

TELANGANA STATE REAL ESTATE REGULATORY AUTHORITY

COMPLAINT NO.587 OF 2022

Date of Decision: 08.08.2023

Bachu Prabhakar Reddy

Versus

...Complainant

M/s Endeco Builder & Developers

...Respondents

Quorum:

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

Appearance:

Sri Bachu Prabhakar Reddy, the Complainant.
Sri Mohd. Yakub, Managing Partner of M/s Endeco
Builders & Developers 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. The Complainant submitted that he took Flat No.132 with 1819 Sft for an amount of Rs.4275/- per Sft with total base cost of Rs.77,76,225/- and amenities Rs.7,50,000/- (with 50% discount) from the Respondent. He paid Rs.5,00,000/- (Rupees Five Lakhs) vide HDFC Cheque No.000102 as token amount on 28.03.2021 and Rs.33,89,000/- via online transfer on 07.06.2021 to get the Agreement and rest of the amount mutually agreed to pay by the Bank Loan which was agreed by the Respondent. He received the Agreement on 08.06.2021 and the Respondent registered the Project with TS RERA vide Registration No.P02400002398.

3. He enlisted his grievance submitting that the Respondent breached the agreed contract, sent cancellation letter without any reason, demanded extra money and threatened him. At the time of booking of the flat following were promised by the Respondent:

- i. GST on remaining amount can be paid at the time of registration
- ii. Actual instalment will start from after the flat roof slab completion as per booking form
- iii. Under early bird offer (or COVID-19 2nd wave situation) no GST for first paid 50% amount, which means GST will be paid by the Respondent and finally that 50% discount was given on amenities.

4. He submitted that all the aforementioned terms were provided for in the Agreement of Sale. However, subsequently, none of the said terms were honoured by the Respondent. On 04.10.2021, the Respondent sent a new payment schedule in contravention of the terms of the Agreement to Sale which includes GST on 1st paid 50% and discounted 50% amenities. The Respondent also issued a demand letter of Rs.12,65,884/- for completion of 2nd and 1st cellar root via WhatsApp which was denied by the Complainant. Despite several personal difficulties, the Complainant submitted that he paid Rs.25,00,000/- of the remaining amount.

5. The Complainant further submitted that despite paying for “flat roof slab”, the Respondent issued another demand letter to pay 10% of the amount. When he personally went and checked, he learnt that internal plastering, bathroom, external wall for kids bedroom were still pending. In this regard, he submitted that the Respondent was creating undue pressure without completing the work and demanded for payments. That when the Complainant tried to communicate with

the Respondent regarding these issues, the Respondent shouted and told him that his flat was cancelled.

6. Subsequently, the Complainant received a Cancellation Notice cancelling the Agreement of Sale entered into between the parties. Despite the Complainant's efforts to revalidate the Agreement to Sale and showing his willingness to pay the rest of the amount, no positive action was undertaken by the Respondent.

7. The Complainant submitted that as per booking form, internal plastering fell under 60% to 70% payment category, whereas the Complainant has already paid more than 70% of the total agreed cost. He contends that the cancellation notice states that "*in your agreement, by mistake, the instalment of plastering has not been mentioned due to some clerical mistake*", is completely unacceptable and that no such Agreement cannot be different for parties.

B. Relief sought:

8. Aggrieved by this behaviour of the Respondent, the Complainant was constrained to file the present complaint, seeking the following reliefs:

- "(i) execute the agreement to sale as it is;*
- (ii) unconditionally withdraw the cancellation notice;*
- (iii) unconditionally withdraw the word defaulter;*
- (iv) 5,00,000/- for wasting my time and efforts, mental torture and psychiatric depression;*
- (v) Flat #132 should be registered on my name with their expenditures"*

9. And in the interim, prayed for:

“stay order of the apartment/flat to maintain status quo until the issue get resolved. As per cancellation letter “if not we will sell the flat to another customer, & we will refund your amount once we received from the customer”

10. Accordingly, a Notice dated 11.11.2022 was issued to the Respondent to file a reply to the said Complaint.

C. Reply on behalf of the Respondent:

11. Vide Reply dated 02.12.2022, the Respondent submitted that the Complainant defaulted in the first 50% payment by 2-1/2 months, that the Complainant of instalment of 2nd cellar slab was completed in July 2021, however was paid by Complainant in December 2021, after a delay of about 5 months. He further submitted that the ground floor slab was completed in September 2021, however the Complainant paid in December 2021, after a delay of 3 months. Similarly floor roof slab was completed in November 2021, however, the Complainant paid in January after a delay of 2 months. He particularly mentioned that the Complainant was informed that by mistake instalment of internal plastering and external plastering was not mentioned in the Agreement, whereas the Complainant agreed to pay the said instalments in conformity with the other allottees. He finally submitted that vide letter dated 30.04.2022, the Respondent had informed the Complainant that if he does not pay the due payments and payments of internal plastering by 05th May 2022, the Respondent will be compelled to cancel the flat and refund the amount.

D. Hearing conducted:

12. That the matter came up for hearing on 08.08.2023 and this Authority endeavoured to settle the disputes between the parties for the benefit of both. In lieu thereof, vide its powers under Section 37 of the Act, this Authority, to encourage equanimity amongst the parties and to bring about a quietus to the disputes between them, directs the Respondent to revalidate the Agreement of Sale entered into with the Complainant and directs the Complainant to make payments in accordance with the schedules provided by the Respondent.

E. Jurisdiction of the Authority:

13. 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 allottee's obligations provided under Section 19(6) of the Act, this Authority has complete subject matter jurisdiction to adjudicate the present matter.

F. Directions of the Authority:

14. In this regard, for having committed dereliction of his duty as provided under Section 19(6) of the Act by not making payments as per schedule provided by the Respondent, this Authority directs the Complainant to pay an interest of directed to pay interest for the delayed payment to the Respondent, within 30 days of receiving this Order from date on which the amount fell due as per the payment schedule provided by the Respondent in the Agreement of Sale dated 08.06.2021 till the actual possession on the actual amount to be paid by the Complainant towards the consideration of the said unit at the rate of Marginal Cost Lending Rate

(MCLR) of SBI plus 2% as prescribed under the provisions of Section 18 of the Act and the Rules made thereunder.

15. This Authority further directs the Respondent to register the flat No.132 in the Complainant's name upon the Complainant completing his payment schedules as well as upon the Complainant withdrawing his complaint filed before the Consumer Commission. A letter agreeing to the same has been filed by the Complainant and is taken on record.

16. 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.

17. 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

