

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

COMPLAINT NO.821 OF 2021

30th Day of December, 2023

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

Rock Gardens Flat Owners Welfare &
Maintenance Co-Operative Society ...Complainant

Versus

M/s Rainbow Builders
rep. through Sri Ravinder Reddy ...Respondent

The present matter filed by the Complainant herein came up for hearing on 09.08.2023, 29.08.2023, 21.09.2023, 19.10.2023 and 16.11.2023 before this Authority in the presence of the Advocate, Mr. Deepak Chowdhary along with Office bearers of the Complainant Association, and Sri Maram Ravinder Reddy on behalf of the Respondent Builder/Developer, and upon hearing the arguments of both 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") seeking the following reliefs against the Respondent Builder:

"(i) direct the respondent to register the Residential Project under the name "Rock Gardens" situated on Plot bearing Nos.155/P, 156, 157, 158, 159, 160, 161, 162,

163, 164, 165, 166, 167, 168 and 169, forming part of Sy.Nos. 300 to 303, 306 to 311 and 313 to 315 in "MARWA TOWNSHIP-B", Narsingi Village and Grampanchayat, Gandipet Mandal (erstwhile Rajendranagar), Ranga Reddy District, Telangana with this Hon'ble Authority,

(ii) to appoint a registered Architect to evaluate the pending works of the Residential Project,

(iii) direct the Respondent to deposit the entire expenditure/cost to be incurred for completion of the pending works (amenities) into the account of the Complainant Association so as to enable the Complainant Association to complete the works by appointing a civil contractor,

(iv) direct the Respondent to deposit the amount of Rs.80,00,000/- as agreed under Clause 26 of the MoU, dated 22.01.2021 along with the interest rate of 12% per annum till the date of realisation,

(v) direct the Respondent to deposit the amount collected as corpus fund from each of the allottees at the time of execution of the Sale Deed collectively into the account of the Complainant association,

(vi) to restrain the Respondent from unauthorized conversion of the space allocated for entrance access to cellar and its adjacent parking space on the ground floor for any other purpose, which is in contravention of the sanction plan,

(vii) punish the Respondent for contravention of Section 3 r/w Section 4(1) of the Act, 2016 and the Rules 2017 envisaged therein,

(viii) and pass such other order or orders as this Hon'ble Authority may deem fit and proper in the circumstances of the case.

A. Brief facts of the case:

3. That the Complainant is a society formed by the Individual Flat Owners of the Apartment Complex namely, "Rock Gardens" under the provisions of Telangana

Societies Registration Act, 2019 vide Reg. No.3600236/238 under the name and style of “Rock Gardens Flat Owners Welfare & Maintenance Co-Operative Society”. The Complainant Association submits that the Respondent is primarily engaged in the business of construction of buildings, apartments, individual houses, land development, civil contracts, etc., running under the name and style of “Rainbow Builders”, a registered partnership firm registered under Section 63 of the Indian Partnership Act, 1932, bearing Registration No.4250/2015, having its registered office at H.No.3-12/23, Kalpana Kennel Road, Bhaskar Rao Nagar, Puppalaguda, Gandipet Mandal (erstwhile Rajendra nagar mandal), Ranga Reddy District, Telangana. The Respondent is represented by its Partners, Sri Maram Reddy, Ravinder Reddy, S/o Sri Thirupathaiah (Managing Partner) and Smt. Maram Reddy Vani Reddy W/o Maram Reddy Ravinder Reddy (Partner), both residents of Flat No.101 & 102, Gold Stone Prime, Road No.13, Alkapoor Township, Puppalguda Village, Gandipet Mandal, (erstwhile Rajendra nagar mandal), Ranga Reddy District, Telangana.

4. They further submitted that the Respondent Firm is the absolute owner and possessor of the land admeasuring and extent of 4,632 Sq Yds bearing Plot Nos.155/P, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168 and 169, forming part of Sy. Nos. 300 to 303, 306 to 311 and 313 to 315 in “MARWA TOWNSHIP-B”, Narsingi Village and Grampanchayat, Gandipet Mandal (erstwhile Rajendranagar), Ranga Reddy District, Telangana. That in the year 2017, the Respondent sought and was granted HMDA Permissions for the said plot for the construction of Residential Apartment Complex comprising of Sub-cellar + Cellar + Ground + 5 Floors, vide HMDA Permit No.00181/SKP/R1/U6/HMDA/02082016 dated 29.07.2017. That the Apartment Complex consists of two individual blocks

and each block consists of two separate access stairs and two individual lift facility as per design plan of the project.

5. The Complainant submits that provisions of the Act of 2016 and the Rules thereunder are applicable to all Real Estate Projects across the State, whose building permissions are approved on or after 01.01.2017 by the Competent Authorities, viz., UDA/DTCP/Municipal Corporations, etc., and that the Project is “on-going” as per the Rules, 2017.

6. The Complainant Association submits that the Respondent has violated Rule 3 and 4 of the Rules, 2017 and also failed to adhere to the orders issued by this Authority by extending the time for registration of ongoing projects. He submits that Respondent has deliberately entered into Agreement of Sale with various allottees in the project without adhering to the specific common timeline for completion of the project. Further, he submits that, it appears from the agreement of sale entered with the various allottees/purchasers of the project, the Respondent has intentionally indicated different timelines only to mislead and falsely warrant/lure the allottees for entering into agreement of sale for the purpose of individual flats constructed in the building complex.

7. The Association also submits that the Respondent has sold close to 90% of the flats to various individual allottees and executed conveyance/sale deeds in favour of the Allottees and around 50% of the allottees have taken possession of their respective flats and have been utilising the same for living purposes. Till date despite the repeated reminders, personal meetings with the Respondent, the status of the activities in the project has come to a standstill. That only after repeated reminders, the Respondent has installed lift provision with a delay of almost one

year from the date of possession and several other issues with respect to the activities promised to be undertaken by the Respondent.

8. The Complainant Association further submits that the Respondent has already collected Rs.4,50,000/- and additional amount of Rs.50,000/- on account of Corpus Fund in the form of cash from each of the Allottees at the time of execution of conveyance/sale deed in favour of each of the allottee for the purpose of providing amenities. Whereas, till date the Respondent has not taken any steps to provide the same. Further, the Respondent entered into an MoU dated 22.02.2021 and thereby agreed to complete all the pending amenities within a period of two months from the date of execution of the MoU. It was also agreed by the Respondent that in case of default on his part, Rs.80,00,000/- shall be paid by him to the Complainant Association as compensation with interest @ 12%.

9. Further, they submit that the Respondent is planning to cover the space allocated for entrance access to cellar and its adjacent parking space on the ground floor for the purpose of sale to third parties in order for them to convert it into a commercial space in contravention of the Sanction Plan and violative of the provisions of the Act, 2016. Aggrieved by the same, the Complainant filed the present complaint on 13.12.2021.

B. Notices issued:

10. Accordingly, vide Notice dated 24.01.2022, this Authority directed the Respondent to submit a reply along with such other information with regard to the Project. Further, on the same day, i.e., on 24.01.2022, this Authority also issued Show Cause Notice as to why penalty ought not to be issued upon the Respondent for violation of Section 3 & 4 of the Act, 2016.

11. Subsequently, another Show Cause Notice dated 12.05.2023, was issued to the Respondent seeking explanation as to why this Authority shall not levy penalty under Section 63 of the Act, 2016 for failing to comply with and contravening the orders or directions of the Authority. The same was returned, notice was incomplete.

C. Interim and Penalty Order:

12. Again, Summons dated 01.08.2023 was issued to the parties to appear before the Hon'ble Authority for hearing in the matter on 09.08.2023. Accordingly, the Complainant Association represented by its Advocate, Mr. Deepak Chowdhary along with office bearers of the Complainant Association appeared on 09.08.2023, but there was no representation on behalf of the Respondent on the said day as notice was incomplete.

13. On the said day, the Complainant Association reiterated the contentions raised in the complaint and sought for time to file additional documents such as pending works, ECs, etc. It was prayed that interim orders may be passed restraining the Respondent to register any further flats as the Respondent failed to register before RERA, failed to provide amenities as promised under the Agreement of Sale and also obtained Occupancy Certificate without completing the pending works. They added that 63 out of 68 flats have already been sold causing grave injustice to the said allottees. Accordingly, matter was adjourned to 29.08.2023 seeking the Respondent's reply. A Notice dated 10.08.2023 was again issued to the Respondent, however the same was returned on 27.08.2023 with a note "left address".

14. On 29.08.2023, the Respondent did to appear as notice was incomplete before this Authority and the Complainants submitted that only 2 out of 68 flats are left and the rest of them have been sold by the Respondent Builder without registering before this Authority.

15. Therefore, upon consideration of the facts and circumstances of the present case, this Authority issued an Interim Order dated 29.08.2023 restraining the Respondent Builder, not to register/alienate any further flats without submitting an Application of registration before this Authority and until the present matter is disposed of. This Authority also issued Penalty Order dated 29.08.2023 imposing a penalty of Rs.9,90,000/- (Rupees Nine Lakhs and Ninety Thousand Only) under Section 59 for violation of Section 3 & 4 of the of the Act, 2016.

D. Reply by the Respondent:

16. Subsequently, the matter came up for hearing on 21.09.2023, 19.10.2023 and 16.11.2023 and Sri Maram Ravinder Reddy on behalf of the Respondent Builder appeared and filed a Reply dated 10.10.2023 and 20.10.2023 stating that M/s Rainbow Builders, initiated a residential project approved by HMDA. The project consists of 2 Cellar + 1 Ground + 5 Upper Floors, located on plot Nos: 155 to 169, as per approval vide: 000181/SKP/R1/U6/HMDA/02082016 dated 2/8 /2016.

17. Thereafter, Respondent promptly applied for RERA Registration in accordance with Section 3(1) & 4(1) with application No: REA02400001060. He submitted all the required documents, however, due to a lack of communication from one of the Respondents' employees regarding document shortfalls, they did not receive RERA approval. He submitted that he agrees to pay the penalty amount

of Rs.9,90,000/-(Rupees Nine Lakhs and Ninety Thousand Only) in due time and submit all the required shortfall documents and request your esteemed office to consider these documents and proceed with the registration of the project under TSRERA.

18. He submitted that in the course of this project, the Respondent Builder initiated construction activities and successfully sold units to family members and a close-knit group of friends. The construction was completed in compliance with HMDA norms, and that Occupancy Certificate was obtained on 08.04.2022 vide 000596/OC/HMDA/SKP/2022.

19. After hearing was conducted on 19.10.2023 and 16.11.2023, the Respondent categorically submitted that following activities shall be completed by him:

- a. Solar fencing to the entire compound wall of the subject matter building, as per physical condition.
- b. Children play equipment will be provided and installed on designated place in the building.
- c. Complete building external painting of one coat will be completed.
- d. Car parking slots will be allotted on the basis of serial allotting, starting from northeast of the cellar 2 to cellar 1. Carparking serial number will be starting from ground floor to Fifth floor. As per the sale deed respective flat owner will be entitled to respective slots.

20. Therefore, he prayed to approve the registration of the Project “Rock Gardens” and further to cancel the Interim Order dated 29.08.2023 issued

restraining the Respondent Builder to alienate/sell any flats in the Project and accordingly permit him to proceed with the sale and registration of the remaining units without causing any inconvenience to the customers. He also requested this Authority to allow him and his workers to visit the building and complete the above committed works.

21. He added that after the said allocation of car parking to the respective owners, the said remaining parking slots will belong to the Respondent Builder and the same can be sold to the requested members of the Project on agreed sale consideration. In this regard, he sought direction from this Authority to all the allottees of the Project to cooperate in completing this process is hassle free, and to complete all this, the Respondent Builder sought 6 (six) months' time i.e., on or before 30.04.2024 on account of his current financial situation.

22. The Complainants, vide Memo dated 28.11.2023 filed their written submissions reiterating the contents of their Complaint and Rejoinder and seeking prayers as mentioned therein.

E. Observations Directions of the Authority:

23. This Authority has heard the matter at length and considered the contentions of both the parties. In accordance thereof, the following directions are issued to the Respondent Builder as well as the Complainant Association:

- a. As there is ample parking space more than the constructed flats, the Respondent Builder, as promised, is directed to conduct lottery for allotment of car parking spaces to the individual flat owners in the presence of Flat Owners Association as promised in the Agreement of Sale for which amount was also collected.

- b. As the Complainant Association/Flat Owners have already occupied flats and living there they are bound to pay the maintenance for the smooth functioning of community.
- c. If any amounts are due to the Respondent (Builder) by the Complainant/Flat Owners as per the statement of the Respondent during hearing in the presence of the Complainant Association, the Complainant Association is directed to pay the said amounts to the Respondent Builder within 60 days of the receipt of this Order.
- d. The Complainants are also directed to allow the Respondent Builder and his workmen to enter into the Project premises to complete the pending works.
- e. The tot-lot equipment to be installed and landscape to be maintained.
- f. Solar fencing as promised by the Respondent Builder to be completed. Regarding this a fresh Memorandum of Understanding may be made between the Developer and the Association with time bound period.
- g. The Respondent Builder shall complete all these pending works on or before 30.04.2024 as promised by him in the Letter submitted on 20.10.2023.
24. In lieu of the above-mentioned directions, the present complaint stands disposed of. The parties are hereby informed that failure to comply with this Order shall attract Section 63 of the Act, 2016.
25. 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