellar for parking space + 01 (one) stilt floor for parking space, and 5 (five) typical upper floors as required & amenities over the Project Land. It was also agreed that Respondent No.1 Developer/Builder shall construct and deliver with its own funds 1,25,000 (One Lakh) Twenty-Five Thousand Only) SFT built-up area inclusive of all common areas, balcony areas, parking area and other facilities, circulation areas, etc., to the Respondent No.2 landowner and that the remaining built-up area shall fall to the share of the Respondent No.1 Builder/Developer as property of the Developer.

Timeline for completion of project as per Development Agreement

6. It was also agreed between the parties that the Respondent No.1 shall complete the development and construction on the Project Land in 24 (Twenty-Four) months with a subsequent grace period of 06 (Six) months from the date of the final approved plan including revised plans of the apartment complex by the competent authorities.

Competent Authority Permission

7. The Complainants submitted that pursuant to this Agreement, the Respondent No.1 Developer executed several unregistered Agreements of Sale, as submitted by the Complainant Association from 2019 onwards. In the interim, the Respondent No.1 Developer also applied for HMDA permission on 18.03.2020 vide Application No. 035526/MED/R1/U6/HMDA/18032020. Thereafter, HMDA technical approval was accorded on 13.02.2021 for 1 Ground + 4 Proposed Building (F): 1 Ground + 5 Proposed (Building G): 1 Ground + 5 Proposed (Building H): 2 Cellar + 1 Ground + 5 Upper Floors in Survey No. 41/1/AA and 41/4 of Gundlapochampally Village, Medchal Mandal, Medchal-Malkajgiri District, Telangana to an extent of 18,402.12 Sq. Mts. Therefore, a total of 136 flats were to be constructed wherein, Block H – 35 units, Block G – 48 units and Block F – 53 flats. The said HMDA approval is valid till 13.02.2027.

8. The Complainants submitted that by virtue of the above-mentioned Development Agreement dated 31.01.2020, the Respondent No.1 entered into 249 Agreements of Sale with the members of the Complainant Association, out of which 14 cancelled their allotment, 62 made partial payment up to 30 Lakhs and 174 allottees made partial/full payment more than 30 Lakhs collected by Respondent No.1 Promoter.

Encumbrance Certificate

9. The Complainant Association has provided Encumbrance Certificate of the Project land which enumerated 72 entries out of which 43 sale deeds have been executed for respective flat numbers in favour of Kedia Group by the Respondent No.1 Developer and the Respondent No.2 landowner, whereas 28 sale deeds executed

by the Respondent No.1 and Respondent No.2 in favour of Maa Bhavani Nirman Pvt. Ltd. Group and one Sale Deed in favour of one individual flat owner.

TS RERA Registration

10. Consequently, the Respondent No.1 Builder submitted application for registration under Section 4, vide application No. REA02200025418 for development of the Project, however the same was incomplete as several short falls were raised and not fulfilled by the promoter, therefore, this Authority did not grant registration to the said Project.

11. The Complainant Association alleges that construction work has not commenced, and work was not completed as per the HMDA plan. Despite the Complainant Association's numerous attempts to communicate with Respondent No.1 Builder, these efforts yielded no positive outcomes.

Criminal cases pending against Developer

12. As the matter stood thus, the Complainants submitted that there were several news reports that the Respondent No.1 Builder committed fraud, was arrested by the Economic Office Wing team of Central Crime Station, Hyderabad, Telangana and booked cases against B. Laxminarayana, Managing Director of the Respondent No.1 Builder under various sections of the Indian Penal Code, 1860 for fraud and cheating. It was alleged that a total of Rs.1100 crores was siphoned by the Respondent No.1 Builder, and the same was procured out of the sales made by him in the present project as well as other projects titled Sahiti Sarvani Elite, Sahiti Sishta Abode, Sahiti Karthikeya Panorama, Sahiti Sitara Commercial amongst others. Cognizance of the said matters were taken by the Ld. Metropolitan Sessions Judge, Nampally, Hyderabad and the matter is pending adjudication.

13. The Competent Authority under the **Telangana Protection of Depositors from Financial Establishments Act, 1999** has attached the subject land i.e., Survey Nos.41/1/AA and 41/4, Gundlapochampally Village, Medchal Mandal, Medchal-Malkajgiri District, Telangana State under Section 3 of the said Act on vide G.O.Rt. No.1065 dated 26.05.2023. Cognizance of the said matters were taken by the Ld. Metropolitan Sessions Judge, Nampally, Hyderabad and the matter is pending adjudication.

Prayer

14. Aggrieved, the Complainant Association prays for completion of construction and to handover their respective flats in the Project at the earliest or refund of their respective amounts paid by them along with interest.

Penalty imposed on the Respondent Builder:

15. As the Respondent No. 1 Builder proceeded with the sale transactions without obtaining registration from this Authority, a penalty of Rs. 1.30 crores was imposed for contravention of Sections 3 and 4 of the Act, 2016 vide Order No.742/2021/TGRERA dated 22.09.2023.

Reply on behalf of the landowners:

16. The landowners filed an Application dated 18.10.2023 submitting that they have a direct and substantial interest in the matter and seek to become a party to the ongoing proceedings relates to the property situated at Sy.No.41/1, Gundlapochampally, Quthbullapur, Medchal, Medchal-Malkajgiri District. It was submitted that the Development Agreement stipulated that the Respondent No.1 was obligated to complete the development within 24 months with a grace period of 12

more months. However, the Respondent No.1 completed only excavation work and some work related to footings and abandoned the project in the year 2021. Since then, no progress in the work.

17. He added that since the Respondent No.1 failed to meet this obligation and did not complete the project as agreed and there is no possibility of performance of the contract, the development agreement was cancelled. Accordingly, he prayed that M/s SVN Infra, i.e., the owner of the schedule property is a necessary party to the case and to implead him as party Respondent. Accordingly, same was heard and allowed and he was made party to the present matter.

18. The Landowner, M/s SVN Infra was directed to file their reply to the main complaint, however, despite several instructions and several directions, there was no reply forthcoming from the Respondent No.2, consequently, its right to submit any reply has been foreclosed.

Reply on behalf of the Respondent Nos.3 & 4

19. The Respondent Nos.3 & 4 submitted a detailed report dated 19.08.2024 highlighting numerous complaints against Boodati Laxminarayana, Managing Director of Sahiti Infratech Ventures India Private Limited. The complaints allege that Mr. Laxminarayana, through social media, advertised pre-launch offers from June 2019 onwards, collecting substantial sums from the complainant and other customers without securing the necessary land acquisitions and permissions. Despite repeated requests for refunds, the company continuously extended deadlines and eventually ceased responding to customers, leading to the lodging of this complaint.

20. During the early stages of the investigation, previous Investigating Officers arrested A-1 Boodati Laxminarayana, A-2 Parvathi (his wife), and A-3 Sathwik, following searches of their offices and residences, where material evidence was seized. He, along with his marketing director, initiated pre-launch sales, collecting approximately ₹103 Crores. Further investigations revealed that he expanded these activities, launching 12 additional projects in Hyderabad and surrounding areas, collecting about ₹1,290 Crores from 3,000 customers and defaulting on these obligations, notably in the Sarvani Elite project.

21. Respondent Nos. 3 & 4 further reported that they have identified and attached the properties of the accused, including lands purportedly involved in these fraudulent activities. A total of 60 cases have been registered against all Sahiti projects. The Respondents conducted searches on several individuals' homes and offices, seizing incriminating material and ₹25 Lakhs in cash. Bank transactions are being scrutinized with forensic auditors to trace the funds. The investigation has reached an advanced stage, with a charge sheet expected to be filed imminently.

Issues for Consideration and Observations and Directions of the Authority:

22. Keeping in mind the above facts and circumstances, the following issues arise for consideration before this Authority:

- (i) Whether the Respondent No.1 Developer has failed to perform its obligations under the Act and thereby violated the provisions of the Act, 2016?
- (ii) Whether the Complainants are entitled to the relief as prayed for? If yes, to what extent?
- (iii) Whether action can be initiated under Section 59(2) against the Respondent for non-compliance of Order No.742/2021/TGRERA dated

22.09.2023 by way of which, this Authority imposed penalty of Rs.1.30 crores for violation of Sections 3 and 4 of the Act, 2016?

Issue (i)

23. This Authority entrusted the task of conducting a comprehensive evaluation of the Project to an investigating body being the Engineering Staff College of India (“ESCI”), so as to facilitate collecting such relevant information as regards the Project – Sahiti Sishta Abode for proper adjudication of the present dispute. The investigative body submitted a Technical Report dated 18.12.2023. In the Technical Report, it is submitted that the present stage of work assessed is at just the excavation stage with little basement work in only ‘H’ Block and no work progress at all in ‘G’ Block, ‘F’ Block and Amenities Block of the project. It is clear from this finding that the construction could not be concluded within the stipulated timeframe as committed in the respective Agreements of Sale.

24. As per the submission of the Complainants, the Respondent No.1 was arrested by the competent authorities under Telangana Protection of Depositors from Financial Establishments Act, 1999 and has not been able to conduct any business on account of the attachment and the arrests. In such circumstances, it is not expected, neither is it probable for the Respondent No.1 to complete the construction of the Project “Sahiti Sishta Abode” and thereby comply with the provisions of the Act, 2016 more specifically Section 11(4) which provides the duties of the promoter. Observing the series of events taken place with the Respondent No.1 Builder in this project as well as other projects which this Authority has taken cognizance of, it is manifest that the Respondent No.1 Builder never intended to construct or handover any flats to the allottees but merely siphoned monies for defrauding the innocent allottees who invested their life savings in the said Project.

25. Section 11 (4) of the Act, 2016 obligates the Developer to be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, till the conveyance of all the apartments. It also obligates the Developer to be responsible to obtain the completion certificate, to obtain the lease certificate, for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees, enable the formation of an association or society or co-operative society, execute a registered conveyance deed of the apartment in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees, etc, which the Respondent No.1 Developer has failed to do. Looking at the progress of the construction and the stage at which the development of the Project is proceeding, this Authority has no faith in the Respondent No.1 Builder.

26. The Respondent No.1 Builder is not only in violation of Section 11(4) but other provisions under the Rules such as Rule 14(1)(c) that obligate the promoter to file quarterly reports of the construction along with photographs, list of number and types of apartments offered for sale, etc. In lieu thereof, for not having complied the functions and duties of the promoter under the Act, this Authority deems it fit to rebuke any developmental rights of the Respondent No.1 Builder in respect of the Project – Sahiti Sishta Abode. Point (i) is answered in affirmative.

Issue (ii)

27. This Court is of the considered opinion that in recent times, there has been an alarming increase in fraudulent activities carried out by builders, which

necessitates urgent judicial intervention to protect the rights and financial stability of allottees. It is the Authority's considered opinion that these individuals, having invested their life savings with the legitimate expectation of securing a home, must not be left vulnerable to such malfeasance. Respondent No.1 Builder has clearly demonstrated a consistent pattern of fraudulent conduct, intentionally deceiving numerous allottees and siphoning off vast sums of money, with no intention of completing any of the promised projects.

28. The evidence presented in this case and other matters in relation to the Respondent No.1 Builder is unequivocal. Testimonies from affected allottees and financial records clearly illustrate that the builder, with deliberate intent, misappropriated funds, leaving projects incomplete and allottees in dire straits.

29. This court finds such actions to be not only a grievous breach of trust but also a direct violation of contractual and statutory obligations under the Act, 2016. The affected allottees, having placed their trust and hard-earned savings into these projects, have faced severe financial and emotional distress.

30. It is, therefore, the duty of this Authority to ensure that the rights of these allottees are upheld and that they are provided with the necessary redress in accordance with law. Moreover, the Respondent No.1 Builder who engaged in such fraudulent practices must be held accountable to prevent further instances of such misconduct. The Authority, clothed with the responsibility of ensuring transparency and accountability, recognizes that these fraudulent practices undermine public confidence in the real estate sector, which is a critical component of economic stability and growth, and therefore it is critical to restore faith in the general public.

31. It is also pertinent to note the *ratio decidendi* in *Newtech Promoters vs. The State of Uttar Pradesh & Ors.* (Civil Appeal No(s). 6745-6749 of 2021), which categorically upheld the very unequivocal right of the allottees to claim refund of the amounts paid. Relevant extract is reproduced hereunder:

“77. This Court while interpreting Section 18 of the Act, in Imperia Structures Ltd. v. Anil Patni [Imperia Structures Ltd. v. Anil Patni, (2020) 10 SCC 783 : (2021) 1 SCC (Civ) 1] held that Section 18 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the homebuyer's agreement in para 25 held as under : (SCC p. 810)

“25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.”

85. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the Regulatory Authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like “refund”, “interest”, “penalty” and “compensation”, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the Regulatory Authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, is extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the 2016 Act.” (emphasis supplied)

32. The Hon’ble High Court of Judicature at Bombay observed on similar lines in *Sanvo Resorts Pvt. Ltd. and Others vs. Shital Nilesh Deshmukh and Another*, 2023 SCC OnLine Bom 1850 which is reproduced hereunder:

“21. In this context, the Supreme Court in the case of *Newtech Promoters and Developers Pvt. Ltd. (supra)* in paragraphs 22 and 25 has expressly observed that the allottee has an unqualified right to claim interest under Section 18(1) of the RERA Act if the promoter fails to discharge his obligation in accordance with the terms and conditions of the agreement. This unqualified right is not

dependent on any contingencies or stipulations and therefore the legislature has consciously provided this right of refund as an unconditional absolute right to the allottee if the promoter fails to give possession within the stipulated time regardless of unforeseen events or stay order of the Court which is in either way not attributable to the allottee.” (emphasis supplied)

33. This Authority has also taken note of the Order passed by the Hon'ble High Court of Bombay in *Wadhwa Group Housing Pvt. Ltd. vs. Vijay Choksi & Anr.* (Second Appeal No.21842/2023), in which, it is categorically held as under:

17.

....Thus, definition of the term “Promoter” under Section 2(zk) of RERA is wide enough to include every person who is associated with construction of the building such as builder, coloniser, contractor, developer, estate developer or by any other name or even the one who claims to be acting as the holder of a power of attorney from the owner of the land. One of the principal objectives of RERA is to bring transparency in real estate sector and to protect the interests of the consumers in the real estate project. The term ‘Promoter’ has been so widely defined that it virtually includes every person associated with construction of the building. Thus, even a person who is merely an investor in the project alongwith the Promoter and who is entitled to benefit in the real estate project is also covered by definition of the term ‘Promoter’. In the present case, I need not delve deeper into the enquiry as to whether Appellant is covered by the expression ‘Promoter’ or not. While registering the project as ongoing project under Section 3 of the RERA, Appellant’s name has been included in the list of Promoters. Therefore, Appellant cannot run away from the

fact that it is the promoter in respect of the project 'The Nest'. Explanation to Section 2(zk) makes all persons who construct or convert building into apartments or develop a plot for sale, as well as a person who sells apartments or plots to be promoters making them jointly liable as such for the functions and responsibilities specified under the Act, or the Rules and Regulations made thereunder. Thus, a person who does not actually construct or causes to be constructed a building but merely takes part in the joint venture and sells flats, becomes a Promoter. Appellant admits that it is entitled to a share in the joint venture in the constructed area, which it is entitled to sell. Thus, the Appellant is entitled to sell flats in the project and accept consideration for such sale. There is therefore no doubt to the position that, both Appellant as well as the second Respondent are Promoters and are jointly liable in respect of the responsibilities under the RERA and Rules and Regulations made thereunder.

18. In my view therefore, mere falling of flat in the share of the second Respondent under the Joint Development Agreement, would not excuse the Appellant from the responsibilities and liabilities under the RERA, Rules and Regulations made thereunder qua that flat. RERA does not demarcate or restrict liabilities of different promoters in different areas. The liability is joint for all purposes under the Act, Rules and Regulations.

...

23. Thus, under Section 18(1)(b), the liability to return the amount received from the flat purchaser is on the Promoter. Since the Appellant is covered by definition of the term 'Promoter', it is also jointly liable to refund the amount along with the other promoter, being the second

Respondent. Section 18 cannot be narrowly interpreted as sought to be suggested by Mr. Engineer, to include only that promoter who actually received the amount. The objective behind enactment of RERA must be borne in mind. If such narrow interpretation of Section 18 is accepted, it would give a license to developers to deliberately accept payments in the accounts of one of the promoters and then escape the liability to refund or to pay interest by taking a specious plea that the other promoters are not liable in respect of those payments. Mr. Engineer has sought to draw distinction between projects launched before and after coming into force of RERA by submitting that now the monies must be received in the registered account, which was not the case before registration under RERA. To my mind, this distinction sought to be made cannot be a ruse to escape the liabilities as promoter under RERA. The Act applies even to ongoing projects and therefore the account in which monies are received by promoters is irrelevant for the purpose of determining joint liability of promoters under Section 18.

24. The Appellant's contention about absence of privity of contract between it and the Complainant is totally misplaced. Definition of the term 'promoter' under Section 2(zk) of the RERA would indicate that even persons/entities with whom a flat purchaser does not enter into contract are also covered by definition of the term 'promoter'. Therefore, it is not necessary that there has to be an agreement between every Promoter and the flat purchaser. As observed above, it is a matter of indoor management between the Promoters and the flat purchaser who is not supposed to know the intricacies of the arrangements made between several promoters amongst themselves. When a claim is raised in respect

of a real estate project by a flat purchaser, all promoters become jointly liable qua that flat purchasers, irrespective of whether there is privity of contract with each of the promoter or not. This is the scheme of RERA and mere absence of privity of contract with a particular promoter does not relieve such promoter in respect of the liabilities under RERA. 25. I am therefore of the view that Appellant cannot escape the liability to refund the amount received towards sale of flat to Respondent No. 1.”

34. A careful perusal of the said judgment of the Hon'ble High Court of Bombay, makes it abundantly clear that landowners i.e., M/s SVN Infra, Respondent No.2 herein is also equally responsible towards its functions under the Act, 2016. In this regard, it is also noted that the Encumbrance Certificate produced by the Complainants clearly shows that the Respondent No.2 was also a party to the sale of flats made by the Respondent No.1. Further, by virtue of the Development Agreement dated 31.01.2020 bearing Document No.1265/2020, through which the Respondent No.2 has been allotted 1,25,000 sft of built-up area and is entitled to sell the same upon completion of the Project, therefore Respondent No.2 shall also be categorised as a Promoter to the project. The landowners, squarely falling in the definition of a Promoter under the Act, 2016 cannot escape the liability towards the Complainants/allottees despite them not having received any sale consideration.

35. During the hearing on 01.08.2024, the Complainants unequivocally submitted that they are ready to accept a refund, as the prospect of handover of the flats is far from being realized on account of several legal complications. Therefore, this Authority is of the considered opinion that the Complainants herein are entitled to full refund of their investments made in the project "Sahiti Sishta Abode" along with maximum interest as per Rule 15 of the Rules, 2017.

Issue (iii)

36. Since the Respondent has failed to comply with the Order No.742/2021/TGRERA dated 22.09.2023 issued by this Authority by failing to pay penalty, the Respondent is liable to be punished under Section 59(2).

37. Earlier, penalty was imposed to a tune of Rs.1.3 crores on the Respondent vide Order No.742/2021/TGRERA dated 22.09.2023 by this Authority vide its powers under Section 59 (1) read with Section 38. However, the Respondent has failed to comply with the same.

38. Section 70 speaks about powers of the court to compound punishment awarded under Section 59(2) on such terms and conditions and on payment of such sums as prescribed either before or after the institution of the prosecution. Rule 33 of the Rules, 2017, makes a mention about the quantum of amount to be collected by the court while compounding the punishment of imprisonment under Section 59(2). Further, Section 80 stipulates that no court, inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class, shall, take cognizance of any offence punishable under this Act save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose and thereby try the offence punishable under this Act.

39. A combined reading of said provisions of Sections 59(2), 70 and 80 of the Act read with Rule 33 of the Rules go to show that since the Respondent/Promoter did not comply the orders of Authority by paying penalty already imposed, the Respondent/Promoter has to be prosecuted. Therefore, it is held that the Respondent is liable to be prosecuted as envisaged under Section 80 of the Act, 2016 and Addl.

Registrar of this Authority is authorised to launch prosecution before the concerned Metropolitan Magistrate. Issue No.(iii) is accordingly answered.

Directions of the Authority:

40. Keeping in mind the above-made observations, this Authority passes the following directions vide its powers under Section 37:

- i. Despite service of notices for hearing, there has been no representation on behalf of the Respondent No.1 Promoter and therefore, he is set *ex-parte*.
- ii. The Respondent No.1 had applied for registration of the Project – Sahiti Sishta Abode vide Appl. No.REA02200025418, and this Authority raised shortfalls in the Project application on 06.05.2021, 21.08.2021, 28.08.2021, 11.09.2021, 26.09.2021, 21.10.2021 and 14.11.2021 as the application was not in accordance with Section 4 of the Act, 2016 read with Rules thereunder. This Authority also issued notice to the Respondent No.1 for hearing on 05.08.2024 and 20.08.2024, however, the Respondent failed to appear on both the dates despite being in service of notice vide e-mail.
- iii. As enough opportunities have been granted to the Respondent No.1 but there has been no representation on its behalf, and the promoter has defaulted in complying its functions and duties as provided under the Act and the Rules, and the promoter has violated all of the terms and conditions of the approval given by the competent authority and further, the Respondent No.1, is involved in unfair trade practice or irregularities by executing multiple agreements for the same flat to the detriment of the allottees, this Authority rejects the Application made vide Appl. No. REA02200025418.
- iv. Consequently, all developmental rights of the Respondent No.1 Developer are hereby terminated henceforth, and the Respondent No.1 Promoter is restrained not to advertise, market, book, sell or offer for sale, or invite persons

to purchase in any manner, the apartment in the said Project or part of it as otherwise, appropriate action under Section 63 will be initiated against the Promoter.

- v. The Respondent No.1 Developer's name shall be displayed in the list of defaulters and the photograph of the Promoters i.e., Sri Boodati Laxminarayana and Smt. Boodati Parvathi shall also be displayed on the TG RERA website.
- vi. Further, as has been discussed in Para Nos.36 to 39, vide its powers under Section 59(2) read with Section 80 of the Act, this Authority holds that the Respondent is liable to be prosecuted as envisaged under Section 80 of the Act, 2016 and Addl. Registrar of this Authority is authorised to launch prosecution before the concerned Metropolitan Magistrate.
- vii. As has been stipulated in the judgment of the Hon'ble High Court of Bombay (*Wadhwa Group Housing Pvt. Ltd.*), the Respondent Nos.1 & 2 are jointly and severally liable and are hereby directed, under Section 18 of the Act, 2016, to refund the payments made by the Complainants to the Promoter along with interest at the rate of 10.85% p.a. as per Rule 15 of the Rules, 2017, wherein interest is applicable from the date on which the respective Agreement of Sale sought to give possession of the flat, within a period of 90 days failing which appropriate action under Section 63 would be initiated against the Respondent Nos.1 & 2; and
- viii. Such order of refund is being passed on three-fold reasons. First, the Complainants have prayed before this Authority to direct the promoters to refund the amounts as the landowners have also failed to initiate any progress with to completion of the Project. Second, the said Project – Sahiti Sishta Abode is unregistered and the present stage of work assessed in the entire Project site is at just the excavation stage with little basement work in only 'H'

Block and no work progress at all in 'G' Block, 'F' Block and Amenities Block of the project. Further because the Economic Offences Wing of the Central Crime Station, Hyderabad, Telangana i.e., Respondent Nos.3 & 4 herein have attached the subject land under Section 3 of the Telangana Protection of Depositors from Financial Establishments Act, 1999 and cognizance of the same has been taken by the Ld. Metropolitan Magistrate, Nampally and the matter is pending adjudication.

- ix. Until the final disposal of refunds are processed to the Complainants/Allottees, the Respondent No.2 is directed not to enter into any developmental agreement with any other developer/contractor or construct on his own or give on lease to any third-party, and not to alienate/sell/transfer or create any third-party rights on the subject land i.e., Survey Nos.41/1/AA and 41/4, Gundlapochampally Village, Medhcal Mandal, Medchal-Malkajgiri District, Telangana; and
- x. The "Sahiti Sishta Abode Welfare Association, Kompally" registered vide Registration No.789 of 2022 is directed to collate all the claims for refund as mentioned above, from the Complainants herein and also from those allottees who have not filed any complaint before this Authority, and to assume responsibility for ensuring the refund is processed from the Respondent Nos.1 & 2 along with the applicable interest as mentioned above; and
- xi. The Complainants, if so advised, may approach the Adjudicating Officer under appropriate form (Form N) to claim compensation under Section 18 of the Act, 2016.

41. The present complaints are hereby disposed of in accordance with the aforementioned directions. No order as to costs.

42. If aggrieved by this Order, the parties may approach the Telangana Real Estate Appellate Tribunal in accordance with Section 44 of the Act, 2016 within 60 days from the date 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, IAS (Retd.),
Hon'ble Chairperson,
TS RERA

