

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

COMPLAINT NO.623 OF 2023

1st Day of August 2024

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

Ms. Erranki Santhoshi Priya ...Complainant

Versus

M/s Abacus Constructions
Represented through its Authorised Representative ...Respondent

The present matter filed by the Complainant herein came up for hearing on 18.10.2023, 14.11.2023, 20.12.2023, 30.01.2024, 15.02.2024 and 03.04.2024 before this Authority in the presence of Counsel for the Complainant, Sri G.N.S.S. Prasad, and Counsel for the Respondent, Sri Uppal Kiran Kumar along with Authorized Representative of 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 Complainant booked a two-bedroom flat bearing No. 710 with Respondents project namely "AVANTE KALPATARUVU" which is registered with this Authority vide Regn. No. P02500002612 for a total sale consideration of Rs.94,80,900/-. At the time of booking of the said flat, Respondent informed that all the link documents are in order and that the Respondent obtained all necessary permissions from concerned authorities and there are no legal issues. Further, it was informed that present project was approved by nationalized bank and Complainant can avail loan from any nationalized bank.

4. Accordingly, the Complainant paid a sum of Rs.2,00,000/- on 19.09.2022 and Rs. 2,97,747/- on 23.09.2022 and Rs. 5,00,000/- on 01.11.2022 and Rs. 4,93,241/- on 04.11.2022, Rs. 5,00,000/- on 01.11.2022 and Rs.4,93,241/- on 04.11.2022 to enter into Agreement of Sale. The Complainant has paid a total sum of Rs. 19,90,988/- (Rupees Nineteen Lakhs Ninety Thousand Nine Hundred and Eighty-Eight Only) by borrowing the amounts from financial institutions towards second instalment. The Respondent informed to the Complainant that after payment of second instalment they will provide all the link documents, if any case the complainant fails to pay the second instalment, then Respondent will cancel the said flat and the amount which Complainant paid will be forfeited.

5. After repeated requests the Respondent sent the draft Agreement of Sale and also, sent some of the link documents such as Development Agreement and rest of the documents sent by them is not in legible condition and it was informed that the original Title Deed has been lost. The Complainant alleged that the draft Agreement of Sale does not comply with relevant provisions under the Act, 2016 and the Respondent has not followed the guidelines of the Hon'ble Supreme Court framed in

case of *Irei Grace Raltch Pvt Ltd and Abhishek Kanna and others*. The Complainant requested changes to the agreement and legible link documents, however, the Respondent refused to make such changes and suggested seeking a loan from private banks.

6. The Complainant made several requests through e-mails dated 06.01.2023, 30.01.2023, 03.02.2023, 16.02.2023, 22.02.2023, 20.03.2023 and 30.03.2023 requesting to amend the Agreement of Sale as per the Guidelines of the Apex Court and the Act, 2016, TP Act and Contract Act and further requested that to provide all the legible link documents so as to proceed with further. Since, the original Title Deeds were lost, the Complainant also requested to provide police complaint and non-traceable certificate and paper publications, if any, which is mandatory to process loan in any nationalized banks. The Respondent, instead of providing the documents, replied that the Agreement of Sale prepared is as per the policy of their Company, and they will not provide the link documents which are required to process the loan from nationalized bank and further informed to avail loan from some private banks and provided a list of such banks.

7. The Complainant further submitted that the Respondent sent a mail on 06.04.2023 and subsequently a Letter dated 14.06.2023 received by Complainant on 16.06.2023, demanding to pay third instalment of Rs.26,13,870/- (Rupees Twenty-Six Lakhs Thirteen Thousand Eight Hundred and Seventy Only) along with interest of Rs.50,927/- (Rupees Fifty Thousand Nine Hundred and Twenty-Seven Only). In that letter, the Respondent stated that the Cellar, First Slab for Units No. 1 to 15 has been completed. However, on the contrary, the construction was still in the initial stage and even 1st Cellar of the blocks had not been completed as alleged in the letter dated 14.06.2023.

8. Aggrieved by the said circumstances, the Complainant prayed as follows:
- a. *To declare the letter dated: 14.06.2023 vide its CRN No. 0060033081 is illegal arbitrary and same is not binding on the Complainant; and*
 - b. *To direct the Respondent to provide all the link documents in legible form including Police Complaint, Non-Traceable certificate and paper Publications; and*
 - c. *To direct the Respondent to amend the Agreement of Sale as per the guidelines of the Hon'ble Apex Court and as per Contract Act, TP Act and RERA Act; and*
 - d. *To direct the Respondent to pay the cost of this complaint.*

Reply by the Respondent:

Preliminary objections

9. *Per contra*, vide reply dated 20.12.2023, the Respondent submitted that the Complainant has deliberately and intentionally suppressed that the booking of the subject Flat has stood cancelled and/or terminated on account of the continued and persistent default and/or breaches by the Complainant of the terms and conditions of the Booking Application Form and the provisions of the Act, 2016.

10. It was submitted that the understanding between the parties was duly recorded in the Booking Application Form read with the Cost Sheet, both dated 29.08.2022. The Respondent having already acted upon the same on account of the admitted failure of the Complainants to come forward to execute Agreement for Sale and make timely payments as per the Payment Schedule agreed to by the Complainants and the refund, if any, was in accordance with the terms and conditions contained in the Booking Application Form read with the provisions of the RERA Act.

11. The failure of the Complainants to adhere to the terms and conditions of the agreement has impacted the liquidity flow that could otherwise be made available to the Respondent for the Project under construction in as much as the timely payments are directly proportionate to the Respondent's project construction progress and any sudden and continued delayed payments and/or refusal to make payments increases the overhead burden on the Respondent in terms of corporate commercial viability in the interest of other stake holders at large. The Respondent has thus suffered losses on account of the Complainants holding onto the said Flat for their self-serving purposes, which constrained the Respondent to cancel and/or terminate the booking of the Flat as stated above. The Respondent is entitled to its claim in this respect. Instead of complying with the requisitions contained in the Pre-Termination Notice dated 27.06.2023; the terms and conditions of the Booking Application Form read with the Cost Sheet; and their obligations under the RERA Act, the Complainants have belatedly, as an afterthought, filed the above Complaint in a bid to cover up its own default and to pressurize the Respondent to cave into its illegal demands.

12. The Complainant is in admitted breach for not having come forward for the execution and registration of the agreement for sale despite being repeatedly called upon by the Respondent to execute an Agreement for Sale. The Complainant failed and/or neglected and deliberately delayed the execution of the Agreement for Sale under the pretext of clauses allegedly not as per the RERA Act and/or raising frivolous title queries and/or questioning the title validity and frivolous and unwarranted demand of documents, despite the same being uploaded on the RERA website and available in public domain.

13. The consequences of breach and/or default are provided in the Booking Application Form governing the parties, and more particularly clauses 11, 15 and 17, as already acted upon by the Respondent. Under the Booking Application Form, upon cancellation/termination the right which remains of refund, if any.

14. The refund, if any, and/or cancellation of the amount would thus be governed by the terms and conditions including the terms of cancellation of the booking allotment executed between the Parties therein as contained in the Booking Application Form read with the Cost Sheet. Further, the Respondent is also entitled to recover the losses caused to the Respondent as stated above.

15. The Complainant has suppressed and not disclosed various vital documents/letters/correspondences/emails, particularly the execution of the Booking Application Form and Cost Sheet dated 29.08.2022; the various reminders as also emails sent to the Complainant for execution and registration of Agreement for Sale in respect of the said Flat; the Pre- Termination Notice dated 27.06.2023 and the consequence of default/breach under the Booking Application Form read with the RERA Act made known to the Complainant by the Respondent. Despite the aforesaid misconduct, the Complainants have sought relief for stay of the reminder notice dated 14.06.2023 from this Hon'ble Authority, which cannot be granted in the facts and circumstances of the present case.

16. It is a settled position in law that a party who approaches a court with unclean hands does not deserve any judicial sympathy and/ or is not entitled to any equity or entitled to be granted any reliefs from the court. The present Complaint ought to be rejected on this ground alone.

17. There is no cause of action and/or no cause of action has arisen in favour of the Complainant as it is the Complainants who have violated the provisions of RERA by not executing the Agreement for Sale and not making payments as per the Payment Schedule voluntarily agreed to by the Complainants who are now trying to take advantage of their own fault.

18. The Respondent has complied with his obligations under the RERA. All the requisite information and documents to be furnished by the Promoter for registration of real estate project has been made and disclosed by the Respondent. The Declaration regarding legal title to the land on which the development of the project is proposed; the authenticated copy of Title certificate in respect of the land on which the development of project is proposed duly certified by the Advocate upon perusal of various documents and chain of title, have amongst other documents in respect of the Project been duly uploaded on the RERA Website for public viewing. It is only thereafter upon compliance that the TG RERA Authority has granted Registration of the Project under No. P02500002612. The Complainants have chosen to purchase the said Flat after considering all the documents and information provided by the Respondent and also uploaded on the RERA Website, hence the lame excuses on the documents are nothing but an afterthought.

19. The draft format Agreement for Sale with representations and warranties made by the Respondent has been duly uploaded on the RERA Website, much prior to the booking done by the Complainants, which is in compliance with the draft Agreement for Sale format prescribed in the Act, 2016 and also the same has been approved by the TG RERA Authority along with deviations and subsequently uploaded on the TG RERA Website and in public domain. The same was also communicated to the Respondent at the time of booking. The Complainants had

sufficient opportunity to view it before executing the Booking Application Form for earmarking of the subject Flat.

20. The Hon'ble Authority is empowered to establish the transparency in the real estate business transactions, but limited to question the title validity, which is under the ambit of the civil court jurisdiction, the Complainants with malafide intention and for self-serving motives indirectly raised the issue pertaining to the title flow of the Respondent on the pretext of missing original title document of 1962, without considering the fact that the Respondent devolved and holding undisputed title till date; which is even regarded by other customers and bankers in sanctioning loans to the Respondent's said project. It was submitted that the act of the Complainant is nothing than a mere attempt to abuse the process of law, to trouble the Respondent initially by tactics to defer the making of agreed payments, and now by this Complaint which apparently becomes cost to the Respondent, in the larger interest of other stakeholders.

Facts on behalf of the Respondent

21. The Respondent submitted that Complainant had approached the Respondent personally in and around August 2022 and expressed their interest in booking a flat in Respondent's said Project. After being fully apprised of and having completely understood with the scheme of development, design and specifications/ amenities to be provided in the said Project, the Complainants showed their keen interest in booking a 2-BHK Flat viz. Flat bearing No.710 on the 7th Floor admeasuring 840 sq. ft. i.e. 78.06.sq. mtrs. carpet area in the Complex ("the said Flat") along with one car parking space.

22. The Complainants being and satisfied with the aforestated information and documents, booked the said Flat by Booking Application Form dated 29.08.2022. The said Booking Application Form contained details of the said Flat booked, terms and conditions, cost of the said Flat of Rs.94,80,900/- (exclusive of taxes) ("Flat Cost"). Society Charges & Other charges, amounting to Rs.6,06,142/-, aggregating to total lump sum consideration amount of Rs.1,00,87,042/- (Rupees One Crore Eighty-Seven Thousand and Forty-Two only), exclusive of stamp duty and registration charges and taxes. A separate Cost Sheet was also provided to Complainants containing the detailed break-up of the total lumpsum consideration amount and other terms and conditions including the terms of cancellation of the booking, as more particularly mentioned therein, which was also agreed, confirmed and signed by Complainants. It bears all the particulars of the periodic payment instalments out of mutually agreed sale consideration required for furtherance including flat documentation.

23. The Complainant, accordingly, made payment of Rs.19,90,988/- (Rupees Nineteen Lakhs Ninety Thousand Nine Hundred and Eighty-Eight Only), inclusive of taxes, vide cheques dated 29.08.2022, 12.09.2022, 28.10.2022 and 04.11.2022 respectively as per the terms and conditions of the Booking Application/ agreed Payment Schedule. Simultaneously, to proceed and comply with the formalities, the Respondent requested Complainant to come forward and execute the Agreement for Sale in respect of said Flat, as required under the law. In this regard, the Respondent issued Letters dated 16.09.2022, 11.11.2022, 14.03.2023 (attaching Tax Invoice dated 13.03.2023), 05.04.2023 (attaching Tax Invoice dated 04.04.2023), 07.06.2023 (attaching Tax Invoice dated 02.06.2023) in addition to several verbal requests and reminders during the interim and during this course, calling upon

Complainant to come forward and execute the Agreement for Sale, however the Complainant have miserably failed and neglected to execute the same.

24. All attempts were made to call upon Complainant to come forward to execute the Agreement for Sale. The Complainants had deliberately failed and neglected to respond and/or comply with the requisitions and later as an afterthought raised frivolous queries and/or demand, inter alia, for documents of title link documents and alleged objections to the clauses of Agreement for Sale, which is duly approved by the TG RERA Authority as stated hereinabove.

25. It was also submitted that the Complainant by himself had duly enquired, verified and satisfied about the title link documents of the Respondent and permissions in place prior deciding and booking the said Flat. At the very first instance when the Complainant refused to comply with agreed payment instalment towards her flat booking, on one of the alleged pretext of referred missing original link document pertaining to 1962, ignoring the succeeded original title documents and permissions obtained till date; still the Respondent had reminded and requested the Complainants several times, that the referred document i.e. historical sale deed document bearing registered document no. 376 of 1962, was unavailable in office possibly due to misplacement at site office, and further the Respondent even informed the Complainant for providing the said document's true copy similarly as the Respondent submitted to its other customers and also submitted to various appropriate authorities including TG RERA. However, the Complainants unwarrantedly continued insisting the Respondent to provide original of the referred sale deed document, as an alleged pre-condition to executing Agreement for Sale and for making payment of outstanding dues towards the said Flat.

26. Secondly the Respondent duly complied with the RERA Act, for which the TG RERA Authority has issued registration number to the Respondent's said Project as cited in above paras. That the draft of Agreement of Sale which the Respondent's submitted for registering with TG RERA, the same has been given to the Complainant, in par with other customers of the said Project as also uploaded on the TG RERA Website in public domain. In that draft which has been approved by the TG RERA Authority and other customers of the said Project have been issued and used without any issues/objections, the complainant raised frivolous objections on some of other alleged pretext, intentionally to defer and/or avoid making the timely agreed payment towards the flat booking.

27. Despite repeated requests and reminders to come forward and execute Agreement for Sale and make payment of outstanding dues to avoid delay interest and/or cancellation/ termination of carparking / booking of the said Flat, the Complainants then chose to maintain stoic silence. As on 27.06.2023, an amount of Rs.19,90,991/- along with interest of Rs.1,53,685/- aggregating to Rs.21,44,676/- is outstanding as instalment dues not paid and/or default committed by the Complainants. Left with no option, the Respondent was constrained to send a Pre-Termination Notice dated 27.06.2023 by and under it's email dated 27.06.2023 as a final reminder prior to cancellation / termination of the booking of the Flat from it's records. The Complainants failed and neglected to comply with the requisitions contained in the various letters read with the said Pre-Termination Notice within a period of 15 days from the date of receipt of the said Notice. The Respondent acted upon the same after having waited for sufficient time mentioned under the Notice. The said booking of Flat has stood cancelled / terminated in terms of the Booking Application Form read with the Cost Sheet on account of continued and persistent failure and neglect of the Complainants.

28. In view of the foregoing grounds, the Respondent prayed to dismiss the present complaint.

Rejoinder by the Complainant:

29. During the course of hearing, it had come to the notice of this Authority that the main contention raised by the Complainant was the discrepancy in the Draft Agreement of Sale provided by the Respondent that the same is not in accordance with Rule 38 of the Rules, 2017. Therefore, the Complainant was directed to file a rejoinder specifically pointing out the alleged differences in the Draft Agreement provided by the Respondent and the one stipulated in the Rules, 2017.

30. Therefore, vide Rejoinder dated 15.02.2024, the Complainant submitted that the Authorized Agent and Marketing Team of the Respondent Company made several calls and requested to book a Flat in "Kalpa Taruvu Avante" and ensured that all the Title Deeds are in order and same was registered with RERA. Complainant approached and booked a Flat and requested to provide all the link documents so as to verify the title of the Respondent. But the Respondent has not provided the link documents and promised that they will provide after receipt of the booking amount and the Respondent further ensured that all the Nationalized Banks will provide the Housing Loans against the Flats in the present Project.

31. It was submitted by the Complainant that when the original link document was lost, the Respondent ought to have informed the Complainant but the Respondent never informed to the Complainant prior to receipt of the Booking Amount. That the said link document is very much essential to establish the title of the present title holder and also very much essential to avail loan from the Nationalized Banks.

32. It was further submitted that the Respondent further alleged that the Respondent Company has uploaded and available all the title Deeds and permissions. In fact, the Respondent has not uploaded the single document to establish the title of the present title holder and as per the procedure contemplated under the Act, 2016.

33. The Complainant submitted that the Booking Application Form and Agreement of Sale are not in accordance with the either Act, 2016 or the Transfer of Property Act, 1882, or the Contract Act, 1872 and the Agreement of Sale is completely a one sided i.e., unilateral and such Agreement is void. He added that the Booking Application is also one sided and no liabilities have been incorporated towards Developer/Respondent Company. At the time of booking, no time was given to the Allottee/Complainant to peruse the conditions mentioned in the Booking Application and they have deceived the Complainant stating that the conditions mentioned in the form are in accordance with the Law.

34. In addition to this, the Complainant pointed out some differences between the Draft Agreement of Sale provided by the Respondent and the Agreement of Sale under Annexure to Rule 38. He accordingly prayed to grant the reliefs as prayed for.

Observations and Directions of the Authority:

35. It is categorically observed that the Complainant's main contention is that the link document of the year 1962 has not been provided by the Respondent despite him repeatedly asking for it as the said document is required to process his loan. He also contended that the Draft Agreement of Sale provided by the Respondent does not conform to the stipulations in the Annexure to Rule 38 of the Rules, 2017.

36. *Per contra*, the Respondent submits that the Respondent has complied with his obligations under the Act, 2016 and that all the requisite information and documents to be furnished by the Promoter for registration of real estate project has been made and disclosed by the Respondent. He further added that the copy of title certificate in respect of the land on which the development of project is proposed is duly certified by the advocate upon perusal of various documents and chain of title, and along with other documents in respect of the Project have been uploaded on the RERA Website for public viewing.

37. To this, the Complainant submitted that at the time of booking or upon his subsequent meetings with the Respondent, the Respondent stated that the original title deed of bearing registered document No. 376 of 1962, was unavailable in office due to misplacement, that however a copy of the said document has been supplied to other customers and none have raised any objection to the same. The Respondent in this regard, while reiterating the same stance, submitted that several other allottees/customers have obtained loan on a copy of this very document and the original document is not necessary for procuring the same.

38. During the course of hearing the Respondent submitted that there is no dispute on the title of the Respondent's project land parcel till date. He also brought to the notice of this Authority that public notices had been published at the relevant time for loss of the registered document no. 376 of 1962 and the Respondent has also pursued with the concerned department for the said document and the same is within the knowledge of the Complainant. He also submitted that appropriate steps in this regard are being taken to recover the original document but, in the meantime,

there was no hurdle for the Complainant to obtain loan as several other customers had obtained loan with a copy of the registered link document no. 376 of 1962.

39. As regards terms of the Draft Agreement of Sale provided by the Respondent is concerned, it is observed that there are not many significant differences with the Draft Agreement of Sale provided in the Annexure to Rule 38 of the Rules, 2017. However, it is observed that the Respondent ought to have mentioned the title flow to the project land in an elaborate manner within the Agreement of Sale as has been stipulated in the Draft Agreement of Sale provided in the Annexure to Rule 38 that will enable the allottees to know the status of the encumbrance on the land.

40. Even though few differences are there, this Authority is of the view that the potential allottees may find it difficult to ascertain their rights and liabilities in the such Agreements which is not word-to-word identical as that stipulated in Draft Agreement of Sale provided in the Annexure to Rule 38. The intent and purpose of bringing such Draft Agreement of Sale is to ensure transparency and uniformity in the process of allotment and to avoid any ambiguities for the allottees.

41. The Complainant had raised the issue with respect to the discrepancies in the Draft Agreement of Sale provided by the Respondent as well as seeking original copy of the 1962 document several times with the Respondent vide e-mails and the Respondent in-turn, vide e-mails several times sought for payment as per the payment schedule agreed by the Complainant. As the Complainant failed to abide by the payment terms stipulated in the Booking Application Form and Cost Sheet dated 29.08.2022 i.e., the Complainant failed its obligation under Section 19(6), the Respondent cancelled the allotment made in favour of the Complainant in terms of the Booking Application Form and Cost Sheet dated 29.08.2022.

42. This legislation aims to safeguard the interests of both the promoter and the allottee. While the Complainant should have recognized the Respondent's inability to procure the 1962 document, and the fact that other allottees secured loans without it, the Respondent should have understood the Complainant's vulnerable position. The Complainant was understandably concerned that discrepancies between the Agreement of Sale and the rules might impact its rights.

43. This Authority has perused the material on record, considered the contentions raised by the parties. This Authority has perused the alleged differences and also perused, in detail, the stipulations under the Annexure to Rule 38. In consideration thereof and in view of the observations made above, this Authority, vide its powers under Section 36 and 37 of the Act, 2016, and in the interest of the allottee, passes the following directions:

- a. The Respondent is directed to change the Draft Agreement of Sale as provided on the TGRERA Website and also use the Draft Agreement of Sale provided as Annexure to Rule 38 henceforth with the potential allottees, if any in order to avoid any future discrepancies; and
- b. Admittedly, the Respondent has collected more than 10% of the total sale consideration without entering into an Agreement of Sale with the Complainant in violation of Section 13 of the Act, which attracts penalty under Section 61. Therefore, a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) is imposed on the Respondent payable within 30 days in favour of TG 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

- c. It is observed that on one side, the Complainant is not following the terms of the payment schedule and on the other he is aggrieved by the both the contents of the Draft Agreement of Sale and by the ownership documents provided by the Respondent. As only the token amount is paid by the Complainant and moreover, after verifying all the required documents the Complainant has paid such amounts. Further, it is also observed that the GHMC has approved and released the permit on prima-facie title. With respect to sanction of loan by any schedule, it is obvious, prima facie ownership document will be submitted to bank for ownership verification. As the Agreement of Sale has not materialised between the Complainant and the Respondent, the Complainant is at liberty to seek refund of the total amount paid by him without any cancellation charges.

44. In lieu thereof, the present Complaint stands disposed of. Parties are hereby informed that failure to comply with the directions stipulated above shall attract penalty under Section 63 and 67 of the Act, 2016.

45. If aggrieved by this Order, the parties may approach the Telangana Real Estate Appellate Tribunal in accordance with Section 44 of the Act, 2016.

Sd/-
Sri K. Srinivasa Rao,
Hon'ble Member,
TG RERA

Sd/-
Sri Laxmi Narayana Jannu,
Hon'ble Member,
TG RERA

Sd/-
Dr. N. Satyanarayana, IAS (Retd.),
Hon'ble Chairperson,
TG RERA