

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

COMPLAINT NO.121 OF 2024

31st Day of December 2024

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

Sri Cheruvu Gnana Prasad

...Complainant

Versus

M/s Bhuvanteza Infra Projects Pvt. Ltd.

Represented through its Authorised Representatives,
Sri Chekka Subramanyam
and Smt. Chekka Bhagyalakshmi

...Respondent

The present matter filed by the Complainant herein came up for hearing on 27.08.2024 and 18.09.2024 before this Authority in the presence of Complainant in person and none appeared on behalf of the Respondent despite service of notice, and therefore he was set *ex-parte* on 18.09.2024, and after hearing the Complainant, this Authority passes the following **ORDER:**

2. The present Complaint has been filed by the Complainant under Section 31 of the Real Estate (Regulation & 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 appropriate relief(s) against the Respondent.

Brief facts of the case:

3. The Complainant submitted that the Respondent executed an Agreement of Sale dated 12..08.2020 in his favour towards the purchase of Flat No. 111 in Block

B, in the project titled “EVK-AURA” situated in Velimela Village. The total area of the flat is 1300 square feet, and the agreed consideration was ₹2,461/- (Rupees Two Thousand Four Hundred and Sixty-One Only) per square foot, inclusive of all amenities, car parking, GST, and registration charges, bringing the total cost to Rs.32,00,000/- (Rupees Thirty-Two Lakhs Only) which, as per the said Agreement was duly paid by the Complainant to the Respondent. It was specifically mentioned in the Agreement of Sale dated 12.08.2020 that the complete details of the Flat shall be provided after procuring the competent authority permission. The consideration also included the proportionate undivided share of land (UDS) and free car parking.

4. The Complainant further submitted that the Respondent executed a Sale Deed bearing No.20852/2020 dated 13.08.2020 transferring and conveying the undivided share of land, measuring 150 square yards situated at Velimala Village & G.P., Ramachandrapuram Mandal, Sangareddy District, Telangana. In the sale deed, it is specifically agreed as under:

“that in consideration of payment of the entire sale consideration by the Vendee, the Vendor/AGPA Holder hereby grants by way of absolute sale the Schedule Property unto the Vendee by conveying all the rights, title and interest in and over the Schedule Property unto the Vendee forever to hold and to have the same for all times, subject to the express condition that the Vendee shall entrust the schedule property for development to the AGPA Holder of the Vendor or any other individuals/company/firm nominated by the AGPA Holder of the Vendor for composite development of the same along with similar purchasers parts and parcels of the land total admeasuring Ac.0-10 Gts. In Survey No.214, situated at Velimala Village & G.P. Ramachandrapuram Mandal, Sangareddy District, Telangana.”

5. The Complainant submitted that, subsequently, as per the terms of the sale deed stipulated above, on 27.02.2021, the Complainant along with two other persons executed a Development Agreement-cum-General Power of Attorney bearing document No.10107/2021 dated 27.02.2021 in favour of the Respondent represented through, Mrs. Chekka Bhagya Laxmi, the landowner, authorizing the development of all that undivided land total admeasuring 400 square yards out of total admeasuring Ac.0-10 gts in Survey No.214, situated at Velimala Town, under the city municipal limits of Tellapur Municipality, Ramachandrapuram Mandal, Sangareddy District, Telangana.

6. The Complainant now contends that the Complainant had approached the Respondent towards purchase of Flat and accordingly paid the total sale consideration of the Flat being Rs.32,00,000/- (Rupees Thirty-Two Lakhs Only). In support of his contention, he also produced the receipts issued by the Respondent acknowledging the receipt of the said amount. However, the Respondent asked the Complainant to execute sale deed in its favor under the term that the Complainant shall execute a Development Agreement in favor of the Respondent on a later date. The Complainant also produced an encumbrance certificate which shows that undivided share of land is in favor of the Complainant. Accordingly, the Respondent got the Development Agreement executed in his favor but miserably failed to execute the project and never sought permission from the competent authority.

7. The Complainant further argued that, as per the terms of the Development Agreement-cum-General Power of Attorney dated 27.02.2021, the Respondent was obligated to complete construction and hand over possession of the flat within 30 months and as per the Agreement of Sale dated 12.08.2020, the Respondent was supposed to handover the flat in thirty-six months from the date of obtaining building permission from HMDA. However, despite the stipulated time frame, the construction remained incomplete, and the possession had not been delivered to the Complainant.

Reliefs sought:

8. Aggrieved by the acts of the Respondent, the Complainant prays for the following:

- i. *The complainant is seeking to be provided with a flat on the ground floor of Block-A, which has been partially constructed, matching the area purchased as per the document.*
- ii. *The complainant seeks a penalty related to the pre-launch offer.*
- iii. *The delay in the project caused a loss, particularly due to failure to deliver possession of the flat on the ground floor in Block-A.*

Points for consideration:

9. After due consideration to the facts and circumstances as stipulated above, the following points sprout for consideration for this Authority:

- I. Whether the Complainant is an allottee as per provisions of the Act, 2016?

- II. Whether the Respondent has violated any provisions of the Act, 2016? If yes, is the Respondent liable for penalty?
- III. Whether the Complainant is entitled to the reliefs as prayed for? If yes, to what extent?

Point I

10. From keen perusal to the facts and circumstances of the case and the submissions of the Complainant made before this Authority, it is understood that the Complainant approached the Respondent for purchase of a flat in the project “EVK-AURA” situated in Velimela Village, Telangana. Just after executing an Agreement of Sale dated 12.08.2020 in favor of the Complainant with regard to the said Flat, it appears that, with a *mala fide* intent, the Respondent executed a Sale Deed bearing No.20852/2020 dated 13.08.2020 in favor of the Complainant, incorporating a specific clause stipulating that the Respondent would subsequently be granted developmental rights over the said land. It appears that by transferring ownership to the Complainant of the said land, the Respondent might aim to avoid certain liabilities (like taxes, debts, or regulatory obligations) that would have otherwise applied had the Respondent retained ownership of the property. The Respondent might seek to reduce capital gains tax, stamp duty, or other transactional costs associated with the development process by structuring the transaction in this way. By executing the Sale Deed in favor of the Complainant, the Respondent might attempt to shift the risk of legal claims, encumbrances, or third-party disputes related to the land onto the Complainant. No explanation for this has been provided by the Respondent, who has been consistently absent throughout the hearing despite service of notice. It also appears that although legal title is transferred to the Complainant, the Respondent effectively retains control through the development rights, allowing them to continue utilizing or profiting from the property without the burden of direct ownership.

11. Subsequently, as agreed, the Complainant, upon instructions and directions of the Respondent, executed a Development Agreement bearing document No.10107/2021 dated 27.02.2021 in favor of the Respondent wherein the Respondent promised to undertake the construction of a residential complex and handover flats to respective landowners, as stipulated in the Development Agreement dated 27.02.2021 including the Complainant within thirty months from the date of obtaining competent authority permission.

12. A perusal of all the three documents makes it abundantly clear that the intention of the Respondent was to sell the flat to the Complainant but due to reasons best known to the Respondent, as explained above, the Respondent executed the Sale Deed and the Development Agreement with the Complainant making him fall in the category of a landowner. This Authority is of the considered opinion that the execution of the Agreement of Sale dated 12.08.2020 in favor of the Complainant, followed by the subsequent alteration of the Complainant's status from that of an allottee under the provisions of the Act, 2016 to that of a landowner, constitutes a deliberate attempt to circumvent the provisions of the said Act. Such a maneuver, which effectively undermines the rights and interests of the Complainant, cannot be countenanced by this Authority, whose primary objective is the protection of the bona fide rights and interests of allottees.

13. Therefore, this Authority deems it fit to declare the Complainant as a *bona fide* allottee in accordance with Section 2(d) of the Act, 2016 and Point I is answered in affirmative.

Point II

14. A perusal of the Agreement of Sale dated 12.08.2020 makes it abundantly clear that the Respondent did not even have a competent authority permission before executing the said Agreement of Sale. In the said Agreement, it is specifically mentioned that:

“Whereas the VENDOR is the Agreement holder of the below mentioned properties:

- i. House No.6-56/ 1, total admeasuring 214 Square Yards., with an Plinth area of 300 Square Feets., Roof covered with ACC Sheets, Situated at Velimela Village, Ramachandrapuram Mandal, Under G.P. Velimela, Medak District, Telangana State., having purchased the same from Sri. Manne Veeraiah S/o. Late M. Hanmaiah, and One Another, under a registered Sale Deed bearing Document No.15270/2008, Book I, dated: 06-11-2008, registered at District Registrar of Medak at Sanga Reddy.
- ii. Open land admeasuring 363 Square Yards in Survey No.212 and admeasuring 4477 Square Yards in Survey No.214, thus total admeasuring 4840 Square Yards., which is equivalent to 4046.72

Square Meters, Situated at Velimela Village, Ramachandrapuram Mandal, Medak District, Telangana State., having purchased the same from Sri. K. Balaji, S/o. Late Ramaiah Choudhary, under a registered Sale Deed bearing Document No.4018/2009, Book - I, dated: 20-05-2009, registered at District Registrar of Medak at Sanga Reddy.

- iii. Agricultural Wet land admeasuring Ac.0-13 Gnts in Survey No.212, Situated at Velimela Village, Ramachandrapuram Mandal, Medak District, Telangana State., having purchased the same from Sri. K. Satyanarayana, S/o. Late Mallaiah and One Another, under a registered Sale Deed bearing Document No.9125/2008, Book I, dated: 01-07-2008, registered at District Registrar of Medak at Sanga Reddy.
- iv. Agricultural land admeasuring Ac.0-08 Gnts in Survey No.220/A and Ac.0-07 Gnts in Survey No.213, Situated at Velimela Village, Ramachandrapuram Mandal, Medak District, Telangana State., having purchased the same from Smt. Venkatamma W/o. Ananthaiah Ayyavari, under a registered Sale Deed bearing Document No.T12/55/1975/2008, Book I, Vol No.129, pages 327 and 328, Dated: 19-08-1975, registered at District Registrar of Medak at Sanga Reddy.
- v. Agriculture Wet land in Survey No.214, admeasuring an extent of Ac.0-10 Gts, or 0.10 Hectors, Situated at Velimela Village & G.P., Ramachandrapuram Mandal, Sangareddy District, Telangana State., having purchased the same from Sri. K. Balaji, S/o. Late Ramaiah Choudhary, under a registered Sale Deed bearing Document No._/2020, Book I, Dated: 05-08-2020, Registered at District Registrar of Medak at Sanga Reddy.

Whereas the Vendor company i.e., M/S. BHUVANTEZA INFRAPROJECTS PVT LTD., " is coming up with new project i.e., a Residential Apartments Project on the above-mentioned Properties and named the project as "EVK-AURA (Velimela)". The Vendor has offered to sell a Flat No. B-111, Measuring 1300 Sft, Rs.2461/- (Rupees Two Thousand Four Hundred Sixty One only) @ per Square feet, including the amenities, car parking, GST and registration charges along with the proportionate of undivided share of land and the vendee has agreed to purchase the above said property for the said sale consideration. The details of the flat will be confirmed after company obtaining the building permission from HMDA."

15. It can be seen from the above clauses that the Respondent sought to develop a Project on all the properties mentioned above which is exceeding the statutory limit of 500 sq. mtrs as per Section 3(2) of the Act, 2016. Therefore, the Respondent ought to have obtained competent authority permission and registration from this Authority before executing the Agreement of Sale dated 12.08.2020 with the Complainant. This constitutes a clear violation of Sections 3 and 4 of the Act, 2016.

16. Therefore, Point II is answered in affirmative and the Respondent is liable for penalty under Sections 59 and 60 for violation of Sections 3 and 4 respectively.

Point III

17. The Complainant prayed for providing with a flat on the ground floor of Block-A, which has been partially constructed, matching the area purchased as per the document. However, such relief cannot be permitted and directed as this Authority is not aware if the Respondent has created third-party rights on the flat sought for by the Complainant herein. In the event the Respondent had agreed to handover an alternative flat, this Authority had no objection to provide the same, however, in the absence of the Respondent and in the absence of specific information with regard to the encumbrances on the flat sought by the Complainant, this Authority cannot issue such directions. However, for the mere reason that the Respondent failed to appear before this Authority, the Complainant cannot be left in lurch and therefore, this Authority deems it fit to direct the Respondent to refund the entire amount paid by the Complainant i.e., an amount of Rs.32,00,000/- (Rupees Thirty-Two lakhs Only) along with interest as per Rules, 2017.

18. The Complainant also prayed for imposing penalties on the Respondent for violation of Sections 3 and 4 and as discussed above, the Respondent is liable for the same.

Directions by the Authority:

19. In accordance with the discussion made above, vide its powers under Sections 37 and 38, this Authority issues the following directions to the Respondent:

- i. For violation of Sections 3 and 4, the Respondent is liable for penalty under Sections 59 and 60 respectively, therefore, the Respondent is directed to pay penalty of Rs.11,46,915/- (Rupees Eleven Lakhs Forty-

Six Thousand Nine Hundred and Fifteen Only) payable within 30 days in favor of TG RERA FUND through a Demand Draft or online payment to A/c No. 50100595798191, HDFC Bank, IFSC Code: HDFC0007036;

- ii. The Respondent is directed to refund the entire amount of Rs.32,00,000/- (Rupees Thirty-Two lakhs Only) along with interest at the rate of 11.05% per annum (SBI MCLR of 9.05% + 2%) from the date of the agreement of sale (12.08.2020) till the date of actual refund in accordance with Rule 15 of the Rules, 2017 within 30 (thirty) days;
- iii. The Respondent hereby is also directed to file an application for registration of the Project “EVK-AURA (Velimala)” before this Authority in accordance with Section 4 of the Act, 2016 and the Rules thereunder with immediate effect and till the registration is granted by this Authority, the Respondent shall, strictly, not to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any units of the project, “EVK-AURA (Velimala)”.
- iv. Failing to comply with above said directions by the Respondent shall attract penalty in accordance with Section 63 of the Act, 2016.
- v. The Complainant is at liberty to approach the Adjudicating Officer under Form ‘N’ to claim compensation in accordance with Section 18 of the Act, 2016.

20. As a result, the complaint is disposed of.

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