

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

COMPLAINT NO.652 OF 2022

09th January, 2024

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

Sri Pabba Prakash & Anor

...Complainant

Versus

M/s Aparna Sheltors Private Ltd.

...Respondent

The present matter filed by the Complainant herein came up for hearing on 27.10.2023, 02.01.2023 and 21.12.2023 before this Authority in the presence of Complainant Advocate Drupad Sangwan and Respondent Advocate Syed Adil Ahmed Quadri and upon hearing the arguments of the party, 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 "RE(R&D) Act") read with Rule 34(1) of the Telangana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the "Rules") seeking directions from this Authority to take action against the Respondent.

A. Facts of the Case as Stated in the Complaint Filed by the Complainant:

3. In the year 2011-12, the Respondent initiated the development of their project named "Aparna Kanopy Tulips," constructed and marketed by M/s Aparna Sheltors Private Ltd.

4. The complainants were induced by false advertisements and misrepresented by the officials of the Respondent to book a residential apartment in the Respondent's project. They paid Rs. 5,29,120 for this purpose.

5. Subsequently, the complainants were allotted Unit No. 409, Block-L, Floor 4th, measuring 1260 square feet super area situated at Aparna Kanopy Tulips. The complainant entered into an Agreement of Sale/Apartment Buyer's agreement on 22.03.2016 with the Respondent for the said unit. The total sale consideration, including the basic sale price, power backup charges, and Maintenance Deposit, was Rs. 30,20,600. An amount of Rs. 5,29,120 has already been paid against the allotment.

6. As per Clause 6 of the Apartment Buyer's Agreement dated 22.03.2016, the Respondent was liable to deliver possession of the apartment by 22.03.2019, considering it a reasonable time for construction, as no definite time period was specified in the Agreement.

7. The complainants agreed to pay the remaining amount in line with the development of the project. They initiated their own project under the name "APARNA KANOPY TULIPS," constructed and marketed by M/s APARNA SHELTERS PRIVATE LIMITED at the above-mentioned address.

8. The Respondent not only failed to deliver the apartment within the stipulated time but also acted in a manner of abusing their dominant position against the interest of the clients.

9. The act of delay in handing over possession and not adhering to the clauses of the Apartment Buyers Agreement, whereby the Respondent was required to construct and handover possession to the complainants, is a direct violation of the buyer agreement. This shows a mala fide intent and bad faith on the part of the Respondent. It also amounts to misrepresentation and gross deficiency of service as per settled legal principles.

10. Since 22.03.2016, the Respondent has been evading any concrete commitment for fixing a particular date of handing over possession and has not conveyed the status of development of the project to Complainants. Complainants have been in constant touch with the Respondent, seeking clarification on the construction status and have been regularly visiting the construction site of the tower, only to realize that the construction has been unreasonably delayed.

11. Complainants were vigilant about their investment in the Respondent's project and repeatedly sought clarifications by visiting the construction site.

12. The Complainant never defaulted in any payment request raised by the Respondent, as no demand is pending as of the date.

13. After waiting for more than 3 years beyond the deemed date of possession, the complainants sent a legal notice dated 06.07.2022 to the Respondent, requesting delivery of possession and payment of delayed interest amount along with other compensation for damages suffered.

14. In a democratic society, the Respondent cannot be allowed to act despotically and arbitrarily or fraudulently adopt unfair practices simply because they have a monopoly and an upper hand to harass the Complainants. The actions of the Respondent are tantamount to unfair trade practices and a violation of the RERA Act. The Respondent failed to deliver possession within the agreed terms and schedule, resulting in a deficiency of service on their part. The Complainant further submits that the Respondent is guilty of gross deficiency in service, for which it is liable to compensate the Complainant.

15. Respondent is liable to pay monthly interest to the complainant due to delayed possession after 22.03.2019, at the rate prescribed under the rules laid down by the RERA Act.

16. From the above facts and circumstances, it is crystal clear that the action of the Respondent in not delivering the possession of the apartment by 22.03.2019 clearly amounts to a deficiency in services. Therefore, Complainants are entitled to interest at 9.75% per annum on a total amount of Rs. 5,29,120/- till the delivery of possession.

17. The Respondent not only failed to deliver the possession of the said unit within the stipulated time but also acted in a manner of abusing their dominant position against the interest of the complainant.

18. That the Complainant has been suffering physically and mentally besides facing financial hardships since 22.03.2019 due to the non-delivery of

possession of the said unit. This has caused undue hardship and mental agony to the Complainants, as they are now required to make alternate residential arrangements due to the fault of the Respondent. The complainants reserve their right to agitate the issue of compensation due to be paid to the complainants by the Respondent before the appropriate forum.

B. RELIEF(S) SOUGHT:

19. In view of the facts mentioned above, the Complainant prays for the following relief:

- i. If the registration has been granted to the Respondent for the above-mentioned project under RERA Act read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA Act, 2016, for violating the provisions of the RERA Act, 2016.
- ii. In the exercise of powers under section 35 of RERA Act, 2016, direct the Respondent to place on record all statutory approvals and sanctions of the project.
- iii. In the exercise of powers under Section 35 of RERA Act, 2016, and Rule 21 of HRE (R&D), Rules, 2017, provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and any pending demand if any.
- iv. Direct the Respondent to deliver legal possession of the said apartment as soon as possible, as the deemed date of possession has already elapsed.
- v. Provide the Complainants interest on the deposited amount for the delay in completion of the project and from 22.03.2019 till actual delivery of possession by paying interest on the total amount of Rs. 5,29,120/- at the rate of 9.75 % per annum in accordance with the RERA Act, 2016.
- vi. Pay the complainants a sum of Rs. 1,10,000/- as compensation for litigation expenses.
- vii. Grant the complainants any other relief that this Hon'ble Authority deems fit and proper in the interest of justice and equity.

C. INTERIM RELIEF:

20. Pending the final decision of the complaint, the complainant seeks the issuance of the following interim orders:

- i. Restrict the respondent from creating any third-party rights on the unit booked by the complainant by way of sale or lease or mortgage. Maintain the same in the name of the complainant until the pendency of the present proceedings.
- ii. Direct the Respondent to pay interest for the delayed period accrued till date and interest calculated as per the calculation sheet during the pendency of this complaint. Further initiate any necessary process for timely delivery of possession.

D. REPLY FILED BY THE RESPONDENT

21. M/s. Aparna Shelters Private Limited (now merged with M/s. Aparna Constructions and Estates Pvt Ltd) had obtained permission for the construction of group housing apartments containing stilt + 5 Upper Floors (Blocks A to L) in Sy Nos.446(P), 447(P), 450, 451(P) of Gundlapochampally Village, Medchal Mandal, Ranga Reddy District (Presently Medchal-Malkajgiri District) vide Sanction Letter No.4968/P4/Plg/H/2009 dated 21.8.2010 issued by the Hyderabad Metropolitan Development Authority released through the Gram Panchayath, Gundlapochampalli vide No. GPG/018/2010 dated 13.9.2010.

22. They have completed the construction work as per the sanction plan and obtained the Occupancy Certificate dated 12.3.2012 vide reference 4th cited in respect of Blocks I to L. Your notice is with regard to block -L. The complainant booked Apartment No. 409, 4th Floor, L Block for which the Occupancy Certificate was issued on 12.3.2012. Thus, permissions, construction, and occupancy certificate - all were completed before the commencement of the Real Estate (Regulation and Development) Act, 2016, and hence the Act has no application at all, and the complaint is incompetent and not maintainable.

23. As the project was completed much prior to the commencement of Real Estate (Regulation and Development) Act 2016 and Telangana Real Estate

(Regulation and Development) Rules 2017, there is no jurisdiction to entertain the complaint under Rule 34(1) & (2) of TS RERA Rules 2017.

24. Further submit that the complainant have failed to pay the balance sale consideration of Rs.27,61,480/- (Rupees Twenty-Seven Lakhs Sixty-One Thousand Four Hundred and Eighty only) in respect of Apartment No.409, 4th Floor, Block -L of the Project Aparna Kanopy Tulips in Survey Nos.446(P), 447 (P), 450(P), and 451(P), of Gundlapochampalli Village. Hence, they have cancelled the booking and returned an amount of Rs.1,98,480/- (Rupees One Lakh Ninety-Eight Thousand Four Hundred and Eighty Only) after deducting the cancellation charges @10% of the unit value vide Cheque bearing No. 373296 dated 14.10.2016 drawn on ICICI Bank, Begumpet Branch, Hyderabad. The cheque along with the cancellation letter was sent to the purchasers on 10.11.2016 through registered post. After the cancellation of the booking, the apartment was sold to third parties under a registered sale deed. Therefore, any claim in this regard is hopelessly barred by limitation.

24. Hence, request the Hon'ble Authority to reject the complaint as this Hon'ble Authority has no jurisdiction to entertain the complaint.

E. REJOINDER AFFIDAVIT ON BEHALF OF THE COMPLAINANTS

25. At the outset, deny each and every allegation, contention, and insinuation contained in the Reply, which is contrary to and/or inconsistent with what has been set out herein below and in the Petition. In any event, nothing contained in the Reply, which is not specifically admitted herein, may be deemed to have been admitted.

26. It is submitted that the complainants entered into an Agreement of Sale/Apartment Buyer's Agreement on 22.03.2016 with the Respondent for the allotment of one apartment i.e., unit No.409 Block-L, Floor-4th measuring 1260 square feet super area situated at APARNA KANOPY TULIPS. The total sale consideration, including Basic Sale Price Power Backup Charges, and Maintenance Deposit, was Rs.3020600/- (Rupees Thirty Lakhs twenty thousand six hundred only). The complainants have already paid an amount of Rs. 5,29,120/- against the allotment of the said Apartment.

27. It is submitted further that as per clause 6 of the terms and conditions of the Apartment Buyer's Agreement dated 22.03.2016, Respondent was liable to deliver the possession of the apartment in question by 22.03.2019 as being the reasonable time of construction of the apartment since no definite time period for construction is specified in the Agreement of Sale/apartment Buyer's.

28. Thus, it is denied that the present application before this Hon'ble RERA ban is incompetent and not maintainable.

29. The statements made in the reply are false and denied, as the respondents have never obtained the sanction plan nor was the occupancy certificate obtained, and the same is not produced before this Hon'ble RERA. Therefore, the Respondent is put to strict proof of the same.

30. It is denied that the project was completed much prior to the commencement of the Real Estate (Regulation and Development) Act of 2016 and Telangana Real Estate (Regulation and Development) Rules 2017.

31. It is denied that the Hon'ble RERA has no jurisdiction to entertain the present complaint, as the Apartment Buyer's Agreement was entered into on agree

32. It is denied that the complainants have failed to pay the balance sale consideration of Rs. 27,61,480/- (Rupees Twenty-Seven Lakhs Sixty-One Thousand Four Hundred and Eighty Only) in respect of the apartment. It is submitted that the Complainant had never defaulted in any payment request raised by the respondent and had shown an active approach regarding the said booking, and this very fact is further corroborated by the fact that no demand is pending as of the date as raised by the respondent from the complainants.

33. It is denied that the complainants received any demand for the payment of the balance sale consideration of Rs. 27, 61,480/-. It is also denied that the complainants have received be it either the cancellation letter or the cheque dated 14.10.2016. It is submitted that the respondent has never replied to the

queries of the complainants nor provided any insights about the projection completion.

34. It is denied that this present complaint is barred by limitation. Thus, it is submitted that the allegations made by the Respondent in their reply affidavit are false and denied thereof.

F. Hearing conducted:

35. On the 27th of October 2023, a hearing was convened, during which both the complainant and respondent were present. The complainant reiterated the contentions raised in the original complaint. When queried regarding the status of the project, the complainant expressed unawareness. Consequently, the Authority directed the complainant to provide a comprehensive status report on the project during the next scheduled hearing. However, the Respondent sought additional time to file a detail reply. As a result, the matter was adjourned to the subsequent hearing date.

36. On the 2nd of November 2023, both parties were in attendance, and the Respondent requested an early adjournment, leading to the rescheduling of the matter to the 21st of December 2023.

37. During the hearing on the specified date, the 21st of December 2023, no representative appeared on behalf of the complainant. However, the Respondent submitted that the present matter is not maintainable, asserting that the Authority lacks jurisdiction to adjudicate the issue, as the Occupancy Certificate (OC) had already been issued in the year 2012.

E. Observation/Direction by the Authority:

38. In the prevailing circumstances, it is imperative to emphasize that the Respondent associated with the aforementioned project has duly procured the Occupancy Certificate bearing reference number GPG/28/2012, dated 12.03.2012, from the Grampanchayat Gundlapochampally, situated in the Medchal Mandal, Ranga Reddy District. The Authority has taken cognizance of the fact that the complainant has acquired the unit located in Block L of the aforesaid project, expressly encompassed by the aforementioned

Occupancy Certificate. Given that the Occupancy Certificate was issued in the year 2012, it is pertinent to note that Section 3(2)(b) of the RE(R&D) Act provides that no registration of the real estate project shall be required where the promoter has received the completion certificate for a real estate project prior to the commencement of this Act. As the subject property has already been issued an occupancy certificate in the year 2012, i.e., antecedent to the enactment of the RE(R&D) Act 2016, the same does not fall within the jurisdiction of this Authority.

39. Furthermore, the recent judgment of the High Court of Karnataka in the case of ***M/S. Provident Housing Limited v. Karnataka Real Estate Regulatory Authority & ANR. (Writ Petition No. 18448 of 2021)*** clearly articulates that in instances where the project had commenced and the occupancy certificate was issued before the enactment of the Act, such complaints are deemed not maintainable before the Authority.

40. The Order is in favour of the Respondent concerning the maintainability of the complaint itself before this Authority; hence, no further issues raised by the complainant are under consideration. The aforementioned matter is hereby concluded, and the complainant is directed to pursue the relief(s) prayed for before this Authority through the appropriate forum.

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. K. Srinivas Rao,
Hon'ble Member
TS RERA

Sd/-
Sri. Laxmi NaryanaJannu,
Hon'ble Member
TS RERA

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