

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

COMPLAINT NO.427 OF 2022

27th Day of September, 2023

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

Sri Bayya Venkateswara Rao ...Complainant

Versus

M/s Modi Properties ...Respondent

The present matter filed by the Complainant herein came up for hearing on 24.08.2023, 14.09.2023 and 20.09.2023 before this Authority in the presence of Sri Bayya Venkateswara Rao, the Complainant, and Sri Malla Reddy & Sri M. A. Lateef, Advocate on behalf of the Respondent and upon hearing the arguments of both the parties, 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").

A. Facts of the Complaint:

3. The facts of the case, in brief, are that the Complainant along with his wife booked the villa number 140 in Silver Oak Project situated at Cherlapally Village bearing Survey No.11, 12, 14 to 18 & 294 (P), at Kapra, Medchal, Malkajgiri, Telangana. Said Project is registered with this Authority vide Registration No. P02200001575 having validity until 30/10/2025. He submitted that, even though

the said Villa is owner share, the Respondent Builder has executed booking form and arranged for subsequent requirements like receiving the advance amount, issue receipts etc. They booked the said villa based on the information provided by sales executive and the information available in the project brochure and company site.

4. He submits that he paid an amount of Rs.12,25,001/- (Rupees Twelve Lakhs Twenty-Five Thousand and One Only) as an advance amount to the owner of the villa. At the time of verification of site by the bank valuer for the Complainant's housing loan purpose of the said villa, it came to the Complainant's notice that there is a grave yard in the Project as per approved layout of the project which was not disclosed to us at the time of booking as well as subsequent discussion also. Since the said graveyard is located opposite the Complainant's proposed villa and the seller i.e., the Respondent did not disclose about this at the time of booking and subsequent activities, the Complainant decided to cancel the said booking.

5. He further submitted that even though booking of villa has been cancelled due to concealing crucial information, the Respondent has deducted an amount of Rs.50,000/- (Rupees Fifty Thousand Only) as cancellation charges. The Complainant has requested the Respondent to refund the entire cancellation amount, however the Respondent did not refund the same and aggrieved by this action of the Respondent, the Complainant has approached this Authority.

6. He added that non-disclosing about graveyard, which was clearly mentioned in the approved layout of the Project, to the prospective buyers is against the RERA guidelines. Concealing such information in the project brochures and in the publicity material is also contradictory to the TS RERA guidelines.

B. Relief Sought:

7. The Complainant prayed for the following:

“Return the deducted amount of Rs.50,000/- along with interest and other expenses and notional/eventual loss of Rs.50,000/-” on the ground that the

Respondent concealed very crucial information of having graveyard in the project as per approved layout plan. He also sought for an interim payment from the Respondent Builder.

C. Reply on behalf of the Respondent:

8. *Per contra*, the Respondent, vide its Reply dated 30.08.2022 submitted that the Complainant booked Villa No.140 at Silver Oak Villas forming part of Sy Nos.11, 12, 14, 15, 16, 17, 18 & 294 of Cherlapally Village, Kapra (erstwhile Ghatkesar) Mandal, Medchal – Malkajgiri District. Further, the Complainant, by way of e-mail dated 27.12.2021 requested the Respondent to cancel the booking for Villa No.140 and refund the amount paid by him to the Respondent. In reply, the Respondent's customer support team informed that substantial cancellation charges would be levied as per the terms agreed between the Respondent and the Complainant. However, the Complainant, vide e-mail dated 25.01.2022 requested the Respondent to deduct Rs.50,000/- as cancellation charges.

9. That the Respondents agreed to the request of the Complainant and subsequently, on 29.01.2022, the Complainant visited the Respondent's office and handed over the original booking form, receipts and agreement of sale with a request to reduce the cancellation charges to Rs.50,000/-. A copy of the declaration/receipt dated 07.02.2022 has been filed by the Respondent which clearly shows that the Complainant is satisfied with the refund of Rs.11,75,001/- (Rupees Eleven Lakhs Seventy-Five Thousand and One) after deducting Rs.50,000/- (Rupees Fifty Thousand Only) as cancellation charges. The Complainant signed on the said form which certifies that all accounts are deemed to be settled and that he has no claim of whatsoever nature against Silver Oak Villas or Villa No.140.

10. Therefore, the Respondent submitted that there is no merit in the complaint of the Complainant. The booking was cancelled and the amount refunded to the

Complainant as per his own request and accordingly prayed to drop any further proceedings in the said matter.

D. Hearing conducted:

11. This Authority called the parties for hearing on 24.08.2023, 14.09.2023 and on 20.09.2023 where both parties appeared on 20.09.2023 and reiterated the points as mentioned above. The Respondent, to support his arguments submitted that as per the registered Agreement of Sale dated 11.10.2021 that was executed between the parties, at Clause 5.3, it was clearly agreed that *“the purchaser has examined the title deed, plans, area/ extent of the schedule villa permissions and other documents and is fully satisfied with regard to the title of the vendor and the authority of the vendor to transfer the rights hereunder and the purchaser shall not, hereafter raise any objection on this count.”*

12. Conversely, the Complainant submitted that he paid Rs.2,00,000/- (Rupees Two Lakhs Only) as token amount and subsequently paid Rs.12,25,001/- (Rupees Twelve Lakhs Twenty-Five Thousand and One Only) before execution of the Agreement of Sale between the parties. He submits that at the time of booking, the Respondent provided copy of the Project Brochure, Site Plan, Plan of proposed Villa and payment schedule/cost sheet. He adds that the argument that the Complainant agreed to have verified the site plan as per Clause 5.3 cannot be valid as the Agreement of Sale was not executed on 11.10.2021. He submits that the Draft Agreement of Sale was mailed to him on 08.11.2021 and subsequently, the same underwent changes as per request of the Complainant and the panel advocate of SBI, where he applied for loan.

13. As regards Agreement of Sale is concerned, date of execution as per Agreement of Sale is 11.10.2021, whereas draft Agreement of Sale was shared by the Respondent to the Complainant on 08.11.2021 as per the copy of the e-mail filed by the Complainant. In this regard it is pertinent to note that it is imperative to resort to

the the same date on which the Agreement is actually executed instead of back-dated Agreements which creates ambiguity. As regards the argument of parties regarding Clause 5.3 is concerned, it is observed that the same does not have any bearing on the facts as the issue has been settled by way of the Complainant signing the declaration/receipt dated 07.02.2022 wherein he clearly admitted to have closed all claims with the Respondent.

F. Points for consideration by this Authority:

14. Upon careful examination of the facts and circumstances in the present case, the following points arise for deliberation before this Authority:

(i) Whether there is a violation of Section 12 by the Respondent?

(ii) Whether the Complainant's relief, as prayed for, be granted, if yes, to what extent?

Point (i)

15. Section 12 provides as under:

"12. Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act."

16. A bare perusal of this provision stipulates that when the promoter provides any incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building which he proposes to sell, then he shall be liable for such refund or compensation as provided under the Act. In the facts of the present case, the Complainant clearly submitted that a copy of the site plan was provided to him at the time of booking which shows that there is a graveyard adjacent to the project. Even though the Respondent failed to incorporate the said information in the brochure, the site plan was duly provided and acknowledged by the Complainant at the time of booking which establishes that no information was concealed to him “at the time of booking”. Hence, the Respondent has not violated Section 12 of the Act.

17. Nonetheless, this Authority notes that the broader public frequently places significant reliance upon the brochure. Omitting any mention of the presence of a cemetery adjacent to the Project by the Respondent within its brochure has a considerable impact on potential purchasers who place their trust in the brochure without question. It is incumbent upon both buyers and sellers to exercise caution, with a particular onus on sellers to include exhaustive and unambiguous information in their brochures, so as not to ensnare unsuspecting customers in such situations.

Point (ii)

18. The Complainant cannot come at this belated stage after having agreed to deduct Rs.50,000/- (Rupees Fifty Thousand) at his own conscience, seeking refund of the said amount before this Authority. Several e-mails and declaration/receipt dated 07.02.2022 has been filed by the Respondent to sufficiently demonstrate that the claim between the parties has been resolved. Hence, the Complainant’s relief cannot be granted.

19. In lieu of the above discussions, the present complaint stands disposed of. The parties are hereby informed that failure to comply with this Order shall attract Section 63 of the Act.

20. 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 Laxmi Narayana Jannu, Hon'ble Member

Sd/-
Sri K. Srinivasa Rao, Hon'ble Member

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



GOVERNMENT OF TELANGANA
TS RERA
TELANGANA STATE REAL ESTATE REGULATORY AUTHORITY