

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

COMPLAINT NO.519 OF 2023

12th Day of March, 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 Umesh Choudhary

...Complainant

Versus

M/s Alpine Infratech

Represented by its Managing Director

...Respondent

The present matter filed by the Complainant herein came up for hearing on 17.10.2023, 28.12.2023, 09.01.2024, 18.01.2024 and 30.01.2024 before this Authority in the presence of the Complainant in person and Authorized Representative of the Respondent Builder and upon hearing the arguments of both parties, this Authority passes the following **ORDER:**

2. The present Complaint has been filed by the Complainant under Section 31 of the Real Estate (Regulation & 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.

A. Brief facts on behalf of the Complainant:

3. The Complainant submitted that he booked a flat (A-112) in August 2021 of 1120 sft in GMR Springfield Project, Survey No. 82 & 86 situated in Turkapally Village under GHMC, Alwal Circle, Medchal- Malkajgiri district and paid 20% i.e., Rs.9,13,500 (Rupees Nine Lakhs Thirteen Thousand and Five Hundred Only) of the cost as per the demand of the Respondent Builder. Balance 80% amount was to be arranged in form of loan.

4. He submitted that being a Central Government Official, employees have the facility of getting a loan in the form of House Building Allowance (HBA) from the concerned department where the employee is working. The rate of interest is quite low in comparison to any nationalized bank and the interest amount is also very low as the office recovers first the principal portion in the form of EMI and then the interest amount. Thus, the employee can save a big amount on the loan amount.

5. He submitted that since the day of booking of the flat, he has informed and requested the management of the Respondent Builder to hand over the documents required to be submitted in my office for availing HBA. Several mails and calls have been made in this regard wherein I have explicitly mentioned that the process of getting loan from office is a time taking process as the office has to call for budget from headquarter office (New Delhi) which will take its own course of time (3 to 4 months).

6. That subsequently, in December 2022, after continuous perusal, a meeting was held with the Managing Director (MD) namely Sri Md Amir Hussian and others wherein he promised to give the documents at the earliest. However, the documents in complete shape were handed on 20.02.2023 and the management has directed the Complainant to pay the due amount by 28.03.2023 i.e within one month and

eight days only or else base price will be increased by Rs.200 per sft. Soon after receiving the documents, the Complainant applied for a loan (HBA) in his office.

7. That the management of the Respondent Builder started pressurizing in March 2023 for payment. However, the Respondent Builder had not handed over the documents in time and after giving the said documents on 20.02.2023, the management has given only one month and eight days for payment which is unethical, unreasonable, and unjustifiable.

8. That thereafter, a meeting was held with the MD wherein, the Complainant proposed to make the payment by July 2023 and an interim payment of Rs.5,00,000/- (Rupees Five Lakhs Only) in first week of May 2023. The MD instructed to send mail in this regard so that he can put the matter on the Board, however, they did not receive any mail or call in this regard.

9. That as per the Complainant's proposal of doing payment of Rs.5,00,000/- (Rupees Five Lakhs Only) in first week of May 2023, the Complainant had taken personal loan from AG Office Co-operative Society to make payment and arranged hand loan from friends and relatives for the entire amount due.

10. He submitted that in May 2023, the Complainant went to the Respondent Builder and requested the MD to accept the due amount of Rs.25,00,000/- (Rupees Twenty-Five Lakhs Only) instead of waiting for July. But the MD refused to accept the amount and stated that he will only accept if the Complainant agreed to make the payment with the revised base rate by Rs. 1000 per sft (i.e. $\text{Rs.}1000 \times 1120 = \text{Rs.}11,20,000$). According to the MD, as the Complainant has delayed in making payment, he sought to increase the base price by Rs.1000 per sft or else he will cancel my allotment of flat.

11. The Complainant added that the delay in making payment occurred due to non-handing of documents in time. Hence, management is responsible for such delays. However, the MD is not ready to accept his fault and wants to revise the rate or else wants to cancel the allotment of flat. The revised increased rate is not acceptable as the delay in making payment did not occur on default of the Complainant.

12. He submitted that the budget sanctioned towards HBA cannot be kept idle/unused for longer period of time. The Complainant had requested his office to hold it for seven more days. Hence, the matter needs to be resolved in a few coming days otherwise the sanctioned budget will be surrendered by the office to headquarters office as they cannot keep the huge amount of budget for longer period of time. This aspect, the Complainant has also intimated to the management of the firm via mail and messages, but still there is no response. Accordingly, he submitted that the Respondent Builder is harassing him and demanding abnormal amount which is totally unethical and unjustifiable in nature and prayed to take needful action against the Respondent Builder as per the applicable rules and regulations and to get the flat at the original agreed rate.

B. Reply on behalf of the Respondent:

13. Vide Reply dated 18.01.2024, the Respondent Builder submitted that Complainant had approached the Respondent Company on 01.08.2021 and expressed his desire to purchase a flat in the project "GMR Spring Flies". Complainant was duly attended by the representative of the Respondent Company and he was provided with the brochure as well as the specifications of various flats which the Respondent Company were going to construct in the Project and also since the Complainant opted to pay the premium booking amount, discount on booking over base price.

14. That the Complainant herein after being satisfied with the quality of construction and the amenities being provided by the Respondent Company in the Project, choose to book a Flat No. A-112, the area of which was about 1120 Sq. Ft. which was subject to final measurement after completion of construction, by paying amount of Rs.4,00,000/- as Provisional Reservation Money. The Complainant also signed the Application Form/Terms and Conditions of Allotment ('Terms and Conditions') after duly perusing and understanding the same.

15. That the Complainant thereafter issued a cheque bearing No. "223981" dated 10.08.2021 drawn on State Bank of India, Nampally Branch for an amount of Rs. 12,00,000/- (Rupees Twelve Lakhs Only) and requested to present the same upon his instructions. Thereafter, time and again he requested the Respondent Company not to present the same but as a matter of fact the Respondent Company was duped in the first instance by the Complainant in spite of availing discount and not paying the agreed amount.

16. That subsequently the Complainant, after several requests and remainders from the Respondent Company paid an amount of Rs. 1,00,000/- (Rupees One Lakh Only) on 14.10.2021, an amount of Rs. 3,70,000/- (Rupees Three Lakhs Seventy Thousand Only) on 10.11.2021 by way of online transfer (NEFT) and an amount of Rs. 43,500/- (Rupees Forty-Three Thousand and Five Hundred Only) on 31.12.2021 by way of Online Transfer (NEFT). In all, the Complainant paid an amount of Rs.9,13,500/- (Rupees Nine Lakhs Thirteen Thousand and Five Hundred Only) only instead of agreed amounts of Rs.12,00,000/- (Rupees Twelve Lakhs Only). Even till date the said cheque is in the possession of the Respondent Company unrepresented.

17. The Respondent submitted that as per the terms of allotment the Complainant was required to pay the amounts as per the schedule linked to the various stages of construction and after payment of substantial amount, the Complainant was required to enter into Agreement of Sale with the Respondent Company. The Complainant after several reminders and request finally entered into Agreement of Sale in the month of January 2022.

18. That the Respondent Company made several requests to the Complainant to make payments as per the payment schedule plan, but the Complainant failed to do so for the reasons best known to him. At the time booking was offered with loan facility by the Respondent Company in various nationalized banks but the Complainant initially agreed orally but later in the month of July 2022, started requesting various documents from the Respondent Company. The Respondent Company provided all the documents available them and requested to pay the amounts at the earliest, but the Complainant failed to pay the amounts as per the booking schedule.

19. The Respondent submitted that, as the Complainant failed to perform his part of contractual obligation and did not make the payment as per schedule, the Company is justified in cancelling the booking dated 01.08.2021. The Respondent added that as a matter of fact the Respondent Company sent several mails requesting the Complainant to visit the office of the Respondent Company to sort the issue. The Respondent Company even procured attested legal opinion from a government designated advocate at its own cost which was beyond the preview of the Respondent Company but despite this the Complainant demanded more documents and started sending mails.

20. The Respondent submitted that it requested the Complainant to visit the Respondent company, but he said that he has Rs. 5,00,000/- (Rupees Five Lakhs Only) only which he is willing to pay the same and that he has been allotted with HBA loan of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only) same would be disbursed to his account but never gave any proof of the same. That the Complainant never gave any proof of allotment of any loan nor did he perform his part of contractual obligation by paying the agreed amounts. To avoid the payments of agreed amounts as per Conditions of Allotment and also as per the agreement of sale, the Complainant made one or the other request for the documents and that too after a lapse of one year and also which were beyond the purview of the Respondent Company and evaded the payments due to the Respondent Company. In light of the same, the Respondent Company prayed to dismiss the Complaint.

C. Rejoinder on behalf of the Complainant

21. Vide Rejoinder dated 19.01.2024, the Complainant submitted that after a long discussion and negotiation, the agreed rate of ₹3482 per sft was arrived at, hence no such special discount was offered. That at the time of booking the flat, the Respondent promised to give some relaxation in amount pertaining towards amenities and other secondary charges. However, after making the initial payment by the Complainant they denied such promise. Also, as per payment schedule of the agreement of sale, only 20% payment should have been done by the Complainant which arrives to ₹9,13,500. Hence, the Complainant has made the required payment of ₹9,13,500 and not the 30% i.e. ₹12.00 lakh.

22. Since the day of booking of the flat, the Complainant has expressed his intention of getting the HBA instead of taking bank loan. Further, that required documents were only handed over to the Complainant in the last of week of

February 2023 after a long and continuous pursuance of the Complainant. It can be well substantiated by the mails of Respondent dated 14.11.2022 wherein the company stated that they can't provide the documents, mail dated 16.11.2022, the Respondent Company stated what documents they can provide and what not, mail dated 28.02.2023, the Respondent company stated that the documents were handed over to the Complainant on 20.02.2023 and the complainant should make the payment in one month. This all clearly signifies that the Respondent has not given the required documents before February 2023.

23. The Complainant further submitted that as per the promise made by the Complainant, the Complainant has taken loan of Rs.24,50,000 (Rupees Twenty-Four Lakhs and Fifty Thousand Only) from AG Office's Co- operative Society in the month of May for making payment and went to the office of the Respondent for making the payment of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only). The Complainant annexed the relevant documents in support of his contentions.

24. That, meanwhile, the Respondent has raised two demands for making payment, against which the Complainant has always reverted and requested to provide the documents. It was specifically mentioned in all the mails of the Complainant that delay in making payment was due to non-furnishing of documents by the Respondent. Also, it was stated by the Respondent that based on the legal documents of the projects several customers have obtained bank loan. In this regard, it is to state that the required documents for HBA may have different checklist to be adhered to as it is a government loan which have its own requirement.

25. He submitted that as per prevailing rules and regulations, the sanctioned HBA should be utilized within a month from the date of the sanctioned or else it should be returned to the Government account along with interest. Complainant

has requested its Group officer managed to hold it upto first week of December 2023. Several mails were also sent to the Respondent in order to settle the issue immediately otherwise the Complainant has to surrender the sanctioned amount. However, the Respondent was least bothered to reply and not taken cognizance of it. In light of the same, he prayed that the Respondent be directed to accept the payment at agreed base rate of ₹3482 per sft and to allow minimum six months' time period for making the payment of ₹25.00 lakh to the Respondent as obtaining fresh HBA from the office will take minimum six months.

D. Observations and Directions of the Authority

26. The Complainant and the Respondent, have, as per their submission before this Authority, executed an Agreement of Sale in the year 2022. Both have filed a copy of an undated, insufficiently stamped and un-registered Agreement of Sale in which, both have agreed as under:

- i. In Clause 1.3, the Complainant agreed to make payment as per payment plan set out in Schedule C (Payment Plan).
- ii. As per the Payment Schedule annexed to the said Agreement of Sale, which is not marked as Schedule C, the Complainant categorically agreed to payment of the schedule therein.
- iii. Further, in the annexure to the said Payment Schedule, Point No.4 stipulates that prices are subject to change without prior notice upon non-confirmation of sale.

27. The said Agreement is taken on record as both parties agreed to have executed the same. It is also observed that vide e-mail dated 15.04.2022, the Complainant sought for several documents from the Respondent Builder to avail HBA loan being a Central Government Employee. The documents as sought for include the following:

- i. Allotment letter from the selling agency
- ii. Agreement of sale
- iii. Valuation report from the registered valuers
- iv. Estimates
- v. Draft sale deed
- vi. Flat plan
- vii. Block plan
- viii. Sworn declarations
- ix. Government pleader's certificate
- x. Permission under Conduct Rules for purchase of a flat
- xi. Non-drawal certificate from spouse, if he/she is a central government employee.
- xii. Copy of the registration of the firm,
- xiii. Copy of the sale deed of the site,
- xiv. Copy of the Certificate of Encumbrance on property (15 years)
- xv. Construction permit
- xvi. Approved plan of proposed building
- xvii. permission under Conduct Rules for purchase of site
- xviii. permission under Conduct Rules for construction of the house
- xix. Notice under Section 26(1) of the Urban Land (Ceiling & Regulation) Act, 1976, amongst others.

28. Complainant issued reminder e-mails on 11.06.2022 and 20.10.2022 to submit the documents in order to avail the HBA loan amount. He submitted that on account of delay in submission of some of the above-quoted documents, opinions and certificates by the Respondent, the Complainant could not procure the HBA loan and thereby failed to make the payment. He added that therefore, delay cannot be attributed to the Complainant.

29. *Per contra*, the Respondent Builder submitted copy of the e-mail dated 27.02.2023 wherein, it was agreed by the Respondent Builder that all necessary documents, opinions and certificates were submitted to the Complainant vide e-mail dated 20.02.2023 and further directed the Complainant to complete the payment by 20.03.2023 as otherwise, base price will be increased by Rs.200 per sft. Further, the Respondent also previously issued an e-mail dated 12.11.2022 to the Complainant stating that they are in receipt of Rs.9,13,500/- (Rupees Nine Lakhs Thirteen Thousand and Five Hundred Only) and further that a balance

payment of Rs.11,41,875/- (Rupees Eleven Lakhs Forty-One Thousand Eight Hundred and Seventy-Five Only) is pending as per construction stage to be paid by 20.11.2022. The Respondent mentioned, in the said e-mail dated 12.11.2022, that in case the Complainant fails to pay such an amount immediately, the construction of the respective flat may be stopped.

30. In this regard, it is pertinent to note that the Complainant agreed to a payment schedule as per the undated Agreement of Sale which is not disputed by either party. In such circumstances, the Complainant is bound by the same and failure of the Complainant in complying with the payment schedule is derogation of his duty under Section 19(6) of the Act. It is also observed, documents such as ownership documents, link documents, encumbrance certificate, copy of permission proceedings, sanction plan are very much available in the GHMC/TS-bPASS portal as well as on the TS RERA website. The legal opinion on ownership documents would normally be provided by an advocate appointed by the bank upon payment of fee. Similarly, technical opinion on sanction plan & permission will be obtained by chartered engineer appointed by the bank upon payment of fee. Therefore, the delay in procuring the documents cannot be attributed to the Respondent Builder as the said documents may not readily available with him and he may not be in a position to produce documents such as government pleader's certificate, estimates, permission under Conduct Rules for purchase of site and for construction of the house, Notice under Section 26(1) of the Urban Land (Ceiling & Regulation) Act, 1976, etc.

31. Clause 9.3 of the undated Agreement of Sale executed between the parties clearly stipulates as under:

“(i) In case the Allottee fails to make payments for 2 (two) consecutive demands made by the Promoter as per the Payment Plan annexed hereto,

despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;

(ii) In case of Default by Allottee under the condition listed above continues for a period beyond 2 (two) consecutive months after notice from the Promoter in this regard, the Promoter may cancel the allotment of the [Apartment/Plot] in favour of the Allottee and refund the money paid to him by the allottee by deducting the booking amount and the interest liabilities and this Agreement shall thereupon stand terminated. Provided that the promoter shall intimate the allottee about such termination at least thirty days prior to such termination. The amount shall be repaid by the Promoter within a period of ninety days after termination or the date on which the Promoter is able to resell the Apartment/Plot to another purchaser, whichever is later.

32. Further, a perusal of the e-mail dated 16.12.2022, clearly stipulates that the Respondent Builder made several attempts to communicate with the Complainant in order to complete the payment with respect to the flat, however he failed to do so on account of delay in procuring HBA loan amount. Subsequently, the Respondent did not accept the payment offered by the Complainant stating that base price has increased on account of failure of the Complainant to make payment as per agreed schedule.

33. In this regard it is observed that, the Complainant has an obligation to adhere to the payment schedule as agreed in its Agreement of Sale as per Section 19(6) and once it is agreed amongst the parties as regards a certain timeline with respect to payment for the flat, both parties are bound by the same. It was incumbent upon the Complainant to make the payment in time as per agreed terms, moreso, as the Project is at 75% completion as per submission of the

Respondent, and mere not procurement of the loan amount cannot put the Respondent Builder under financial distress.

34. Given that the Respondent Builder has duly furnished all requisite documentation for the Complainant's acquisition of an HBA loan in 20.02.2023, and the Complainant has acknowledged receipt thereof, upon consideration of the facts and circumstances and in the interest of justice while exercising its powers under Section 37, this Authority directs the following:

- a. The Complainant and the Respondent agreed to comply with the terms of the Agreement of Sale filed by both. In the said Agreement, explanation (iii) to Clause 1.2 stipulates that the *vendors shall periodically intimate in writing to the purchaser, the amount payable as stated above and the purchaser shall make the payment demanded by the vendors within the time and in the manner specified above.* That admittedly, on 20.02.2023, the Respondent supplied all documents, opinions and certificates in relation to procuring the HBA loan to the Complainant and on the said date the Respondent also sought for remaining amounts/balance payment from the Complainant as per the payment schedule. Therefore, in light of the said circumstances, the Complainant is directed to pay the remaining amounts which is pending as on date as per the payment schedule agreed upon by both the parties within 60 (sixty) days, along with interest of 10.65% as per Rule 15 of the Rules, 2017 read with with Section 19(7) from the date on which the documents were received by the Complainant for procuring HBA loan i.e., 20.02.2023.
- b. Further, in the event the Complainant fails to complete such payment, the Respondent is to initiate measures in accordance with the provisions of the Act and Rules thereunder.

35. In lieu thereof, the present complaint stands disposed of.

36. 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) as per Section 44 of the Act, 2016.

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

Sd/-
Sri Laxmi Narayana Jannu,
Hon'ble Member,
TS RERA

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

