THE ANDHRA PRADESH REAL ESTATE REGULATORY AUTHORITY
AT: VIJAYAWADA

On 4th day of August,2025.

Corum: Sri E.Rajasekhara Reddy, Hon'ble Member,
Sri. U.S.L.N.Kameswara Rao, Hon'ble Member,
Sri. A.Jagannadha Rao, Hon'ble Member.

Complaint No: 1/2025

Between:

Sri Sai Complex Welfare Association
Rep by it's president,
Dr. Gadi prasad, S/o. Gadi Ramamurthy,
Aged about 56 year, D.No:1-9-1/49, Sai complex,
Mayuri junction, Vizianagaram - 535 002.

... Complainant

And

1). Sri. Gorapalli Bhaskara Rao,
S/o G.Venu Gopala Rao,
R/o 55-33-13/1, F No:102,
SSV Paradise Apartment,
KRM Colony, Near Venkateswara temple,
Visakhapatnam, P & T Colony(VM), Visakhapatnam(Urban),
Andhra Pradesh-530 013.

2). Vizianagarm Municipal Corporation,
Vizianagarm rep by it's Commissioner,
Vizianagaram - 535 001 AP.

... Respondents

O R D E R

This complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the RERA Act") by the

Sri Sai Complex Welfare Association, represented by its authorized signatory, against Respondent No. 1 the promoter of the project *Sri Sai Complex*, and Respondent No. 2 the Vizianagaram Municipal Corporation, alleging continued unauthorized occupation and commercial use of common areas, particularly the terrace, by the promoter in violation of statutory obligations under the RERA Act, 2016 and the Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987 (hereinafter "AP Apartments Act").

The project in question *Sri Sai Complex* is a commercial complex constructed by the 1st Respondent (promoter) over land admeasuring 733 sq. yards in Vizianagaram, Andhra Pradesh. The project comprises Stilt + Ground + 3 upper floors and was completed in the year 1999. All 36 units in the complex were sold over a period extending up to 2018. The allottees subsequently formed a registered association under the name *Sri Sai Complex Welfare Association* in 2017.

Despite completion and sale of all units, the promoter failed to transfer the common areas to the association and continued to assert unauthorized control over the terrace and other areas. The promoter has leased the terrace to commercial entities for the installation of a cell tower and advertising signboards. These acts were carried out without consent of the allottees and in disregard of the sanctioned plan.

The complainant association seeks relief inter alia for declaration of such actions by the promoter as illegal, removal of unauthorized installations from the terrace, Direction to effectuate transfer of common areas to the association and initiation of penal proceedings under Section 61 of the RERA Act.

The 2nd Respondent, represented by the Commissioner of the Vizianagaram Municipal Corporation, filed a counter affidavit contesting the maintainability of the complaint filed under the Real Estate (Regulation and Development) Act, 2016 ("the Act"). The 2nd Respondent submits that the primary allegations relate to the installation of a cell tower and advertisement hoardings over the premises of Sri Sai Complex by the 1st Respondent-promoter, which the complainant claims were done in contravention of the Act and in violation of the common area rights of the flat owners.

The 2nd Respondent clarifies that the building permission for the project was originally granted by VMRDA authorities on 06.06.1995, vide Roc. No. 1596/95/G5, for construction of RCC roof structure in stilt, ground plus four upper floors at Sy. Nos. 679 and 680, Ward No. 1, Mayuri Junction, Vizianagaram. As such, the project predates the coming into force of the RERA Act, which became operative from 01.05.2017, and hence the provisions of the Act, particularly Sections 4, 17 and 61, have no retrospective applicability to the said construction.

The counter further states that the promoter had granted consent on 01.01.2001 to M/s. Prakash Publicity for installation of advertisement hoardings on the roof of the complex on a rental basis, and the Municipal Corporation has been duly collecting advertisement tax in accordance with prevailing rates and Gazette notifications.

With regard to the installation of a cell tower, it is submitted that the promoter granted consent to M/s. Indus Towers Ltd., and the said company submitted its application to the Corporation on 10.09.2009 seeking permission for telecom infrastructure under G.O. Ms. No. 183, MA & UD Department, dated 27.02.2008, under which the Corporation granted necessary permissions.

The 2nd Respondent asserts that the dispute regarding common area rights between the promoter and the allottees is civil in nature and beyond the scope of adjudication under the RERA Act by this Authority. Further, the building in question was completed well before the RERA framework came into effect, and no obligation to register the project under Section 3 or to transfer common areas under Section 17 can be imposed retrospectively. The invocation of Section 61 for penal action is also inapplicable.

Additionally, a factual inspection report of the Sri Sai Complex has been annexed by the Corporation to confirm the chronological events and permissions granted.

Therefore, the 2nd Respondent contends that the complaint is devoid of merit, has been filed suppressing material facts, and seeks enforcement of statutory provisions that are inapplicable to the case. It is prayed that the complaint be dismissed with exemplary costs for lack of jurisdiction and maintainability under the Act.

The representative of the complainant, Sri Gunavardhan, appeared and argued the matter. The counsel for respondent No.2, Sri S. Lakshmi Narayana Reddy, Advocate, appeared and filed a counter and argued that being the promoter, he is entitled to apply for the erection of a cell tower, and the respondent authorities have duly considered and processed his application for grant of such permission in accordance with the applicable regulations. It was further submitted that in case of any concerns or grievances relating to radiation or health hazards arising from the installation of the cell tower, the affected parties may approach the competent regulatory authorities for appropriate redressal.

Therefore, it was argued that this Hon'ble Authority does not have the jurisdiction to entertain the present complaint in respect of the erection of the cell tower.

Respondent No.1, though duly served with notice on 18.02.2025, failed to appear despite the matter being posted on 17.03.2025, 21.04.2025, 05.05.2025, 23.06.2025, 14.07.2025 and on 21.07.2025.

Section 2(n) "common areas" mean –

(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

Section 11 (4) The promoter shall –

(a) be responsible for all obligations, responsibilties 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, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

Section 17. (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the

case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project,

and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

Section 19 (3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.

Section 34 (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

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Section 3(d) "Common areas and facilities" unless otherwise provided in the declaration, means:

(ii) foundations, columns, girders, beams, supports, main walls, roofs including terraces, halls, corridors, lobbies, stairs, stair-ways, fire-escapes and entrances and exits of the building;

Section 11. Certain works prohibited - No apartment owner shall add any material structure or excavate any additional basement or cellar or do any other work which would be prejudicial to the soundness or safety of the property or would reduce the value thereof or impair any easement or hereditament.

In view of the above pleadings, the following issues arise for consideration:

1. Whether the Real Estate (Regulation and Development) Act, 2016 applies to the project in question, considering that the construction was completed before the Act came into force?
2. Whether the promoter's continued occupation and leasing of the terrace area constitutes a violation of the RERA Act and the AP Apartments Act?
3. Whether Respondent No. 2, the Municipal Corporation, acted illegally in permitting the installation of a cell tower and advertisement hoarding on the terrace of the complex, which constitutes a common area?
4. Whether the Association of allottees is entitled to possession and control over all common areas, including the terrace, setbacks, ramps, and passages?

Respondent No. 2, Vizianagaram Municipal Corporation, has raised a preliminary objection contending that the construction of the subject project was completed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016 (hereinafter "the Act"), which came into force on 01.05.2017. It is their contention that, as the project predates the Act, the provisions of the Act are not applicable and hence, this Authority lacks jurisdiction.

This Authority has examined the legal position and relevant facts and finds that such a preliminary objection is not tenable in law for the following reasons:

The applicability of the Act is not restricted solely to ongoing or under-construction projects. Certain obligations of the promoter, especially those of a continuing nature, such as the transfer of common areas to the association of allottees under Section 17, and maintaining the integrity of common areas, remain enforceable even after the completion of the project.

The date of completion is relevant only to determine whether registration under Section 3 of the Act was mandatory. In the present case, registration is not in issue. The grievance pertains to the alleged unauthorized use of common areas by the promoter (e.g., installation of a cell tower and hoardings) which is clearly within the scope of Section 17 and the statutory rights of allottees under the Act.

The Supreme Court and multiple RERA Authorities across jurisdictions have held that the Act has retroactive effect in so far as it relates to ongoing duties of promoters and protection of homebuyer rights, even in respect of projects completed before 01.05.2017.

Once the flats have been sold and possession handed over, the promoter ceases to have any proprietary right over common areas, and any further use or lease of such areas (such as for cell towers or advertisements), without the consent of the association of allottees, is per se illegal under the Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987, and amounts to a violation of the spirit of RERA.

The complaint filed under Section 31 of the RERA Act is maintainable to address non-performance of post-possession obligations, and to ensure the statutory compliance and rights of the allottees, irrespective of whether the project is completed or not.

The Real Estate (Regulation and Development) Act, 2016 partially applies to the present project, particularly in respect of continuing obligations of the promoter and the protection of allottee rights under Sections 17 of the Act.

Permitting the promoter to evade these ongoing responsibilities merely because the construction was completed before 2017 would defeat the object and purpose of the Act, which seeks to ensure accountability, transparency, and consumer protection in real estate transactions.

Accordingly, the preliminary objection raised by the Respondents regarding lack of jurisdiction is rejected.

This Authority notes that as per Section 2(n)(iii) of the RERA Act and Section 3(d)(i) of the AP Apartments Act, roofs including the *terraces* are deemed to be *common areas* and *non-saleable*. Upon the sale of all units and formation of the association, the promoter is statutorily obligated to transfer such common areas to the association of allottees as per Section 17 of the RERA Act.

In the present case, the promoter has failed to execute conveyance of the common areas, leased the terrace to private parties without authority, collected rent for cell tower installation and advertising use and interfered with the peaceful enjoyment of the premises by the association.

These actions are a flagrant violation of Section 17 of the Real Estate (Regulation and Development) Act.

The promoter has unlawfully leased out portions of the common areas and failed to comply with the mandatory statutory obligations under the applicable laws. As per Section 17 of the Real Estate (Regulation and Development) Act, 2016, the terrace forms part of the common areas and vests with the association of allottees upon completion and handover of the project. Therefore, any installation of a cell tower or advertisement signage on the terrace, without the prior consent of the association, constitutes an unauthorized and illegal act.

Respondent No. 2, by permitting the installation of a cell tower and advertisement boards on the terrace of the building, acted without ascertaining the promoter's title or ownership over the common areas. The terrace is a common area under law and not subject to independent exploitation by the promoter.

Further, Respondent No. 2 levied advertisement tax and approved telecom installations based solely on consent given by the promoter, who lacks legal title post-sale of all units. Respondent No. 2 failed to ensure structural stability and safety while granting such permissions.

The actions of Respondent No. 2 are in gross contravention of the Real Estate (Regulation and Development) Act and are void ab initio. A competent planning authority is expected to enforce statutory safeguards, not abet violations.

All units have been sold. As per the AP Apartments Act and RERA Act, upon completion and occupation, common areas vest in the association of allottees. The association, registered in 2017, is the rightful custodian of the terrace and other common facilities.

The rights over common areas, including the terrace, are legally vested with the *Sri Sai Complex Welfare Association*. The promoter has no surviving proprietary interest.

This Authority reiterates that the Real Estate (Regulation and Development) Act, 2016, and the AP Apartments (Promotion of Construction and Ownership) Act, 1987, confer inalienable rights on allottees over common areas. Promoters and planning authorities must discharge their duties in accordance with law. Deviation, commercial exploitation, or unauthorized alteration of common spaces cannot be permitted.

In view of the above findings and in exercise of powers under Section 37 of the RERA Act, 2016, the Authority passes the following directions:

i. The actions of Respondent No. 1 in leasing the terrace for commercial purposes (cell tower and advertisement hoardings) are declared *illegal, arbitrary, and without legal authority.*

ii. Respondent No. 2 (Vizianagaram Municipal Corporation) is *directed to remove the cell tower and all advertisement signboards* from the terrace of Sri Sai Complex *within 30 days* from the date of this order and file a compliance report.

iii. Respondent No. 1 (Promoter) is *directed to execute and register the conveyance of all common areas*, including the terrace and open spaces, in favor of the Sri Sai Complex Welfare Association within *60 days*.

iv. Respondent No. 1 is *restrained from interfering with the peaceful possession and enjoyment of the common areas* by the association or any of its members.

v. The Principal Secretary, Government of Andhra Pradesh (MA & UD Department), is *directed to conduct an inquiry into the conduct of Respondent No. 2* for granting illegal permissions to the promoter contrary to law, and to take disciplinary or administrative action as deemed appropriate.

vi. The respondent is directed to pay a sum of ₹10,000/- (Rupees Ten Thousand only) towards legal expenses incurred by the complainant.

vii. In the event of non-compliance with this order, this Authority shall proceed under Section 63 of the Real Estate (Regulation and Development) Act, 2016.

*As per Section 44 of the Act, an appeal against this order lies before the Real Estate Appellate Tribunal, Andhra Pradesh, within a period of sixty (60) days from the date of receipt of this order.

(Typed as per the dictation of the Authority, corrected and pronounced in open court on this 4th day of August, 2025.)

MEMBER MEMBER MEMBER