

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

**COMPLAINT NO.283 OF 2023**

**28<sup>th</sup> Day of February, 2024**

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

Sri Sai NB Elegance Flat Owners  
M.A.C. Maintenance Society Ltd.

...Complainant

Versus

M/s Sai Bhavani Constructions  
Represented by its Authorised Representative  
Sri Bijilee Sadanand

...Respondents

The present matter filed by the Complainants herein came up for hearing on 08.11.2023, 20.12.2023 and 30.01.2024 before this Authority in the presence of Complainants in person and Authorised Representative of the Respondent Builder and upon hearing the arguments of both parties, this Authority passes the following **ORDER:**

2. The present Complaints have been filed by the Complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule (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 Builder.

**A. Brief facts on behalf of the Complainants:**

3. The Complainant has filed a registration certificate of the Mutually Aided Co-Op. Society but not filed any sale deeds in support of their contention. They submitted that the construction of the said Project is not in a good condition having the following issues:

- i. As per the official plan approved, 57 car parking including visitors parking were documented. But the Respondent Builder has allotted 71 parking spaces which does not include visitor parking. Due to which parking is congested.
- ii. As per the sanctioned building plan, the permitted building is a Residential Apartment of Cellar, Stilt and 5 floors. Cellar and Stilt are earmarked in the building plan as designated car parking areas and top 5 floors are for residential apartments but contrary to the sanctioned plan builder in Block A has constructed commercial shops in stilt area in the place allotted for car parking and the top 5 floors have been converted into commercial space in the place of residential apartments which is gross illegality and blatant deviation from Sanctioned building plan.
- iii. The Common area was supposed to be handed over to the Residents Welfare Association within 30 days from the obtaining of completion certificate as per Section 17 (2) but the building completion notice was submitted by the Builder on 01.01.2021 but still the common area is being held by the Builder as a civil structure being constructed by the Builder, which is in the area designed as common area.
- iv. No Visitor Car Parking slots have been allocated in either the stilt or cellar area designated for car parking in the apartment building and even after 2 years after submitting of building completion notice to GHMC.
- v. Builder has to provide post maintenance service for defects arising out of plumbing and electrical fittings of the building for a period of 5 years from the handing over of the possession in accordance with section 14 (3).
- vi. As per section 17(2), the Builder is bound to handover all relevant documents and plans related to the building within 30 days after obtaining the project completion certificate which is again not been compiled by the Builder even after repeated requests from the Residents Welfare Association.

- vii. Common current meter & water contention is still not been handed over to the Association
  - viii. One of the flat owners has built an unauthorized duplex apartment in 4th and 5th floor.
4. Accordingly, they prayed that the Respondent Builder may be directed to address the issues raised and resolve them at the earliest.

**B. Reply on behalf of the Respondent Builder:**

5. Vide Reply dated 20.01.2024, the Respondent Builder, submitted as follows:
- i. The Respondent, as per the sanctioned plan, has constructed 50 flats. After completion of the Apartment, and as per the physical condition of the site, initially the Respondent has allotted 70 parking spaces in Cellar and Stilt. But after elaborate discussions and meetings with all the Flat Owners, due to congestion, 4 parking spaces have been excluded from 70 parking spaces, as all the flat owners requested that if 70 parking spaces are provided, it will lead to congestion. Therefore, the Respondent has made 66 parking spaces. All the Flat owners and the complainants have agreed for 66 parking spaces only, and they have requested the Respondent to allot the entire 66 parking spaces basing on the lucky draw.
  - ii. In the presence of all the flat owners, allotment of car parking by way of lucky draw was conducted on 22.01.2023 and car parking spaces were allotted to the respective flat owners i.e., 50 flat owners.
  - iii. 12 Flat owners, out of total 50 Flat owners, have requested to allot the extra car parking. In pursuance to their request, the Respondent has allotted extra 12 car parking spaces to them. 4 car parking spaces which have been excluded from 70 parking spaces, are collectively using by all the flat owners including the visitors.
  - iv. There is no visitor parking space in the sanctioned plan.
  - v. Respondent will remove the office space, which is constructed for temporary purpose. The car parking space which was given to all the flat owners, is not congested.
  - vi. "A" block was allotted to the landowner as per the sanctioned plan. The Respondent is not responsible for any deviation thereafter.

- vii. All the Flat owners are using the common area, by occupying their flats. The Respondents has constructed temporary office space, in part of the parking space, which belongs to the Respondent. After selling the entire flats, the Respondent will remove the office space and will convert into car parking.
  - viii. There are some unsold flats in the apartment, therefore remaining parking spaces of the unsold apartment are retained by the Respondent to handover to the potential allottee.
  - ix. There are no cracks on the outer walls of the building. The cracks which they are showing in the photographs, is not a crack, it is an expansion joint, which is covered with rubber sheet in slab in corridor of Block "B", which is also shown in the sanctioned plan, and also as per the structural design.
  - x. The Respondent will hand over the all the relevant documents as per the procedure prescribed under the law.
  - xi. Common current meter has already been changed in Association name and Change of water connection is under process.
  - xii. It is not unauthorized structure and it is only internal modifications and the respondent shall comply with the same.
6. In light of the above, the Respondent prayed that the Complaint may be dismissed as all issues have been addressed by the Respondent.

**C. Rejoinder by the Complainants:**

7. Vide Rejoinder dated 30.01.2024, the Complainants submitted that:
- i. The Association was notified about the approved 57 parking during the lucky draw for parking slots. As per the approved sanction plan, there are 57 parking slots including 10% visitors parking. The remaining area belongs to the Complainant Society.
  - ii. The Respondent Builder is not fixing the structural damages to the building which is evident by the way of cracks on outer walls and common area (corridors) of the building.

- iii. Corpus fund of only 47 flats was handed over to the Association out of 50 flats.
- iv. The Respondent Builder did not hand over all relevant documents and plans related to the building such as land, water connection, electricity meter, lift, generator, etc.
- v. Office constructed in the approved parking area has to be demolished.

**D. Observations and Directions of the Authority:**

8. Complainant and Respondent appeared before this Authority and reiterated the contents of their respective affidavits. The Project “SRI SAI N B ELEGANCE” is registered with this Authority vide Regn. No. P02200000559 and valid up to 13.05.2024.

9. Section 14(3) stipulates as follows:

*(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.*

10. Admittedly, the Complainants entered into possession of their flats in October 2021 and the five-year defect liability period has not expired yet, as per Section 14(3). Further, this Authority has perused the documents and photographs

filed Therefore, vide this Order, this Authority deems it fit to pass the following directions:

- i. The parking provided in the sanctioned plan is a total of 3656.72 sq.mtrs. not having any area allocated to visitor car parking. It is also observed that the competent authority, while issuing Occupancy Certificate dated 25.08.2021 has scrupulously inspected the Project premises and accordingly certified the same to be fit for occupation which in turn signifies that the sanction has been followed in *stricto sensu*. It is also pertinent to note herein that the description of the Building in the Occupancy Certificate is as per the sanction plan including the parking area. Therefore, the Respondent Builder and the Complainant Association are bound by the same.
- ii. Any excess in parking slots may be retained by the Respondent Builder as there are some unsold flats in the apartment to whom such unsold parking lots will be handed over.
- iii. The Respondent is directed to demolish the office space built in the parking area in deviation of the sanctioned plan, within 60 days.
- iv. The Respondent is directed to handover all relevant documents and plans related to the building within 30 days.
- v. The Respondent is directed to change water connection in the Complainant Association's name within such reasonable time as may be required.
- vi. With regard to Corpus Fund, the Complainants are informed that the Respondent shall handover the entire corpus fund to the Complainant Society only after all the flats in the Project are sold by the Respondent Builder.
- vii. The Complainants have submitted that, contrary to the sanctioned plan, the Respondent Builder, in Block A, has constructed commercial shops in stilt

area in the place allotted for car parking and the top 5 floors have been converted into commercial space in the place of residential apartments. However, no photograph/videography is placed on record to show that such deviation has taken place. Nonetheless, if any structures are erected in the parking area i.e., in the stilt or cellar, the same has to be removed. To execute the same, the Complainants may approach the competent authority for appropriate relief.

viii. With regard to conversion of purpose of the building from residential to commercial, the Complainants may approach the competent authority for appropriate relief.

ix. The Respondent Builder to make necessary changes and rectify the defects within 60 days and submit proof of such rectification. Upon the failure of the Respondent Builder to comply with the present Order, appropriate action, including imposition of penalty, will be taken as per provisions under Section 63 of the Act, 2016.

11. In lieu of the above-mentioned directions, the present complaint stands disposed of.

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**