

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

COMPLAINT NO.1674 OF 2023

30th 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

Dr. N. Saraswathi
representing Ms. Thota Kiran Mayee,
through SPA dated 23.11.2023 ...Complainant

Versus

Sri K. Ramesh ...Respondent

The present matter filed by the Complainant herein came up for hearing on 27.02.2024 before this Authority in the presence of the Complainant in person and its Counsel, Sri N. C. Pavan Kumar and Counsels for the Respondent, Sri C. Vinayak Rao, Sri S. Janamejai and Smt. Aameba 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 is representing her daughter, Ms. Thota Kiran Mayee through SPA dated 23.11.2023. That the Complainant purchased a Flat bearing No.503 in 5th floor, Annapurna Apartment, Kothapet, Hyderabad for a total consideration of Rs.73,00,000/- (Rupees Seventy-Three Lakhs Only) which, as promised by the Respondent Builder, includes amenities and an exclusive car parking, lift, 24 hours power diesel generator back-up, ground and municipal water, three phase power supply, transformer etc.

4. That, consequently, the Complainant’s daughter entered into a Sale Agreement with the Respondent Builder on 28.07.2022. That in the said Sale Agreement, she has paid an amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) to the Respondent Builder as an advance payment towards purchase confirmation of the said Flat, the receipt of which Respondent Builder readily admitted and acknowledged.

5. The Complainant submitted that the balance amount of Rs.58,00,000/- (Rupees Fifty-Eight Lakhs Only) out of the total sale Consideration of Rs.73,00,000/- was subsequently paid and the Respondent Builder accordingly executed a registered Sale Deed at SRO Uppal vide Sale deed No. 17262 of 2022 dated 09.11.2022.

6. She submitted that her daughter and herself shifted to the said Flat on 21.12.2022, and faced many problems with the Flat, as there was no proper Housing Association. That the amenities which was promised by the Respondent Builder at the time of Purchase of the flat were not provided. That whenever, the Complainant approached the Respondent Builder to address the issues, there was no proper response.

7. That the Complainant recently came to know that there were many deviations made by the Respondent Builder and that he has not constructed the apartment as per the Approved Plan, of GHMC and deviated, and that therefore GHMC has rejected to issue Occupancy Certificate. That, due to the negligent act of the Respondent Builder, the Complainant suffered and, even after repeatedly addressing the issues, Respondent Builder did not cooperate.

8. Accordingly, the Complainant prayed that stringent action be taken against the Respondent Builder for his negligent behavior and compensate the Complainant with damages in the interest justice.

B. Reply on behalf of the Respondent:

9. Vide Reply dated 15.02.2024, the Respondent Builder submitted that the Complainant is not having any *locus standi* as she is not the "allottee" as defined under section 2 (d) read with Section 31(1) of the Act, 2016. Admittedly the complainant is not the allottee or the aggrieved person and her elder daughter Ms. Thota Asha Kiran Mayee is the allottee of the Flat No. 503.

10. He submitted that the allegation of the Complainant stating that her elder daughter has entered into an agreement with the Respondent on 28.07.2022 is true and further allegation with regard to complying of all conditions by the Complainant's daughter is denied by the Respondent as she has not complied the total payment condition.

11. That the Respondent has obtained permission for the construction of Ground + Upper 5 floors. Respondent has started the construction in accordance with the plan sanctioned by the GHMC. That while the construction was in progress some persons claiming to be the Commercial Taxes Colony Welfare Association represented by its Secretary and other office bearers more particularly one Mr. Anjaiah Goud along with Secretary, Mr. Ravinder and some persons claiming to be the colony persons who have tried to interfere in the construction activity and made illegal demands.

12. He submitted that there is a small temple beside the western side wall of the Apartment. In furtherance of their illegal demands, they have started the construction of compound wall in the first week of March 2021 and dumped the construction material at the site for which the Respondent has objected.

13. That unable to withstand the illegal activities of the said persons, the Respondent was constrained to lodge a complaint with the GHMC Officials on 12.03.2021 thereby requesting to remove the said illegal construction of compound wall but for the reasons best known to the officials they have not initiated any action on the complaint of the Respondent herein. As such the Respondent was constrained to file a Writ Petition vide W.P.No.6738 of 2021. The Hon'ble High Court was pleased to pass orders thereby directing the GHMC officials to consider the complaint of this Respondent dated 12.03.2021 and take necessary action and see that the encroachments if any are removed from the footpath.

14. The Respondent submitted that the officials of the GHMC have earlier interfered in the day-to-day construction of this Respondent. To contain the ill motives of the GHMC Officials, the Respondent filed Writ Petition vide W.P.No. 20271 of 2021, wherein, the Hon'ble High Court was pleased to direct the GHMC Officials not to interfere in the day-to-day construction Respondent in I.A.No. 1 of 2021 in W.P.No. 20271 of 2021.

15. He submitted that the GHMC Deputy Commissioner for Saroornagar has earlier issued notice under section 452 (1) & 461 (1) OF HMC Act, 1955 vide notice No. UC 561 Dated 31.07.2021 to this Respondent thereby alleging certain deviations in the construction. He added that the said deviations are very negligible and minute which does not warrant any harsh action from the officials.

16. That as the W.P No. 6738 of 2021 was pending, the Occupancy Certificate was rejected though there were minor and negligible deviations which are below 10% of the total constructed area and are allowed as per G.O.Ms.168. However, on the advice and direction of the officials of the GHMC said Writ Petition was withdrawn and this Respondent is in the process of applying the Occupancy Certificate after complying the deficiencies which were pointed out by the Officials of the GHMC.

17. The Respondent also submitted that he has already filed an application for registration before this Hon'ble Authority vide No.REA02200036739 and the same is pending. He also added that most of the allegations are with regard to internal problems which are nothing to do with this Respondent, and that there are no problems in the apartment and all the apartment owners have issued satisfactory letter in token of appreciation of the works carried out by this Respondent. He submitted that in the said letter the complainant's daughter i.e., Ms. Thota Asha Kiran Mayee had also signed as one of the signatories.

18. The Respondent submitted that in total the Complainant's daughter is due an amount of Rs. 14,25,000 (Rupees Fourteen Lakhs Twenty-Five Thousand Only) and that the Complainant's daughter has executed two demand promissory notes in favour of the Respondent herein. And therefore, he prayed to dismiss the complaint with exemplary costs.

C. Rejoinder by the Complainant

19. Vide Rejoinder dated 27.02.2024, while reiterating the contents of the Complaint, submitted that the Respondent wrongly concluded that the Complainant does not have any *locus standi*, as she is not the "allotee", as defined under Section 2(d) read with Section 31(1).

20. She submitted that, due to non-issuance of Occupancy Certificate by the GHMC, she incurred excess electricity charges and house taxes. That further, the office bearers of the unregistered Housing Association, are acting as per the whims and fancies of the Respondent Builder and collecting maintenance amount from the Complainant without detailing the accounts and expenditures incurred for the maintenance of the building.

21. She further submitted that the proceedings of W.P. No.6738 of 2021 and W.P.No.20271 of 2021 and the orders passed in the said matters are irrelevant to the present case. She added that the Respondent is misleading this Authority stating that there is only below 10% deviation of the total constructed area and that the same is allowed as per G.O.Ms.168.

22. She submitted that GHMC issued a Show Cause Notice bearing File No.3/UC/C5/LBNZ/GHMC/2024 dated 07.02.2024 to the Respondent, that you are presently proceeding with the unauthorized construction of watchman room without taking prior permission from GHMC and that in reply to the said notice, the Respondent created a satisfaction letter, and forged the consent signature of Miss. Thota Kiran Mayee.

23. She denied that the Respondent extended loan the Complainant on humanitarian grounds. She added that the Complainant is also paying to the Respondent, without any default till date.

D. Observations and Directions of the Authority

24. The first point to consider is whether the Project is within the purview of this Authority. In this regard, it is observed that the plot area on which the Apartment is situated is only 483.28 sq mts which is less than 500 sq mts as required under Section 3(2). However, as seen from GHMC approval proceedings vide permit No.2/C5/13063/2020 dated 28.12.2020, the number of 5 upper floors are permitted and the units are more than 8. Hence, the Project is within the purview of RERA.

25. The Respondent submits that he has applied for registration of the Project vide Application No. REA02200036739 on 20.11.2021, and that the same is pending. During the course of arguments, the Respondent submitted that as the Application was made and this Authority did not register within the stipulated

time, as per Section 5(2), the Project is deemed to be registered. This argument of the Respondent is rejected at the onset, as this Authority, after duly considering the application made by the Respondent raised objections/shortfalls to the application of registration which have not been met by the Respondent till date for the reasons best known to the Respondent. Further, admittedly, the Agreement of Sale with the Complainant was executed on 28.07.2022, without having RERA registration, and therefore, it is clear that the Respondent has violated Section 3 of the Act, 2016. And therefore, this Authority, while exercising its powers under Section 38 read with Section 59, deems it fit to impose a penalty of Rs. 6,80,137/- (Rupees Six Lakhs Eighty Thousand One Hundred and Thirty-Seven Only) upon the Respondent herein for abject violation of Section 3 as has been discussed above. The Respondent is directed to pay the penalty within 30 days in favour of TS RERA FUNDS through Demand Draft or online payment to A/c No.50100595798191, HDFC Bank, IFSC Code: HDFC0007036.

26. Now, as regards whether the Complainant has locus to file the present case, this Authority observes that the Complainant has filed an SPA dated 23.11.2023 which has been filed on record. A perusal of Section 2 of the Powers of Attorney Act, 1882 makes it clear that any person can execute a power of attorney in favor of another person for a specified purpose and in the present case, the daughter of the Complainant has executed an SPA in favor of the Complainant, which is not barred by law. Therefore, the Complainant, filing the present Complaint through the SPA dated 23.11.2023 representing the daughter who is the allottee in the said Project shall be considered as an allottee and an aggrieved person as defined under Section 2(d), 2(zg)(i) read with Section 31(1) of the Act, 2016.

27. With regard to the reliefs, it is observed that the Complainant failed to elaborate the specific relief sought for before this Authority. The Complainant prays that stringent action be taken against the Respondent but does not specify the demarcated reliefs which this Authority can grant. However, considering the facts and circumstances, and keeping in mind the interests and the welfare of the allottees of the Project, this Authority, while exercising its powers under Section 37, deems it fit to pass the following directions:

- a. Respondent is directed to clear the shortfalls in its RERA application vide No.REA02200036739 and complete the RERA registration within 30 days;
- b. Upon perusal of the rejection letter from GHMC, it is observed that the Occupancy Certificate has been rejected on the ground that road widening portion has not been handed over to the local body. Hence, the Respondent Builder is directed to obtain Occupancy Certificate duly fulfilling the requirements in the GHMC rejection letter within 60 days;
- c. As per the Complainant, during her oral submissions, it is mentioned that the overhead water tank has not been constructed to the capacity as required as per occupancy. Therefore, if any shortfall is noticed, additional water tank has to be provided by the Respondent Builder within 60 days.

28. In lieu thereof, the present complaint stands disposed of. Parties are informed that non-compliance with this Order shall attract penalty under Section 63 of the Act, 2016.

29. 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

