

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

COMPLAINT NO.1205 OF 2023

03rd January, 2024

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

Mr. Venkanna Gattu
Mrs. Rajini Gattu

...Complainant

Versus

M/s Krishnaiah Projects Pvt Ltd

...Respondent

The present matter filed by the Complainant herein came up for hearing on 27.12.2023 before this Authority in the presence of Complainant present in person along with Counsel Shyamprasad, Counsel Chakarvathi Guntla on behalf of the Respondent and upon hearing the arguments of the party, 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 "RE(R&D) Act") read with Rule 34(1) of the Telangana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the "Rules") seeking directions from this Authority to take action against the Respondent.

A. Facts of the Case as Stated in the Complaint Filed by the Complainant:

3. The complainants were introduced to the project "Bollineni Boin," an under-construction site. They engaged with the sales team, scrutinized the title deeds, and confirmed the project's registration certificate granted by TS RERA, bearing registration number P0240000967. The promoters of Bollineni Boin expressed willingness to sell any selected flat to the complainants.

Subsequently, the complainants independently verified Bollineni Boin's RERA application online, including the Promoter Project Details page on the TS RERA website. The promoters updated their RERA account on 15th November 2022, aligning with clause (b) of sub-section (1) under section 11 of the RE(R&D) Act. As of the latest update in February 2023, none of the flats were booked. Convinced of the project's integrity, the complainants expressed interest in purchasing Flat A-2001, spanning 1840 sq. feet, with common area rights and a single covered car parking. The promoters assured the complainants that Flat A-2001 was free from encumbrances and offered it for sale at Rs. 1,78,83,633/-.

4. Having been convinced, the complainants made an initial payment of Rs. 10,00,000/- as a token advance on 6th Feb 2023, followed by an additional payment of Rs. 8,00,000/- on 15th Feb 2023. The complainants awaited the issuance of the allotment letter and agreement for sale. Upon revisiting the Promoter's RERA account, the system responded that the sale had not yet commenced, and no allotment had been made to the customer. Nevertheless, on 25th February 2023, the complainants entered into a sale agreement with the promoter for Flat A-2001, concurrently signing a Construction Agreement and a Tripartite Agreement with the Promoter and State Bank of India for a housing bank loan.

5. As per the Construction Agreement, possession was to be delivered by the end of March 2023, with a final delivery deadline of September 2023, accounting for an agreed-upon grace period. The complainants, responding to payment demands from the Promoter, paid Rs. 15,00,000/- on 24th March 2023 and Rs. 41,00,000/- on 10th April 2023. The cumulative payment made to the Promoter amounted to Rs. 74,00,000/-. The balance payment was anticipated to be covered by the housing loan from SBI, which was sanctioned in principle but awaited disbursement.

6. On 20th July 2023, the complainants received a demand for payment amounting to Rs. 1,04,83,632/- from the Promoters. Attempting to process the housing loan, the complainants discovered that the subject property, A-2001, had already been hypothecated to HDFC Limited in the name of two

borrowers since 7th November 2022, predating the complainants' agreement of sale. Despite multiple attempts to address this issue with the Respondent, no resolution has been provided.

B. Relief(s) Sought:

7. The complainant have sought following relief(s)
 - i. Issue an order directing the Respondents to complete all necessary procedures for executing the Agreement of Sale dated 25th February 2023 for Flat A-2001 at the Project, cancel any registration with third parties, and declare any third-party rights on the flat as null and void-ab-initio. Cancel the existing hypothecation with HDFC Ltd or any other financial institutions, enabling the complainants to process the bank loan on the subject property, and deliver possession without encumbrances or penalties.
 - ii. Pass orders directing the appropriate authority to investigate fraudulent, unfair, and deceptive practices committed by the Respondent in cheating prospective buyers and impose legal consequences.
 - iii. Pass orders for the Respondent to pay Rs. 50,00,000/- as compensation, along with applicable interest from the date of the agreement of sale, for causing mental anguish and disrupting the family vacation plans of the complainants and their overseas-residing children.
 - iv. Pass orders for the revocation of the registration granted to the promoter under section 5 of the RERA Act, citing grounds under clause (a) of subsection (1) and clause (d) of subsection (1) under section 7.

C. Interim Order:

8. The complainants request interim orders:
 - i. Stay all transactions across the project, maintaining the status quo until TSRERA concludes its inquiry into all sale transactions and until the promoter achieves compliance with the Act.

- ii. Freeze the Respondent's bank accounts to the maximum extent possible for penalty until the case is disposed of or deposit an amount equivalent to the maximum possible penalty before filing their response to this authority.
- iii. Stop all registrations to prevent double bookings and subsequent disputes.
- iv. Issue any other orders deemed fit and proper by this Hon'ble Authority in the circumstances of the case, in the best interest of justice, and to protect the interests of allottees.

D. Reply by the Respondent:

9. The contentions presented by the Complainant are inaccurate and are hereby denied. No statement, allegation, contention, or submission contained in the complaint should be construed as admitted by the complainant, except to the extent specifically admitted by the Respondent in this counter.

10. At the outset, apart from matters of record and specific admissions of truth, every allegation, submission, or averment made by the complainant is categorically denied by the Respondent. Each claim is refuted as if expressly detailed and traversed in this response.

11. The Respondent, acting pursuant to the Joint Development Agreement via document no. 8049 of 2016 (registered on 22.06.2016) and document no. 8759 of 2019 (registered on 16.05.2019), has undertaken the development of the Residential Area known as "Bollineni Boin," a project comprising 5 blocks. The GHMC approved the construction of 5 Blocks via old permit no: 1/C20/09164/2019 dated: 14.06.2019, and new permit no. 1/C20/00435/2022 dated: 14.09.2022. The construction completion date, as per the new permit, is 13.06.2025.

12. The Respondent obtained a TS RERA registration vide: P02400000967 dated: 27.06.2019, for project "Bolelineni Boin" situated at Serlingampally, Ranga Reddy District. The valid TS RERA registration certificate is effective until 13.06.2025.

13. The complainant entered into an unregistered Agreement of Sale dated 25.02.2023 for the purchase of Apartment A-2001, covering 1840 sq. yards, with the Respondent, for a total sale consideration of Rs.1,82,32,267/-. The Respondent acknowledges receiving Rs. 74, 00,000/-.

14. The complainant received a demand note for the balance sale consideration of Rs.1, 04, 83,632/- on 20.07.2023. The complainant, having mandated their banker for a home loan facility and executed a Tripartite Agreement, faced a loan disbursement issue due to the unit A-2001 being hypothecated to HDFC Bank.

15. The Respondent disputes the allegation, claiming that the hypothecation has been rectified, and the mistake in records has been corrected. The Respondent emphasizes that, considering the COVID force majeure timelines permitted by TS RERA, possession can be handed over until 30th November 2023.

16. The Respondent maintains that the complainant prematurely approached TS RERA for relief, bypassing written notice to the Respondent.

The Respondent asserts that the allegations of systematically siphoning money are baseless and refuted. The Respondent clarifies that the mistake in records has been rectified.

17. Responding to the legal aspects, the Respondent cites Section 10 of the Indian Contract Act, 1872, and Section 22, stating that a contract is not voidable merely due to a mistake of fact by one party.

18. The Respondent contends that the allegations could result from misunderstandings or misinterpretations. Contextual factors, personal biases, or prejudices influencing perceptions should be considered before passing judgment.

19. To disprove the allegations, the Respondent offers testimonials from other purchasers, highlighting its commitment to honesty and hard work.

20. Regarding the reliefs sought, the Respondent admits to the first relief and is willing to complete the registration of the sale deed upon receiving the

balance amount. All other reliefs sought are deemed untenable, as the Respondent does not violate the TS RERA Act and Rules. The Respondent argues that these reliefs could cause irreparable loss to the developer and other purchasers already residing in the Residential block.

E. Hearing Conducted:

21. The hearing convened on 27.12.2023, during which the Complainant reiterated the contentions previously submitted in the original complaint. The Complainant highlighted that despite approaching the Respondent regarding the issue, no concrete solution was presented, compelling them to lodge a formal complaint. Additionally, the Complainant asserted that the Respondent's actions contravened various provisions of the RERA Act, raising concerns about potential misuse of the complainant's unit. The Complainant appealed to this Authority for directives instructing the Respondent to complete all necessary procedures for executing the Sale Deed, declaring any existing agreements with third parties null and void, initiating an investigation into the Builder's construction activities, imposing a compensation penalty of Rs. 50 lakhs, and revoking the RERA registration.

22. Contrarily, the Respondent presented to this Authority that the hypothecation on the concerned property was removed by the Respondent Company well before the execution of the sale agreement with the Complainant. The discrepancies arose due to the merger transaction of HDFC Investment and HDFC Holdings have been amalgamated with and into HDFC limited, and the Respondent clarified the matter with HDFC Bank, obtaining a clearance letter affirming that Unit 2001 in the project is free from any hypothecation, with no objection to releasing its charge. The said letter, dated 26.11.2023, bearing reference H/OP/L/679497951, was submitted and recorded by this Authority.

23. The Respondent emphasized that the error originated on the part of the bank, asserting that they did not sell the unit to any third party but rather hypothecated it. The Respondent expressed their willingness to execute the

sale deed, contingent upon the Complainant fulfilling the remaining balance of the sale consideration. It was clarified that the Complainant had impeded the release of funds from the bank.

24. In response to queries from the Authority, the Complainant affirmed their willingness to register the said unit in their name. The Authority duly recorded this consent during the proceedings.

F. Observations of the Authority:

25. In its written reply submission, the Respondent asserted its intention to register the unit identified as A2001 in the name of the complainant. This willingness was reiterated during the hearing, where the Respondent also expressed a commitment to execute a sale deed for the aforementioned unit. It was further clarified that, although the hypothecation of the unit had been settled prior to June 2023, complications arose during the bank merger, leading to an inaccurate indication of pending hypothecation. However, this issue was subsequently addressed and resolved by October, as evidenced by the issuance of a non-objection letter from the bank bearing reference H/OP/679497951 dated 26.11.2023, which was presented before this Authority.

26. Consequently, the Authority holds the opinion that, given the clearance of hypothecation and the issuance of a no-objection letter by the bank, coupled with the Respondent's expressed willingness to register the unit in question in the complainant's name with the complainant's explicit consent, the prayer in question is deemed resolved.

27. Authority observes that the complainant is seeking compensation in the present relief. It is essential to understand that the Act clearly distinguishes between interest and compensation, providing them as distinct entitlements available to allottees. This Authority does not possess the jurisdiction or authority to grant compensation as specifically sought by the complainant. Also, it is pertinent to note that as per RE(R&D) Rules, Rule 38 Annexure, the agreement of sale, term 1.10, clearly states that the Promoter

shall pay all the outgoings, including mortgage loan and interest on mortgages, before transferring physical possession of the apartment to the allottees. However, since the parties have only entered into an agreement of sale and have not executed a sale deed, the Respondent is only liable in case he did not pay the mortgage amount while executing the sale deed or handing over possession of the unit.

28. The observation and findings of this Authority so far as the relief (d) in the complaint filed by the complainant is concerned, though sub section 1 of section 7 of the Act encourages revocation of Registration in certain circumstances and also considering the deviations(with respect to Functions and duties of the Promoter) stated by the complainant, this authority keeping in view the interest of larger allottees in the entire project, is not inclined towards the said revocation as the primary object is to protect the Rights and Interests of the allottees with stipulated timelines. Hence, the Revocation may be inappropriate at this stage, the relief sought for at this juncture does not arise.

29. So far as the Interim reliefs sought for by the complainant is concerned, in view of the order passed by this Authority the issue of interim relief does not arise.

30. This Authority observed that the Respondent has failed to comply with section 11(1) of the RE(R&D) Act, which dictates to upload quarterly update. Respondent shall adhere to upload project status reports on the RERA website on quarterly basis as required under section 11.

G. Direction of the Authority:

31. In light of the aforementioned observations and discussions, this Hon'ble Authority hereby issues the following orders and directives pursuant to Sections 37 and 38 of the RE(R&D) Act.

- i. The Complainant is hereby directed to remit the remaining balance amount to the Respondent for the execution of the sale deed. This transaction must be completed within 45 days from the date of receipt of this order.

- ii. The Respondent is instructed to proceed with the execution of the Agreement of Sale and to register Unit A-2001 in the concerned project immediately in the name of the complainant, following the receipt of the balance sale consideration amount.
- iii. The Respondent is specifically directed to diligently upload project status reports on the RERA website on a quarterly basis, as mandated by Section 11(1) of the Real Estate (Regulation and Development) Act of 2016. This obligation must be fulfilled within 10 days from the date of receipt of this order.

32. In lieu of above findings and directions, the present complaint stands disposed off. The parties shall bear their own cost. The parties are hereby informed that failure to comply with this Order shall attract section 63 of the Act.

33. 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. Srinivas Rao,
Hon'ble Member
TS RERA

Sd/-
Sri. Laxmi NaryanaJannu,
Hon'ble Member
TS RERA

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