

REAL ESTATE REGULATORY AUTHORITY, ASSAM
(Authority established under the Real Estate (Regulation and Development) Act, 2016)

Case No. : RERA/ASSAM/COM/2025/40
 Complainants : Shri Amar Gupta
 Respondent No.1 : M/s Shakti Developers
 Respondent No.2 : M/s Shakti Square Housing Society
 For the complainant : Mr. Manab Jyoti Hazarika, Advocate
 For the respondent No.1 : Smti. Shalini Bajaj, Advocate
 For the respondent No.2 : Mrs. Nayan Moni Medhi, President
 Judgement and Order
 Delivered By - : Mr. P.K.Borthakur, Chairperson, RERA, Assam
 Date Of Judgement & Order - : 21.08.2026

JUDGMENT AND ORDER
21.08.2026

A. THE COMPLAINT

1. The Complainant, Shri Amar Gupta, is the absolute owner of a commercial space measuring 3757 sq. ft. super built-up area on the 1st Floor (Western side) of the multi-storied building “Shakti Square”, together with 3 (three) car parking spaces and an undivided proportionate share in land, purchased from Respondent No. 1 (M/s Shakti Developers) vide a registered Deed of Sale dated 16.12.2017 for a total consideration of Rs. 50,00,000/-.
2. The Complainant let out the said commercial space to the State Bank of India for its Madgharia Branch, which has been in occupation and operation since March 2021.
3. The grievance of the Complainant, in substance, is that Respondent No. 2, the Housing Society constituted by the unit-holders of the building (of which the Complainant is himself a member), has (i) denied access to common amenities, including the lift, to the occupants/customers of the Complainant’s commercial

space; (ii) disconnected the water supply; and (iii) imposed maintenance and security charges (claimed at Rs. 6,000/-, and later Rs. 11,500/- per month, comprising Rs. 5,500/- maintenance and Rs. 5,000/- security) that are alleged to be arbitrary, discriminatory and disproportionate to the Rs. 2,000/- per month charged to other unit-holders.

4. It is the Complainant's case that, in order to comply with the judgment and order of the Hon'ble Gauhati High Court dated 22.07.2024 (passed in a writ petition concerning non-payment of rent by SBI and the restoration of amenities), he was compelled to deposit Rs. 66,000/- towards arrears "under protest", and was thereafter made to agree to the enhanced monthly charge of Rs. 11,500/-.
5. The present complaint was filed on 23.07.2024 under Section 31 of the Real Estate (Regulation and Development) Act, 2016 ("the Act") against Respondent No. 1 as the promoter of the project, and Respondent No. 2 as the housing society presently in charge of maintenance of the building, seeking, inter alia: (a) restoration of unconditional access to common amenities; (b) a direction to comply with the terms of the Deed of Sale and the provisions of the Act; (c) justification/refund of the disputed maintenance and security charges; (d) penalties and costs; and (e) production of building permissions, layout approvals and NOCs to verify alleged illegal construction on the 5th floor and 1st floor.

B. CASE OF RESPONDENT NO. 1 (M/S SHAKTI DEVELOPERS)

6. Respondent No. 1 filed its Written Statement denying the allegations levelled against it. It has taken the specific stand, reiterated before this Authority on 19.08.2025 through its Ld. Advocate, that the issues in dispute are essentially between the Complainant and Respondent No. 2, inasmuch as the flats/units in the building have already been handed over to the allottees in terms of the agreement, and Respondent No. 2, the Housing Society, is presently maintaining and managing the project.

7. In view of the above stand, this Authority, by order dated 19.08.2025, directed Respondent No. 1 to submit an affidavit whether its duties as promoter under Section 11(4)(f) and Section 17 of the Real Estate (Regulation & Development) Act, 2016 — relating to the formation of the association/society and the handing-over of common properties and documents — stand completed in all respects, or whether any residual duties remain with it. Respondent No. 1 thereafter sought and was granted an adjournment (order dated 12.11.2025) to compile and place on record documents relating to formation of the society, the handing-over process and common area documents. The matter was, in the meantime, referred to mediation before the District Legal Services Authority (DLSA), Kamrup (Metro).

C. CASE OF RESPONDENT NO. 2 (M/S SHAKTI SQUARE HOUSING SOCIETY)

8. Respondent No. 2, through its present President, filed its Written Statement on 02.06.2025, resisting the complaint on merits and asserting, inter alia, that the amounts demanded are the maintenance and security charges applicable to the Complainant's commercial unit, and that restrictions on access were referable to security considerations concerning a commercial (banking) establishment operating within an otherwise residential building.

D. PROCEDURAL HISTORY

9. Owing to initial difficulties in service of the complaint upon Respondent No. 1, and repeated difficulties in serving the current office-bearers of Respondent No. 2 (the original respondent named, Sri Bhaskar Jyoti Das, having clarified on 04.10.2024 that he was only the ex-President and held no post in the Society), the pleadings in this matter were completed only by June 2025. The matter was thereafter referred to mediation before DLSA, Kamrup (Metro) on three occasions — 03.12.2025, 26.02.2026 and 06.03.2026 — without any settlement being arrived at, Respondent No. 2 having also remained absent on at least one

occasion before the Mediation Centre. Upon report of failure of mediation, the matter was heard on 16.06.2026 and fixed for judgment and order.

E. ISSUES FOR DETERMINATION

10. On the above pleadings, the following issues arise for determination by this Authority:

- (i) Whether a complaint under Section 31 of the Act is maintainable against Respondent No. 2, M/s Shakti Square Housing Society, having regard to the categories of persons against whom such a complaint may be filed under the Act; and
- (ii) Whether, on the material on record, any independent and subsisting violation of the Act is made out against Respondent No. 1, the promoter, so as to sustain the complaint against it, including with reference to its obligation under Section 11(4)(b) of the Act to obtain and furnish the occupancy certificate.

F. FINDINGS ON ISSUE (i): MAINTAINABILITY AGAINST RESPONDENT NO. 2

11. Section 31(1) of the Act provides that “any aggrieved person may file a complaint with the Authority or the adjudicating officer... for any violation or contravention of the provisions of this Act... against any promoter, allottee or real estate agent, as the case may be.” The three categories of persons against whom a complaint may be maintained under Section 31 are thus exhaustively enumerated, namely (a) a promoter as defined under Section 2(zk); (b) an allottee as defined under Section 2(d); and (c) a real estate agent as defined under Section 2(zm) of the Act.

12. The Explanation appended to Section 31(1) provides that, “for the purpose of this sub-section, ‘person’ shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.” This

Explanation operates only to enlarge the class of persons who may be treated as an “aggrieved person” competent to file a complaint (i.e., on the complainant’s side). It does not, and by its terms cannot, enlarge the three categories of respondent against whom a complaint may be directed. Had the Legislature intended an association of allottees to also be answerable to a complaint under Section 31, it would have said so expressly, as it did in respect of locus standi to complain. The deliberate inclusion of the association of allottees for one purpose, and its omission for the other, in the same sub-section, is a strong indicator that a housing society/association of allottees is not a person against whom a complaint under Section 31 lies.

13. Respondent No. 2, M/s Shakti Square Housing Society, is, on the Complainant’s own showing and on the record of this case, the association of unit-holders/allottees of the building, constituted in the manner contemplated under Section 11(4) read with Section 17 of the Act for the purpose of maintenance, upkeep and management of the common areas and facilities of the project after handover by the promoter. It is not disputed that Respondent No. 2 is neither a promoter, nor an allottee (in the sense of a person to whom the Complainant’s unit was allotted), nor a real estate agent within the meaning of the Act.
14. The substantive grievances raised in the complaint against Respondent No. 2 — namely, denial of access to the lift and other common facilities, disconnection of water supply, and the levy of maintenance and security charges alleged to be excessive, arbitrary and discriminatory — are, in essence, disputes concerning the internal administration, maintenance and management of the society/association, and the equitable apportionment of common charges amongst its members. Such disputes are governed by the constitution/bye-laws of the society and the relevant law under which it is registered, and are amenable to redressal before the appropriate civil court, the registering/competent authority

for societies, or the Consumer Fora, as the case may be. They do not, without more, constitute a “violation or contravention” of the Act by a promoter, allottee or real estate agent so as to attract the jurisdiction of this Authority under Section 31.

15. This Authority accordingly holds that the complaint, in so far as it is directed against Respondent No. 2, M/s Shakti Square Housing Society, is not maintainable and this Authority has no jurisdiction to adjudicate upon it.

G. FINDINGS ON ISSUE (ii): LIABILITY OF RESPONDENT NO. 1

16. It is the specific and unrebutted stand of Respondent No. 1, recorded in the order dated 19.08.2025, that possession of the units in the building has been handed over to the allottees, and that the maintenance and management of the project presently vests in and is being carried out by Respondent No. 2. Respondent No. 1 was granted opportunity to place on affidavit the position regarding completion of its obligations under Section 11(4)(f) and Section 17 of the Act. Nothing on record before this Authority, including the report of the mediation proceedings, discloses or establishes that Respondent No. 1 has failed to form the association/society or has failed to hand over the common areas, properties and documents as required by law, or that any part of the maintenance/management of the project continues to vest in Respondent No. 1.

17. It is, however, specifically noted from the order of this Authority dated 19.08.2025 that Ld. Advocate for the Complainant had pointed out that the occupancy certificate in respect of the project has, as yet, not been obtained by Respondent No. 1 and has not been shared with the Complainant. This assertion has not, at any subsequent stage of the proceedings — including after the reference to and return from mediation — been controverted, denied or otherwise addressed by Respondent No. 1, nor has any occupancy certificate been placed on the record of this case.

18. Under Section 11(4)(b) of the Act, it is the promoter who is responsible “to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority... and to make it available to the allottees individually or to the association of allottees, as the case may be.” This is a distinct, non-delegable and continuing statutory obligation of the promoter. It is not discharged merely by handing over possession of the units and the common areas to the association of allottees, nor does it stand transferred to or assumed by Respondent No. 2 upon its formation. Unlike the maintenance and common-area disputes considered under Issue (i), which are matters of internal management properly to be agitated against Respondent No. 2 outside this Authority, the obligation to obtain and furnish the occupancy certificate is a violation, if established, of the Act by the promoter alone, and squarely attracts the jurisdiction of this Authority under Section 31.
19. Save and except this limited, specific obligation regarding the occupancy certificate, no other violation of the Act by Respondent No. 1 is found established on the material on record, for the reasons discussed under Issue (i) above.

H. ORDER

20. For the reasons recorded above:

- (a) The complaint, in so far as it is directed against Respondent No. 2, M/s Shakti Square Housing Society, is dismissed as not maintainable for want of jurisdiction under Section 31 of the Real Estate (Regulation and Development) Act, 2016.
- (b) The complaint against Respondent No. 1, M/s Shakti Developers, stands disposed of, save and except in respect of its obligation under Section 11(4)(b) of the Act to obtain the occupancy certificate for the project from the competent authority and to make it available to the Complainant/allottees.

Respondent No. 1 is directed to obtain the occupancy certificate and furnish an authenticated copy thereof to this Authority, and to the Complainant and Respondent No. 2, within 90 (ninety) days from the date of this order.

(c) In the event of failure of Respondent No. 1 to comply with clause (b) above within the time stipulated, the Complainant shall be at liberty to move this Authority for appropriate directions/action for such continuing default, in accordance with law.

(d) Save as aforesaid, this dismissal is without prejudice to the right of the Complainant to seek redressal of his grievances relating to maintenance, common area charges and access, against Respondent No. 2, before the appropriate forum in accordance with law, including a civil court of competent jurisdiction, the authority competent under the law governing registration of the Society, or the Consumer Forum, as may be advised.

(e) No order as to costs.

Case disposed of accordingly.

Sd/-
(P. K. Borthakur)
Chairperson, RERA, Assam