



**BEFORE THE TAMIL NADU REAL ESTATE
REGULATORY AUTHORITY (TNRERA)
(Tamil Nadu, Andaman & Nicobar Islands)
at Egmore, Chennai – 600 008**

[Under the Real Estate (Regulation and Development) Act, 2016]

C.No.36/2021

6th day of October, 2021

**Coram : Thiru K. Gnanadesikan, I.A.S. (Retired), Chairperson
Er. S. Manohar, Member
Adv. V. Jeyakumar, Member**

Thiru E. Sundaravadivelu ... Complainant

Versus

M/s. BSR Builders Engineers & Contractors]
Represented by its Managing Partner] Respondent
Thiru B. Raghavendra Reddy]

This Complaint came up for final hearing before this Authority in the presence of the Complainant appeared party in person and of M/s. P.Subba Reddy, T.Sri Krishna Bhagavat, N.C.Thirumalai Balaji – Counsel for Respondent and upon hearing the arguments of both the parties, this Authority passed the following order:

FINAL ORDER

The Complainant has submitted that he has purchased flat No.E-6 from the Respondent Builder based on the advertisement and the amenities mentioned in the pamphlets. The Respondent Promoter has also

registered the project 'BALAJI ENCLAVE' under RERA on 06.09.2017 vide registration No.TN/02/Building/0127/2017dated 17.10.2017 situated at No.110/1, Off Poonamallee High Road, Mogappair Link Road, Nerkundram, Chennai-107.

2. The Complainant has further submitted that at the time of purchase of flat in the above said project, certain work was to be completed by the Promoter, on the assurance of the Builder that "it will be rectified within short span of time after handing over". On this basis of assurance given by the Promoter, the Complainant has purchased the flat. Even after completion of more than eighteen months passed, the Respondent Builder not fulfilled his commitment. Finally the Complainant spent his own money and made entire plastering work of his flat and made repainting and incurred cost from his savings.

3. The Complainant has further submitted that the Respondent Builder collected metro water and sewage connection & infrastructure deposit but as on date Respondent has not provided the facility. The community hall has not been completed with all infrastructures as per agreed terms. The Metro Water & Sewage Connection has not been provided till date. There is huge crack between two blocks which elaborating day by day and when raining, water is entering through this and it causes the question of stability of the building.

4. The Complainant has also submitted that even after Completion Certificate obtained from the respective authorities, the original documents like plan approval, wiring plan, water and sewage line drawing and

deposits with government departments are not transferred to Association name as on date. The entire project is mortgaged with private financial arrangement. Till date the loan amount has not been completely closed and the original documents not handed over to the association and the documents are with the financial company. The promoter is not fulfilling his legal duty to provide GST paid receipt which is collected from the Complainant.

5. The Complainant has prayed for the following reliefs:

1. *To make a plastering and entire portion of Flat E-6, and painting cost to be compensated for after plastering made.*
2. *Cost of Compensation poor quality of construction and for caused mental agony.*
3. *Return the amount collected for Metro Water & Sewage & Infrastructure charges Rs.2,00,000/-*
4. *Cost of Legal Expenses paid for this issue*
5. *Provide Building Stability Certificate*
6. *Stop doing his second project in the same premises within the meaning of document wise.*

Interim order, if prayed for:

Pending final decision on the Complaint, the Complainant has sought to issue of the following interim order:

1. *To Provide Metro Water & Sewage Facility & Increase the Electricity Transformer capacity, since these are essential requirement for day to day activity.*

2. To appoint Special Engineer to verify the stability of the Building due to crack in between the two blocks.

6. In the Counter Affidavit the Respondent Promoter has submitted that the Complainant Mr. Sundaravadivelu has purchased two flats bearing E-6 with a plinth extent of 1228 sq.ft. and another flat bearing D-6 with an plinth extent of 962 sq.ft. in the name of his wife Mrs. Pramila, in the residential project promoted by the Respondent herein named 'BALAJI ENCLAVE' situated at Nerkundram village for residential purpose. After purchasing, the Complainant himself has done interior works for office purpose to accommodate his Legal office by combining the two apartments. The same has been done without consulting the builder; moreover the Complainant has done the painting on common wall also in the corridor without any prior approval or notice on his own volition.

7. The Respondent has further submitted that the Complainant occupied the flat as office and as many as 10 to 15 staff members come to his office regularly. Since he is also running a tax consultation office at the premises, he is visited by many clients who are giving nuisance, security issues and loss of privacy for other flat owners/occupants. Regarding the prayer to compensate the cost of plastering and painting in the Complainant's flat No.E-6 and D-6, the Respondent has stated that the Complainant has modified his flooring, done some modifications by demolishing wall and reconstructed as per his needs, after which painting was also done by him and the Respondent cannot be made responsible for something done by the Complainant.

8. The Respondent has further stated that this Respondent has provided with 14 bore wells with water treatment plant, and as per CMDA sanctioned plan provided STP also. It is nowhere in the agreement this Respondent has promised or agreed to provide Metro Water/Sewerage connections. It is also pertinent to note that in that locality/area so far there is no feasibility of Metro Water/Sewerage connections given to any of the buildings, even on Poonamallee High Road. Also the Respondent has not assured to provide any Metro water or Sewerage connection.

9. The Respondent has also stated that this Respondent has handed over the Building stability certificate, completion certificate original, approved plan, receipts related to the payment to the Balaji Enclave Association along with other parent documents. The copy of Stability Certificate is enclosed (in the typed set of Respondent). The crack between two buildings is there is a joint as per the Structural Engineers opinion, as Block-1 & Block-2 combined basement building length exceeds more than 150 feet expansion joint is provided. Also the Respondent has stated that there is no change in contract terms or deviation in complying with the terms. The Respondent has completed the building in 2019 and very minor work like gardening, cleaning the site was pending and got delayed due to the Covid – 19 pandemic situations. Some of the buyers in the building including this Complainant were tested positive for corona, and hence the Government authorities did not permit any person inside the complex to do any of the balance pending work. Finally in January 2021 the Respondent has handed over the maintenance to the Association after completion of all the works.

10. The Respondent has further submitted that the provision store near the ramp to the basement has been provided exclusively for the Balaji Enclave buyers as there is no provision store nearby. The Respondent has provided Gym, indoor games, for the benefit of the buyers. Regarding the GST, the Respondent has stated that GST is not applicable for Complainant as he bought the flat after the building was complete and completion certificate was received, thereby he has paid 11% stamp duty.

11. In the written submission of arguments, the Complainant has submitted that the allegation of the Respondent that this Complainant has been using the premises for commercial purpose is without any proof. It is significant to point out that the Hon'ble Supreme Court in M.P. Electricity Board and others V. Shiv Narayanan and another (2005) 7 SCC 283. The Hon'ble Supreme Court held that the legal profession does not involve a commercial activity and the office of a lawyer is not a commercial establishment.

12. In the written submission of arguments, the Respondent has submitted that regarding plastering and painting in flat No.E-6 and D-6 the Complainant has modified his flooring, done some modifications by demolishing wall and reconstructed as per his needs, after which painting was also done by him. The Respondent cannot be made Responsible for something done by the Complainant. Moreover the Complainant has willfully defaulted in payment of Rs.32,708/- for Flat No.D-6, and Rs.41,752/- for Flat No.E-6 in total to a sum of Rs.74,460/- as maintenance, despite occupying flats, from August 2019.

13. This Authority has examined the Complaint, the Counter Affidavit filed by the Respondent Promoter and the written submission of arguments by both sides, carefully.

14. Regarding the 1st prayer of plastering the entire portion of Flat E-6 and painting cost to be compensated after plastering made, the Respondent Promoter has stated that the Complainant Allottee has combined 2 flats E6 and D6 on his own by doing modification after which painting was also done by the Complainant Allottee without consulting the Respondent Promoter and hence, the Respondent Promoter cannot be made responsible for something done by the Complainant.

15. This Authority accepts the explanation of the Respondent Promoter and holds that this prayer of the Complainant is not feasible of compliance by the Respondent Promoter.

16. Regarding the prayer for compensation for poor quality of construction thereby causing mental agony, the Complainant is at liberty to move the Adjudicating Officer of this Authority for compensation, if any, by providing documentary evidence in support of his claim.

17. Regarding the prayer to return the amount collected for Metro Water & Sewerage and Infrastructure charges of Rs.2,00,000/-, the Respondent Promoter has stated that the Respondent has provided 14 bore wells with water treatment plant, and as per CMDA sanctioned plan provided Sewage Treatment Plant (STP). It is nowhere in the Agreement that the Respondent has promised or agreed to provide metro water/sewerage connection. Also in that locality/area, so far there is no

feasibility of metro water/sewerage connections given to any of the buildings. Also the Respondent has not assured to provide any metro water or sewerage connection.

18. Accepting the submissions of the Respondent Promoter, this prayer of the Complainant is not feasible of compliance.

19. Regarding the prayer to provide building stability certificate, the Respondent Promoter has stated that the building stability certificate, completion certificate, approved plan, etc. have been handed over by the Respondent Promoter to the Association of Allottees. The copy of the building stability certificate has also been enclosed in the typed set of the Respondent (page 3 to 7 of the typed set filed by the Respondent). Therefore, this prayer also has already been complied with by the Respondent Promoter.

20. With the above findings, this Complaint is disposed of.

Sd/-...06.10.2021

Sd/-...06.10.2021


Sd/-...06.10.2021


MEMBER (M), TNRERA

MEMBER (J), TNRERA

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER


6/10/21