

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

COMPLAINT NO.515 OF 2023

24th Day of June, 2024

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

1. Sri Kandi Lakshma Reddy
 2. Sri Mahesh PVS
 3. Sri D. S. G. Krishna
 4. Sri Ch. Satya Vara Prasad
 5. Sri Narender Reddy
 6. Smt. T. Uma Devi
 7. Sri T. S. S. Chakravarthi
 8. Sri Santosh Manapragada
- ...Complainants

Versus

M/s Abhi Constructions
Represented by its Managing Director,
Sri Doneti Srinivasa Reddy

...Respondent

The present matter filed by the Complainant herein came up for hearing on 03.04.2024 before this Authority in the presence of Counsel for the Complainant, M/s MNR Law Chambers through Sri Naresh Kumar and none for the Respondent despite service of notice and upon hearing the arguments, 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 "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.

Brief facts of the case:

3. The Complainants submitted they are the residents of Tirumalahills, Narayanadri & Venkatadri registered with this Authority vide Rgn. No. P02200001922. That there are multiple short comings to fulfil the proposed/agreed standards, incomplete hand over and no maintenance ownership by the Respondent Builder and following are the issues:

- a. One of the Three Elevators installation yet to be completed (Small cabin size (4 members) provided, lower than standard 82 flats)
- b. Solar/electric fencing has not been provided as per the commitment.
- c. Multiple water leakages [Internal & External water leakages] are present in common area, cellar and terrace area due poor quality of the construction.
- d. Lower capacity water connection [25 mm] provided for 82 flats, resulting insufficient water supply to 82 flats.
- e. Poor quality of construction, plumbing and electric wiring in the individual flats
- f. Improper civil work carried out in the Ramps of entry/exit gates and lift foundation, water proofing.
- g. Conversion of common area meter from commercial to residential has not been done.
- h. Main drainpipe line work done in very inappropriate manner.
- i. No entry or driveway provided for fire engine/etc for all sides of community on the ground floor.
- j. Apartment surroundings were not cleaned properly while handing over.
- k. No maintenance ownership and zero response to the communication from residents
- l. Storm water drain is not provided.

- m. Wiring issues are there in intercom/internet wiring provided by the builder.
 - n. Parking tiles not provided for both the cellars.
 - o. Common area & parking area encroachment by landowner against the interest of all the residents in the community.
4. Accordingly, they prayed to direct the Respondent to rectify above-mentioned issues faced by residents of Tirumalahills, Narayanadri & Venkatadri.

Reply on behalf of the Respondent:

5. Vide Reply dated 11.08.2023, the Respondent submitted that the project has been fully completed and obtained Occupancy Certificate on 04.03.2021. The maintenance and ownership of the building has been handed over to its customers/flat owners and it has been 2 and ½ years since the Owners Welfare Association took over the building responsibilities.
6. In respect of point-wise reply, the Respondent submitted as under:
- a. Three Elevators installation: Respondent got into a contract with ThyssenKrupp for installing 3 lifts in 2 blocks and 90% of the money was paid to the vendor in November 2019. Due to Covid and poor management of the ThyssenKrupp company, they took a long time in completing the installation of 2 lifts and 1 lift has some pending work. Respondent is pursuing with the vendor company to bring the 3rd lift operational.
 - b. Solar/electric fencing: Solar fencing is provided, Respondent undertakes to provide the proofs also. This is completely false statement. In addition to that Respondent has provided heavy flood/streets lights in the setback area and concrete pit with flower plants around the border which were completed during the handover.

- c. Multiple water leakages: There were no leakages found but after 2 years the association did some additional works due to that few drainpipe were damaged.
 - d. Lower capacity water connection: Respondent has given 50mm water line as per the HMWS specifications.
 - e. Poor quality of construction: Respondent is a reputed construction company and never compromised in quality. Unfair and biased judgement from the customers.
 - f. Improper civil work: Not in our scope.
 - g. Drainpipe line: Respondent did the very best drainage system to the building.
 - h. No entry or driveway provided for fire engine: Building has four side roads and no ramps are required. Entry and exit gates were built in a very good manner.
 - i. No maintenance ownership: Maintenance after handover is completely association's responsibility so it is not applicable.
 - j. Storm water drain: Storm water drainage on the roads is completely municipality scope and not in Respondent's scope.
 - k. Wiring issues: Respondent did very good quality wiring and electricity works for the building.
 - l. Parking tiles: Respondent spent huge money for VDF floorings in cellars instead of tiles for better strength and durability which was conveyed and completely accepted by the allottees during handover. Parking tiles were installed on the ground floor.
 - m. Common area & parking area encroachment: Completely untrue. They are according to the plan.
7. The Respondent further submitted that the Respondent completed the Project with no compromise in quality. These are false allegations to get the incomplete lift

work which we are promising to get it done even with alternative vendors, since the original vendor failed in completing the task.

Observations and Directions of the Authority:

8. This Authority has heard the matter on several occasions i.e., on 17.10.2023, 15.11.2023, 20.12.2023, 30.01.2024, 15.02.2024 and 03.04.2024. during the said hearings, despite service of notice, the Respondent failed to appear and hence was set *ex-parte* on 03.04.2024.

9. The Complainants, on the final hearing, submitted that the Respondent was obligated to construct the said project in accordance with the agreed specifications, but failed miserably in constructing the project as per the promised quality standards and there exists several shortfalls and deficiencies in provision of amenities, due to which the numerous families residing in the project are facing hardships on day-to-day basis. The Respondent while selling flats in the said project had advertised and promised several amenities and features, trust, quality, and service, etc., in their brochure and other documents to attract the customers, but the Respondent had failed to deliver the same even after several months of selling flats to the Complainants.

10. It was submitted that the Respondent had promised to provide Three (3) Independent 6-Passenger lifts, but till date only 2 of them have been installed, and the 3rd lift is yet to be completed. Even out of the two installed lifts one of them has been non- operational/defunct since several months, and the lifts provided have small cabin size (sufficient for just 4 members), which is lower than standard and not sufficient for serving the residents of 82 flats. Despite bringing this to the Respondent's notice several times, he has taken no steps to either complete the

installation of 3 lift within guaranteed timeline or get the defunct lift repaired and address the issues of residents. In response to the Complaint, the Respondents have simply shifted the blame onto the vendor company for installation and maintenance of the lifts, despite lapse of several months and suffering of the residents. Even after the Complainants approached this Authority, the Respondent has evaded liability by merely stating that they are pursuing with the vendor company, without any specific timeline and responsibility towards residents of the said project.

11. Further, the Respondents even promised to provide Electric/Solar Fencing to the said project, but the same has not been fulfilled yet for reasons best known to them. Despite that, the Respondent claims to have provided solar fencing and provide proof also, but if the solar fencing is indeed provided and operational, it cannot be the case of the Respondent that all the residents of the project cannot see it or they are false. The Respondent had sufficient time to submit proof of the same while filing their reply and till date they have not done so, which explains their evasive nature.

12. It is submitted that, due poor quality of the construction material and work there exists multiple water leakages (Internal & External) in the common area, cellar and terrace area of the Project, and the Respondent instead of getting the repairs done has indulged in blaming the association for getting some works done which damaged the drainpipes, which is absurd. As the residents were compelled to get some repairs done when the Respondent refused to do the same, and to avoid daily hassles with multiple leakages the residents performed some repairs., which was the responsibility of the Respondent, having constructed the project with substandard material and improper works.

13. The Respondent had promised that the said project would be constructed as per standard quality and specifications promised in their brochure and terms of DAGPA, which has not been fulfilled. And the Respondent claims of being a reputed construction company, but the same is not reflected in the quality of the construction of the project which is riddled with many defects such as:

- i. poor quality of construction evident from visible cracks developed on various walls, roofs, etc., that too within few months of project completion
- ii. low water capacity pipelines (25mm instead of 50mm) leading to insufficient water supply to the residents of 82 flats and improper drainage pipeline work done by the Respondent is causing hardship to the Complainants even for basic necessities on daily basis. And the Respondent's claim of providing the 'best drainage system to the building' is not only exaggeration but arrogance on part of the Respondent in recognising the openly visible defects and getting them fixed.
- iii. inferior quality of plumbing works and electrical wiring provided leading to frequent repairs, issues with intercom/internet cabling within few months of handover, and the additional cost incurred by the residents due to the sub-standard works of the Respondent, who have simply claimed to have done 'very good quality wiring and electricity works' without any specific mention of actual material/specifications used in the construction, which led to such deplorable state within few months of project completion.
- iv. lack of storm water drains, which would facilitate the rainwater harvesting and also help in reducing water logging and blocking of drains.
- v. Improper civil work carried out in the Ramps of entry/exit gates and lift foundation.

vi. Improper water proofing work done by the Respondent, leading to frequent leakages and inconvenience to the residents.

14. That in addition to the above deficiencies on part of the Respondent, his inaction on the encroachment of common area and parking area by the landlord against the interest of all the residents including the Complainants, points to the Respondent's complicity.

15. They submitted that due to the negligent and evasive actions of the Respondent, the Complainants have been subjected to severe hardships on daily basis even after paying huge amounts for purchasing the flats in the said project with promised quality and amenities, which the Respondent has failed to deliver. As such the Complainants including 82 families residing in the project are compelled to take up frequent repairs leading to loss of valuable time and money and are unable to lead a comfortable life despite shelling out lakhs of rupees in buying their flats.

16. They categorically also submitted that the provisions of the Act, 2016 clearly mandate that, in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees i.e. the Complainants shall be entitled to receive appropriate compensation in the manner as provided under the Act.

17. It was further submitted that, due to the irresponsible and neglectful attitude of the Respondent in fixing the defects in building, the allottees including the Complainants were compelled to incur huge expenses amounting to about Rs. 23,68,740/- (Rupees Twenty-Three Lakh Sixty-Eight Thousand Seven Hundred and Forty Only) by pooling funds among themselves, for taking up various repairs, civil works including *manjeera* water connection, plumbing works, lift, solar fencing, internet cabling works, material cost, etc.

18. Further that, the Respondent is obligated under the Act to hand over the physical possession of the apartment to the allottees and the common areas to the association of the allottees, and the other title documents pertaining thereto within specified period, but till date the Respondent has failed to hand over original linked documents, flat allotment letter and NOC from builder to the allottees including the Complainants. Due to the lack of link documents, NOC from builder, etc., the allottees are unable to transfer their loans to other banks and are stuck with paying higher interest rates and additional charges. Moreover, the builder and landlord threatened the Complainants stating that they would use or sell the extra parking spaces to outsiders and also open space in ground floor where flats were not constructed as they were above the ramp area, which is clear violation of the sanctioned plan and regulations, and also against the interest of the allottees.

19. Evidently, the Respondent failed to deliver the project as per the prescribed standards and have failed to discharge their obligations towards the Complainants and their actions are in abject violation of the provisions of the RERA. Hence, the Respondent is obligated to perform their duties in making good the shortcoming plaguing the said project and complete repairs as necessitated to address the Complainants issues in a time bound manner, and the Complainant is also entitled

to compensation for the aforesaid actions of the Respondent and loss incurred due to them.

20. Accordingly, they prayed for the following reliefs:

- a. *Direct the Respondent to complete the pending works, take up necessary repairs/civil works on the said project, as prayed for in the complaint within a time bound manner.*
- b. *direct the Respondent to pay an amount of Rs. 23,68,740/- (Rupees Twenty-Three Lakh Sixty-Eight Thousand Seven Hundred and Forty Only) for expenses incurred by the complainants and allottees for getting done various works, installations, repairs, civil works, material cost, etc., in the said project, along with interest from the date of payment until date of realisation.*
- c. *direct the Respondent to pay Compensation of Rs. 5,00,000/- (Rupees Five Lakh Only) to the Complainants for causing mental agony, loss of time, hardship and litigation expenses incurred by the Complainant.*
- d. *to appoint a commissioner/expert in construction or engineering or from any other discipline as it deems necessary, to conduct inquiry into the aforementioned defects in workmanship, sub-standard construction, quality or provision of services and other obligations of the Respondent.*
- e. *And issue suitable directions or orders, in the interest of justice.*

21. In light of the aforementioned facts, this Authority, deems it relevant to extract the pertinent provisions under the Act, 2016 more specifically Section 14 read with Section 11(4)(d), (e), (g) which provide as under:

Section 14(3)

“(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for

sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.”

Section 11(4)(d), (e), (g)

“(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or

person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person”

22. Even after considering the contentions raised in the Reply filed by the Respondent, the conduct of the Respondent is apparent and proves his irresponsible attitude to the allottees/complainants. Therefore, while considering the contentions of both parties, the following directions are issued:

- a. Three Elevators installation: As promised by the Respondent in its Reply dated 11.08.2023, the Respondent is directed to undertake the installation of the third lift within 60 days. The Respondent, for having violated Section 11(4)(d) and not providing the elevator as promised, is liable for penalty of Rs.4,00,000/- (Rupees Four Lakhs Only) payable 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, failing which appropriate action under Section 63 of the Act, 2016 shall be initiated against the Respondent; and
- b. Solar/Electric fencing: As promised by the Respondent in its Reply dated 11.08.2023, the Respondent, if not provided by the Respondent as alleged by the Complainants, shall provide within 60 days; and
- c. Terrace flooring leakage: The Respondent shall repair the leakages on the terrace flooring at places where such leakages are noticed; and
- d. Wiring for Intercom: The Respondent shall ensure that wiring for intercom is provided; and
- e. Parking tiles: It is observed that Respondent mentioned VDF flooring has been laid in the parking area, which is better quality than parking tiles; and
- f. Encroachments: If there are any encroachments in common areas/parking area, the same shall be removed within 30 days; and

- g. Regarding relief (b) as mentioned in paragraph 20, if any money is spent or incurred by the Complainants towards infrastructure, it is the duty and responsibility of the Respondent to re-imburse the same within 60 days; and
- h. Regarding relief (c) as mentioned in paragraph 20, the Complainants may approach the Adjudicating Authority under appropriate form for such reliefs.
- i. Regarding relief (d) as mentioned in paragraph 20, the Authority has felt there is no need to appoint a commissioner/expert to conduct inquiry into the defects in workmanship, sub-standard construction, quality or provision of services and other obligations of the Respondent at this stage.

23. In lieu thereof, the present Complaint stands disposed of. The Parties are hereby informed that failure to comply with the directions of the Authority shall attract appropriate action under Section 63 of the Act, 2016.

24. 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) in accordance with 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