



**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.89/2022

09th day of February, 2023

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

1) Thiru Biswabhusan Prusti]
2) Tmt. Namita Sahu] Complainants

Versus

M/s. Selene Estates Ltd.]
Represented by its Authorised Signatory] Respondent
Thiru G. Natarajan]

The above Complaint came up for final hearing before this Authority and the Complainants represented by their Counsel M/s. Chennai Law Associates and the Respondent represented by their Counsel M/s. A.R.Vishwaram and P.Dillibabu. This Authority passes the following order:

FINAL ORDER

The Complainants have submitted in the Complaint that they were allotted a Flat No.E1 1001 in Tower E1, 10th floor in the project "Indiabulls Greens" at Jalladianpettai Village Perumbakkam developed by the

Respondent in the year 2019. The flat measuring super built up area of 1489 sq.ft. consisting 886 sq.ft. carpet area with 2.5 BHK as part of the overall apartment complex. The total sale consideration for the said flat was Rs.61,21,715/-

2. The Complainants have further submitted that they entered into a Construction Agreement with the Respondent dated 01.04.2019 registered as Document No.4094 of 2019 and the Sale Deed executed on 01.04.2019 and registered as Doc No.4095/2019 before the Sub Registrar, Chennai South Joint-I.

3. The Complainants have also submitted that they paid the total sale consideration for the said flat of Rs.51,47,832/- and have taken possession of the said flat on 09.11.2019. The Complainants have further submitted that in the possession letter dated 09.11.2019 the Respondent instructed the Complainants to pay monthly maintenance charges to the Respondent or its nominated agency for the upkeep of the common areas and facilities which is calculated at the rate of Rs.3 per sq.ft. of super built up area (1489 sq.ft.) of the premises. It is also stated by the Complainant that in that possession letter dated 09.11.2019 the Respondent demanded a sum of Rs.15,813/- (3 months advance CAM including GST) for the period from 01.11.2019 to 31.01.2020 and the Complainants have duly paid the CAM charges.

4. The Complainants have further submitted that they entered into a Maintenance Agreement dated 09.11.2019 with the Respondent wherein the Respondent have promised and assured to provide maintenance and proper upkeep of the premises. It is also submitted by the Complainants that despite the Complainants promptly paying the CAM charges the

Respondent has not provided adequate security as promised to provide 4 Security Personnel but only two Security Personnel are employed which is causing serious safety issues to the residents in this project. The Complainants have further submitted that the swimming pool, Health Club and Gym have not been provided by the Respondent till date. The Complainants have averred that they have been charged for the said amenities whereas the Respondent has failed to provide the said amenities despite the Respondent's specific undertaking in Annexure-I of the said Maintenance Agreement dated 09.11.2019. Also the generators installed by the Respondent for power back up have also not been maintained properly. Further, the Respondent and the Respondent Officers in charge do not turn up when the lift becomes dysfunctional.

5. The Complainants have prayed for the following reliefs in their Complaint.

- a. Provide the promised facilities and amenities including maintenance and proper upkeep of the premises as mentioned in the maintenance agreement dated 09.11.2019;
- b. Pay a sum of Rs.5,00,000/-towards mental agony and severe hardship caused by the Respondent and
- c. Pass such other order as this Authority deems fit.

6. In the Counter Affidavit, the Respondent has submitted that both RERA Act, 2016 and TNRERA Rules, 2017 protect and preserve the agreements that were executed between the parties prior to the RERA Act came into force. In the present case the agreements were entered on

01.04.2019, hence the Complainant is entitled for remedies only as per RERA Act, 2016.

7. The Respondent has further submitted that the facilities mentioned under the scope of Common Area Maintenance under the ANNEXURE I of the Maintenance Agreement dated on 04.11.2019 is being availed by the Complainant and other residents of the said project.

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

9. The main prayer of the Complainant Allottee is that the Respondent Promoter has not been providing proper maintenance and upkeep of premises as per the Maintenance Agreement dated 09.11.2019. It is seen that Annexure-I of the Maintenance Agreement dated 09.11.2019 between the Complainant Allottee and the Respondent Promoter specifies the Scope of the Common Area maintenance as below:

- i. Round the clock security
- ii. Maintenance and upkeep of common area
- iii. Maintenance and upkeep of landscaped area/common garden
- iv. Maintenance of Swimming Pool
- v. Maintenance of Health Club
- vi. Illumination of the common areas
- vii. Maintenance and operation of bore wells, sumps, overhead tanks and related motors to ensure water supply
- viii. Maintenance and operation of lifts
- ix. Maintenance and operation of WTP & STP

- x. Maintenance and operation of generators for common area backup power
- xi. Payment of all water bills consumed for the common area and all occupants usage.

10. As stated above by the Complainant Allottee, the Respondent Promoter has provided two Security Personnel as against the promised round the clock security. It is impossible to provide round the clock security to such a residential complex. Therefore, it is clear that the Respondent Promoter has failed to provide the round the clock security as promised in the Maintenance Agreement.

11. Also in view of non-provision of Swimming Pool and Health Club, the Respondent Promoter cannot charge the agreed rate of Rs.3/- per sq.ft. as common area maintenance charges.

12. It is also stated by the Complainant Allottee that permanent domestic electricity service connection from TANGEDCO has not been obtained so far and the Generator for power backup has not been maintained properly.

13. The Respondent Promoter has not specifically met these points in the Counter Affidavit. The fact that the Respondent Promoter has not completed the promised facilities like Swimming Pool and Health Club and that the permanent electricity domestic service connection has not been obtained from TANGEDCO so far, this Authority holds that this apartment has not been completed in habitable condition and directs the Respondent Promoter to obtain permanent electricity domestic service connection from TANGEDCO for this apartment before 31.03.2023 without fail.

14. As the Promoter has not provided the permanent electricity domestic service connection and that the swimming Pool and Health Club have not been provided so far, this Authority directs the Respondent Promoter to reduce the maintenance charges per flat at the rate of Rs.1000/- per month till permanent electricity domestic service connection is obtained and all the promised facilities are completed and made operational.

15. This Authority also directs the Respondent Promoter to complete the promised facilities and amenities like swimming pool, health club, etc. before 30.09.2023 without fail.

16. The Complainant Allottee is at liberty to move the Adjudicating Officer of this Authority for compensation, if any.

17. With the above findings and directions, this Complaint is disposed of.

Sd/-...09.02.2023
MEMBER (M), TNRERA

Sd/-...09.02.2023
MEMBER (J), TNRERA

Sd/-...09.02.2023
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

N. Anoop
9/2/2023
ADMINISTRATIVE OFFICER
9.2.23