

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

COMPLAINT NO.1784 OF 2023

10th Day of July 2024

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

Smt. Kalvakolanu Vijaya Lakshmi ...Complainant

Versus

1. Sri Sikha Balaraju
2. Sri Anji Reddy

...Respondents

The present matter filed by the Complainant herein came up for hearing on 10.07.2024 before this Authority in the presence of Counsel for Complainant, Sri Hari Prasad Podila and Counsel for Respondent No.2 Sri Drupad Sangwan and Sri Pavan Reddy, and none for Respondent No.1, and upon hearing the arguments, 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") requesting appropriate action against the Respondent.

Brief facts of the case:

3. The Complainant entered into an Agreement of Sale dated 10.10.2022 with M/s Viana Homes Pvt. Ltd. represented by Respondent No.2 i.e., Sri Anji Reddy Annapureddy and paid Rs.1,02,94,100/- to both Respondents for purchase of commercial space of 1000 sq.ft. in the Project titled "Poojitha Tech Park" registered with RERA vide Regn. No. P02400002546. The Complainant's grievance is that the Respondents are not registering the commercial space despite making full payment.

4. It was submitted that as per the Agreement of Sale dated 10.10.2022, the value of the 1000 sq.ft. space at unit 45, 4th floor is Rs 66,00,000/- + GST and other expenses of Rs.7,92,000/-, thus totalling to Rs.73,92,000/-, however, the Respondent No.1 collected Rs.1,02,94,100/- as against Rs.73,92,000/-. It was submitted that as per the receipts Rs.65,94,100/- was received by Respondent No.2 and Rs.37,00,000/- was received by Respondent No.1.

5. Therefore, it was prayed to direct the Respondent No.1 to register the 1000 sq.ft. commercial space at unit number 45 of the 4th floor in the POOJITHA Tech Park in favour of the Complainant at the earliest and also sought for rent at the rate ₹80 per sq.ft. from January 2024 on account of delay in registration and possession thereby.

Reply on behalf of Respondents:

6. The Respondent No.1 filed its Reply refuting all the claims. Respondent No.2 filed its reply and primarily submitted that the complaint herein has been filed seeking relief against the Respondent in his personal capacity and not M/s.

Viana Homes Pvt Ltd. That M/s. Viana Homes Pvt. Ltd. had entered into an Agreement of Sale dated 10.10.2022 with the Complainant herein but for the reasons best known to the Complainant, the Respondent No.2 i.e., Sri Anji Reddy, Managing Director of M/s. Viana Homes Pvt. Ltd. has been made a party to the present proceedings. It was submitted that M/s. Viana Homes Pvt. Ltd is a separate legal person with a unique identity from its employees/ members and is a necessary party for adjudicating of present dispute.

7. The Respondent No.2 submitted that the reliefs prayed for by the Complainant herein cannot be granted by this Authority as the Complainant is seeking a combination of reliefs with one of the reliefs being a relief of compensation (claim of rent) and the other being the relief seeking directions. It was submitted that a perusal of the Agreement of Sale dated 10.10.2022 would evidence that the Agreement of Sale has been entered between M/s. Viana Constructions Pvt Ltd and the Complainant over the subject property. However, the relief is wrongly sought against the Respondent No.2 in his personal capacity who is neither the owner nor possessor of the subject property in no manner can convey any rights over the said property as prayed for.

8. The Respondent No.2 also submitted that the Complainant has filed the present complaint seeking registration of the subject property under Section 31. However, complaint can be filed only against any promoter, allottee or real estate agent, however Respondent No.2 is not the promotor in a personal capacity and the Agreement of Sale dated 10.10.2022 clearly indicates the same. That the Complainant having made the Answering Respondent a party in his personal capacity, there is no allottee and promoter relationship between the complainant

and the Answering Respondent. Therefore, it was prayed to dismiss the present complaint on these preliminary grounds.

Rejoinder by the Complainant to the preliminary submissions filed by the Respondent:

9. The Complainant submitted that the complaint is filed for the relief sought in Para 5 of main complaint and the Respondent No.1 appeared and filed his counter by admitting the receipt of total sale consideration by Respondent No.2.

10. It was submitted that the Respondent No.2 avoided the notices of appearance with intention to delay the matter and appeared after many adjournments. Even after appearance of Respondent No. 2, several adjournments were taken without filing counter and tried to lag the matter. That subsequently a preliminary counter was filed instead of opting to file counter as representative of Respondent No.2 Company under capacity of MD of said company.

11. It was submitted that under the said circumstances, the counter filed by Sri. A. Anji Reddy in the matter cannot be taken on file and liable to be rejected at threshold as complaint is filed by the Complainant against the Respondent No.2 company represented by its MD Sri. A. Anji Reddy but not alone against the Sri. A. Anji Reddy liable under his personal capacity in the matter. It was also submitted that opting to file preliminary counter by Sri. A. Anji Reddy under his personal capacity rather filing main counter by the Respondent No. 2 represented by its MD Sri. A. Anji Reddy is nothing but delay tactics by the Respondent No.2 to drag the matter and harass the Complainant to pressurize her to seek refund

of amount and cause loss to her without registering the Sale Deed having been received total sale consideration by the Respondent No.2 company.

12. It was submitted that there has been no denial of factual contentions of the Complainant either by said Sri. A. Anji Reddy or the Respondent No.2 Company in the matter except raising invalid grounds of misjoinder of parties and lack of jurisdiction, hence the contention of the Complainant in the complaint are deemed to be correct and proved in the matter.

13. That the Para No.2 of details of claim mentioned in the main complaint reads the Respondent No. 2 as Sri. Anji Reddy Annapu Reddy S/o Sri. A. Venkat Reddy, MD Vianna Homes Pvt. Ltd., which should be read and mean that Vianna Homes Pvt. Ltd. is the Respondent No. 2 represented by its MD Sri. A. Anji Reddy and same is the intention of the Complainant in making said company as responsible to do as sought the reliefs in the complaint including petition for interim reliefs dated 20.03.2024. By mere reading of cause title of complaint, the matter should not be confused without reading total content of complaint and its spirit and intention of Complainant in the Complaint. The relevancy and liability of the Respondent No.1 apart from Respondent No.2 is borne on record and documents filed along with the complaint demonstrate the fact of liability of both Respondents in the matter.

Observations and Directions of the Authority:

14. This Authority has perused the material on record and heard the contentions raised by the Complainant as well as the Respondents. The Respondent No.2 states that as per the judgments of the Hon'ble Delhi High Court

and Karnataka High Court (submitted vide a Memo), only the company i.e., M/s Vianna Homes Pvt. Ltd. that has entered into Agreement of Sale with the Complainant has to be made a party to the present proceedings and that an individual/company representative i.e., the Respondent No.2 cannot be made liable for the actions of the company.

15. *Per contra*, the Complainant submits that this is a delay tactic by the Respondent No.2 who belatedly appeared before the Court and seeks to harass the Complainant. The Complainant also submitted that, Sri. Anji Reddy Annapu Reddy S/o Sri. A. Venkat Reddy was made a party in the capacity of an Managing Director M/s Vianna Homes Pvt. Ltd., which should be read and mean that M/s Vianna Homes Pvt. Ltd. is the Respondent No. 2 represented by its MD Sri. A. Anji Reddy and same is the intention of the Complainant.

16. The judgments produced by the Respondent explicitly opine that when it is the company that has entered into agreement with the complainant, only company should be made liable for any non-compliance of the terms of the agreement, which is a different party from that of the managing director of the company, who is merely an employee for that time being.

17. The contention of the Complainant that Sri. Anji Reddy was made party in the capacity of the position he holds at the company which shall mean to make the company a party to the present complaint is not tenable. This position is inconsistent with the *ratio decidendi* stipulated by the Hon'ble High Courts. Naming the Managing Director as a party in a representative capacity, without

formally including the company as a party, is both incorrect and unjust, as evidenced by the judgments submitted by Respondent No. 2.

18. Therefore, in light of the judgments of the Hon'ble Delhi High Court and Karnataka High Court and the contentions raised by both the parties, this Authority is of the view that the complaint is liable to be dismissed for non-joinder of necessary parties.

19. As the Complainant has suffered several hearings on account of delay on part of the Respondent No.2 and the matter has to be heard on merits for the reliefs prayed for, the Complainant is at liberty to file a fresh complaint in accordance with law.

20. If aggrieved by this Order, the parties may approach the TS Real Estate Appellate Tribunal in accordance with Section 44 of the Act, 2016.

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**