

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

COMPLAINT NO.802 OF 2021

01st Day of March, 2024

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

M/s Indian Timber and Sawmill
Through its Proprietor, Sri Kavuluri Peer Mohammad ...Complainant

Versus

M/s Aditya Constructions Company (India) Pvt. Ltd.
Through its Authorised Representative ...Respondent

The present matter filed by the Complainant herein came up for hearing on 09.08.2023, 19.09.2023, 17.10.2023, 15.11.2023, 20.12.2023, 17.01.2024, 31.01.2024, 15.02.2024, 20.02.2024 before this Authority in the presence of the Counsel for Complainant, Sri S. M. Subhan, and Counsel for Respondent, Sri Srinivas Achanta & Sri M. Bhargav Venkata Naga Sai, and upon hearing the arguments of the parties, this Authority passes the following **ORDER:**

2. The present Complaint has been filed 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 Respondent Builder.

A. Brief facts of the Complaint

3. The Complainant submitted that the Complainant purchased a residential Flat No: 407, situated in 4th Floor Beaumont, Empress Towers Annex, consisting of 1700 Sft (Including common Areas), on 28.03.2019 for a Total Sale Price of Rs. 1,10,00,000/- (Rupees One Crore Ten Lakhs Only) and the Sale price includes Two Car Parking, Electricity & Water Charges and Club Membership, that the Respondent have failed to complete the construction of the flat. That the Complainant is paying Rs. 60,000/- (Rupees Sixty Thousand Only) as rent to the existing house and not in a position to bear with the rent and in spite of his calls and visiting the Respondent's office, Respondent failed to handover the flat and there is no response even for Complainant's Legal Notice dated 09.09.2021, though received on 14.09.2021.

4. The Complainant submitted as the Respondent adjusted an amount of Rs.35,16,585/- (Rupees Thirty-Five Lakhs Sixteen Thousand Five Hundred and Eighty-Five Only) for the timber supplied by the Complainant since 2013 vide Letter dated 28.03.2019, by promising to give a flat. Whenever Complainant visited the Respondent's office, he also informed concerned in the Respondent office that he is ready to pay the remaining balance as per the Letter dated 28.03.2019 issued by Respondent, but there is no response from Respondent.

5. The Complainant further submitted that the Complainant supplied the material in the year 2014 and the said material cost was adjusted towards advance payment for the flat on 28.03.2019 and as per the agreement the flat should be handed over within 18 months i.e., by October, 2020.

6. Accordingly, the Complainant prayed that to handover the Residential Flat No: 407, situated in 4th Floor, Beaumont, Empress Towers Annex, consisting of 1700 Sft (Including common Areas) in a move in condition and to direct the Respondent to pay Rs 6,00,000/- (Rupees Six Lakhs Only) as the rental dues and continue to pay an amount of Rs.60,000/- (Rupees Sixty Thousand Only) Per Month, till handing over the possession of the residential Flat No: 407, and also to grant interest for the delayed period along with costs of this petition.

B. Reply on behalf of the Respondent:

7. Vide Reply dated 15.11.2023, the Respondent submitted that the allegations mentioned in the complaint are neither true nor correct. He added that the present complaint is not maintainable either in law or on facts as the Complaint is barred by limitation and the same was liable to be dismissed. The property above-mentioned does not come under RERA as the building permissions and approvals sanctioned for the project in which the mentioned flat is situated were all prior to the existence/implementation of RERA.

8. The Respondent submitted that the Authority has no jurisdiction to entertain this complaint as the permission for construction of the residential blocks was obtained on 30.03.2015 and the Fire and Environmental permissions were granted in the year 2013. That all the permissions with regard to the construction were granted much prior to the implementation of the RERA, i.e. 01.01.2017. The project in which the alleged flat booking was carried out is an old project which does not come under the RERA Act, as such the present Authority is not entitled to entertain the present complaint.

9. The Respondent submitted that the present complaint is filed based on the alleged Credit Note said to be issued by the Respondent Company. But, there was no clarity by whom the said alleged Credit Note was issued. No name or designation was mentioned in the credit note or in the Flat Booking Letter dated 28.03.2019. The amounts mentioned in the Credit Note on which the present complaint is relying by the Complainant are the alleged payments for the years of 2013-14. That all those payments were already barred by limitation and the Complainant has created a credit note for the time barred payments and showed that credit note as a basis for the advance amount for the sale consideration towards the flat. The Respondent submitted that the Complainant did not insist the Respondent for execution of Agreement of Sale if the Complainant paid an amount towards the advance sale consideration mentioned in the Credit Note.

10. That there is no valid contract between the Complainant and the Respondent with regard to the alleged sale of the flat. Clause 5 of the Flat booking letter clearly states that, said *Flat Booking Letter is a provisional one in nature and execution of an Agreement of Sale in the Company's format is mandatory*. The Respondent further submitted that the Complainant herein does not adhere to the terms and conditions/clauses of the Flat Booking Letter on which he is relying and grossly violated them. According to Clause 2 of the Flat Booking letter, "*timely payment installments as per the work progress is mandatory. In case of delay in making payments for first 30 days, an interest @ 18% P.A. will be levied and beyond 30 days will attract an interest @ 24% P.A.,*

Non-payment of for 3 months after the due date shall lead to cancellation of the flat and normal forfeiture clause would apply”.

11. The Respondent submitted that the Complainant did not pay even a single rupee after the execution of the alleged Flat Booking Letter towards the balance sale consideration till to date or prior to the filing of this complaint. That the Complainant is demanding the respondent to register the flat without paying the balance sale consideration and filed the present complaint before this Authority which is not having the jurisdiction to entertain the same. Therefore, he prayed to dismiss the Complaint with costs.

C. Rejoinder by the Complainant:

12. Vide Rejoinder dated 23.01.2024, the Complainant reiterated the contents of his Complaint and further submitted that as the Respondent received an advance amount from the Complainant in the month of March 2019, this attracts provisions of the Act, 2016 and as such the Respondent Builder is liable for the costs and consequences thereof in the interest of justice and fair play in action.

13. The Complainant also submitted that it is evident from the Credit Note No. 17 of 2018 that an amount of Rs. 35,16,585/- was received by the Respondent but he failed to complete the construction of the flat and handover the same to the Complainant.

D. Hearing Conducted:

14. The respective counsels appeared on final hearing and reiterated the contents of their affidavits. While the Complainant urged that the Flat Booking Letter dated 28.03.2019 protected its right as an allottee under the Act, 2016 and therefore, is entitled to his relief as prayed for by registering the Flat No. 407, situated in 4th Floor, Beaumont, Empress Towers Annex, consisting of 1700 Sft (Including common Areas) in a move in condition and others. *Per contra*, the Respondent denied the existence of the Flat Booking Letter and the Credit Note dated 28.03.2019 and submitted that, even assuming that the said Letter and Note dated 28.03.2019 are admitted, the Complainant failed to adhere to the terms of the Flat Booking Letter and therefore, cannot approach this Authority at a belated stage to seek registration of the Flat.

15. The Respondent also submitted that the permissions and approvals for the Project, Beaumont, Empress Towers Annex was obtained prior to 01.01.2017, thereby making the Act, 2016 inapplicable on the said Project and that therefore this Authority does not have jurisdiction to entertain the present Complaint.

E . Observations and Directions of the Authority:

16. It is observed from a perusal of the record that for alleged exchange of supply of timber, the Respondent issued a Credit Note and a Flat Booking Letter to the Complainant. However, the Respondent, during the hearing, as well as in its Reply, has denied issuance of any such Credit Note and a Flat Booking Letter dated 28.03.2019. In the absence of an admission by the Respondent of the said Credit Note and Flat Booking Letter, and the failure of

the Complainant to provide any substantial evidence to prove the existence of the same, this Authority is of the view that no action can be taken by this Authority with respect to the relief prayed for by the Complainant.

17. In lieu thereof, the Complaint stands disposed of and the Complainant is directed to approach appropriate forum for crystallization of their rights.

18. If aggrieved by this Order, the parties may approach the TS Real Estate Appellate Tribunal (vide G.O.Ms.No.8, Dt.11-01-2018, the Telangana State Value Added Tax Appellate Tribunal has been designated as TS Real Estate Appellate Tribunal to manage the affairs under the Act till the regular Tribunal is established) within 60 days from the date of receipt 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