

did not complete the Project and was forcing the Complainant to pay the full amount and that the bank sought for Occupancy Certificate for final disbursement which, the Builder could not obtain. He further submitted that the Agreement of Sale dated 25.01.2021 prepared by the Respondent is in conflict with Rule 38 of the Rules, 2017 also that the Complainant paid Rs.3.1 lakhs GST, to which the Respondent did not produce any receipts.

4. The Complainant stated that the Respondent Builder failed to make escrow account in line with Section 4(2)(l)(D) of the Act. Furthermore, by 07.09.2022, 90% of the total flat cost [i.e., Rs.65,01,599/- (Rupees Sixty-Five Lakhs One Thousand And Five Hundred And Ninety-Nine Only)], as per the Agreement of Sale was paid but Respondent Builder did not finish the work in the Complainant's flat. He added that the quality of work was not as per brochure provided to him, and that the Respondent Builder was forcing to pay corpus fund without forming association. He mentioned that the Respondent Builder was charging interest at 24% for any delay in payment and not paying any compensation as per Agreement of Sale for delay in handing over of the flat. Aggrieved by this, the Complainant filed the present complaint praying to declare the Respondent Builder as a defaulter and take appropriate action in accordance with law.

5. Subsequently, the Complainant filed a representation dated 28.01.2023 addressed to this Authority, submitting that the Respondent Builder has registered itself with RERA and thereafter entered into a tripartite agreement with the Complainant, himself and the SBI Bank at Madhapur Branch. That the total sale consideration under the Agreement of Sale for Flat No.405, sought to be purchased by the Complainant is Rs.73,95,130/- (Rupees Seventy-Three Lakhs Ninety-Five Thousand and One Hundred and Thirty Rupees) which includes all applicable

taxes, corpus and 2 years' maintenance charges. He reiterated that the Respondent Builder failed to handover the flat within the handover date i.e., 25.05.2022 as per the Agreement of Sale and therefore, the Complainant stopped making any further payments invoking Clause No. 9.2.(i) of the Agreement of Sale dated 25.01.2021. Furthermore, the Complainant provided email correspondence between himself and the Respondent Builder, demonstrating that the Respondent Builder had requested the Complainant to make a full payment before the project's completion. The Respondent Builder also failed to provide the Occupancy Certificate to the Complainant, and further upon physical verification, it was found by the Complainant that his Flat No.405 was incomplete without any doors, electricity, plumbing, etc., and also the common amenities were incomplete.

6. He also added that no handover was being done by the Respondent Builder, and to the Complainant's surprise, the Respondent Builder, vide e-mail dated 18.01.2023 stated that the allotment of Flat No.405 in favour of the Complainant had been cancelled. Aggrieved, he sought for refund of the total amount paid by him along with interest as per the Rules, 2017.

B. Reply on behalf of the Respondent:

7. Accordingly, vide Notice dated 28.12.2022, served upon the Respondent, this Authority directed the Respondent to submit a reply in terms of Rule 34 (1) & (2) of the Rules, 2017 along with such other information with regard to the Project. Since, no reply was received, a Reminder Notice dated 12.05.2023 was issued to him to submit a reply. Accordingly, Vide Reply dated 23.05.2023, the Respondent Builder merely denied all the allegations as false and submitted that escrow account is being maintained, that the Complainant was asked to pay balance

amount but he failed to do so, and that construction was in line with the permission sought from the competent authority.

C. Hearing Conducted:

8. This Authority called the Complainant and the Respondent for hearing on 26.09.2023 & 01.11.2023, whereas both parties reiterated their stand as per their respective submissions enumerated above. The Respondent Builder also submitted that the flat is now ready for occupancy and that upon receiving balance payment, he is willing to register the Flat No.405 in favor of the Complainant. However, the Complainant on the other hand, submitted that he only sought for refund along with interest as per the Rules, 2017.

D. Observations and Directions of the Authority:

9. Upon consideration of the facts and circumstances of the present matter, this Authority directs the Respondent Builder to refund the amounts paid by the Complainant along with interest at the rate of MCLR of SBI plus two percent i.e., 10.5% as on the date of this Order. The calculation of interest on the principal amount paid by the Complainant shall start from the date on which the Complainant defaulted in the payment schedule provided by the Respondent Builder i.e., from 07.09.2021 onwards until 31.10.2023.

10. The Complainant is already in receipt of Rs.61,91,999/- (Rupees Sixty-One Lakhs Ninety-One and Nine Hundred and Ninety-Nine Only) from the Respondent Builder. The Respondent Builder is also directed to refund the GST amount paid by the Complainant to him at the time of purchase of the flat. As the Complainant has cancelled the flat voluntarily, the Respondent Builder is entitled to forfeit the

booking amount paid for the allotment as provided under Clause 7.5 of the Model Agreement under Annexure to Rule 38 of the Rules, 2017.

11. The matter is disposed of on the above terms and parties are hereby informed that non-compliance with the Orders of the Authority shall attract Section 63 of the Act.

12. 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