

TELANGANA STATE REAL ESTATE REGULATORY AUTHORITY

COMPLAINT NO.631 OF 2021

Date of Decision:09.08.2023

M. Sridhar Reddy & Others

Versus

...Complainants

M/s Vrise Builders & Developers LLP

...Respondents

Quorum:

Dr. N. Satyanarayana, Hon'ble Chairperson
Sri K. Srinivasa Rao, Hon'ble Member
Sri Laxmi Narayana Jannu, Hon'ble Member

Appearance:

Mr. M. Srinivas Rao, Mr. L. Srinivas, Mr. M. Sridhar Reddy, Mr. Thirpathi Rao, Mr. Ravinder Rao and Mr. Malla Reddy for the Complainants.

Mr. Srinivas Reddy S/o Anji Reddy for the Respondent.

ORDER

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:

2. That the matter had been taken up on hearing before this Authority on 09.08.2023, and the Complainant submitted that they had purchased flats in SHAMALA ANJI REDDY (SAR) MARVEL (hereinafter referred to as the "Project") from M/s Vrise Builders and Developers LLP headed by Mr. S. Anji Reddy, Mr. S. Laxman Reddy, Mr. S. Srinivas Reddy and Mr. S. Sandeep Reddy during the year 2020-21. All of the Complainants herein have admittedly occupied the flats between November 2020 to April 2021 though the Respondent/Builder was still tasking up minor repair works in the apartment.

3. That the Project occupies 842 sq. yds. (701.10 Sq Mtrs) with 10 flats of 2302.5 Sq Ft each. This area includes common areas and one car parking each with an undivided share of 82.40 Sq Yds per each flat owner. That further, out of the 10 (ten) flats in the Project, the Respondent/Builder has kept 3 (three) flats on their name.

4. That the Complainants have contended that the Builder has violated Sections 3, 4, 11 and 14(3) of the RERA Act, 2016 as he has not given the Complainants any brochure nor the RERA Registration Number before the sale of the apartments. That further, as regards Sanction Plan for competent authorities is concerned, there are deviations from the same such as proper slope is not maintained at the roof slab resulting in roof leakage between the flat Nos.501 and 502, corridors not cleaned, buffing has to be done to the steel railing, documents of equipment like generator and CC cameras etc., are not handed over so far.

5. He vehemently contends that without following the safety norms such as a fire safety system/fire-fighting installation for the entire Project, as prescribed by GHMC, he has obtained Occupancy Certificates for the Complainants/Flat Owners.

6. He adds that the GHMC approved drawing shows a total of 12 (twelve) parking spaces. However, in deviation to it, the Respondent/Builder has constructed only 11 parking spaces. That the Respondent/Builder orally promised for 1 parking space for each flat owner being 10 parking spaces in total and the 11th parking space to be used commonly by all flat owners for 2 wheeler parking.

7. To contradict his own promise, the Respondent/Builder has kept 4 parking spaces to himself against 3 flats owned by him and left the rest 7 parking spaces to be divided amongst the flat owners. Further, no lottery system has been followed in allotting the parking spaces as was promised by him.

8. He further submits that for all 10 identical flats, the undivided share is same i.e., 82.4 Sq Yds. However, Smt. S. Sujatha W/o Mr. S. Anji Reddy has registered the Flat No.201 with 2302.5 Sq Ft + 150 Sq Ft + 150 Sq Ft = 2603 Sq Ft with 2 car parking, Mr. S. Laxman Reddy has registered Flat No.301 with 2302.5 Sq Ft + 200 Sq Ft = 2502.5 Sq Ft and Mr. S. Sandeep Reddy has registered Flat No.401 with 2302.5 Sq Ft + 200 Sq Ft = 2502.5 Sq Ft. In this regard, the Complainant highlights that all have claimed the undivided share of 82.40 Sq Yds only i.e., 2302.5 Sq Ft itself includes car parking and common areas.

9. The Complainant vehemently argues that when undivided share is same i.e., 82.40 Sq Yds for all 10 (ten) identical flats with same carpet area, registering 3 (three) flats owned by the Respondent/Builder at size over and above 2302.5 Sq Ft in contravention of GHMC guidelines is a clear case of irregularity on part of the Respondent Builder. He accordingly prayed to modify the registration documents of the Respondents with correct Sq Ft and to allot the 10 (ten) car parking areas by lottery system and 1 parking area may be allotted for parking of two wheelers.

B. Relief sought:

10. That in the interim, the Complainants have prayed for the allotment of parking's slots be done by lottery system and one parking slot be allotted for two wheeler parking. Further to direct the Respondents to rectify the roof repairs and provide fire safety measures in the building.

11. The present complaint has been filed seeking following reliefs:

“(a) the allotment of the car parking slots may be done by lottery system and one parking slot may be allotted for two wheeler parking by rectifying the repairs as mentioned as per clause 14.3 of the RERA Act.

(b) Fire safety norms may be taken up as per National Building Code of India, 2005 as mentioned in the guidelines of GHMC”

12. That subsequently, Notice dated 17.11.2021 was issued by this Authority to the Respondents communicating the various reliefs sought by the Complainants and sought for a Reply on the contentions raised by the Complainant duly annexing relevant documents and substantiating evidences or such other information as required with a copy to the Complainant.

13. A representation dated 24.02.2022 was issued by the Complainants, bringing to the knowledge of the Authority that no action has been taken by the Respondents with respect to the present Complaint and sought for taking matter further ahead.

14. Considering the facts and circumstances, a Show Cause Notice was issued on 19.02.2022 by this Authority, asking the Respondents, why penalty ought not to be imposed on them for violation of Section 3(1) and 4(1) of the Act, 2016.

C. Reply on behalf of the Respondent:

15. Per contra, vide Reply dated 01.12.2021 and 02.12.2021, the Respondents have submitted that Sri Anji Reddy was originally the owner and possessor of the open land admeasuring 1360 Sq Yds or 1136.96 Sq Mts in Sy No.33 situated at Pet Basheerabad Village, Quthbullapur Mandal, under GHMC Circle, Ranga Reddy District. He got the said property under a registered partition deed bearing document No.635/2015 dated 13.01.2015, and out of the said land he alienated part of the property i.e., land admeasuring 521.33 Sq Yds to the prospective purchaser under registered sale deed bearing document No.26985 of 2018 dated 14.12.2018 and has retained land admeasuring 838.67 Sq Yds.

16. Thereafter, the Respondent entered into a registered Development Agreement-cum-General Power of Attorney for development of the said land with M/s Vrise Builders and Developers vide Document No.4779//2019 dated 25.02.2019 for construction of residential complex under the name and style of "SAR MARVEL" (hereinafter referred to as the "Project") consisting of silt + 5 upper floors for mutual benefit of both the parties as per the existing rules for an area admeasuring 824.37 Sq Yds out of the total extent of 838.67 Sq Yds. That in the said Agreement, it was agreed that upon construction 40% of the built up area inclusive of all common areas, balcony areas, circulation areas shall be retained by the Respondent and the 60% built up area was to be taken by the developer. He added that though development agreement was entered for land admeasuring 824.37 Sq Yds, building permission was applied for land admeasuring 838.67 Sq Yds.

17. That the Respondent applied for building permission and the same was sanctioned on 02.03.2019 vide file No.2/C25/00220/2019 and Permit No. 2/C25/03624/2019. The developer completed the construction as per the terms of

the Development Agreement dated 25.02.2019 and have obtained the occupancy certificate for the same on 01.02.2021. Flat Nos.201, 202, 301 and 401 have fallen to the share of the Respondent and flat Nos.101, 102, 302, 402, 501 and 502 have fallen to the share of the developer, respectively.

18. That subsequently, the Respondent gifted flats which belonged in his share under registered gift deeds to his family members as follows:

- (1) Gift deed bearing No.20188/2021 to Smt. Samala Sujatha (wife) dated 19.07.2021 for flat No.201; and
- (2) Gift deed bearing No.20186/2021 to Samala Laxma Reddy (Son) dated 19.07.2021 for flat No.301; and
- (3) Gift deed bearing No.20187/2021 to Samala Sandeep Reddy (Son) dated 19.07.2021 for flat No.401.

19. The Respondent submitted that he also executed sale deed bearing document No.18771/2021 dated 07.07.2021 in favour of Sri G. Rajasimha Rao selling flat No.202 in his favour. He added that similarly, the Developer sold his share of flats to the Complainants herein.

20. It was categorically submitted by the Respondent that the purchasers from the share of Developer have filed this complaint seeking allotment of car parking slots by lottery system. In this regard, he submits that the Complainants have been allotted one car parking along with the flat they have purchased along with proportionate share in the common area and have been parking their respective vehicles in the allotted space. It was also submitted that there was no oral assurance given by the Respondent for allotting 1 car parking for common use which is also evident from the sanction plan approved by GHMC.

21. He adds that it is not the case of the complainant that any common area of the residential apartment have been converted into car parking and is utilised by the Respondent, however, it is specifically mentioned in the Sale Deed that the purchaser has no right and no objection to extra car parking. The Respondent further submitted that the Respondent has rectified all the complaints raised with regard to structural deficiencies in the residential apartments and there is no obligation on their part to allot one car parking for two wheelers as we have not given any oral assurances for the same.

22. That with regard to Fire Safety norms, the Respondent submitted that as per Circular Memorandum dated 03.06.2017 vide R.C. No.15009/MSB/CR/RR/2013, the residential apartment i.e., the Project, is not covered under Section 13 of the Telangana Fire Services Act, 1999 and therefore, there is no requirement to obtain NOC from the Fire Department. He substantiates the same by stating that the height of the apartment is 14.75 meters as per the GHMC sanction plan and the same is constructed without any deviations. He concluded by submitting that the present Complaint is false and without any base to compel the Respondents to part with car parking which have been duly fallen to the share of the Respondents.

D. Jurisdiction of the Authority:

23. Further, this Authority observes that it has subject matter jurisdiction to adjudicate the present matter as Section 34(f) empowers this Authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder. As the present complaint raises issues with regard to non-compliance of the promoters'

obligations provided under Sections 3(1), 4(1) and 14(1) of the Act, this Authority has complete subject matter jurisdiction to adjudicate the present matter.

E. Points for consideration by this Authority:

24. After consideration of the facts and circumstances of the present case, following issues sprout for consideration before this Authority:

- (i) Whether the Project is “On-going” as per Rule 2(j) of the Rules, 2017? If yes, then whether Respondents/Builders have violated Section 3(1) and 4(1) of the Act?
- (ii) Whether Respondents/Builders have violated Section 14(1) of the Act?
- (iii) Whether the Complainant’s relief, as prayed for, be granted, if yes, to what extent?

Point (i)

25. Let us first understand whether the Project is an on-going project. An on-going project, as per Rule 2(j), is a project where development is going on and for which Occupancy Certificate or Completion Certificate has not been issued. Though Occupancy Certificates have been obtained in 01.02.2021 as per record, admittedly, the Building Permit Order is obtained by the Respondents on 02.03.2019 under File No.2/C25/00220/2019 and Permit No. 2/C25/03624/2019. Hence, the Project is considered as an on-going project as the Building Permit Order is obtained by the Respondents only on 02.03.2019.

However, no application was made to this Authority for registration subsequent to obtaining the permit and no sufficient explanation has been provided by the Respondent/Builder as regards why the application was not made.

26. Section 3 and 4 of the Act provide as under:

3. (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

4. (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.

27. Plain reading of the above-quoted provision clearly portrays that the Respondent/Builder has violated the above provision by not registering the Project

and also by advertising, booking, selling, etc., the apartments in the said Project. Therefore, this Authority, vide its powers under Section 59 of the Act, imposes a penalty of Rs.15,000/- (Rupees Fifteen Thousand) on each flat so sold without registering before this Authority payable in favor of TS RERA FUND within 30 days of the receipt of this Order by the Respondents/Builders. In addition, this Authority also directs the Respondent/Builder to register the said Project before this Authority within 30 days of the receipt of this Order so as to comply with the provisions of Section 14(3) of the Act, 2016.

Point (ii)

28. Section 14(1) of the Act provides as under:

14. (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

29. The Complainants have contended that the Respondents have violated Section 14(1) by (a) not conforming to Fire Safety Norms and (b) by not allotting one extra car parking as common area to all the residents i.e., the Complainants. In this regard, the Respondent rightly submitted that they have been excluded from obtaining NOC from the Fire Department in light of the Circular Memorandum dated 03.06.2017 vide R.C. No.15009/MSB/CR/RR/2013, read with Section 13 of the Telangana Fire Services Act, 1999, as the height of the apartment is 14.75 as per the Building Permit Order issued by GHMC. This is also further substantiated by the vital fact that the Occupancy Certificate has also been issued by the GHMC after scrupulously verifying the required safety norms in the building premises. However, as per the GHMC Building Guidelines, the Builder is hereby directed to

ensure that sprinklers are installed and are in working condition in the stilt floor parking area to ensure fire safety for the residents/allottees.

30. Now as regards, one extra parking which is sought for use as “common area” by the Complainants, it is pertinent to look into the GHMC Sanction Plan. In the said Sanction Plan, the 11th parking space is identified as a “Parking Space” and not as a “Common Area”. Therefore, since the Respondents are disabled from deviating from this Sanction Plan, the 11th parking space cannot be utilised for “common use” by all the residents but only as another parking space in line and conformity with the GHMC Sanction Plan.

Point (iii)

31. As regards reliefs are concerned, it is stated that this Authority endeavored to bring about a quietus in the disagreements between the parties and has, during the course of hearing on 16.08.2023, directed the Respondents to undertake lottery system to allot parking slots to the residents/complainants herein and the Respondent has agreed to undertake the same. Further, as regards Fire Safety Norms are concerned, this Authority has dealt with the same above and therefore, no specific directions are given by the Authority in this regard.

F. Directions of the Authority:

32. In lieu of the above-made findings and directions, 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.

33. 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, Hon'ble Chairperson
TS RERA

