

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

COMPLAINT NO.115 OF 2024

30th Day of December 2024

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

Sri Katchala Nanaji

...Complainant

Versus

M/s Krithika Infra Developers Pvt. Ltd.
Represented through its Authorised Representatives,
Sri D. Srikanth & Sri D. Shashikanth

...Respondent

The present matter filed by the Complainant herein came up for hearing on 08.08.2024, 29.08.2024 and 1.10.2024 before this Authority and Complainant in person, virtually appeared and Counsel for Respondent, Sri E. Vishwaprasad, Sri S. Srinivas Nayak, and Smt. N. Suvarna appeared on behalf of the Respondent Company and after hearing the arguments, 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") seeking appropriate relief(s) against the Respondent.

Brief facts of the case:

3. The Complainant submitted that he entered into an agreement with the Respondent Company in October 2021 for the purchase of a flat located in Beeramguda, Hyderabad. An advance payment at the rate of Rs. 2,500/- per square foot was made by the complainant, along with an additional sum amounting to Rs.33,84,200/- (Rupees Thirty-Three Lakhs Eighty-Four Thousand and Two Hundred Only).

4. The Complainant further submitted that despite repeated assurances from the Managing Director and CEO of the Respondent Company, the flat was not handed over by the promised date of March 2024. The complainant has repeatedly sought updates regarding the construction, but no satisfactory progress was made.

5. The Complainant further submitted that the Respondent had not initiated the necessary construction work and has also failed to secure requisite approvals, including RERA registration and loan clearances, which are essential for completing the project as per the agreement.

6. The Complainant also submitted that despite multiple follow-ups and meetings with the representatives of the Respondent Company, there has been no concrete response regarding the completion timeline of the flat. And that the Respondent Company has repeatedly failed to meet their obligations, causing undue hardship and uncertainty to the Complainant.

7. Owing to the undue delay and lack of transparency from the Respondent, the Complainant sought to cancel the booking and requested a refund of the payments made. However, despite the request for cancellation, the Respondent has failed to

initiate the refund process, and the Complainant is now constrained to approach this Authority seeking the refund of the amount paid along with appropriate compensation for the delay, harassment, and inconvenience caused.

Relief Sought:

8. Accordingly, the Complainant sought for the following reliefs:

- i. *Immediate release of the invested amount with compound interest @ 2rs. Interest per month.*
- ii. *Take stringent action on the company as per the RERA norms as project started without RERA registration.*
- iii. *Legal criminal action on the company M/s Krithika Infra Developers and its Directors CEO and MD.*

Counter on behalf of the Respondent:

9. Vide Counter affidavit dated 29.08.2024, the Respondent submitted that the Complainant, attracted by the good reputation of the Respondent's business in the construction sector, voluntarily entered into an Agreement of Sale dated 05.02.2022 to purchase Flat No. A-108, Block A, situated on the 5th floor with a built-up area of 1594 sq. ft., exclusive of common areas, along with an undivided share of land measuring 35.4 sq. yards, located at Sheshadri's Silver Oak, Boduppall Village, Medipally Mandal, Medchal Malkajgiri District. That the Complainant entered into this Agreement after due satisfaction with the Respondent's completed construction work.

10. The Respondent submitted that, subsequently, the Complainant, citing financial distress, approached the Respondent with a request to cancel the Agreement of Sale dated 05.02.2022 and refund the amounts paid. In response, the

Respondent, considering the Complainant's request on humanitarian grounds, refunded the amounts via cheque No.002111 dated 30.08.2024 of Rs.16,05,938/- (Rupees Sixteen Lakhs Five Thousand Nine Hundred and Thirty-Eight Only), cheque No.002112 dated 30.09.2024 of Rs.16,05,938/- (Rupees Sixteen Lakhs Five Thousand Nine Hundred and Thirty-Eight Only), and cheque No.002113 dated 30.10.2024 of Rs.16,54,603/- (Rupees Sixteen Lakhs Fifty-Four Thousand Six Hundred and Three Only), drawn on Kotak Mahindra Bank, Hyderabad. After receiving these cheques, the Complainant executed a cancellation of the Agreement of Sale in favor of the Respondent.

11. The Respondent contended that, despite receiving the entire amount, the Complainant has filed this case prematurely, allegedly suppressing the above material facts, with the intention of making wrongful gains and to malign the Respondent's reputation in society. Therefore, it was prayed on behalf of the Respondent to dismiss the complaint.

Points for consideration:

12. After due deliberation of the contentions of both the parties and the documents filed in support of their contentions, following questions arise for consideration by the Authority:

- I. Whether the Respondent violated Sections 3 & 4 of the Act, 2016, by not registering the project, Sheshadri's Silver Oak?
- II. Whether the Respondent violated Section 13(1) of the Act, 2016 by accepting advance payments exceeding the statutory limit of 10% of the total sale consideration?
- III. Whether the Complainant is entitled to its relief? If yes, to what extent?

Observation by the Authority:

Point I

13. The Agreement of Sale dated produced by the Complainant and admitted by the Respondent herein clearly stipulates as under:

“Whereas, the Developer/Builder herein agreed and offered to sell away Proposed Residential Flat No.A-108, Block -A, in 5th Floor, built up area 1594 sq.fts (exclusive of common areas), with one car parking area, in Complex known as SHESHADRI’S SILVER OAK, along with undivided share of land 35.4 sq.yds, in Survey No.15 admeasuring 13658 sq.yds or 11418 sq.mtrs situated at Bodduppal Village, Under Boduppal Municipality, Medipally Mandal, Medchal – Malkajgiri District, Telangana State, to the Vendee (hereinafter called the “THE SCHEDULE PROPERTY”).”

14. A bare perusal of the said Agreement clearly shows that development is being done in Survey No.15 admeasuring 13658 sq.yds or 11418 sq.mtrs situated at Bodduppal Village, Under Boduppal Municipality, Medipally Mandal, Medchal – Malkajgiri District, Telangana State, out of which, the Complainant was allotted Flat No.A-108, Block -A, in 5th Floor of 1594 sq.fts built up area. This means the land is exceeding 500 sq. mtrs., and also has more than 8 units and therefore, project titled “Seshadri’s Silver Oak” requires RERA registration in accordance with Section 3(2) which stipulates as under:

“(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required— (a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases.”

15. Further, Section 4 mandates that an application for registration has to be filed by the promoter in such form and manner as prescribed but no such application was admittedly filed by the Respondent, thereby failing to comply with Section 4 of the Act, 2016.

15. Therefore, as Section 3 mandates registration prior to offering for sale of any units in a project that falls well within the jurisdiction of the Authority, but the Respondent, admittedly and apparently violated such provision by executing Agreement of Sale dated 05.02.2022 with the Complainant herein, the Respondent is liable for penalty under Section 59 of the Act, 2016. Further, as the Respondent admittedly has not filed any application for registration under Section 4, he is liable for penalty under Section 60 of the Act, 2016. On 08.08.2024, this Authority issued a Show Cause Notice to the Respondent under Sections 3 & 4 of the Act, 2016 of which they did not provide any reply despite being in receipt of the same.

16. Therefore, Point I is answered in affirmative, and the Respondent is liable for penalty under Sections 59 and 60 for violation of Sections 3 and 4 respectively.

Point II

17. Admittedly, the Complainant paid and the Respondent received total consideration of Rs.33,84,200/- (Rupees Thirty-Three Lakhs Eighty-Four Thousand and Two Hundred Only) before the date of execution of the Agreement of Sale dated 05.02.2022. Upon examination of the financial transactions between the parties, it has come to the notice of the Authority that prior to the execution of the Agreement for Sale dated 05.02.2022, the Respondent had accepted substantial sums of money from the Complainant as follows:

- i. ₹50,000 on 12.12.2021;

- ii. ₹5,00,000 on 01.01.2022;
 - iii. ₹1,50,000 on 20.01.2022;
 - iv. ₹16,00,000 on 29.01.2022;
 - v. ₹5,00,000 on 03.02.2022.
18. The aggregate of these amounts totals ₹28,00,000, which significantly exceeds the permissible limit stipulated under Section 13(1) of the Act, 2016, which stipulates as under:

“(1) A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.”

19. Thus, as per Section 13, a promoter is prohibited from accepting a sum more than ten percent of the cost of the apartment as an advance payment or application fee without first entering into a written agreement for sale and the admitted fact that the Respondent accepted amounts surpassing this limit prior to formalizing the agreement constitutes a clear violation of the above statutory provision which is intended to protect the interests of consumers. Therefore, the Respondent is also liable for penalty in this regard under Section 61 of the Act, 2016.

20. Therefore, Point II is answered in affirmative, and the Respondent is liable for penalty under Section 61 for violation of Section 13(1) of the Act, 2016.

Point III

21. The relief claimed by the Complainant is two-fold, one, the Complainant seeks refund and second, the Complainant seeks appropriate action be taken against the Respondent for violation of provisions of the Act, 2016.

22. In the counter of the Respondent dated 29.08.2024, the Respondent vehemently asserts that the Complainant being in receipt of the amounts, cannot raise any grievance before this Authority. To substantiate this, the Respondent filed copies of the cheques bearing cheque No.002111 dated 30.08.2024 of Rs.16,05,938/- (Rupees Sixteen Lakhs Five Thousand Nine Hundred and Thirty-Eight Only), cheque No.002112 dated 30.09.2024 of Rs.16,05,938/- (Rupees Sixteen Lakhs Five Thousand Nine Hundred and Thirty-Eight Only), and cheque No.002113 dated 30.10.2024 of Rs.16,54,603/- (Rupees Sixteen Lakhs Fifty-Four Thousand Six Hundred and Three Only), drawn on Kotak Mahindra Bank, Hyderabad. This Authority fails to understand how the Complainant will be in receipt of such amounts on 29.08.2024 itself, when the cheques are dated 30.08.2024, 30.09.2024 and 30.10.2024.

23. Without any valid proof of receipt of amounts by the Complainant, the Respondent categorically submitted that the Complainant has received the amounts. Upon verification by this Authority as to whether the Complainant received the amounts on 30.08.2024 vide cheque No.002111 of Rs.16,05,938/- (Rupees Sixteen Lakhs Five Thousand Nine Hundred and Thirty-Eight Only), the Complainant submitted that the cheque was dishonored for insufficient funds, and he did not receive any amounts.

24. Furthermore, the Respondent was absent on the last date of hearing despite being well acquainted that the matter was to be finally heard on the said day. The Respondent also failed to provide any justification to substantiate their claims or to refute the allegations made by the Complainant. Their non-appearance impedes the proceedings and suggests a lack of diligence in addressing the seriousness of

allegations made against them. Therefore, the Complainant is liable for full refund of the amounts paid by him along with interest as per Rules, 2017.

25. As regards, violations are concerned, this Authority in Paras 13 to 20 has already concluded the violations committed on part of the Respondent for which he is liable for penalty. Therefore, Point III is answered in affirmative, and the Complainant is entitled to a full refund of Rs.33,84,200/- (Rupees Thirty-Three Lakhs Eighty-Four Thousand and Two Hundred Only) along with interest as per Rules, 2017.

Directions of the Authority:

26. In accordance with the discussions made above, this Authority, vide its powers under Sections 37 and 38, issues the following directions to the Respondent:

- i. For violation of Sections 3, 4 and 13(1), the Respondent is liable for penalty under Sections 59, 60 and 61 respectively, therefore, the Respondent is directed to pay penalty of Rs. 9,96,000/- (Rupees Nine Lakhs Ninety-Six Thousand and Fifty Only) payable within 30 days in favour of TGRERA FUND through a Demand Draft or online payment to A/c No. 50100595798191, HDFC Bank, IFSC Code: HDFC0007036;
- ii. The Respondent is directed to refund the entire amount of Rs.33,84,200/- (Rupees Thirty-Three Lakhs Eighty-Four Thousand and Two Hundred Only) along with interest at the rate of 11.05% per annum (SBI MCLR of 9.05% + 2%) from the date of the agreement of sale (February 5th, 2022) till the date of actual refund in accordance with Rule 15 of the Rules, 2017 within 30 (thirty) days;
- iii. The Respondent hereby is also directed to file an application for registration of the Project "SHESHADRI'S SILVER OAK" before this

Authority in accordance with Section 4 of the Act, 2016 and the Rules thereunder with immediate effect and till the registration is granted by this Authority, the Respondent shall, strictly, not advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any units of the project, SHESHADRI'S SILVER OAK.

- iv. Failing to comply with above said directions by the Respondent shall attract penalty in accordance with Section 63 of the Act, 2016.

27. As a result, the complaint is disposed of. No order as to costs.

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

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

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

