

By RPAD

**NOTICE OF APPEARANCE
GOVERNMENT OF TELANGANA
TELANGANA REAL ESTATE REGULATORY AUTHORITY,
DTCP Building, Ground Floor,
640, AC Guards, Masab Tank, Opp: PTI Building.
HYDERABAD.**

**CC. No. 93/2024/TG RERA
RC. No. 735/2024/TG RERA**

Between:

M. Anand Kumar & 19 Others

...Complainant(s)

And

1. Nilesh Agarwal HUF Mukta Agarwal

2. M/s. Mehtha & Modi Realty Kowkur LLP &

.....Respondent(s)

WHEREAS the complainant above named has filed the complaint against the respondent(s) for the relief prayed therein. A copy of complaint along with documents filed by the complainant is sent herewith for service upon you.

The respondent is here by directed to file counter/reply on or before the date of hearing and the Complainant(s) and the Respondents(s) are hereby directed to be present either in person or through your authorized representative / Advocate before the AUTHORITY on **30.07.2024 at 11.00 AM.**

In the event of non-attendance without reasonable cause, the TG RERA may proceed with the hearing based on the available information and evidence on record and a decision may be rendered accordingly.

Dated this the 26th day of June, 2024.


**Dy. Collector & Addl. Registrar,
TG RERA, Hyderabad.**

To,

✓ 1. Nilesh Agarwal, HUF Mukta Agarwal, M/s. Mehtha & Modi Realty Kowkur LLP & H. No. 5-4-187/3 & 4, 2nd Floor, Soham Mansion, M.G. Road, Secunderabad-500003.

..(Respondents)

2. M/s. Mehtha & Modi Realty Kowkur LLP & H. No. 5-4-187/3 & 4, 2nd Floor, Soham Mansion, M.G. Road, Secunderabad-500003.

..(Respondents)

3. M. Anand Kumar & 19 Others, Green Wood Heights, Histop Road, Near ARK Majestic, Kowkur, Bollaram, Medchal Malkajgiri District, Hyderabad-500010.

...(Complainants)

FORM 'M'
[See rule 34(1)]
COMPLAINT TO AUTHORITY

Complaint Under Section 31

For use of Regulatory Authority(s) Office.

Date of filing: _____

Date of Receipt [at the filing counter of the Registry/

Receipt by post/online filing]: _____

Complaint No: _____

Signature: _____

Registrar: _____

TELANGANA REAL ESTATE REGULATORY AUTHORITY

DTCP Building, Ground Floor -640, A.C Guards, Masab Tank, Opp PTI Building,
Hyderabad - 500000

BETWEEN

S.NO	FLAT NO	NAME	MOBILE NO
1	B 713	M. Anand Kumar	9949661172
2	B 506	Prasenjit Das	7780409320
3	A 415	Col. L.S Sundaram	7382705484
4	A 515	V.V. Ramana Murthy	9440570979
5	A 316	Chandan Dutta	9573022938
6	B 613	Angad Singh Nijjar	9052000520
7	B 307	Dennis Anthony	7893760707
8	A 304	Sesha Sai Raghuram	7893748939
9	A 602	K. Sai Charan	7032408282
10	B 109	Dr. Maj Suma Alluri	7981549104
11	B 611	R. Sarada	9849529434
12	B 513	Tabitha Prem Kaza	9346188403
13	B 706	Tulshi Pandey	9618786088
14	B 413	Aashish Sikka	8008137775
15	B 313	Divya Uday	9849416729
16	A 605	Maya Srivastava	9618880099
17	B 406	Kiran Kumar /Madhu Gangadhara	9502735101
18	A 516	Rani Singh	9908836433
19	A 305	Pradeepta Kumar Sahu	9493484118
20	A 314	Raveendra Raju	9849056769

GREENWOOD HEIGHTS

Histop Road, Near ARK Majestic

Kowkur, Bolarum,

Dist: Medchal-Malkajgiri,

Hyderabad: 500010.

Email: greenwoodheightskowkoor@gmail.com

ak47mak@gmail.com

prasenjitdas31@gmail.com

...Complainants

AND

1. M/s Mehta & Modi Realty Kowkur LLP
5-4-187/3 & 4, II Floor.
Soham Mansion, M.G. Road,
Secunderabad 500003
Email: kprasad@modiproperties.com (PROMOTER)
2. Nilesh Agarwal HUF
Mukta Agarwal
c/o M/s Mehta & Modi Realty Kowkur LLP
5-4-187/3 & 4, II Floor.
Soham Mansion, M.G. Road,
Secunderabad 500003
Email: kprasad@modiproperties.com (LAND OWNER/INVESTOR)
...Respondents

DETAILS OF CLAIM

1. PARTICULARS OF THE COMPLAINANTS

Names of the complainants, Address of the existing Residence, Address for service of all notices and contact details

S.NO	FLAT NO	NAME	MOBILE NO
1	B 713	M. Anand Kumar	9949661172
2	B 506	Prasenjit Das	7780409320
3	A 415	Col. L.S Sundaram	7382705484
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11	B 611	R. Sarada	9849529434
12	B 513	Tabitha Prem Kaza	9346188403
13	B 706	Tulshi Pandey	9618786088
14	B 413	Aashish Sikka	8008137775
15	B 313	Divya Uday	9849416729
16	A 605	Maya Srivastava	9618880099
17	B 406	Kiran Kumar /Madhu Gangadhara	9502735101
18	A 516	Rani Singh	9908836433
19	A 305	Pradeepta Kumar Sahu	9493484118
20	A 314	Raveendra Raju	9849056769

GREENWOOD HEIGHTS

Histop Road, Near ARK Majestic
Kowkur, Bolarum,
Dist: Medchal-Malkajgiri,
Hyderabad: 500010.

Email: greenwoodheightskowkooor@gmail.com
ak47mak@gmail.com prasenjitdas31@gmail.com

2. PARTICULARS OF THE RESPONDENTS

Names, address for service of notices and contact details of Respondents

- (i) **M/s Mehta & Modi Realty Kowkur LLP**
5-4-187/3 & 4, II Floor.
Soham Mansion, M.G. Road,
Secunderabad 500003
Email: kprasad@modiproperties.com

- (ii) **Nilesh Agarwal HUF**
Mukta Agarwal
c/o M/s Mehta & Modi Realty Kowkur LLP
5-4-187/3 & 4, II Floor.
Soham Mansion, M.G. Road,
Secunderabad 500003
Email: kprasad@modiproperties.com

3. JURISDICTION OF THE AUTHORITY

The Complainants declare that the subject matter of the claim falls within the jurisdiction of the Authority.

4. FACTS OF THE CASE

- (A) The Complainants are individuals who have purchased residential flats vide Registered Sale Deeds (Details as per Annexure 1) in the layout developed by the Respondent (1) under the name and style of "**Greenwood Heights**" consisting of 119 flats, further comprising Block A and Block B, in the layout located in Sy. No 196, Histop Road, Kowkur, Alwal Mandal, Medchal-Malkajgiri District, Secunderabad 500010. Greenwood heights herein referred is a "Housing Project" registered by the Respondent (1) under the provisions of the RERA Act with the Telangana State Real Estate Regulatory Authority at Hyderabad on 19/10/2019 under Registration No: P0220001314. The said Housing Project is ongoing and is proposed to be completed by 21/09/2025.

- (B) The Respondent(s) (2) are the Land Owners/Investors of the Housing Project registered by the Respondent (1) as stated above and have sold some of the flats allotted to them in the said Housing Project to some of the complainants as detailed in Annexure 1.

- (C) That all the Complainants, without any exception, in good faith, presuming the reputation of the Respondents to be of a very high standard, as asserted by the Executives of the Respondent (1) and based on the brochures and literature given to them, complied with all the stipulations set by the builder as regards payment of Sale Consideration and other Related Amounts and accepted and signed the Agreement of Sale, Sale Deed and other Letters issued to them by the Respondent (1) on the assurance by the executives of

the latter that these were standard documents which complied with the provisions of the applicable laws and the provisions of the RERA Act under which the Housing Project was registered.

- (D) Subsequent to taking possession and occupation of their respective flats as per the stipulations of the Respondent (1) and becoming Members of the Welfare Association incorporated by the Respondent (1) and paying Maintenance Charges as demanded, the Complainants experienced several construction defects in the Housing Project as a whole, as well as in their individual flats, and lack of provision of basic amenities and facilities by the Respondent (1) who as per the provisions of the RERA Act was liable to maintain and provide basic facilities and amenities till the completion of the project and the handing over of the same to the " Association of the Allottees"
- (E) As stipulated by the Respondent (1) in its website the Complainants posted their complaints on the website of the Respondent (1) only to get a standard automated reply that their complaint would be addressed in 15 days, but without any action being taken by the Respondent (1). Complaints to the Project Staff of the Respondent (1) also met with a standard response that the matter would be referred to their "Head Office" without any action being taken.
- (F) Frustrated with their sufferings and the un-cooperative attitude of the Respondent (1), the Complainants sent a Registered Letter dated 13/01/2024 to the Partners of Respondent (1) and its Customers Relation Manager listing out all the defects in quality and issues faced by them and calling for rectification by the Respondent (1). A copy of the said letter is enclosed as Annexure 2.
- (G) In response to the aforesaid letter of the Complainants, the Customer Relations Manager and Project Manager of the Respondent (1) without any prior intimation or notice to the complainants, came to the project on 20/01/2024, late in the afternoon when only 2 flat owners were available to have a discussion on the letter of the complainants. They were asked to come on a holiday or at a time when a majority of the complainants were available. With the consent of the said Executives of the Respondent (1) a meeting was fixed for Saturday 27/01/2024 at 11.00 a.m. However, on the said date the Customer Relations Manager of the Respondent (1) sent a WhatsApp message to one of the complainants that he was visiting some other project and could not come for a meeting with the Complainants as scheduled.
- (H) Vide a Registered Letter dated 27/01/2024 the Complainants once again requested the Authorized Partner of Respondent (1) along with required Project Executives to visit the Project Site for a meeting with the Complainants and resolving issues in a reconciliatory manner. A copy of the said letter is enclosed as Annexure 3.

- (I) Even to the aforesaid letter of the complainants there was no effort on the part of the Respondent (1) to have a meeting with the complainants as requested. Alternatively, a Notice dated 05/02/2024 stating that the Respondent (1) had received written complaints from flat owners and giving brief so called replies to the issues brought out by the complainants in their letter dated 13/01/2024 (Annexure 2) was affixed on the Notice Board of the Apartment Complex by the Project Staff of the Respondent (1). A copy of the Notice is enclosed as Annexure 4.
- (J) In response to the said Notice affixed by the Respondent (1) the Complainants vide a Registered Letter dated 22/02/2024 once again brought to the notice of Respondent (1) that replies were vague and did not in any manner address the issues raised by the complainants. The complainants also offered some solutions to the problems faced and assured the Respondent (1) that they desired to sort the problems in a mutually beneficial and reconciliatory manner and once again requested for a meeting with the Authorized Partner of Respondent (1). A copy of the said letter is enclosed as Annexure 5.
- (K) Even to this letter there was no response whatsoever from the Respondent (1). Once again vide a Registered Letter dated 18/03/2024 the complainants once again called upon the Respondent (1) to adopt a friendly and mutual attitude towards the complainants and resolve the issues in a reconciliatory manner which would be to the advantage and benefit of all concerned. A copy of the said letter is enclosed as Annexure 6.
- (L) Even to this letter there being no response the Complainants gave a Final Notice dated 15/04/2024 to the Respondent (1) listing out precisely the defects in quality of construction of the Project and the violations of the provisions of RERA by the Respondent (1) and calling for specific addressal of the said complaints by the Respondent in the manner stated by the Complainants in the said Final Notice. A time frame of 15 days from the date of receipt of the said Final Notice was given to the Respondent (1) to respond thereto listing out the action proposed to be taken and the time frame for the same. A copy of the said Final Notice is enclosed as Annexure 7. Even to this Final Notice there is no response whatsoever by the Respondent (1) or its Partners/Executives even till date.

Consequently, the Complainants are left with no other Alternative but to prefer this Complaint on the Respondents before the Honorable TS RERA Authority.

5. COMPLAINTS AGAINST THE RESPONDENTS

5.1 Residents Welfare Association/Maintenance Charges

- 5.1.1 As per the provisions of Section 11(4)(d) of the RERA Act, 2016 the ***“Promoter shall be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of allottees”***

In the instant case even though the project is not completed and Completion Certificate and Occupancy Certificate have not yet been obtained, the Respondent (1) incorporated a Residents Welfare Association styled as Greenwood Welfare Association (Registration No 687) 2021 under the Telangana Societies' Act 2001. Copy of Registration Certificate is enclosed as Annexure 8.

Pertinent to mention that this Welfare Association was incorporated even before a single Flat in the Project was Registered in favour of, and occupied by any Allottee.

Further the said provision of section 11 (4) (d) contemplates the maintenance of the Project by the Promoter at its cost till the handing over of the Project to the Association of Allottees.

Contrary to the above provisions of section 11(4)(d) the Respondent (1) vide the said Welfare Association is collecting Maintenance Charges from the complainants right from the date of occupation of the flats by the latter even though the Project, is not completed and Completion/Occupancy Certificate has not been obtained, and handed over to the association of allottees.

In some cases, the Respondent (1) has forced the allottee to pay Maintenance Charges even before the Flat was Occupied

- 5.1.2 The said Greenwood Welfare Association has been incorporated with the Partners of the Respondent (1) LLP and its executives as the Founder Members and Executive Committee Members. Notwithstanding that the Complainants were compelled to become members of the said Society failing which they were not given possession of their respective Flat, the management and control of the said society was totally in the hands of the Respondent (1) and the Complainants had no say in the same.

Pertinent to point out that as per clause 7(d) of the Bye laws of the Society (Copy enclosed as Annexure 9)

“The members forming the Association shall be the Founding Members of the Executive Committee and shall hold office till the election of a New Executive Committee. The first such election shall be called for after the Association has at least 150 Members. However, the Executive Committee shall be at liberty to call for the election at any time it may deem fit and proper.”

In view of the above provisions the allottees of the Project can never call for an election of a New Executive Committee as there are only 119 Flats in the project and the condition laid down by the above clause is that there should be 150 members. As such it is totally at the whims and fancies of the Respondent (1) to call for the election of a New Executive Committee.

Consequently, the said Greenwood Welfare Association cannot in any reasoning whatsoever be called a Society of Allottees as stipulated in section 11(4)(e) of the RERA Act.

- 5.1.3 Further submitted to the Honorable RERA Authority that the Honorable High Court of Hyderabad in the case of M/s. Nuggets Estates Private Ltd. (W.P No 3319 of 2013) ruled that a Residents Welfare Association cannot be incorporated under the provisions of the Societies' Act 2001 since section 3(1) of said Act contemplates the formation of a Society which has its objects the promotion of art and culture and other public objects. Consequently, a Residents Welfare Association not having any public activity as its objects cannot be incorporated under the Societies' Act 2001. A copy of the said judgement is enclosed as Annexure 10.

In pursuance of this Judgement the Commissioner and Inspector General of Registration and Stamps, Telangana vide Circular No: Circular Memo No Soc.7124/2018 dated 28/01/2019 issued instructions to all District Registrars in the state not to Register Residents Welfare Associations under the Societies' Act 2001. Copy of the said Circular is enclosed as Annexure 11

To overcome the provisions of the above High Court Ruling the Respondent(1) has falsely obtained Registration of the Greenwood Welfare Association , which is strictly speaking a Residents Welfare Association with objectives of maintaining the Housing Project which are not public in nature, under the Societies Act 2001 by avoiding the words "Residents Welfare" in its title and showing its Main Objectives as "Promotion of Cultural, Social , literary and other Public Objectives" .Copy of the Memorandum of Association is enclosed as Annexure 12.

Consequently, the said Greenwood Welfare Association violates provisions of law and judicial pronouncements and can be struck down and quashed at any point of time causing irreparable damage to the Complainants. Even in this respect the said Greenwood Welfare Association cannot by any fathom of reasoning be considered to be an Association of Allottees as contemplated by section 4(e) of the RERA Act.

In view of the above facts, it is submitted before the Honorable TS RERA authority that the Respondent (1) is not entitled to collect Maintenance Charges from the Complainants (Allottees) through the said Greenwood Welfare Association

5.2 Corpus Contribution utilization for Project Maintenance

Respondent (1) through the aforementioned Greenwood Welfare Association has collected Corpus Contribution of Rs 30000 from each of the Complainant/Allottee prior to the handing over of possession of the Flat to the said allottee.

As per Generally Accepted Accounting Principles and General Terms Corpus Fund is a Capital Fund and is not to be utilized for Operational Expenses unless so directed by the contributor of the Corpus Amount, viz, the Allottee. The Corpus Fund has to be reflected as a Capital Account in the Balance Sheet of the Society/Association.

However, the Audited Balance Sheet of the Greenwood Welfare Association as on 31st March 2023 shows Partners/Members Capital as Rs 27607 which is less than the Corpus Contribution for 1 flat. This clearly shows that the Respondent (1) which is in full control and operating the said Welfare Association has utilized the Corpus Contribution for operative expenses without the consent of the allottees and has thus violated principles of equity and law. Copy of the Balance sheet is enclosed as Annexure 13

It is further submitted that the complainants vide their letters and final notice hereinabove referred requested the Respondent (1) to provide the Audited Accounts from inception till date but there has been no compliance. Annexure 12 was downloaded from the Website of the Respondent(1) . However, the accounts for other years are no viewable being password protected.

5.3 GST Invoices and proof of Remittance of GST not provided

The Respondent(s) 2 who are the part of the Land Owners/Investors of the Greenwood heights Housing Project have collected GST at 5% of the Sale Consideration from the Complainants to whom they have sold their Flats.

However, they have failed to issue GST Invoices and Proof of Remittance of the GST Amount to the Government to the Allottees. Complainant No 1 Mr. M. Anand Kumar vide his Registered Letter dated 18/03/2024 had called upon the Land Owner /Investor to provide the GST Invoice and Copy of Proof of Remittance of GST to the government but there has been no compliance till date. Copy of the said letter is enclosed as Annexure 13

5.4 Variation of Clauses in the Agreement of Sale entered with the Complainants and the Draft Agreement of Sale filed with TS RERA Authority at the time of Grant of Registration.

It is submitted that the Respondent (1) filed a Draft Agreement of Sale with the Honorable TS RERA Authority as stipulated by the provisions of section 4(2)(g) of the RERA Act 2016.

Pertinent to point out that this stipulation of the Act is to ensure transparency and fair play on the part of Builders with the Allottees and the Promoter is bound to enter into Agreement of Sale and Conveyancing Deed strictly adhering to the format and clauses of the Drafts submitted at the time of Registration and appearing in the website of the Honorable RERA Authority

In the instant case the Respondent (1) has totally violated the said provisions and intent of transparency of the RERA Act by entering into an Agreement of Sale with the complainants which strictly does not correspond with the Draft Agreement of Sale filed.

The Agreement of Sale entered by the Respondent (1) with the Complainants is enclosed as Annexure 14

A copy of the Draft Agreement of Sale filed with the Honorable TS RERA Authority is enclosed as Annexure 14 (A)

The details of the variations as compared to the Draft Agreement of Sale are listed out in Annexure 14(B)

5.5 Construction and other Related Complaints

In the Initial Letters and Final Notice several defects and issues were pointed out. The complainants called for a meeting with the Partners of Respondent (1) and Project Engineer to address and solve these issues in a mutual and reconciliatory manner. However, despite the positive attitude on the part of the complainants to have a mutual and friendly relationship with the Respondent (1) there has been no reciprocate action on the part of the Latter.

The complainants do not wish to waste the time of the Honorable TS RERA Authority by repeating herein the Construction and other related defects and issues as these are already listed in detail in the Final Notice (Annexure 6)

6. RELIEF SOUGHT

Based on the above facts and circumstances of the case, the Complainants herein pray that the Honorable TS RERA Authority be pleased to offer the following relief(s)

- 6.1 Direct the Respondent (1) to stay and suspend collection of Future Maintenance Charges from the complainants till the Completion of the Project and handing over of the same to the Association of Allottees.
- 6.2 Direct the Respondent (1) to refund the Maintenance Charges collected till date to the respective Complainants together with Interest as applicable under the provisions of the ACT.
- 6.3 Direct the Respondent (1) to refund the Corpus contribution collected from respective Complainants together with interest as applicable under the provisions of the Act.
- 6.4 Direct the Respondent (1) to Maintain the project and provide reasonable amenities to the complainants at it s cost till the handing over of the Project to the Association of allottees
- 6.5 That a New Co-operative Housing Society of the Allottees be formed within 2 months of the completion of the Project and receipt of Occupancy Certificate.
- 6.6 Direct the Respondent (2) to issue GST Invoices and Proof of Remittance of GST to the government to the respective Complainants.
- 6.7 Direct the Respondent (1) as well as other Land Owners /Investors Register a Rectification Deed ironing out/removing the defects in the Agreement of Sale entered with the complainants so that the latter couple with the Rectification Deed corresponds to the Draft Agreement of Sale filed with the Honorable TS RERA Authority.
- 6.8 Direct the Authorized Partner of Respondent (1) to have a meeting with the Complainants to solve the Construction Defects and other Related Issues and submit in writing to the complainants as well as the Honorable TS RERA authority of the manner in which the Respondent (1) proposes to rectify these defects/address these issues and the time frame for the same.
- 6.9 The complainants pray leave to submit such additional grounds as may be required after the meeting sought for in para 6.8 above is held and response received from the Respondent (1) , before the Final Disposal of the Complaint herein.

7. INTERIM ORDER

NIL

8. COMPLAINT PENDING IN ANY OTHER COURT ETC.

Nil