

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

COMPLAINT NO.621 OF 2022

30th Day of April 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 Pandu Ranga Reddy Gattu ...Complainant

Versus

M/s BRV Constructions
Represented through its Authorised Representative ...Respondent

The present matter filed by the Complainant herein came up for hearing on 16.11.2023 before this Authority in the presence of the Complainant in person, and Counsel for Respondent, Sri Rajesh Kshirsagar, and Sri P. Sai Shakti Rao, and as both parties agreed for settlement through mediation, while exercising its powers under Section 32(g) had sent the parties for mediation. However, the said mediation failed, and the parties were called for hearing on 19.03.2024, wherein the Complainant in person appeared and the Respondent did not appear, and after 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 Builder.

Brief facts of the case:

3. The Complainant submitted that he entered into an Agreement of Sale with the Respondent on 05.05.2018 for purchase of flat in the Project titled “BRV Constructions” by paying a sum of Rs.45,00,000/- (Rupees Forty-Five Lakhs Only) as full consideration towards the said flat in the residential project. The said Project was registered with this Authority vide Regn. No.P01100003617 which expired on 20.11.2021. The Complainant alleged that there are several delays in completing the Project and that the Respondent is also delaying registration of the flat despite the Complainant paying total sale consideration.

4. The Complainant submitted that Respondent has registered the flat on another person's name by accepting further consideration for the same flat and therefore, Complainant alleged that the Respondent has indulged in unfair trade practices. In lieu thereof, the Complainant prayed for refund of amounts paid by him to the Respondent along with interest at the rate of 18% p.a., to direct the Respondent to register the flat in the name of the Complainant without any consideration and also to impose penalty on the Respondent for undertaking fraudulent activities.

Reply by the Respondent:

5. *Per contra*, Vide reply dated 01.02.2023, the Respondent submitted that the Complainant has not come before this Authority with clean hands. He submitted that the Agreement of Sale dated 05.05.2018 submitted by the Complainant is not enforceable as the same is barred by limitation.

6. The Respondent submitted that this Authority has no jurisdiction to adjudicate the present matter as it is merely a monetary transaction between the Complainant and the Respondent and that a competent civil court has the jurisdiction to try and adjudicate the same. It was submitted that the Complainant got issued a Legal Notice dated 27.07.2022 calling upon this Respondent to register the Sale Deed and a suitable reply was issued to Complaint which fact is deliberately suppressed by the Complainant in the present complaint.

7. He submitted that the Respondent (Sri Babu Rao) is a Civil Contractor and having a vast experience in carrying out civil contract works. That, the Complainant, and Respondent are known to each other since more than 35 years and have also carried out certain civil contracts jointly. That the Respondent along with other partners were running a Construction firm under the name and style of M/s BRV Constructions. And, during in the year 2017 as Respondent was intending to develop a site at Tellapur Village, R.C.Puram Mandal along with his partners, the Complainant with his earlier acquaintance with Respondent has approached him and wanted to invest in their project at Tellapur village, RC.Puram. Accordingly, the Complainant has initially issued two cheques bearing Nos.000092 and 000093 dated 28.08.2017 for a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) each drawn on Bank of Baroda as a part of his share of investment in the project. However, as the Complainant could not procure the money issued under cheques and further investments amounts, Complainant requested Respondent not to present the said cheques.

8. It was further submitted that the Complainant has not come forward to invest the money in the project. However, initially Complainant has helped this Respondent in negotiations, developmental activities and paper work of the project

taking into consideration their earlier acquaintance and friendship and the Respondent assured that they will compensate for the services rendered by Complainant. That taking advantage of Respondents assurance Complainant was pressuring the Respondent day in and day out and was blackmailing Respondent and was causing nuisance daily. At that juncture Complainant has got executed a nominal Agreement of Sale dated 05.05.2018 without any sale consideration only as a security and to pay goodwill. That the agreement of sale is a nominal one and was executed without any consideration and it was executed only as a security to the money assured by Respondent to be paid to complaint towards his services rendered.

9. At that point of time, sanction permit of the building was also not accorded, and sanction was accorded in the month of November, 2018. He added that no prudent person will pay entire sale consideration, in a project which is not even commenced as on the date of agreement. Further, as on the said date there was no such market value prevailing to pay such an amount. Further no such documents have been filed by the complainant to prove the payment of sale consideration except acknowledgement in Sale Agreement dated 05.05.2018, nor given any clarity with respect to mode of payment nor filed any IT returns to establish the conformity of the payment of Sale consideration amount.

10. That thereafter, the Respondent has transferred to Complainant account through his different banks amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) on 13.11.2018 to Complainant and his firm. Further on 15.12.2018, 18.12.2018 and 08.01.2019, the Respondent and also Rs.27,00,000/- (Rupees Twenty-Seven Lakhs Only) through his employee Satyam. It is further stated that, a further sum of Rs.3,00,000/- (Rupees Three Lakhs Only) was also got transferred from the

account of Respondent's daughter on 19.12.2018 to Complainant. That, after payments of entire amounts Respondent has requested to return the Agreement of Sale but, however Complainant was postponing the same on one pretext of the other saying that it is misplaced.

11. It was submitted that the Complainant received the above-mentioned amount towards his services though not entitled for such an amount, only taking into consideration of Respondents' friendship with Complainant. Complainant is taking advantage of retaining of the Agreement of Sale which is on the face of it time barred has got filed this complaint after a period of 4 years. That the Complainant is now trying to blackmail Respondent to enrich himself unjustly under the threat of litigation as the project is developed and already sold to third parties. That after the Development of the site the above-mentioned flat is already alienated to third party.

12. In conclusion, he prayed to dismiss the complaint.

Rejoinder by the Complainant:

13. Vide Rejoinder dated 28.03.2023, the Complainant submitted that the Agreement of Sale dated 05.05.2018 has no time limitation and cannot be treated as time barred. That there was no suppression of the Legal Notice dated 27.02.2022 and as agreed in the Agreement of Sale dated 05.05.2018, the Respondent has received full sale consideration of Rs.45 Lakhs as against the Flat. He submitted that the Respondent and the Complainant are known to each other from last 35 years and having faith, the Respondent promised to register one flat in the name of the Complainant during 2017 and against which 2 cheque nos. 000092 & 000093 dated 28.08.2017 were issued by the Complainant and that was

not materialized. He added that this was not for investment in the project at Tellapur but for the purchase of the flat which was not returned by the Respondent so far. The said transaction is mentioned in the IT returns of the Complainant as Agriculture income and business income during the period AY 2018-19 SAY 19-20.

14. That only Rs.10 Lakhs is received on 13.11.2018, Rs.2 Lakhs on 18.12.2018, Rs.3 Lakhs & Rs.5 Lakhs on 29.10.2018 by the Complainant herein. The refund of Rs.10 Lakhs was paid back by the Respondent herein as against the financial help sought by the Respondent from the Complainant during 2011 in cash against which a Cheque No.628797 was issued by the Respondent for Rs.5 Lakhs.

15. Accordingly, the Complainant prayed to revoke the registration granted to the Respondent's project vide Registration No.P01100003617 and not to release the 4 flats under mortgaged to this Authority until and unless the grievance is fulfilled of the Complainant by the Respondent.

Observations and Directions of the Authority:

16. This Authority has perused the material on record, considered the contentions raised by the parties and it is clear that the Complainant and the Respondent entered into a transaction for alleged sale of a flat in the Project being constructed by the Respondent herein. On account of failure of the Respondent to register the flat despite the entire consideration being paid, the Complainant, aggrieved, approached this Authority for refund of amounts paid to the Respondent, as the flat has now been registered in favour of a third party.

17. The Respondent on the other hand disputes any such transaction for sale of the flat. He contends that the transaction is in relation to an investment made by the Complainant in the Project and therefore, same was made much prior to even obtaining a sanctioned plan from the competent authority. He also submits that the amount paid by the Complainant has been returned to him and accordingly filed receipts of the said amounts being returned.

18. After consideration of the facts and circumstances of the case, this Authority is of the view that the above-mentioned disputed facts clubbed with the alleged receipts filed by the parties require a trial by a competent civil court of appropriate jurisdiction and this Authority cannot delve into such intricate questions of disputed facts and law.

19. Considering the peculiar circumstances of the case, the present order is being issued however the same shall not be taken as a precedent for adjudication of disputes before the present authority.

20. For the aforementioned reasons, relief prayed for by the Complainant cannot be granted as the Complainant has failed to establish any reasons for revocation of registration of the Respondent's project. In lieu thereof, the present Complaint stands disposed of.

21. 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) in accordance with Section 44 of the Act, 2016.

Sd/-

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Sri K. Srinivasa Rao,
Hon'ble Member,
TS RERA

Sd/-

.....
Sri Laxmi Narayana Jannu,
Hon'ble Member,
TS RERA

Sd/-

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Dr. N. Satyanarayana, IAS (Retd.),
Hon'ble Chairperson,
TS RERA

