

TELANGANA STATE REAL ESTATE REGULATORY AUTHORITY

COMPLAINT NO.496 OF 2021

Date of Decision: 09.08.2023

Sri Hari Babu Nadella

...Complainants

Versus

Sri Rajender Reddy & 3 Others

...Respondents

Quorum:

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

Appearance:

Sri Hari Babu Nadella, Complainant present.
Sri Rajender Reddy, Respondent present.

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 Complainant submits that Respondents namely, Mr. Gangireddy Sudheer Kumar and Other promoters, for the construction of the Project – Lacasa CABEZA (Residential Apartment) at Sy. No.307/E/A, Plot No.145P, 146 & 147, Layout/Sub Divn No.27/MP2/H/03, RK Township, Gajularamaram, Medchal-Malkajgiri, Hyderabad – 500072, procured Builder Permit Order on 25.07.2018 from Town Planning Section, GHMC. He contends that as per Condition No.19 of the said Building Permit Order dt.25.07.2018, the "*Builder/Developer shall register the project in RERA website after the launch in July, 2018*", however this condition

was violated by the Respondents. The Project was registered only on 21.03.2020 by a delay of about 20 (twenty) months.

3. The Complainant further contends that the Respondents misrepresented the that they already have RERA permissions along with all the facilities in the Project, however the permissions were not made available to the Complainant. Keeping in mind the facilities available and the promises made by him, the Complainant evinced his interest to buy Flat No.301 in Lacasa CABEZA for an agreed total sale consideration of Rs.63,50,000/- (Rupees Sixty Three Lakhs and Fifty Thousand Only) and paid an advance of Rs.99,000/- (Rupees Ninety Nine Thousand Only) on 05.02.2020 by way of cheque payment (bearing MICR No.19377 on ICICI Bank, Diamond Point Branch, Secunderabad). This was duly acknowledged by the Respondent No.1 by way of a hand-written acknowledgement dt.05.02.2020. That this advance was taken as mandatory condition before furnishing any documents such as permissions and approvals from appropriate authorities to the Complainant.

4. The Complainant further contends that, subsequently, some documents were shared by the Respondent No.1 and his agent, Mr. Amar, whereby, there were some deviations in the actual laid down floor compared to the approved floorplan and also that the said project was not registered under RERA violating Section 3 of the Act. When asked for RERA registration and about deviations, Respondents tried to mislead the Complainant by sending a draft Agreement of Sale & Work Order (with some manipulations of adjustments of costs towards materials etc.) which are not in consonance with the standard AoS stipulated under Rule 38 of the Rules, 2017. Thereafter, RERA Registration Certificate bearing No. P02200001888 dated

21.03.2020 for the Project, Lacasa CABEZA was produced before the Complainant by the Respondent, which is valid until 25.07.2024.

5. That subsequently, on account of the National Lockdown, the Complainant moved to Andhra Pradesh and the same was intimated to the Respondent No.1 vide e-mail dated 23.03.2020.

6. That the Complainant was staying in Andhra Pradesh on account of the COVID-19 situation, and after several calls & requests to meet, the Respondents informed the Complainant that the said Flat No.301 has been already sold to someone else in June, 2020. Instead, the Respondents offered a Flat on 5th Floor for a total sale consideration of Rs.74,00,000/- (Rupees Seventy Four Lakhs Only) as against original price of Rs.63,50,000/- (Rupees Sixty Three Lakhs and Fifty Thousand Only) for Flat No.301. The Complainant vehemently contends that the Respondents have cheated and defrauded the Complainant in selling Flat No.301 to another party without intimating the same to the Complainant.

7. That further, Complainant sought for refund of Rs.99,000/- (Rupees Ninety-Nine Thousand Only) several times, but in vain. The Complainant found out that the Flat No.301 was registered only on 24.12.2020 as opposed to June 2020 stated by Respondent No.1 and his agent, whereas Complainant in clear terms expressed his interest in paying the full and final amount of sale consideration on 02.11.2020.

8. Aggrieved by the same, the Complainants issued a Legal Notice dated 28.01.2021 demanding registration of another flat at the same price i.e., Rs.63,50,000/- (Rupees Sixty-Three Lakhs and Fifty Thousand Only). Respondent

issued Reply notice to the same on 10.02.2021 denying the contentions and subsequently, a rejoinder was issued on 22.03.2021 by the Complainant.

9. That in the interim, the Complainant has prayed for:

*“(i) to order to conduct an enquiry and investigation into the affairs of the Respondents books of account and to check violation of Section 11 of the RERA Act, 2016 committed and pass appropriate orders; and
(ii) to investigate into the fraudulent, unfair and deceptive practices committed by the Respondents in cheating the prospective buyers of flats and punish them as per law.”*

10. The Complainant dated 11.08.2021 is challenging the action of the Respondents, vide the present Complaint, alleging violation of Section 3(1), 7, 11(5), 12 and 14 of the Act by the Respondents/Promoters.

11. Accordingly, a Notice bearing No.496/2021/TSRERA was issued to the Respondents on 23.09.2021 by this Authority directing them to submit a Reply or such other information in accordance with Rule 34(1) and (2) of the Rules, 2017.

B. Relief sought:

12. The Complainant sought for the following reliefs:

“(a) That this Hon’ble Authority be pleased to order and decree that the Respondents complete all procedures and execute Agreement of Sale of the said Flat No.301 in the Apartment Lacasa CABEZA and cancel its registration with a third party Mrs. B. Sowbhagya Lakshmi or direct the Respondents to register another flat in the same project at the same price at which the

advance was taken by them from the Complainant without inflating the agreed Sale Consideration as the cancellation is unilateral, arbitrary, without sufficient cause, and willful fraud and cheating committed by the Respondents;

(b) That this Hon'ble Authority be pleased to order and decree the imposition of penalty due to non-compliance of terms and conditions of the RERA registration certificate or revocation of the registration if the non-compliance continues by the Respondents;

(c) That this Hon'ble Authority be pleased to order, direct and impose on the Respondents to pay Rs.10,00,000 (Rupees Ten Lakhs) as compensation alongwith interest @ 24% on Rs.99,000/- from 5th February, 2020 onwards till date to the Complainant as this Hon'ble Authority may consider appropriate;

(d) That this Hon'ble Authority be pleased to treat any third party rights created on the said flat No.301 in the said project as null and void-ab-initio;

(e) Cost of this complaint and legal charges including advocates fee etc.,; and

(f) Such other order or specific reliefs as the nature and circumstances of the Complaint may require to be granted to the Complainant by this Hon'ble Authority to meet ends of justice."

C. Reply on behalf of the Respondents:

13. Accordingly, vide Reply dated 29.10.2021, the Respondents denied all the allegations made by the Complainant. He submitted that the Complainant had approached the Respondent No.1, authorized person of the Project, and expressed his intentions to purchase Flat No.301. After verifying the documents shown by Respondent No.1 and after due negotiations, it was agreed that the total sale consideration shall be Rs.63,50,000/- (Rupees Sixty Three Lakhs and Fifty Thousand Only) out of which the Complainant paid a sum of Rs.99,000/- (Rupees

Ninety-Nine Thousand Only) on 05.02.2020 by way of cheque payment as Token Amount, thereby promising to pay 20% of the agreed total sale consideration and enter in to an Agreement of Sale with necessary terms and conditions for sale and purchase of the flat.

14. He further submitted that on mere payment of token amount, the allotment of the flat cannot be confirmed unless written Agreement of Sale is executed by the parties to a transaction on payment of considerable amount as part sale consideration.

15. The Respondent urged before this Authority, that there is no violation of Section 3 of the Act and that there is no suppression of any facts as, the application for registration of the Project was already filed and the same was pending consideration. Subsequently, the TS RERA Registration was granted to the Project - Lacasa CABEZA on 21.03.2020 valid up until 25.07.2024.

16. It was also contended by the Respondent, that the Respondent did not issue any message on WhatsApp which are contrary to Rule 38 of the Rules, 2017. Further, he submitted that there is no such denial for execution of Agreement of Sale by the Respondent No.1, but because the Complainant could not pay 20% of the total sale consideration within 2 (two) weeks of the date of payment of token amount, no Agreement could be entered into between the parties.

17. It was submitted that the Complainant concocted a false story by taking advantage of the COVID-19 situation. Nowhere was he stopped from making any online payments. Upon insistence to pay the rest of the sale consideration by the Respondents, the Complainants failed to respond and failed to make the payment

constraining the Respondent to sell the flat to another party. He states that Complainant has no right to question the action of the Respondents alleging violation of Section 3(1) without entering into any agreement of sale of the flat. To add, he submitted that unless a flat is allotted to a person under an agreement of sale there cannot be a binding contract between the parties and same cannot be treated as an unfair trade and it does not constitute fraud and cheating.

18. The Respondent also submits that the Complainant was never ready with the balance of sale consideration for concluding the transaction. As the Complainant had caused loss to the Respondents by not arranging the balance of agreed sale consideration as promised by him, the Respondent was constrained to dispose of the flat to a third party by making initial negotiations in the month of June, 2020 and completed the sale at a later stage, and that therefore, the Respondent did not mislead the Complainant.

19. As regards cancellation of sale agreement is concerned, it was submitted by the Respondents that as there was no Allotment/Booking made under an Agreement, the question of unilateral termination of the same does not arise and further, there was no such *mala fide*, unfair or fraudulent acts committed by the Respondents. He submits that the Complainant, instead of complying with his part of the obligation to complete the transaction, is trying to malign the conduct of the Respondents without any valid reason and has filed the present Complaint coupled with unreasonable demands. On these grounds, Respondents prayed to dismiss the Complaint.

20. That accordingly, the said Reply was sent to the Complainant vide Notice dt.24.01.2022 for submitting any further reply/remarks in the matter by this Authority.

D. Rejoinder by the Complainant:

21. The Complainant filed a Rejoinder on 01.09.2022 to the Reply filed by the Respondents reiterating his contentions mentioned in the Original Complaint and submitted that Respondent No.1 issued receipt-cum-allotment confirmation dt.05.02.2020, wherein it clearly stated as “*towards flat 301 (west facing)*”. He adds that even the schedule of property mentioned in the draft Agreement of Sale, which was not in consonance with the standard AoS stipulated under Rule 38 of the Rules, 2017, shared by the Respondent explicitly reveals that allotment has been made in the Complainant’s favor. He asserts that it is a firm contract and Respondents failed to perform their part of the promise and failed to give draft Agreement of Sale (AoS) to the Complainant only with the intention of taking advantage of the COVID-19 pandemic situation and sold the property for higher amount to some other buyers while the interest in the schedule property is created in favor of the Complainant herein.

22. The Complainant submitted in his Rejoinder that in terms of Clause 19 of the special conditions of Building Permit Order, the builder/developer shall register the project with RERA after launch in July 2018, but the project has not been duly registered before offering for sale, in violation of Section 3 of the Act. He adds that the Respondents willfully enticed the Complainant to pay the advance/allotment

amount for the said flat with a pre-condition for sharing of any of the approvals/RERA Registration related documents of the Project.

23. The Complainant also submitted that due to unprecedented crisis of COVID-19 pandemic, there were obvious delays in payment, which were exonerated by the Hon'ble Supreme Court of India in number of cases and that such delays are not counted for the purpose of limitation due to the extraordinary situations prevailing at that time. Despite the same, the Complainant regularly followed up with the Respondent as regards the development of the Project, however, there was no proper response from them. The Complainant learnt on 08.11.2020, that the same flat was sold to third parties by the Respondents without any intimation, which establishes his fraudulent intentions. He submits that the Respondents purposefully did not refund the advance money because of their nefarious stratagems.

24. The Complainant further submits that despite issuing legal notice, the Respondents have dodged the matter all the way till the time of selling the same flat to third party in the month of December 2020 due to which huge loss and damage was occasioned to the Complainant. He further reiterated that as per Section 11(5) of the Act, the promoter may cancel the allotment only as per the Agreement of Sale, and therefore, the cancellation of allotment by the Respondents herein is invalid and fraudulent. The Respondents' action has deprived the Complainant of his rights under Section 19 of the Act, and therefore, he prayed for dismissal of the Respondents' reply and allow his Complaint.

E. Jurisdiction of the Authority:

25. 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), 7 and 11(5), and with regard to non-compliance of the allottees' obligations provided under Section 19(6) and (7), this Authority has complete subject matter jurisdiction to adjudicate the present matter.

F. Points for consideration by this Authority:

26. That, accordingly, the matter came up for hearing before this Authority on 09.08.2023, and after hearing oral contentions of the parties that have reiterated the above, the following issues sprout for consideration:

- i. Whether the Respondent has violated Section 3(1) of the Act?
- ii. Whether the Respondent's Project – Lacasa CABEZA registered vide Regn. No. P02200001888 deserves to be revoked as per Section 7?
- iii. Whether there was any Agreement to Sale entered into between the parties? If yes, then shall Section 11(5) be applicable in the facts and circumstances of the present case?
- iv. Whether the Complainant has overlooked his duty as provided under Section 19(6) & 19(7) of the Act?
- v. Whether the Complainant's relief, as prayed for, be granted, if yes, to what extent?

Point (i)

27. Upon consideration of the facts and circumstances of the present case, it is apparent that at the time when the flat was advertised for sale to the Complainant,

the application for registration before TS RERA of the Respondent's project was pending consideration. Accordingly, on 21.03.2020, after accepting token amount of Rs.99,000/- (Rupees Ninety-Nine Thousand Only) on 05.02.2020, the Project was registered with TS RERA vide Regn. No. P02200001888.

28. As the Application for Registration before TS RERA was pending registration, it cannot be said that there is any violation of Section 3 and/or 4 of the Act on part of the Respondent.

Point (ii)

29. Now, the conditions for satisfying the revocation of registration granted under Section 5 of the Act, 2016 to a project are as under:

“(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.”

30. It is clear that, only when the “*promoter defaults in doing anything required by or under this Act...*”, the Registration granted to the Project deserves to be revoked. However, since point (i) explained above establishes that there is no violation of Section 3, this Authority is of the view that the registration of the Project shall not be revoked.

Point (iii)

31. Section 11(5) provides that,

“(5) The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.”

32. The provision noticeably provides that the allotment can be cancelled only in terms of the agreement of sale. However, it is necessary to consider whether, the “hand-written Receipt-cum-Allotment confirmation” dated 05.02.2020 can be classified as an Agreement to Sale.

33. Section 2(c) of the Act, 2016 stipulates that “*agreement to sale*” means an *agreement entered into between the promoter and the allottee*. However, since there is no formal agreement between the parties enumerating the duties/responsibilities/liabilities of the parties, it cannot be said that there is any agreement of sale entered into between the parties. In fact, it is pertinent to note that, in the said note it was agreed that the Complainant shall pay 20% of the total sale consideration within a period of one week that will result in the parties entering into an Agreement of Sale. On account of the Complainant’s failure to pay rest of the consideration, as agreed, no Agreement of Sale was entered into between the parties.

34. In lieu thereof, there is no violation of Section 11(5) of the Act on part of the Respondent.

Point (iv)

35. Section 19(6) and (7) provide as under :

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

36. A plain reading of the above quoted provision clearly stipulates that the Act casts duty upon the “allottee” to make necessary payments in the manner and within the time specified by the promoter. Allottee is defined under the Act as follows:

“(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;”

It is reiterated that since there is no formal agreement between the parties enumerating the duties/responsibilities/liabilities of the parties, it cannot be said that there is any agreement of sale entered into between the parties. Even assuming, for the sake of argument, that the Complainant is an “allottee” under Section 2(d) of the Act, he has clearly failed to make requisite payments as required under the “written acknowledgment note” dated 05.02.2020 signed by both the parties. Thus, cannot be explicitly indicated that he failed upon its duties under Section 19(6) and (7) of the Act, but has failed in its obligation to make payment as per their written acknowledgment dated 05.02.2020.

Point (v)

37. As far as reliefs are concerned, this Authority brings to light the oral contentions made by the parties whereupon, it was agreed, in terms of the “hand-written agreement” between the parties that *if the Complainant is not fully satisfied with the documents, it will return the token amount of Rs.99,000/- (Rupees Ninety Nine Thousand) and will cancel the agreement*, referring to the agreement of sale that the parties may enter into in the event the Complainant pays 20% of the total sale consideration in one week as agreed.

38. In this regard, it is noteworthy to mention the Order passed by the Ld. *Karnataka Real Estate Regulatory Authority in Complaint No. CMP/201230/0007353*, vide Order dated 02.01.2023, thereby cancelling the Agreement for Sale entered into between the Complainant- Promoter on account of the Allottee not making payments, as per agreed schedule, on time. This Order goes a long way in addressing the issue of allottees not adhering to the terms of the

Agreements for Sale that they entered into and make payments as per the payment schedule in such Agreements in respect of the apartment or plots that they would have agreed to purchase from the Promoters. In the facts of the present case, on account of failure of agreed payment by the Complainant, the Respondent was constrained to sell the flat to third party.

I. Directions of the Authority:

39. Nonetheless, upon oral contentions being heard by this Authority, to bring a quietus to the disputes between the parties, the Respondent proposed himself for refund of the token amount of Rs.99,000/- (Rupees Ninety-Nine Thousand Only), paid by the Complainant within 2 (two) weeks from the date of receipt of this order, thereby bringing the parties to a settlement and to not agitate any further disputes.

40. In lieu thereof, 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.

41. 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
TS RERA

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

Sd/-
Dr. N. Satyanarayana, Hon'ble Chairperson
TS RERA

