

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

COMPLAINT NO.61 OF 2024

12th Day of May 2025

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

1. Smt. Neelima Vanamala

2. Sri Srikanth Leburu

(Both are R/o. Villa 30, Aakriti VIVA, Tellapur, Hyderabad -500 019. Telangana)

...Complainants

Versus

1. M/s Sankalp Infra Projects Pvt. Ltd.

Represented through its Director, Sri Alok Kumar

2. Sri Manoj Kothari

3. Sri Alok Kumar

(Office Address of above Respondents: Adithya Ram Square, MCH No. 8-2 293/82/A/646/A, 4th Floor, Road No. 36, Jubilee Hills, Hyderabad-500033)

...Respondents

The present matter filed by the Complainants herein came up for hearing on 18.06.2024, 13.08.2024, 29.08.2024, 12.09.2024, 24.09.2024 and 18.10.2024 before this Authority in the presence of Counsel for Complainants, Sri M. Ravindra Babu, Sri M. Nischith & Sri P. Venkata Ratnam and the Counsel for the Respondents, Sri N. Vinesh Raj, Sri V Ramesh Babu & Sri Vishwanath Yadav and after hearing the arguments, this Authority passes the following **ORDER:**

2. The present Complaint has been filed by the Complainants 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 Respondents.

Brief facts of the case:

3. The Complainants submitted that they booked Villa No.113 in the project named Aakriti VIVA, located at Tellapur, Hyderabad, in October 2014. The Villa No.113 is 2674 sq ft. Super built-up area and land of 220 square yards, which was purchased from the Respondents for a total sale consideration of Rs.73,41,000/- (Rupees Seventy-Three Lakhs and Forty-One Thousand Only) by executing an agreement of sale and construction agreement followed by a registered sale deed dated 27.01.2015.

4. It was submitted that Respondent No.1, the Builder, had agreed to complete the rest of the construction of civil works in Villa No.113 and agreed to finish roads and other common area works as per the agreement on or before 30.04.2016. The Complainants have paid an amount of Rs.66,48,140/- (Rupees Sixty-Six Lakhs Forty-Eight Thousand One Hundred and Forty Only) as against the total consideration leaving balance payable is only of 10%, i.e., Rs,6,92,852/- (Rupees Six Lakhs Ninety-Two Thousand Eight Hundred and Fifty-Two Only). The Complainants further submitted that the Respondent was supposed to hand over the possession of the Villa No.113 within 18 months from the date of the agreements plus a grace period of 6 months, i.e., latest by 30.04.2016, failing which the Respondents was liable to pay penalties for the delayed period of handing over the completed Villa No.113, an amount of Rs.4/- per square feet of super built up area per month from 01.05.2016 till the handover of possession of the Villa No.113 on completion of all works in the layout including common works in the entire gated community project. But till today the Respondents have not delivered Villa No.113, thereby causing an abnormal delay of 9 years.

5. The Complainants further submitted that they have taken Housing Loan from SBI on 09.12.2014 for Rs. 59,79,000/- (Rupees Fifty-Nine Lakhs and Seventy-Nine Thousand Only) and that they have repaid the entire

housing loan to the SBI. They submitted that the Respondents have never completed Villa No.113 and the project as promised on or before 01.05.2016 but demanded for the payment of the balance sale consideration. They added that the Complainants being NRIs and staying away from India, the Respondents have taken full advantage of the situation and diverted their money to the other projects and always pleaded some lame excuses.

6. The Complainants also submitted that the Respondents informed Complainants in the month of January 2020 that the majority of the works in the Villa No.113 have been completed and in the month of October 2022 that the majority of the amenities in the layout have been completed which denotes that Respondents have categorically admitted that they have utterly failed to fulfil their promise made in the agreements and the Villa No.113 was not made ready for occupation by 01.05.2016.

7. That till today the completion certificate is not obtained by the local authority as required, which is mandatory and that the Respondents have demanded an amount of Rs.37,00,000/- (Rupees Thirty-Seven Lakhs Only) vide their email communication for the handover of the Villa No.113 and has threatened me by email in the month of February 2023 about the unilateral cancellation of the agreements and the sale deed.

8. The Complainants submitted that blank cheques given by the Complainant to Respondent No.1 at the time of registration in January 2015 were deposited after 8 years, and bounced in the Complainants' bank account in December 2022. The Complainants were not aware that Respondent No.1 deposited the cheques after eight years of issuance and without prior notice. Respondent No.1 was trying to encash an additional amount of Rs. 29,00,000/- (Rupees Twenty-Nine Lakhs Only) by depositing the cheques, whereas the payable balance amount due was only Rs. 10,00,000/- (Rupees Ten Lakhs Only).

9. The Complainant further submitted that in February 2023, the Complainants received a Villa No.113 cancellation notice from Respondents No.1 due to non- payment of the balance amount and the cheques bounce. Respondent No.1 also demanded that the Complainants pay Rs. 37,00,000/- (Rupees Thirty-Seven Lakhs Only) as interest and take possession of Villa No.113. That the Complainants have suffered the following losses due to the delay in the delivery of possession of the Villa No.113 by the Respondents:

- Reimbursement for the delay as per the agreement: Rs . 10,27,000 /- (Rupees Ten Lakhs Twenty-Six Thousand Only) [2674 (sft) x Rs.4 x 96 months = 10,26,816 or say 10,27,000/-]
- Loan interest paid due to the delay: Rs. 12,00,000/- (Rupees Twelve Lakhs Only)
- Rental loss due to the delay of 96 months @ Rs.50, 000/- per month, i.e., Rs. 48,00,000/- (Rupees Forty-Eight Lakhs Only)
- Total loss: Rs. 70,27,000/- (Rupees Seventy lacs and Twenty-Seven Thousands Only)

Reliefs prayed for:

10. Aggrieved by the actions of the Respondents, the Complainants sought for the following relief(s):

- Direct the Respondents to hand over the peaceful vacant possession of Villa No.113 to the Complainants immediately, along with all the common amenities and facilities as promised by the Respondents;*
- Grant a decree of perpetual injunction restraining the Respondents, their agents, servants, representatives from interfering with the peaceful possession and enjoyment of Villa No.113 by the Complainant (s);*
- Grant a decree for the payment of the penalty/compensation, as per agreement for the to the Complainant (s) for the delay of 9 years in delivering the possession of Rs. 10.27,000/- (Rupees Ten Lakhs twenty-seven thousand Only);*
- Grant a decree for the payment of the loss of rent for the delay in the delivery of possession due to the delay of 96 months @Rs.50, 000/- per month.: Rs. 48,00,000/- (Rupees Forty-Eight Lakhs Only);*

- v. *Direct the Respondents to pay future rent @ 50,000/- per month from March 2024 till the final handing over of the Villa No.113 to the complainants;*
- vi. *Direct the Respondents to reimburse the sum of Rs 8.00,000/- spent on several pending civil works, unfinished plastering, civil works and painting, laying tiles etc., to the knowledge of the Respondents;*
- vii. *Direct the Respondents to reimburse Loan interest paid due to the delay: Rs. 12,00,000/- (Rupees Twelve Lakhs Only);*
- viii. *Grant a decree for Rs. 10,00,000/- towards the compensation for the mental agony, harassment, and deficiency in service caused to the Complainant (s);*
- ix. *Grant a decree for Rs. 1,00,000/- for the payment of the litigation costs incurred by the Complainant (s);*
- x. *Pass appropriate orders to register the Project under the Act with immediate effect and to punish the Respondents for non-registration under Sec 3 of the Act as contemplated under Sec 59 of the Act 2016.*

Counter on behalf of the Respondents:

11. The Respondents filed a detailed counter, submitting that the present complaint is not maintainable either in law or on facts. That the Complainants approached this Authority on incorrect and misleading allegations with unclean hands to knock away Villa No.113 without any valid sale consideration. It was further submitted that subject Project was approved by the Gram Panchayath Tellapur Village, RC Puram Mandal, vide proceedings No.GP/10/2014 dated 05.09.2014. That the sale agreement was executed in the year 2014 and sale deed was executed in the year 2015 wherein it is categorically recited that HMDA has accorded permission vide permit No.15/MP2/PLG/HMDA/2013 dated 23.09.2013 by a letter vide No.1888/MP2/P8/1MDA/2012 dated 23.09.2013 for construction of 131 Villas.

12. It was submitted that there are several legal notices being exchanged between the parties. By legal notice dated 13.07.2023, the Complainant categorically admitted that cheques reflected in the sale deed towards

consideration have been issued only as a security which clearly establishes that the sale deed of land for 200 square yards is illegal and non-executable, i.e., without any consideration. The Complainants, in accordance with the General Power of Attorney executed by the landowners in favour of the Respondents, executed a Sale Deed dated 27.01.2015, bearing Document No. 1178/2015, before the Joint Sub-Registrar Office, Sangareddy, with the landowner acting through the Respondents.

13. That the said Sale Deed is for semi-finished Duplex House/Villa No.113, admeasuring 220 square yards/183.95 sq. Mtrs consisting of ground plus First Floor together with super built-up area admeasuring 2674 sft in Group Housing under Gated Community project known as "SANKALP ARV VIVA" (Now called as Aakriti ARV VIVA), in Sy. No. 406/Part, situated at Tellapur Villa No.113ge and Grampanchayath, Ramchandrapuram Mandal, Medak District.

14. That as per the said Sale Deed the Complainants made payment of Rs.5,85,400/- (Rupees Five Lakhs Eighty-Five Thousand and Four Hundred Only) to the Respondents No.1 and issued cheques amounting to Rs.29,36,400/- (Rupees Twenty-Nine Lakhs Thirty-Six Thousand Four Hundred Only) vide four cheques drawn on ICICI Bank under a specific condition that the Developer would have a right to revoke the Sale Deed in case the amounts are not released as per specific miles stone even through alternate mode of payment. At the time of executing the Sale Deed, the Complainants assured the Respondents that arrangements for the transaction had been made and requested its execution. Relying on this assurance, the Respondents executed the Sale Deed based on the cheques specified therein.

15. That subsequent to the execution of the said sale deed, the Complainants have not approached the Respondents, however the Respondents continued the construction in spite of pandemic and was also waiting for the Complainants to meet their part of obligation. The

Respondents also issued emails to the Complainants and after receiving the said emails the Complainants approached the Respondents through his relative who visited the site and upon satisfaction of the progress, he instructed the Respondents to deposit the cheques mentioned in the Sale Deed. As per the said instructions, the Respondents deposited the cheques with their banker, but the said cheques were returned for the reason "FUNDS INSUFFICIENT" vide return memo dated 22.12.2022. That thereupon, Respondents have issued a legal notice to the Complainants as the Sale Deed dated 27.01.2015 and the Agreement of Sale contain an Arbitration clause at para 25 & 22, respectively, Respondents have invoked Arbitration by notice dated 16.04.2024. However, the Complainants refused for appointment of Arbitrator as suggested by the Respondents. As the Complainants refused Arbitrator suggested by the Respondents, the Respondents filed Arbitration Application Under Section 11(6) of Arbitration and Conciliation Act, 1996 before the Hon'ble High Court for the State of Telangana vide Arb Appl No. 135/2024. The Hon'ble High Court was pleased to order notice by order dated 21.06.2024 to the Complainants and the same was served upon the Complainants and posted for the counter of the Complainants.

16. It was submitted that the very sale deed dated 27.01.2015 and its validity is under challenge due to non- payment of sale consideration admittedly, complaint before this Authority is not maintainable and premature in nature for adjudicating before this Authority. Further, upon perusal of the documents submitted by the Complainants, it is established that the Complainants have violated the terms of the agreements and failed to meet their obligations. Upon perusal of the account statement, the amount of Rs.59,79,000/- (Rupees Fifty-Nine Lakhs Seventy-Nine Thousand Only) has not come into the account of the Respondents that too through the State Bank of India. In fact, upon perusal of the account statement, majority of the amounts were paid through Bank of Baroda. This also establishes that the Complainants have diverted the loan amount and thereby defaulted in payments with this Respondents.

17. Further, regarding the document filed by the Complainant regarding release of the final installment, it is an unauthenticated document created for the purpose of the case. Further this is also an admission on the part of the complainant that they are dues of more than Rs. 10,00,000/- (Rupees Ten Lakhs Only). The said document also shows that the amount is not released by the Bank. The Respondents further submitted that regarding, Certificate dated 30.09.2023 issued by the State Bank of India certifying that original documents for creation of housing loan are availed with the bank, it is established that the Complainants have deposited the documents on 30.09.2023 which are executed in 2014 this itself establishes that the complainant have not even complied with the terms of sanction which is in the year 2014. Regarding the No Dues cum Possession Certificate dated 27.01.2017 and Occupancy Certificate dated 26.06.2018, the Respondents submitted they are misleading documents as they belong to Villa No.30 in "AAKRITI CRR LAKE SIDE VILLA". Regarding, Account Status Report dated 10.08.2020, the account statement apart from as submitted earlier the last payment is of 30.12.2015 which establishes the fact that the Complainants has went incognito after 2015 and never bothered to meet his obligation.

18. That as the Complainants went incognito, the Respondents issued Demand Letter dated 10.08.2020 duly bringing to the notice of the Complainants that they are due of amount of Rs. 13,72,835.56/- (Rupees Thirteen Lakhs Seventy-Two Thousand Eight Hundred and Thirty-Five Only) including taxes. As the Complainants did not respond to the demand notice, the Respondents issued e-mail dated 22.02.2023 duly bringing to the notice of the Complainants that cheques towards Sale Consideration as mentioned in Sale Deed were returned and due to non-response of the Complainants, the Respondents was forced to cancel the booking and also offered to receive the due amounts of Rs.60,29,333/- (Rupees Sixty-Lakhs Twenty-Nine Lakhs Three Hundred and Thirty-Three Only) vide cheque No.089582.

19. That only after receipt of the said cancellation letter, the Complainants have come up with a series of emails wherein the Complainants agreed to pay

the due amounts. After that instead of paying the due amounts, the Complainants has indulged in avoidable and speculative litigation. The Complainants Notice dated 13.07.2023 which was aptly replied to by the Respondents which is not filed herewith by Reply Notice dated 08.08.2023.

20. Regarding e-mail dated 29.01.2024 issued by ARV VIVA Owners Group to the Respondents and email dated 30.01.2024 issued by the Respondents to ARV VIVA Owners Group, which is self-explanatory and that there are maintenance dues from the Villa owners of around Rs.32 Lakhs in spite of which the Respondents are maintaining the layout. The Respondents denied that Complainants are the absolute joint owners and possessors of Villa No.113, AAKRITI ARV Gated Community, Tellapur. That the Complainant has not paid any amounts since December, 2015, as Account Statement filed by the Complainants themselves. Complainants came into contact with the Respondents only after receipt of the email of cancellation dated 22.02.2023. Though the Complainants admitted to pay the balance consideration but have failed to pay the legitimate dues and instead indulged in litigation. The Complainant has failed to explain the delay between the period 2015 to 2023. Therefore, the Respondent prayed to dismiss the present Complaint as it is barred by the limitation.

I.As filed by the Parties:

21. The Complainant, while reiterating the contents of the complaint, prayed for the following in the above-mentioned **I.A. No.98 of 2024**:

“Issue interim directions to the Respondents to hand over the original sale deed dated 27th January 2015 to the petitioner forthwith & Declare that the cancellation of the allotment of Villa No.113 is illegal, arbitrary, and that the Respondents have no right, power, or authority to cancel the allotment, especially after having received the entire sale consideration by 2016.”

22. To this, the Respondents filed the main counter as elaborated above. Subsequently, the Respondents filed another **I.A. No.99 of 2024**, submitting

that as the Sale Deed dated 27.01.2015 contains an arbitration clause at Para 25 and Agreement of Sale at Clause 22. Therefore, the Respondents invoked arbitration by issuing notice dated 16.04.2024, that however, the Complainants refused for appointment of arbitrator as suggested by the Respondent. In result thereof, the Respondent filed an Application under Section 11(6) of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court for the State of Telangana at Hyderabad vide Arb. Appeal No.135/2024. That the Hon'ble High Court was pleased to order notice by Order dated 21.06.2024 which was duly served on the Complainants.

23. The Respondents further submitted that as the very sale deed dated 27.01.2015 and its validity is under challenge due to non-payment of sale consideration, admittedly. Therefore, the Respondents submitted that the present Complaint is not maintainable and premature for adjudication before this Authority. It was added that the very title of the Complainants has to be established by the appropriate forum/court and unless the same is decided in favor of the Complainants, the Complainants cannot maintain the present complaint. Therefore, the Respondents prayed to dismiss the complaint.

Counter to I.A. No.99/2024 by the Complainant

24. In response to this I.A. No.99 of 2024, the Complainants submitted as follows:

- a. Doctrine of Election: The Complainants submitted that the Hon'ble Delhi High Court in the case of *Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd.*, held that the remedies available under the RERA Act are not in suppression of those under the Arbitration and Conciliation Act, 1996 ("A&C Act") and that the petitioner's choice to seek arbitration is not barred by the existence of concurrent remedies.
- b. Section 79 of the RERA Act: The Complainants submitted that there is a bar of jurisdiction under Section 79 of the Act, 2016 *as no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no*

injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. The Complainant submitted that while the Act, 2016 provides for specific remedies, it does not preclude other available remedies and that the A&C Act coexists with the Act, 2016 and the remedies under both statutes are complementary, not mutually exclusive.

- c. Jurisdictional Issue: The Complainants submitted that the Application of other laws are not barred under Section 88 of the Act, 2016 and that the Act, 2016 shall have overriding effect i.e., it shall not be inconsistent with other laws. The Complainants added that the Complainant's claim is for abnormal delay in completion and handing over the villa and the illegal and unauthorized cancellation of allotment under the Flat Buyer Agreement, pertains to rights in *personam*, which are amenable exclusively under Act, 2016 alone.
- d. Purpose and Distinctiveness: The Complainant submitted that the Act, 2016 and the A&C Act serve distinct purposes. The former focuses on real estate regulation, while the latter governs arbitration. Their coexistence ensures comprehensive remedies for aggrieved parties.
- e. The Complainant also submitted that the Respondent's disregard for registering the project under the Act, 2016 despite securing revised permissions from the Municipal Authority in 2023, in blatant defiance of specific notices and directives from this Authority, amounts to an egregious violation of regulatory norms. They added that despite receiving full payment, their inexplicable 10-year delay in delivering the livable homes after completing them in all respects, together with promised amenities in place is nothing short of an ordeal for the buyers.
- f. The Complainant further submitted that the Respondent's failure to register the project under the RERA Act, 2016, despite securing revised municipal permissions in 2023 and repeated notices from the Authority, constitutes a gross violation of regulatory norms. The Respondent's inordinate 10-year delay in delivering fully completed

homes with promised amenities, despite receiving full payment, has caused undue hardship to buyers.

- g. It was also submitted that the Hon'ble Supreme Court in *Imperia Structures Ltd. v. Anil Patni (2020)* clarified that Section 79 does not preclude proceedings before fora other than civil courts and acknowledged the concurrent availability of remedies under the Act, 2016 and the (A&C) Act. However, once a remedy under RERA is elected, recourse under the A&C Act is precluded. Further, Section 18 stipulates that its remedies are without prejudice to other available remedies, thereby allowing concurrent relief unless a party has already initiated proceedings under RERA, as in the present case. Consequently, the election of arbitration is impermissible. The provisions of the RERA Act and the A&C Act are not inconsistent but serve distinct purposes, with the former providing statutory relief to allottees while the latter offers an alternative contractual remedy.

25. Accordingly, the Complainants prayed to dismiss the I.A. No.99 of 2024.

Rejoinder filed by the Complainant:

26. The Complainants filed Rejoinder to the Counter filed by the Respondents and submitted that the counter filed by the "non-party-individual" cannot be taken on record as the individual has no *locus-standi* to file the present counter and that the individual who signed the affidavit has no-power, no-right or no-authority to represent the "Respondents" in this case. They further submitted that that the individual who filed the counter lacks the legal authority to represent the company, as no board resolution has been presented, nor has their position been disclosed. Additionally, that the project in question remains unregistered under the RERA Act, reflecting negligence on the part of the Respondents. Despite a legal notice dated 13.07.2023 and multiple reminders, the Respondents have failed to clarify the existence of the company, indicating a lack of transparency. They added that it is well-established that a duly executed and registered sale deed cannot be revoked unilaterally, and the notion of re-execution lacks legal basis. The

Respondents' own statement of account confirms full payment of the sale consideration, and the challenge to the sale is time-barred, having not been raised within the three-year limitation period. Moreover, no adequate explanation has been provided for the delayed deposit of cheques seven years after the transaction, rendering Clause 25 of the Sale Agreement inapplicable.

27. Further, Arbitration, being an additional remedy, does not preclude adjudication before this Authority. The Respondents have failed to initiate proceedings for cancellation of the sale deed within the last decade, thereby undermining their claim. Notably, the Respondents have admitted to receiving the entire sale consideration, with the housing loan sanctioned on 09.12.2014 and the sale deed registered on 27.01.2015. Furthermore, the failure to hand over Villa No.113 and its maintenance responsibilities to the society demonstrates the Respondents' indifference. In light of these factors, the Complainants prayed that the counter filed by the Respondents lacks merit and should be treated as a no-counter, warranting its rejection and removal from records.

Additional Counter filed by the Respondents:

28. The Respondents, by way of an additional counter, submitted that the Respondents, a business entity engaged in Infrastructure Development, were incorporated under the name "M/s. SANKALP INFRA PRIVATE PROJECTS" and later renamed as "M/s. AAKRITI CONSTRUCTIONS & DEVELOPERS PRIVATE LIMITED" as per the incorporation certificate dated 18.05.2015, with CIN No. U45400TG2008PTC060093 and registered office at 8-2-293/82/A/646A, Adityaram Square, Road No.36, Jubilee Hills, Hyderabad, represented by their Director, Mr. Manoj Kothari. That the Complainants, having gained the Respondents' confidence, requested registration of the property in their favour and issued four undated cheques (Nos. 023711, 023712, 023713 & 023714) amounting to Rs.29,36,400/- towards land consideration, promising to arrange funds and provide instructions for filling the dates and presentation. Trusting this assurance, the Respondents executed a registered Sale Deed dated 27/01/2015, bearing Document No.

1178/2015. It was mutually agreed at the time of execution that the Complainants would adhere to the payment schedule, failing which the Respondents retained the right to revoke the sale deed along with other agreed terms. They, therefore, prayed to dismiss the present complaint.

Points for consideration:

29. After deliberating upon the contentions of the parties and the documents filed by them, the following issues sprout for consideration:

- I. Whether the present complaint is maintainable in light of the fact that Arbitration Appeal No.135/2024 is pending adjudication before the Hon'ble High Court for the State of Telangana, at Hyderabad?
- II. Whether the Complainants have violated Section 19(6) of the Act, 2016 and whether the Respondents have violated Section 11(5) i.e., unilateral cancellation of agreement?
- III. Whether the Respondents have violated Sections 3 & 4 of the Act, 2016 by not registering the Project with this Authority?
- IV. Whether the Complainants are entitled to the relief(s) as prayed for? If yes, to what extent?

Observations of the Authority:

30. The Complainants argued that the Respondents' counter cannot be taken into consideration as the same has been signed by authorized representative of "M/s. AAKRITI CONSTRUCTIONS & DEVELOPERS PRIVATE LIMITED" whereas, the Respondent in the present matter is "M/s. SANKALP INFRA PRIVATE PROJECTS". To this effect, the Respondents, by way of an additional counter, submitted that the Respondent No.1 was incorporated under the name "M/s. SANKALP INFRA PRIVATE PROJECTS" and later renamed as "M/s. AAKRITI CONSTRUCTIONS & DEVELOPERS PRIVATE LIMITED" as per the incorporation certificate dated 18.05.2015, with CIN No. U45400TG2008PTC060093 and registered office at 8-2-293/82/A/646A, Adityaram Square, Road No.36, Jubilee Hills, Hyderabad, represented by their Director, Mr. Manoj Kothari. This Authority is adequately satisfied with the

explanation provided by the Complainants and therefore is duly considering the contentions of the Respondents raised in the Counter affidavit.

Point I

31. The Respondents argued that the Respondents issued a notice dated 16.04.2024 to initiate arbitration with respect to the Sale Deed dated 27.01.2015 as the Respondents claimed that the Complainants failed to pay the total sale consideration until issuance of the cancellation notice by the Respondents in February 2023 by way of an e-mail. Prior to this, i.e., in March 2024, the Complainants filed the present complaint, thereby invoking jurisdiction of this Authority. Subsequently, upon refusal of the Complainant to appoint an arbitrator, the Respondents filed Arbitration Appeal No.135 of 2024 under Section 11 before the Hon'ble High Court for the State of Telangana at Hyderabad praying for an appointment of an arbitrator. The said appeal is pending adjudication before the Hon'ble High Court.

32. The Respondents filed I.A. No.99 of 2024 praying to dismiss the present complaint as Arbitration Appeal No.135/2024 is pending adjudication before the Hon'ble High Court for the State of Telangana at Hyderabad. Whereas, in response to the same, the Complainants filed a reply and submitted that as the Complainants invoked the jurisdiction of this Authority, the arbitration appeal cannot be adjudicated upon in light of the judgment of the Hon'ble High Court of Delhi in Priyanka Taksh Sood & Ors. Vs. Sunworld Residency Pvt. Ltd. & Anr., (Arb. P. 868/2021), Dated 19.04.2022, wherein, the Complainants submitted that the Hon'ble High Court held that the remedies available under the RERA Act are not in suppression of those under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act, 1996") and that the petitioner's choice to seek arbitration is not barred by the existence of concurrent remedies.

33. This Authority has perused the judgement relied upon by the Complainants and Para 38 of the judgment speaks as under:

"38. From the foregoing, it is thus clear that the remedy available under the A&C Act is in addition to the remedies available under other special

statutes and the availability of alternative remedies is not a bar to the entertaining of a petition filed under the A&C Act. But once elected, then the other remedy will not lie in respect of the same dispute. Hence, once a RERA proceeding is initiated, an application under Section 8 of the Act would not lie. However, in the instant case, Respondent has not initiated any proceeding under RERA, hence election of remedy of arbitration is not barred.”

34. A bare perusal of this judgment will clearly establish that an aggrieved person has the liberty to elect the various remedies available to him under law. However, once the person has elected one remedy, the other one cannot be elected by the same person. However, in the facts of the present case, the allottee has elected his remedy provided under the Act, 2016 whereas, the promoter has elected its remedy under the Act, 1996. Therefore, doctrine of election cannot be made applicable in the facts and circumstances of the present case, as persons electing their remedies are two different individuals having different cause of action and different reliefs prayed thereof.

35. Now, the question is whether this Authority has the jurisdiction to entertain the present complaint, in light of the arbitration appeal pending adjudication before the Hon’ble High Court. In the considered opinion of this Authority, the Act, 2016 grants statutory rights and liabilities over allottees, promoters and real estate agents, whereas the Act, 1996 is a remedy which can be invoked at the behest or option of either of the parties to the agreement. The statutory rights of the parties cannot be ousted merely because another party has availed an optional and voluntary remedy under the Act, 1996. The Hon’ble High Court of Patna in *Bihar Home Developers and Builders, through its authorized and registered Partner Sh. Rajiv Ranjan Kumar v. Narendra Prasad Gupta*, (2021 SCC Online Pat 1355) upon analysis of Sections 88 and 89 of the Act, 2016 has held that the Act, 2016 is not inconsistent with the provisions of the Act, 1996.

36. Statutory rights under the Act, 2016 takes precedence over contractual agreement between the parties and the presence of an arbitration clause does not oust the jurisdiction of RERA under the Act, 2016 which gives powers to RERA to regulated real estate dispute. Having understood the facts and circumstances of the present case, where rights and liabilities of the allottee and promoter are questioned under the provisions of the Act, 2016, it is imperative that this Authority intervenes and determines the same in order to protect and promote the interests of the allottees as well as the promoter, as envisaged under the objects and purpose of the Act, 2016.

37. Therefore, Point I is answered in affirmative, and the present complaint is maintainable.

Point II

38. Coming to contractual obligations, admittedly, the Complainant submitted that only 90% of the total sale consideration was remitted to the Respondents as mentioned in Para 4.4 of its Complaint i.e., out of Rs.73,41,000/- (Rupees Seventy-Three Lakhs and Forty-One Thousand Only) of the total sale consideration, only Rs,6,92,852/- (Rupees Six Lakhs Ninety-Two Thousand Eight Hundred and Fifty-Two Only) was remaining to be paid by the Complainant. Whereas the Respondent vehemently argues that when the Complainant failed to pay the remaining balance consideration from 2015 and showcased the various documents such as account status report dated 10.08.2020 and the certificate dated 30.09.2023 issued by the State Bank of India amongst others. Section 19(6) clearly stipulates that *“Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and **shall pay at the proper time and place**, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.”*

39. It is apparent that the Complainants failed to remit the entire sale consideration, as was admitted on their behalf, which was obligated on their

in the terms of the Sale Deed dated 27.01.2015. It can be seen that only after issuance of a cancellation e-mail dated 22.02.2023 by the Respondents, the Complainants kept following up with the Respondents by issuing e-mails from 06.03.2023 onwards. And as submitted by the Respondents, despite having promised to pay the remaining sale consideration of Rs.18 lakhs as promised in e-mail dated 18.04.2023 & 17.05.2023, the Complainants, even in their rejoinder have not come forward with any substance to show that they have paid the balance sale consideration in accordance with their obligation under Section 19(6) of the Act, 2016.

40. On the other hand, the Complainants submit that because the Respondents delayed in completing the construction of the Villa No.113, they could not remit the entire sale consideration, but the intentions of the Complainants are clear where they did not pay the balance sale consideration till today. Therefore, it is held that the Complainants have violated Section 19(6) of the Act, 2016.

41. *Per contra*, the Respondents straight away issued a cancellation e-mail dated 22.02.2023 to the Complainants stating that the cheques submitted by the Complainants bounced back and because the total consideration was not paid by them. Section 11(5) stipulates that *cancellation of allotment can be made strictly in accordance with the terms of the agreement of sale and provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.*

42. The Agreement of Sale entered into between both parties in 2014 stipulates at Clause 7(b) that *“in case of any material delay in the payment for a delivered milestone by the Purchaser, Developer at his sole discretion reserves the right to cancel this agreement by giving a notice of one month in writing to the Purchaser.”* In terms of this very agreement itself, the Respondent ought to have given one month notice to the Complainants. The Annexure to Rule 38 containing draft Agreement of Sale to be executed between an allottee and

a promoter also stipulates that the promoter has to issue a one-month prior notice before cancelling the allotment of the promoter. And therefore, the Respondents could not have cancelled the allotment made to the Complainants, as unilateral cancellation without prior notice is not in accordance with the provisions of the Act, 2016.

43. Point II is answered in affirmative and the Complainants have violated Section 19(6), and the Respondents have violated Section 11(5) of the Act, 2016.

44. Even though the Respondents purportedly cancelled the allotment through email, now that this Authority has seized the matter and is adjudicating the dispute, the said unilateral cancellation is violation of section 11(5) of the act and cannot be sustained solely on the basis of a clause in the Agreement being allegedly violated by the Complainants. Cancellation of a registered Sale Deed cannot be effected unilaterally or merely by invoking a contractual clause. It must follow due process of law, either by execution of a mutual cancellation deed or by seeking appropriate relief from a competent civil court. In the absence of such a lawful procedure, the Respondents cancellation has no legal effect. Accordingly, no penalty is being imposed on the Respondents in this regard.

Point III

45. The Respondents procured competent authority permission from HMDA vide Letter No.1888/MPZ/Plg./HMDA/20212 for construction of 131 independent duplex houses/villas. Till now, occupancy certificate for Villa No.113 allotted to the Complainants is not procured and as per the documents submitted by the Complainants, Occupancy Certificate dated 26.06.2018 was procured for Villa No.30 and the status of the remaining villas is unknown.

46. Proviso to Section 3 of the Act, 2016 clearly stipulates that *projects that are ongoing on the date of commencement of this Act and for which the*

completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act. When the construction of the project is on-going as on the date of commencement of the Act, 2016, the Respondents were mandated to register the project with the Authority. But there was no response in this behalf by the Respondents as to why the Project was not registered. In view of the same, this Authority is constrained to hold that the Respondents have violated Sections 3 & 4 by not registering the Project with this Authority within stipulated period of time.

47. Point III is answered in affirmative, and the Respondents are liable for penalty under Sections 59 & 60 for non-compliance with Sections 3 & 4 of the Act, 2016.

Point IV

48. Coming to reliefs of the Complainants regarding handing over of peaceful vacant possession of the Villa No.113, it is pertinent to note the terms of the Agreement executed between both the parties. Clause 3(a) of the said Agreement stipulates that *“the Developer shall complete the Schedule Property within 18 month from the date of the Agreement with a further of 6 months as grace period to meet any unforeseen exigencies and shall handover the vacant possession of the same on receipt of the total sale consideration from the Purchaser”*. Further, clause (b) states *“in the event of delay in handing over the possession of the Schedule Property to the Purchaser and if the delay is not on account of reasons set out in Clause 16 (force majeure) below, the Developer undertakes to compensate the Purchaser at the rate of Rs.4/- (Rupees Four Only) per month square feet of built-up area of the Schedule property for the period of the delay subject to receipts of all the payment which are due from the purchasers per the agreed payment schedule under clause 2(b) hereinabove.”*

49. Further, Clause (e) stipulates *“the Purchaser hereby agrees that he shall not have any rights to take possession, let, sub-let, alienate, mortgage, charge, encumber or otherwise deal the Schedule Property or any*

construction/development in this regard till Developer acknowledges in writing that all payments including agreed interest, if any, covered under this Agreement and all other prior/subsequent agreements have been made in full by the Purchaser and accordingly the Developer issues the “No Dues Certificate” to the Purchaser in respect of the Schedule Property and construction/development thereon.”

50. In terms of the said clauses as quoted above, the possession of the Villa can only be handed over after the total sale consideration has been paid by the Complainants to the Respondents and the Respondents issue a “No Dues Certificate” to the Complainants. As the Complainants have violated Section 19(6) as explained above, this Authority is constrained to direct the Complainants now to pay the remaining sale consideration along with interest as per Rule 15 of the Rules, 2017 and subsequent thereto, the Respondents shall issue “No Dues Certificate” and handover possession of the Villa to the Complainants in accordance with the terms of their agreement and the provisions of the Act, 2016.

51. However, as the Respondents also made an un-explainable and inordinate delay towards completing the construction of the Villa No.113 and handover the possession to the Complainants. And in lieu thereof, the Respondents are liable to pay Compensation as per clause 3(b) of the Agreement of sale to the Complainants towards this delay and pay Rs.4/- (Rupees Four Only) per month square feet of built-up area of the Villa No.113 for the period of the delay subject to receipts of all the payment which are due from the Complainants as agreed.

Directions of the Authority:

52. In light of the discussions made above, this Authority, vide its powers under Sections 37 and 38 of the Act, 2016, issues the following directions:

- i. The Complainants are hereby directed to pay the remaining balance sale consideration as sought as has been agreed by the Complainant and the Respondent in the Agreement of Sale executed between the parties along with interest at the rate of 11.10% per annum in accordance with Rule 11 of the Rules, 2017 from the date on which such payment fell due until the total consideration is paid within a period of 30 (thirty) days; and
- ii. The Respondents are directed to remit the compensation as agreed by them vide clause 3(b) of the Agreement of sale, accruing to the Complainants at the rate of Rs.4/- (Rupees Four Only) per month square feet of built-up area of the Villa No.113 for the period of the delay subject to receipts of all the payment which are due from the Complainants within a period of 30 (thirty) days; and
- iii. In order to ease the payment process, the Respondent is hereby directed to set off the payment to be received from the Complainant while remitting the payment as stipulated in direction (ii) and the remaining balance is to be paid within a period of 30 (thirty) days to the Complainant; and
- iv. Subsequent to the complying with direction (i) by the Complainants and direction (ii) by the Respondents, after issuance of a “No Dues Certificate”, the Respondents are hereby directed to handover vacant peaceful possession of the Villa No.113 to the Complainants; and
- v. The Respondents are directed to pay a penalty of Rs.12,32,527/- (Rupees Twelve Lakhs Thirty-Two Thousand Five Hundred Twenty-Seven Rupees Only) for violating Sections 3 & 4 of the Act, 2016 payable within 30 (thirty) days 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; and
- vi. As the Occupancy Certificate for the said Villa is not yet procured and the Project is not yet complete, Respondent is hereby directed not to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any unit in the Project – SANKALP ARV VIVA without registering the real estate project with this Authority failing which, appropriate action under Sections 59(2) and 63 will be initiated against the Respondent; and

vii. The parties are hereby informed that non-compliance of directions of the Authority shall attract penalty under Sections 63 and 68 of the Act, 2016.

53. In light of the above, present complaint is disposed of. All connected interlocutory applications are also disposed of. No order as to costs.

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

