THE ANDHRA PRADESH REAL ESTATE REGULATORY AUTHORITY
AT: VIJAYAWADA

On 12th day of May,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. 79/2022

Between:
D.V.R.S. KUMARI,
Nityasri Nilayam, Flat No: 102,
JKC Road, Guntur-522006.

...Complainant

AND

M/s Punati Constructions,
Rep by Managing Partner,
Mr. P Jagannadha Rao,
Rajendra Nagar, 3rd lane,
D.No: 3-28-18/47,
Guntur-522006.

...Respondent

ORDER

This complaint is filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") against the Promoter for failure to fulfill contractual obligations and for violating the provisions of the Act and corresponding rules.

The case of the Complainant is that the complainant herein purchased and occupant of Flat No. 102, Nityasri Nilayam, JKC College Road, Guntur, and residing therein since 2018. The Complainant, being an allottee within the

meaning of Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 ("the Act"), has approached this Authority aggrieved by the continuing inaction and failure of the promoter in discharging duties under the Act.

The Complainant stated that her unit has persistent issues of water leakage and blockage of wastewater in the kitchen and wash area. Despite repeated requests made to both the promoter and an unauthorized association of allottees, no action has been taken to rectify the defects. The issues have persisted for over three years.

The Complainant further stated that the project did not have an Occupancy Certificate (OC) at the time of commencement of the Act and the notification of the Andhra Pradesh RERA Rules, 2017. The promoter is alleged to have violated Section 3 of the Act by failing to register the project with RERA despite not having secured an OC. The Complainant has submitted a copy of the OC as Exhibit-I.

Additionally, the Complainant stated that the promoter failed to form an Association of Allottees in accordance with the provisions of the Act and the AP Apartment Ownership Act, 1987. As a result, unauthorized individuals and tenants have formed their own informal association and have been demanding maintenance charges from residents. The Complainant, aggrieved by the lack of proper handover and absence of original land documents, discontinued payment of maintenance from July 2021 and duly informed the promoter and co-allottees of the same.

Issues relating to poor construction quality and lack of timely rectification of defects have also been raised. Despite repeated requests, no efforts have been made by the promoter to address the grievances, prompting the Complainant to seek intervention from this Authority.

The Complainant also stated that the Respondent is currently developing two additional residential projects in the Guntur district without registering the same with AP RERA, in violation of Section 3 of the Act. Copies of the advertisements for the said unregistered projects have been submitted as Exhibit-II and Exhibit-III.

The Complainant has sought imposition of penalties upon the promoter for non-registration of ongoing projects, non-formation of the association of allottees, failure to rectify construction defects, and non-compliance with the duties mandated under Section 11 of the Act. The Complainant also seeks monetary compensation for physical inconvenience, mental agony, and legal expenses.

The Respondent herein filed a counter denying all material allegations made in the complaint and contending that the complaint is misconceived, barred by limitation, and not maintainable in law. It is submitted that the possession of the flat was handed over to the Complainant in October 2017, and the present complaint, filed several years later, is beyond the period of limitation. The Respondent further submits that under the Real Estate (Regulation and Development) Act, 2016, any liability in respect of structural defects is limited to a five-year period from the date of possession, and no such defect has been established within the prescribed period.

The Respondent also submits that the complaint is hit by the principle of *res judicata* under Section 11 of the Code of Civil Procedure, 1908. A previous complaint (Complaint No. 33/2021) had already been filed by the same complainant (DVRS Kumari) against one of the partners of the Respondent firm, and therefore the present proceedings against another partner on the same issue are not maintainable.

It is submitted that the formation of an association of allottees is the joint responsibility of all owners under the Andhra Pradesh Apartment (Promotion of Construction & Ownership) Act, 1987. Despite repeated efforts by the Respondent, the apartment owners have failed to cooperate in the formation of such an association. The Respondent states willingness to facilitate the process if the owners act in unison.

Regarding allegations of ongoing unregistered projects, the Respondent submits that the projects referred to as "Ramesh Residency" and "Rajyalakshmi Nilayam" are unrelated to the Complainant and were not ongoing as on the date of commencement of the AP RERA Rules (28.03.2017). Furthermore, the present project "Nitya Sri Apartment" had already completed all slab work and was nearing completion when the RERA Rules came into force. The Occupancy Certificate was obtained on 29.12.2017. Hence, the project qualifies for exclusion from registration under Section 3 of the Act read with Rule 4 of the AP RERA Rules, 2017.

It is also the case of the Respondent that under Section 11 of the RERA Act, the promoter's liability post-occupancy certificate is limited to maintaining essential services and does not extend to rectification of internal issues within individual flats, which are the responsibility of the apartment owner as per the applicable apartment laws.

The Respondent denies the allegations of loss or mental agony suffered by the Complainant and contends instead that the complainant's actions have caused mental harassment and financial strain to the Respondent, compelling them to incur legal expenses.

Accordingly, the Respondent prays that the complaint be dismissed as barred by limitation, hit by *res judicata*, and not maintainable either under the RERA Act or any other applicable law.

Observations:

i. It is noted that the earlier Complaint No. 33/2021 was disposed of by this Authority by order dated 25.04.2022, with liberty to file a fresh complaint. Further, the said complaint was filed by the husband of the present Complainant. The current complaint is independently filed by the allottee herself. Accordingly, the plea of *res judicata* under Section 11 of the Code of Civil Procedure, 1908, is not applicable. Hence, the present complaint is maintainable in law.

ii. The complaint pertains to continuing violations under the Act, including non-registration of the project and non-formation of the Association of Allottees. These are ongoing obligations of the Promoter under the Act. Therefore, the complaint is not barred by limitation.

iii. Under Section 3(1) of the Real Estate (Regulation and Development) Act, 2016, all ongoing projects without a valid completion certificate as on the date of commencement of the Act (i.e., 01.05.2017 at the Central level and 28.03.2017 under the Andhra Pradesh RERA Rules, 2017) are required to be registered with the Regulatory Authority.

In the present case, the Occupancy Certificate (OC) was issued only on 29.12.2017, which is subsequent to the commencement of the Act and Rules. Hence, the project qualifies as an "ongoing project" on the relevant date, and the Promoter was required to register the project under AP RERA.

Accordingly, the office is directed to issue a Show Cause Notice to the Respondent as to why action should not be initiated under Section 59 of the Act for failure to register the project. Upon receipt of the reply, the matter shall be placed before the Authority for appropriate action.

iv. As per Section 11(4)(e) and Section 17(1) and (2) of the Act, the Promoter is duty-bound to facilitate the formation of an Association of Allottees within three months from the date when the majority of allottees have booked their apartments, Execute the conveyance deed and hand over the common areas, relevant documents, and maintenance responsibilities to the Association within three months from the date of issuance of the Occupancy Certificate.

The Respondent's defense that the owners failed to act is not legally tenable. The obligation to initiate and facilitate formation of the Association lies solely with the Promoter. Therefore, failure to do so amounts to a violation of statutory duties under the Act.

v. Under Section 14(3) of the Act, the Promoter is liable to rectify any structural defects or defects in workmanship, quality, or services that are brought to their notice by the allottee within a period of five years from the date of handing over possession.

In the present case, possession was handed over in October 2017, and the defects including seepage and leakage have been repeatedly brought to the notice of the Promoter within the five-year period. Hence, the Promoter is under a statutory obligation to rectify such defects.

The Promoter is hereby directed to rectify the said defects within 30 days from the date of this Order, failing which the Complainant shall be at liberty to seek compensation as provided under the Act.

The prayer for compensation on grounds of physical inconvenience, mental agony, and legal expenses falls within the purview of the Adjudicating Officer under Section 71 read with Section 72 of the Act.

The Complainant is at liberty to file a separate application before the Adjudicating Officer for such compensation, in accordance with law.

The available record clearly demonstrates that the Respondent/Promoter has intentionally failed to discharge his statutory obligations, including the formation of the Association of Allottees, transfer of common areas, and rectification of structural defects, thereby violating the provisions of the RERA Act and the Rules made thereunder. This constitutes wilful non-compliance, and it is a fit case for imposition of penalty on the Respondent under the applicable provisions of the Act.

In the above circumstances, in exercise of the powers conferred under section 37 of the act the Authority hereby issues the following directions:

i. The Respondent is directed to initiate and facilitate the formation of the Association of Allottees in accordance with Section 11(4)(e) of the Act and to hand over all common areas and relevant documents within three (3) months from the date of this Order.

ii. The Respondent shall inspect and rectify the structural and service defects pointed out by the Complainant within thirty (30) days from the date of this Order. Failing such rectification, the Complainant shall be at liberty to pursue a claim for compensation under the Act.

iii. Exercising powers under section 61 of the Act, This Authority imposes a penalty of Rs.5,00,000/- (Rupees Five Lakhs only) payable to the AP RERA within 30days from the date of receipt of this order.

iv. The respondent is directed to pay Rs.30,000/-(Rupees Thirty Thousand) towards legal expenses incurred by the complainant.

v. In case of non-compliance with this order, additional penalties shall be imposed as per Section 63 of the RERA Act, 2016.

*An appeal lies to the Appellate Tribunal within a period of 60 days from the date of receipt of a copy of this order, as per Section 44 of the Real Estate (Regulation and Development) Act, 2016.

(Typed as per the dictation of the Authority, corrected, and pronounced by the Authority in open court on this 12th day of May, 2025.)

MEMBER MEMBER MEMBER