

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

COMPLAINT NO.583 OF 2022

16th Day of April 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 R. Srinivasa Rao

...Complainant

Versus

M/s Sandstone Infra India Pvt. Ltd.
Represented by its Managing Director,
Sri M. Chandra Sekhara Reddy

...Respondent

The present matter filed by the Complainant herein came up for hearing on 18.01.2024 and 15.02.2024 before this Authority in the presence of the Complainant in person, and none for the Respondent, and upon hearing the arguments, 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.

Brief facts of the case:

3. The Complainant submitted that in January, 2018, Respondent published one of his ventures "SPRING CITY", situated in Survey No. 383 / P 385 / P 386/P, 387 / P 388 / P 455 / P & 456 / P at Sultanpur Village, Ameenpur Mandal, Sanga Reddy District (hereinafter referred to as the 'Project'), as a Registered Real Estate Project and that he agreed to sell the Plot bearing No. 144, admeasuring 480 Sq. yards, in the said Project for a valuable sale consideration of Rs.61,15,000/- (Rupees Sixty One Lakhs Fifteen Thousand Only). The Complainant submitted that the Respondent represented to register the plot within 1 (one) month from the date of Agreement of Sale.

4. That thereafter, the Complainant paid an amount of Rs.28,00,000/- (Rupees Twenty-Eight Lakhs Only) on different dates by way of cheques which are all encashed by the Respondent and subsequently, both parties entered into an Agreement of Sale dated 05.10.2019 towards purchase of the Plot bearing No. 144, admeasuring 480 Sq. yards, in the Project. Following the execution of the Agreement of Sale, the Complainant was advised to prepare for the registration of the Sale Deed, ensuring that the remaining sale consideration of Rs.33,15,000/- (Rupees Thirty-Three Lakhs Fifteen Thousand Only) is ready for the transaction within one month from the date of the said Agreement of Sale i.e., from 05.10.2019.

5. The Complainant submitted that Respondent promised that the Plot bearing No.144 shall be executed in favour of the Complainant or his nominees and that if there is any delay in completion of the work pertaining to the agreement from the Government or from any statutory authority both the parties

have to wait for the same and there shall not be any dispute on this point and both the parties have to abide by the same.

6. It was further submitted that the remaining sale consideration was arranged and consequently the Complainant approached the Respondent to get the Sale Deed executed in his favour. Whereas the Respondent was postponing the execution of Sale Deed on one pretext or the other that there was delay from the government and statutory authorities, thereby trying to take undue advantage of one of the clauses of the Agreement. In lieu thereof, the Complainant prayed that the Respondent may be directed to register Plot No.144 in favour of the Complainant.

Reply by the Respondent:

7. *Per contra*, Vide reply dated 29.11.2022, the Respondent submitted that the Project is registered with RERA bearing No. P01100003171 dated 24.07.2021. The Respondent submitted that it is true that the Complainant, has approached on his own to purchase a plot bearing No. 144 admeasuring 480 Square Yards in the Project. However, the Respondent has asked Complainant that he will register land to the extent of advance paid as the development works will take time. But the Complainant informed that he would wait and that he selected the Plot which is mortgaged.

8. That the Respondent informed that the selected plot is mortgaged and also mentioned that the Respondent will allot another Plot to him and get the same registered, but the Complainant insisted to register the same plot which is mortgaged. The Respondent further submitted that due to the lockdown and

COVID-19 pandemic situation, the Project faced delays. Respondent added that he is willing to return the amount along with interest, if applicable. The Respondent, therefore, prayed to drop the complaint in which the delay is caused due to pandemic situations.

Rejoinder:

9. The Complainant, vide Rejoinder dated 23.01.2023, denied the Respondent Developer's contentions. He submitted that the Respondent Developer has not admitted to the execution of the 'Agreement of Sale' or the receipt of the sale consideration in their reply. The Mortgage Deed with HMDA, executed by the Developer subsequent to the execution of Agreement of Sale dated 05.10.2019 with the Complainant, is deemed illegal and against the laws governing property transactions. The Developer's attempt to take advantage of the COVID-19 pandemic situation is refuted, as the Agreement of Sale was executed prior to the pandemic. He added that the Respondent is in violation of the provisions of the Act, 2016 and the Rules thereunder as he has executed an agreement of sale with the Complainant much prior to even making an application before this Authority.

10. Accordingly, the Complainant prayed to direct the Respondent Developer to register the Schedule Residential Plot per the Agreement of Sale dated 05.10.2019, accepting the remaining sale consideration. And that if the agreed plot is mortgaged, direct the Respondent Developer to provide an undertaking to release the mortgage and register the plot in the Complainant's name after receiving the balance sale consideration.

Hearing conducted:

11. During the course of hearing, the Complainant reiterated the contents of his complaint and the Counsel for Respondent appeared on 18.01.2024 and sought time for arguments. Accordingly, the matter was adjourned to 15.02.2024 for final arguments as the pleadings were complete. On 15.02.2024, the Respondent, despite explicit directions from this Authority to make final submissions, failed to appear. Complainant appeared and prayed to grant reliefs as prayed for.

Observations and Directions of the Authority:

12. As the Respondent failed to appear despite explicit directions of this Authority, vide this final order, the Respondent Developer is set *ex-parte*.

13. After perusal of the contentions and averments of both parties in their respective pleadings, it is observed that the Respondent admittedly executed an Agreement of Sale dated 05.10.2019 with the Complainant, prior to obtaining RERA registration, which was only granted on 24.07.2021. This sale is in clear violation of Section 3 which categorically prohibits any sale by the promoter before obtaining registration from this Authority.

14. Therefore, while exercising its powers under Section 59 read with Section 38 of the Act, this Authority deems it fit to impose penalty for an amount of Rs.7,07,926/- (Rupees Seven Lakhs Seven Thousand Nine Hundred and Twenty-Six Only) upon the Respondent Developer for having admittedly, violated Section 3 of the Act, 2016 payable 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, failing which appropriate action under Section 63 of the Act, 2016 shall be initiated against the Respondent.

15. Further, the Plot No.144, which was so allotted to the Complainant was admittedly, mortgaged to the HMDA subsequently in the year 2020. In this regard, it is pertinent to note that Section 11(4)(h) of the Act provides as under:

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

16. Therefore, as per Section 11(4)(h), the Complainant's rights and interests concerning Plot No. 144 in the Project shall remain unaffected in line with the Agreement of Sale dated 05.10.2019, and the Respondent shall be held accountable for complying with the terms specified therein.

17. Therefore, upon consideration of the facts and circumstances, while exercising its power under Section 37 of the Act, this Authority deems it fit to pass the following directions:

- a. The Respondent shall be liable to pay a penalty of Rs.7,07,926/- (Rupees Seven Lakhs Seven Thousand Nine Hundred and Twenty-Six Only) upon the Respondent Developer for having admittedly, violated Section 3 of the

- Act, 2016 payable 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, failing which appropriate action under Section 63 of the Act, 2016 shall be initiated against the Respondent; and
- b. The Respondent is directed, if not already done, to release the mortgage of the Plot No.144 admeasuring 480 Sq, in "SPRING CITY" from HMDA through the sub-registrar within 60 days; and
- c. As per the Agreement of Sale, the Respondent agreed to register the Plot No.144 in favour of the Complainant within 1 (one) month from the date of the Agreement i.e., 05.11.2019, but he has failed to do so as mortgage had not been released. Therefore, the Respondent is directed to pay interest at the rate of 10.65% as per Rules, 2017 to the Complainant for delay in possession of the Plot No.144 admeasuring 480 Sq, in "SPRING CITY" from 05.11.2019 within 30 days. It is also not correct on the part of the Complainant to make sale agreement of the plot which has been mortgaged to HMDA; and
- d. The Complainant shall pay the remaining balance sale consideration of Rs.33,15,000/- (Rupees Thirty-Three Lakhs Fifteen Thousand Only) to the Respondent Developer within 30 days of release of mortgage of Plot No.144 admeasuring 480 Sq, in "SPRING CITY" from HMDA through the sub-registrar by the Respondent; and
- e. The Respondent, within 30 days of receiving the said consideration, register Plot No.144, admeasuring 480 Sq, in "SPRING CITY", situated in Survey No. 383 / P 385 / P 386/P, 387 / P 388 / P 455 / P & 456 / P at Sultanpur Village, Ameenpur Mandal, Sanga Reddy District, Telangana in favour of the Complainant.

18. In lieu thereof, the present complaint stands disposed of.

19. 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) as per Section 44 of the Act, 2016.

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

