

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

Misc. Appl. No.2 of 2024

&

Misc. Appl. No.3 of 2024

In

Complaint No.572/2024

5th 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 Mohd. Raziq Khan & 147 Ors.

...Complainants

Versus

M/s Elite BHEL Employees Mutually Aided

Co-Op. Housing Society Ltd., & 12 Ors.

...Respondents

The present applications filed by the Complainants herein came up for hearing on 21.02.2024 before this Authority in the presence of the Counsel for Complainant, Sri Abhinay Tiwari & Sri Guru Charan along with Counsel for Respondent No.1 to 3 and 7 to 13, Sri Nayini Rajeshwar Rao and none for the remaining Respondent Nos.4, 5 and 6, and upon hearing the arguments, this Authority passes the following **ORDER:**

2. The Complainants had preferred a Complaint vide No.572/2022, wherein, after hearing the parties and consideration of the facts and circumstances, this Authority passed an elaborate Order on 19.10.2023 giving the following directions to the parties:

- a. *The Complainants to deposit/ pay the outstanding amounts of the 42 members to the Respondent No.1 Society within 30 (thirty) days from the date of receipt of this Order; and*
- b. *The Respondent No.1 Society, within 30 (thirty) days of receiving this outstanding amount shall transfer the same to Respondent Nos.4, 5 & 6;*
- c. *The Respondent Nos.4, 5 & 6 shall, within 7 days of the receipt of the said outstanding amounts execute registered Sale Deeds in favour of the said 42 Complainants/members as enlisted in the table above. Parties are hereby informed that in case of any default on part of said 42 Complainants/members in paying the balance amounts, they shall be liable to pay such amounts with interest at the rate of 10.65% (8.65% + 2%) per annum to the Respondent No.1 Society. In case any amount has already been already collected by the Respondent 22 of 22 No.1 Society from the said 42 Complainants/members, the interest part thereof, shall be paid to the Complainants for keeping the amount with the Society.*

3. Subsequent to the same, the Orders were issued to the concerned parties through their respective counsels. Vide the present Miscellaneous Applications, the Complainants seek directions from this Authority which are dealt with separately for convenience.

I. Misc. Appl. No.225/2024

4. The Complainants submitted that the Complainants have received the copy of the Order on 19.01.2024. In furtherance to the same, the Complainants have issued a letter to the Respondent No. 1 Society seeking bank details of the Society for depositing the outstanding amounts so as to comply with the Order of the Authority dated 19.10.2023. Further, Complainants have also issued a letter to Respondent Nos. 4, 5 & 6 intimating the readiness

and willingness of the remaining 42 members of the Society in complying with the Order dated 19.10.2023.

5. The Complainants further submitted that the Respondent No. 1 Society vide response dated 03.02.2024 to the above-mentioned letter stated that the Bank account of the Society has been frozen in view of the criminal complaint filed by the members of the Society with RC Puram PS in FIR No. 670/2021 with Economic Offences Wing, Society.

6. They also submitted that it came to the knowledge of the Complainants through some reliable sources that the Respondent No. 1 Society is managing its day-to-day activities through some alternative bank account, and that despite the specific directions of this Authority, the Respondent No. 1 Society is not willing to provide the Complainants with the bank account details wantonly with a mala fide intention to make it difficult for Complainants to comply with the Order as the 30 (thirty) days period.

7. Accordingly, the Complainants prayed to deposit the outstanding amounts with the Authority and directing the Landowner to collect the same from this Authority and proceed with the registration of plots as per the Order dated 19.10.2023.

II. Misc. Appl. No.226/2024

8. While reiterating the same contentions as made above, the Complainants additionally submitted, in this Application, that, Respondent Nos. 4, 5 and 6 are planning to alienate the Schedule Property to third parties, making it impossible for the Complainants to get their plots registered, and therefore prayed to restrain the Respondent Nos. 4, 5 and 6 from alienating the Schedule Property to any third parties other than to the 42 members enlisted in the Order dated 19.10.2023.

Hearing Conducted:

9. The parties were called for hearing on 21.02.2024, whereby the Counsels for Complainant appeared along with Counsel for Respondent Nos.1 to 3 and 7 to 13 appeared and none appeared for Respondent Nos. 4, 5 and 6. The Complainants filed a Proof of Service Memo submitting that, service of notice of hearing was completed on the Respondents via e-mail on 16.02.2024 and annexed the proof of such service.

Reply on behalf of Respondent Nos.1 to 3 and 7 to 13

10. The Complainants reiterated the contents of their Applications and prayed for the reliefs thereof. Whereas the Counsel for Respondent Nos.1 to 3 and 7 to 13 entered appearance and filed Reply to Misc. Appl. No.225/2024 objecting to the applications as not maintainable under law as this Authority has become functus officio, therefore, cannot entertain and pass any directions in the present Applications and that same are liable to be dismissed.

11. He further submitted that 147 Complainants represented by Sri Mohd. Raziq Khan (Complainant No.1) and the deponent, Mr. Surender Reddy filed the present Applications. That except 42 complainants all the other petitioners got the land registered during the pendency of the main case and they have no grievance at all, therefore, the GPA holders cannot file the present applications representing the 147 members, who are not the members of the Respondent No.1 Society. Further, that GPA holders have filed the old GPA copy without filing any Rule 32 Affidavit and permission petition before this Authority.

12. The Respondent Nos.1 to 3 and 7 to 13 also submitted that in the absence of the supply of all documents was unable to file full counter to the complaint and in fact there was no proper opportunity to submit the written version or oral submissions. He added that the landowner intimated the society that they are invoking the relevant clauses of unregistered MOU and SMOU and stated that the agreements deemed to be cancelled on account of the

failure on the part of society or its members in making necessary payments as per schedule. That the Complainants, vide the present Applications, are virtually seeking the review of Order by seeking further directions to respondents.

13. It was further submitted that the Complainants, instead of making deposit, now seeking a direction/permission to deposit before this Authority. That the Complainants made a false complaint against the landowners and Society Management before the PS RC Puram in FIR No. 670/2021 under Economic Offences Wing (FOW) and on filing of such complaint the Police wrote a letter to the Society Bank i.e. SBI, BHEL, RC Puram and the bank, froze the account of the Society by its letter dated 24.09.2021.

14. It was submitted that 126 Complainants including the GPA holders have already got the land registered on their names during January 2023 but however, having knowledge of freeze of account, till date not taken any steps to get the account de-freeze. On disposal of the complaint by this Authority, 42 petitioners sent emails and WhatsApp messages to the society for deposit of the amount, and they were informed about the status of the account. The Complainants can very well deposit the amount in the Society account but due to the same being frozen, same cannot be transferred to landowners. That the Society in their replies requested the Complainants to get the account de-freeze by taking necessary steps on the false complaint, but the members failed to respond. That the members who got the plots registered on their names have not deposited in the Society account and individually they have given a consent to deposit amount in the ESCROW account in SBI, Sanathnagar Branch.

15. It was submitted that the Complainants on one hand are seeking registration of land on their names and on the other hand they want prosecute the Society Management i.e. Respondents No. 1 to 3 and 7 to 13. It is always open to the Complainants to make necessary deposits in the society account and the Society also ready to transfer the same to the landowners provided the account is de-frozen by Complainants.

Reply on behalf of Respondent Nos.4, 5 and 6:

16. On 22.02.2024, the Respondent Nos.4, 5 and 6 filed a Reply submitting that the applications filed by the Complainants are not maintainable either under law or on facts of the case for the reason that the main complaint itself was disposed of and in the absence of any pending proceedings no applications can be entertained by this Authority and that this Authority has no jurisdiction or power to exercise in entertaining the applications.

17. They submitted that when the Complainants have knowledge of maintaining alternative bank account by the Respondent No.1 Society, they ought to have sought directions from this Authority to direct the Respondent No.1 Society to furnish the said alternative bank account details to enable the Complainants for deposit of the amounts.

18. They also submitted that there was no necessity for the Respondent No.4 to sell individual undeveloped plots to the members of Respondent No.1 Society and there are no such recitals in the Memorandum of Understanding between this Respondent Nos.4, 5 & 6 and the Society. That since the Society did not acted upon the terms of the MOU and the Supplementary MOU, a legal notice was issued for Cancellation of MOU and the Supplementary MOU and to receive the outstanding payments paid by the Society to the Respondent No.4. That pursuant to the legal notice for cancellation of MOU and supplementary MOU and during the pendency of the complaint before this Authority, the Society along with its members approached the Respondent No.4 and proposed to sell undeveloped plots to the members in respect of the outstanding amounts due with Respondent No.4. That since the Respondent No.4 was not under any obligation to consider the request made by the Complainants, but however on humanitarian grounds and also subject to withdrawal of the cases filed against the Respondent No.4 to 6 had agreed to register individual sale deeds with a condition precedent to the members who are willing to purchase the individual plots shall pay the sale consideration including the earnest amount paid by them on or before 31.12.2022 and further specific condition in written was also

communicated to the members of the society that no sale transactions will take place and no consideration will be received after 31.12.2022 and the members who failed to avail the above offer, their amounts if any already paid to the Society the same shall be refunded to them.

19. It was submitted that in compliance of the commitment made by Respondent No.4 N. Siva Prasad, as executed 125 sale deeds in favor of the Complainants and in respect of the left out members who failed to pay the sale consideration within the stipulated time, the Respondent No.4 has refunded the entire amount to the society and the last payment was made to the society on 22.09.2023 much prior to the passing of the order dated 19.10.2023 by this Authority and since the Respondent No.4 has refunded the entire outstanding amounts to the society, there is no privity of contract exists between Respondent Nos.4, 5 & 6 and the Respondent No.1 Society and further the order of this authority is not binding on Respondent Nos.4, 5 & 6.

20. Accordingly, Respondent Nos.4, 5, & 6 prayed to dismiss the applications with exemplary costs.

Observations & Directions of the Authority:

21. The Counsel for Complainants reiterated the contents of applications and prayed for the relief thereof. They also filed a Memo dated 21.02.2024 that relief is with respect to only remaining 42 members as has been stated in the Order dated 19.10.2023. None appeared for Respondent No.4, 5 & 6 and therefore, they have been set *ex-parte*. Respondent Nos.1 to 3 and 7 to 13, on the other hand preliminarily submitted that the applications are not maintainable as the Complainants are seeking review of the Order dated 19.10.2023, which is not permissible under the Act, 2016. The Counsel for Respondent Nos.1 to 3 and 7 to 13 also submitted that in case the Complainants were so eager to comply with the Order of the Authority, then they ought to have withdrawn the complaint pending investigation before the

Economic Offences Wing, Hyderabad that would enable them to deposit the amounts in the account of the Society without any hindrance. He added that the Society has no hesitation in implementing the Order in as much as the Complainants, withdraw the complaint before the Economic Offences Wing, Hyderabad which will result in the de-freezing of the Society's bank account.

22. In this regard, upon the Authority making an endeavor to settle disputes, the Counsel for Respondent Nos.1 to 3 and 7 to 13 submitted that these remaining 42 members may deposit the amounts in the escrow account at SBI Branch, created for the purpose of registering 126 plots in favor of the Complainants by the Respondent Nos.4, 5 & 6. To which, the Complainants submitted that the said account was created as these 126 members ceased to be members of the Society and therefore, had no choice than to create such an escrow account and complete the payments for registration of their plots unlike in the present situation where the 42 Complainants are members of the Society. Nonetheless, the Counsel for Complainants agreed that the remaining 42 members of the Society are willing to deposit the remaining amounts in the said escrow account as mentioned by the Counsel for Respondent Nos.1 to 3 and 7 to 13.

23. With respect to the argument of the Society that upon withdrawal of the complaint before Economic Offences Wing, the Society is willing to implement the Order dated 19.10.2023 by accepting the deposits, it is observed that this Authority does not have subject matter jurisdiction of dealing with complaint pending investigation before the Economic Offences Wing.

24. With respect to the argument of the Respondents that the applications are not maintainable as the Authority does not have powers, Section 40(2) read with Section 38 clearly empowers this Authority to enforce the orders passed by this Authority and also issue such directions, as it deems necessary from time to time for discharging its obligations under the Act.

25. The Respondent No.4, 5 & 6 also submitted no sale transactions will take place and no consideration will be received after 31.12.2022 and the members who failed to avail the above offer, their amounts if any already paid to the Society the same shall be refunded to them. That accordingly, Respondent No.4 has refunded the entire amount to the society and the last payment was made to the society on 22.09.2023. That since Respondent No.4 has refunded the entire outstanding amounts to the society, there is no privity of contract exists between Respondent Nos.4, 5 & 6, and the Respondent No.1 Society and further the order of this authority is not binding on Respondent Nos.4, 5 & 6.

26. In this regard, it is observed that, as per the findings of the Order dated 19.10.2023, the Respondent Nos. 4, 5 & 6 were in receipt of Rs.17.55 crores from the Respondent Society paid by the Complainants in lieu of the allotment done by lottery of the plots sized 167 sq yds and 200 sq yds on 24.12.2022. This can be corroborated by the fact the Respondent No.4 along with the members of the managing committee conducted a General Body Meeting (“GBM”) dated 20.12.2022 wherein it was expressed that the Respondent No.4 would come forward for execution of sale deed in favor of the Complainants and other members of the Society. The Respondent Nos.4, 5 & 6 did not substantiate its averment that it has refunded the entire amount to the society and the last payment was made to the society on 22.09.2023. Neither has the Society, in writing or during arguments, admitted to the receipt of such monies. In the absence of the same, it cannot be assumed that refund has taken place. Further, irrespective of whether there is privity of contract between the Respondent Nos.4, 5 & 6 and the Complainants, as per the terms of the MOU, the Respondent Nos.4, 5 & 6 are bound to register the plots in favor of the remaining 42 Complainants.

27. The Counsel for Respondent No.1 to 3 and 7 to 13 also submitted that the MOU between the Society and the Landowner was cancelled pursuant to exchange of legal notices but no such document to substantiate the same has been filed, either by the Society or by

the Landowner, who also made the same argument. In the absence of any proof of such cancellation, this Authority cannot put the interests of the Complainants at the helm of the disputes between the Society and the Landowners, and therefore deems it fit to pass the following directions while exercising its powers under Section 40(2) read with Section 37:

- a. Complainants are directed to deposit the remaining amounts as described in detail in the Order dated 19.10.2023 in Escrow Account at SBI, Sanath Nagar branch within 30 days, and
 - b. Respondent Nos.4, 5 & 6, after receipt of the said amounts from the said Escrow Account are directed to register the plots, as enlisted in the Order dated 19.10.2023 within 15 days from the date of receipt of the amounts and submit proof of such registration.
 - c. Till such time as the registration is completed and the Respondent Nos.4, 5 and 6 file a Memo of completion of registration, the Respondent Nos.4, 5 and 6 are restrained from alienating, transferring, or creating such third party interests in the subject plots of land.
28. In lieu thereof, the Misc. Applications are disposed of.

Sd/-

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

Sd/-

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

Sd/-

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