

BEFORE TELANGANA STATE REAL ESTATE REGULATORY AUTHORITY

[Under the Real Estate (Regulation and Development) Act, 2016]

COMPLAINT NO.318 OF 2023

30th 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

Sri Naga Suresh Kumar Yadavalli

...Complainant

Versus

1. M/s Real Avenues Consultant Services (RACS) LLP
Represented by its Director Sri Gorla Ramesh
 2. Sri Manne Mahesh Yadav
 3. Sri Kolanu Srinivas Reddy
 4. M/s SAS Infratech Pvt. Ltd.
represented by its Director, Manne Mahesh Yadav
- ...Respondents

The present matter filed by the Complainant herein came up for hearing on 05.10.2023, 07.11.2023, 19.12.2023 and 09.01.2024 before this Authority in the presence of the Complainant in person and Counsels for the Respondent No.1, Sri Chenchuramaiah and Sri Dinesh Yadav and none appeared for the remaining Respondents in spite of service of notice and have been set *ex-parte* and upon hearing the arguments of both the parties, this Authority passes the following **ORDER:**

2. The present Complaint has been filed by the Complainant under Section 31 of the Real Estate (Regulation & 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 Respondents.

A. Brief facts on behalf of the Complainant:

3. The Complainant submitted that the Respondent No.1 LLP is registered under Section 9 of the Act, 2016 with Registration Certificate No. A02500001355. Further, the Complainant gave amount of Rs.19,00,000/- (Rupees Nineteen Lakhs) to Respondent No.1 towards booking confirmation for a flat in SAS Mainland – Project in Nizampet, Telangana. The said amount is in the form of cheque and cash for which the receipt was given by Respondent No.2 on 22.09.2021. The Complainant annexed Agent Registration Certificate of Respondent No.1, Copy of Project Brochure, receipts of payment issued by Respondent No.1 for Rupees Nineteen Lakhs, email dated 06.11.2021 from one "ynsk10@gmail.com" confirming receipt of Rs.19,00,000/- (Rupees Nineteen Lakhs Only) towards Flat No.5 in Floor No.2 in landowner's share, notices issued by the Complainant for refund of amounts and refund receipt of Rs.3,00,000/- (Rupees Three Lakhs Only) from the Respondent No.1.

4. The Complainant submitted that Respondent No.1 provided in the receipt that Respondent No.1 is the authorized sales and marketing representative of Landowner Share of SAS Main Land Project, Nizampet.

5. Further, the Project brochure was provided by Respondent No.1 from which it is understood that the said property "SAS Main Land Nizampet" Project

was not registered under TS RERA. The Complainant asked Respondent No.1 several times to provide the documents to avail bank loan and also for registration of property through letter dated 23.12.2021. Subsequently, a Legal notice dated 10.02.2022 was also issued to Respondent No.1 for which the said Respondent has refunded Rs 3,00,000/- (Rupees Three Lakh Only) on 15.02.2022. That the remaining amounts have not been refunded by the Respondent No.1.

B. Relief sought:

6. The Complainant accordingly prayed to register complaint on Respondent No.1 for misleading, cheating and deviating from RERA Agent Registration Condition 2(1) read with Section 10 (a) of the Act, 2016 as the Project, "SAS Mainland" is not registered under TS RERA. He also sought to pass order directing Respondent No.1 to refund the total amount paid with interest from 22.09.2021 and submit the proofs towards refund transactions. Further to impose penalty under Section 62 of Rs 10,000/- per day or cumulative fee of 5% of the cost of the project where the Respondent has facilitated the sale/purchase of project without being registered with TSRERA.

7. The Complainant further prayed to blacklist Respondent No.1 and its directors Sri G Ramesh and Smt. G Sandhya Rani from all the real estate related activities under TS RERA jurisdiction under Section 9(7). And finally, to direct Respondent No.1 to submit the records and transaction details involving SAS Mainland project under TS RERA Agent Registration Rule 12.

C. Reply on behalf of the Respondents:

8. During the course of hearing, it was found, upon submissions made by the parties that the monies were transferred to the account of Respondent No.2 as per the receipts submitted by the Complainant. Further, as per the undated Agreement of Sale filed by the Respondent No.1, said Agreement for sale of flat was executed between the Complainant and the Respondent No.2, who, allegedly is the landowner of the Project – SAS Main Land, Nizampet as per the said Agreement. Therefore, in the interest of justice and upon filing of an Application dated 19.12.2023 by the Complainant, this Authority issued notice for appearance to Respondent Nos.2, 3 and 4.

9. This Authority also issued Notices to the Respondent No.1 to serve upon the other Respondents, however, the Respondent No.1 failed to submit acknowledgment of service upon Respondent Nos. 2, 3 and 4. Therefore, this Authority itself issued notices to the said Respondents on 22.11.2023 for hearing on 19.12.2023 and the said notices have been duly served on the Respondent Nos. 2, 3 and 4, who failed to enter appearance before this Authority, and therefore have been set *ex-parte* vide Order dated 19.12.2023.

10. Vide Reply dated 18.12.2023, the Respondent No.1 submitted that the Complaint is not maintainable. Complainant approached Respondent No.1 to purchase a flat and the Respondent No.1 showed flat bearing No. 205 in SAS Mainland with a plinth area of 1155 sft, including common area and car parking along with an undivided share of land admeasuring 28.0 sq. yards, out of total land of 1595 sq yards. As the Complainant showed interest to purchase the above

stated flat for a total consideration of Rs.38,00,000/- (Rupees Thirty-Eight Lakhs Only), the Complainant paid an advance amount of Rs.19,00,000/- (Rupees Nineteen Lakhs Only) by way of two cheques to the landowner i.e., Respondent No.2 and then executed an Agreement of Sale dated 02.09.2021. The remaining balance has to be paid as agreed upon.

11. The Respondent No.1 further submitted that he has no knowledge as to why the Complainant left his sale transaction with the land owner and then the land owner returned total paid advance amount to the Complainant and that the Complainant also accepted and handed over all the original documents to the land owner i.e., the Respondent No.2. According to settlement, the agreement was cancelled. As verified by the Respondent No.1, cancellation of the agreement was done on account of lack of funds of the Complainant.

12. He further submitted that the Complainant, with an intention to extract money from Respondent No.1 is alleging false allegations and creating fabricated documents. Further, Respondent No.1 is no way concerned with the transaction, as the Respondent No.1 is neither owner of the flat nor received any sale consideration or commission from the Complainant. He also categorically submitted that the Respondent No.1 has not issued any such receipts of Rs.19,00,000/- (Rupees Nineteen Lakhs Only) and the Respondent No.1 is ready to prove his genuine. Accordingly, he prayed to dismiss the present Complaint with costs.

C. Rejoinder on behalf of the Complainant:

13. Vide Rejoinder dated 19.12.2023, the Complainant submitted that he has received Rs.3,00,000/- (Rupees Three Lakhs Only) from the Respondent No.1's

Bank Account to one Smt. Alavalapati Sahithya (IDFC Bank Account), who is wife of the Complainant. He has also filed proof of such payment by attaching bank account statement of Smt. Alavalapati Sahithya, wherein on 15.02.2022, 05.02.2022 and 27.02.2022, Smt. Alavalapati Sahithya has received Rs.50,000 (Rupees Fifty Thousand Only), Rs.1,00,000/- (Rupees One Laks Only) and Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand Only) respectively. He further submitted that the Agent is fully responsible for the refund process as per the provisions of the Act and the Rules and also submitted that the Respondent No.1 ought to provide proof of such payment made by such landowner to the Complainant.

14. The Complainant admitted, in his Rejoinder, that all the documents were handed over to Respondent No.3 and only a refund of Rs.10,00,000/- (Rupees Ten Lakhs Only) were provided by March 2023 and the remaining amounts are pending.

C. Observations and directions of the Authority

15. Upon verification it has been found that SAS Mainland Project is not registered with this Authority. In this regard, appropriate action against Respondent No.4 is being taken vide separate proceedings for indulging in sales of the Project without having RERA Registration.

16. With respect to the relief of the Complainant to take appropriate action against Respondent No.1, it is observed that, admittedly, the Complainant approached the Respondent No.1 for purchase of a flat. The Respondent No.1, despite knowing that the Project is not registered with TS RERA has proceeded to engage in a sale transaction which is evidently violative of Section 10 (a) which

provides that “every real estate agent registered under section 9 shall not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority”. Therefore, while exercising its powers under Section 38 read with Section 62 of the Act, this Authority deems it fit to impose penalty upon the Respondent No.1 for apparent violation of Section 10(a).

17. Coming to other reliefs i.e., for refund of amounts from the Respondent No.1, this Authority observes that the Complainant has issued receipts, purported to be issued by the Respondent No.1, wherein amounts have been paid to Respondent No.2. However, Agreement is executed between Respondent No.2 and the Complainant as per submission of the Respondent No.1 who is also refusing to have issued any such receipt of confirmation of payment. In this regard, it is also observed that a mere e-mail by one Jahangir Kolla (jahangir9177123458@gamil.com) cannot be enough proof of the Respondent No.1 having issued such a receipt of booking confirmation.

18. Further, the Respondent No.1 has failed to provide any proof of refund of amounts from the Respondent No.2 and 3 to the Complainant barring Complainant’s own submission in his Rejoinder that he received Rs.10,00,000/- (Rupees Ten Lakhs Only) from Respondent No.3 and receipt of Rs.3,00,000/- (Rupees Three Lakhs Only) from account of Sri Ramesh Gorla.

19. Receipts were given by Respondent No.1 towards sale consideration of the Flat. The Respondent No.1 denies such a receipt, but in the same breath states that the landowner has refunded total advance payment without substantiating the said claim. It is clear from the averments in the counter affidavit that the Respondent No.1 is privy to the present transaction and he has deposited

intricate details about the transaction. Therefore, it can be assumed that the Receipts dated 22.09.2021 is genuine in the absence of any proof against such claim by the Respondent No.1.

20. One of the condition under the Registration Certificate issued to the Respondent No.1 Agent is that *“the real estate agent shall provide assistance to enable the allottee and promoter to exercise their respective rights and fulfil their respective obligations at the time of booking and sale of any plot, apartment or building, as the case may be”*. Further, it is pertinent to note that on account of non-registration of the Project with TS RERA by Respondent No.4, the Complainant could not procure loan from banks and therefore sought for refund of monies. In this regard, as refund is sought upon failure of the Respondent No.4 to register its Project with this Authority, the applicability of Clause 7.5 of Annexure to Rule 38 which provides the promoter herein is entitled to forfeit the booking amount paid for the allotment where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, it is not applicable.

21. Therefore, in view of the above discussions, this Authority issues the following directions:

- i. This Authority deems it fit to direct the Respondent Nos.1, 2, 3 and 4, who shall be jointly and severally liable, to refund an amount of Rs.6,00,000/- (Rupees Six Lakhs Only) (as Rs.10,00,000/- are received from Respondent No.3 and Rs.3,00,000/- from Respondent No.1 to the Complainant) to the Complainant with an interest at MCLR of SBI plus two percent i.e., 10.65 % (8.65 + 2) per annum from the date on which such payment is made to the Respondents.

- ii. This Authority imposes a penalty under Section 62 of the Act being 5% of the cost of the flat of Rs.1,00,000/- (Rupees One Lakh Only) upon the Respondent No.1 for violation of Section 10(a) of the Act, 2016 payable by him within 30 days in favour of TS RERA FUNDS through Demand Draft or online payment to A/c No.50100595798191, HDFC Bank, IFSC Code: HDFC0007036.
- iii. Vide separate proceedings, appropriate action shall be taken against Respondent No.4 for violating Section 3 and 4 of the Act, 2016.

22. In lieu of the above directions, the present complaint stands disposed of. Parties are hereby informed that failure of complying with the present order shall attract provisions of Section 63.

23. 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/-

Sd/-

Sd/-

.....
Sri K. Srinivasa Rao,
Hon'ble Member,
TS RERA

.....
Sri Laxmi Narayana Jannu,
Hon'ble Member,
TS RERA

.....
Dr. N. Satyanarayana, IAS (Retd.),
Hon'ble Chairperson,
TS RERA