

BEFORE THE TELANGANA STATE CONSUMER DISPUTES REDRESSAL
COMMISSION-1, AT HYDERABAD

CC.No.36 OF 2023

Between:

Tenneti Ratna kumari & another

...Complainant

AND

M/s. Vista Homes & 3 & others

....Opposite Parties

WRITTEN VERSION FILED ON BEHALF OF OPPOSITE PARTY NO.3

1. It is humbly prayed that this Hon'ble District Commission may be pleased to read the pleadings, evidence and documents of both the parties as part and parcel of this Written Submission and the same was not repeated herein to avoid lengthy submission.

2. It is humbly submitted that this Opposite Party had gone through the allegations and averments mentioned in the complaint and its supporting documents and the same are denied except those specifically admitted herein and the Complainant may be put to strict proof of the allegations made in the Complaint. The complaint is not maintainable either on facts or on law as such the same is liable to be dismissed. The present complaint is not having the Limitation as well this Hon'ble Commission is not having territorial and pecuniary jurisdiction to entertain the present Complaint, as such the same is liable to be dismissed. The transaction between the parties is not having consumer relationship but it is commercial in nature as such the consumer Complaint is not maintainable. This present Complaint is filed with false and

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frivolous allegations and the same is a vexatious complaint and is liable to be dismissed with exemplary costs.

3. The allegations made in para.1 & 2 of the Complaint are denied and the Complainant may be put to strict proof of the same. In fact, this opposite party is having 30 + years of experience in the construction of houses and flats in and around Hyderabad and Secunderabad area. The Vista Homes got land for development and construction of apartments as it was constructed more than 400 flats by providing amenities of roads, drainage, electricity, power supply, club house and play ground and other areas for flats owners utilization which was situated at Kushaiguda, Medchal-Malkajgiri District. The Complainant after verifying the condition of the apartments and the project and also facilities and amenities available and provided in the project. They have approached the Opposite party and booked a Flat bearing No.212 on second floor, in E-block of Vista Homes project in sy. No. 198, 194 & 195 of Kapra village, (Kushaiguda locality), Kapra mandal, Medchal-Malkajgiri District vide booking form dated 23.01.2021. Thereafter on 05.03.2020 the complainant had entered an agreement of sale and made the payments in part, accordingly registered sale deed was executed vide document No.2536/2020, dt.14-7-2020 on the file of Sub-Registrar, Kapra and taken delivery of the Flat from the Opposite party and the Complainant taken the delivery of the property which was specifically mentioned in the sale deed which is binding on the Complainant. After purchase of the flat, the Complainant made a request to the opposite party to clean the apartment and make it into tidy condition and



for making the house warming ceremony and thus handed over to the opposite party and the said request of the Complainant was accepted by the opposite party under good gesture there is no obligation to provide any service to the Complainant after sale of the Flat but the same was accepted under good gesture. After fulfilling her request, the opposite party sent a letter dated 18.09.2020 to the complainant intimating about the readiness of flat for possession. Accordingly the complainant has collected letter of possession on 21-4-2021 along with that she has also signed letter of confirmation dated 19.04.2021 wherein it has been clearly mentioned in point No.1,3,4 & 12 which states as follows

Point No.1: "The said flat was inspected and it has been completed in all respects. All fixtures and furniture have been provided."

Point No.3: " All accounts are deemed to have been settled. There are no dues payable to the developer or any refund receivable from the developer."

Point No.4: We have no claim of whatsoever nature against the developer."

Point No.12: The basic common amenities and utility services required for occupation of the said flat have been provided by the developer."

The complainant signed the letter of confirmation itself is a clear evidence to show that she has inspected the flat which was completed in all respects, all accounts were settled and she has no claim with the opposite party. After 4 months of taking the possession of the flat the complainant has raised the complaint with 7 points through developer website (www.modiproperties.com) which was promptly attended, out of 7 points raised in the complaint 5 were resolved and the rest 2 were responded as beyond the scope of the opposite party. Thereafter complainant agreed and residing comfortably without raising

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any complaints. Moreover not a single customer has made any complaint about the lift in the entire project nor has the Association which is run by its duly elected members since October 2020 has raised any objection about the lift. Now After 2 years the complainant again made a untenable demand in January 2023 by way of legal notice through its counsel for which the opposite party has given befitted reply. As such the present complaint is not maintainable and the same is liable to be dismissed. This opposite party has also denied that the 2nd complainant is having lawful authorization to represent the Complainant No.1 and filed present complaint by making false allegations and claim against this opposite party, as such the same the present Complaint is liable to be dismissed. This opposite party denies the allegations made in para.3 of the Complaint and the Complainant may be put to strict proof of the same. This opposite party denies that there is an agreement between parties with regard to purchase of the flat No.212 and also promised to provide 3 lifts out of which one is not adjacent to the Complainant's flat as the Complainant's mother is old-aged and is also suffering from several ailments and unable to walk freely is denied, and the Complainant may be put to strict proof of the same. In fact, there is no agreement for provision of any services to the Complainant including for construction of the Flat but the Complainant purchased the flat in 'as it is condition' under the sale deed as mentioned above, as such, the allegation of the Complainant is far from truth. It is denied that this opposite party promised to provide flat adjacent to the Complainant's flat, but in fact the Complainant themselves verified the

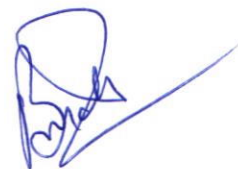


completed Flat No. 212 and after fully satisfied with the amenities and facilities provide to it including the lift they have purchased it. This opposite party never promised to provide any third lift adjacent to the Complainant's flat. In fact, this opposite party provide plan and other permissions along with the sale deed and he cannot make false allegation that too be against the permissions and plan given by the authorities for construction of the flat and that too be he purchased the flat after verifying the physical position and in addition to that he also purchased the said flat in 'as it is condition' and in the same condition of flat and now he cannot say that this opposite party promised to provide third lift at adjacent to his flat is against the facts and documentary evidence. The other allegation that due to non-providing of third lift at adjacent to his flat, his mother has to walk more than 100—feet to reach the lift either to go or to come to his flat which caused and aggrieved her problem of Arthritis resulting underwent knee replacement and incurred medical expenditure of more than Rs.5,00,000/- due to this opposite party not provided third lift at adjacent to his flat is far from truth. All these allegations are made by the Complainant to gain sympathy from this Hon'ble Commission and in addition to that to gain unlawfully either to get compensation or harass this opposite party, even though there is no fault on the part of this opposite party for the above problem of the Complainant No.1 and is incurred expenditure, therefore the Complainant made false allegations against the Complainant and approached Hon'ble Commission with unclean hands with an intention to gain unlawfully

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and also to harass this opposite party, as such the present complaint is liable to be dismissed with exemplary costs.

4. The other allegations in para.4, is that the Complainant has not provided mesh or grills at wash room area (at window or outlet over the wash rooms) causing the birds like sparrows, pigeons are entering and causing the nuisance of excreta and causing distress and even reported the same to this opposite party and they gave standard reply that workers are not available is denied and the Complainant may be put to strict proof of the same. But in fact, the opposite party already informed to the complainant through its reply notice dated 12.01.2023 that it is technically not possible to provide grills in the bathroom as it has openable ventilators which cannot be operated once the grills are fitted. In any case the grills cannot prevent birds from entering the bathroom, therefore the complainant cannot make any claim for the alleged inconvenience caused by the birds in the washing area outlets by not fixing mesh or grills. Moreover the Complainant not raised any compliant on this count for the past 2 years which itself is crystal clear that the complainant filed this complaint just to harass the Opposite party. As stated above, there is no contract of any service in between the parties, except outright sale of the Flat in which the Complainant is residing and the Complainant cannot make any allegations or claims for a defect or deficiency in service on the part of this opposite party, as such the present complaint is liable to be dismissed.



5. With regard to the allegations made in para.5 of the Complaint, the allegation that this opposite party has promised to provide 2-way plugs for lights and fans in bed rooms and the same are not complied as the Complainant No.1 is being old aged woman and unable to move for switch-off the fans in bed rooms and it has caused inconvenience to her. Further alleged that there is a leakage and seepage in the bed room which causing difficulty to live in it and that the same is determining the quality of the construction made by the opposite parties. It has already mentioned earlier that the Complainant purchased the flat in 'as it is condition' and he cannot now make false allegations that this opposite party promised to provide 2-way plugs for fans, lights in bed rooms and in the same way he cannot blame the quality of the construction of flat on the ground of leakage or seepage caused, it is to be noted that so many factors including the heavy rains and lack of property maintenance and improper usage of the upper floor bed rooms, wash areas and other areas that can be attributed to the construction of the flat and even if attributed which was not under any contract of service for consideration, as such, the flat was purchased by the Complainant is without there being any attachment of services and consideration after the sale of the flat, thus there is no consumer relationship between the parties except the vendee and vendor relationship for the sale and purchase of immovable property Flat.

6. With regard to the allegations made in para.7 of the Complaint, it is submitted that the there were shortcomings and deficiencies which was brought to the notice of the Opposite parties by way of raising complaint



through opposite party website as agreed in point No.19 of the letter of confirmation dated 19.04.2021 which clearly states that we agree to raise complaints related to defect in construction or other complaints related to the project which are to be addressed to the developer only through its website (www.modiproperties.com) we agree to not make any oral complaints. Further not even a single email or letter has been addressed by the complainant to the opposite party for any grievances till date except giving legal notice. The Complainant made all false allegations and with an intention to gain unlawful profits and also to harass this opposite party by gaining illegally before this Hon'ble commission under the guise of the CP Act, which is not permissible under law. Thus the Complaint is liable to be dismissed with exemplary costs. Even as per the averments of the Complainant, this opposite party denied the allegations of the Complainant in the legal notice which cannot be assumed that there is a contract of services in between the parties and the Opposite parties, and lacking provision for providing service. Even if there is no consideration for such contract, the entire allegations of the complaint and the pleadings are made without there being any basis for filing the consumer Complaint, as such the same is unsustainable and the same is liable to be dismissed.

7. In reply to the allegations made in para.10 to 12 of the Complaint it is submitted that the Complainant has made allegations with regard to unfair trade practice and deficiency in service on the part of the Opposite parties in not providing the amenities/facilities which was not agreed to and not received



any consideration by the Opposite parties but alleged that which caused mental agony and suffering and made a claim for Rs.25,00,000/- on the said ground is without there being any consideration between the parties and the claim of the complainant is far beyond the truth. It is further alleged that the sale deed was executed on 14-7-2020 but this opposite party delivered the property on 19-4-2021. The true fact is that the complainant made a request to the Opposite party for making the balance sale consideration and GST charges etc, which was cleared by the complainant on 08.04.2021 and as such the possession letter was issued on 19.04.2021. The Complainant has got issued legal notice and filed the Complaint with false averments, though there is no such truth in the said statements are against the real facts and documentary evidence, as such the allegation of the Complainant that the claim is filed basing on the consideration of Rs.57,51,000/- paid by the Complainant on which he paid a court fee of Rs.2,000/- for filing the Complaint is with a motive of ill-intention to gain unlawfully to recover the medical expenses of his mother and other amounts illegally from the Opposite party though there is no deficiency or defect or unfair trade practice on the part of the Opposite party and that too be without any consideration or service contract in between the parties, as such, the complaint is liable to be dismissed with exemplary costs.

8. The complainant made several claims in addition to the claim of Rs.25,00,000/- towards mental agony and suffering and refund of the amount of consideration of paid under sale deed and interior costs of Rs.20,00,000/- and medical expenses of Rs.5,00,000/- and deficiency or defects in not



providing amenities of water, amenities and other claims. As stated above, the Complainant purchased the immovable property Flat in 'as it is condition' and there is no contract of service and, no consideration paid for and when the immovable transaction between the parties is without there being any contract or service for consideration, there is no consumer relationship between the parties, as such the complaint is not maintainable and the complaint is liable to be dismissed with exemplary costs.

9. The complainant though claimed in para.12 (D) of the complaint seeking relief of consideration paid for the flat of Rs.57,51,000/- and costs of interior of Rs.20,00,000/- with interest thereon till realization but the complainant based on this prayer it seems that the complainant suppressed the fact before the Hon'ble Commission that after purchase of the immovable property from the Opposite party, the Complainant himself has got done interior works by spending Rs.20,00,000/- which was claimed in the para.12(D) which clearly shows that the property was purchased in 'as it is where it is condition' and the Complainant has undertaken to complete the works and completed the same under his supervision with his expenses and he cannot blame the Opposite party for not fixing the double switches for lights, fans in bed rooms and at the same time the leakage and seepage and dirtiness in the flat at the time of modification of interiors, there might be several things may happen which might caused the leakage and seepage in the Flat which cannot be attributed to the Opposite party. In addition to that, the Complainant cannot blame the Opposite party that the Opposite party has not provided mesh for

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grills at the out lets of the wash rooms wherein the sparrows, pigeons had ingress and egress freely and causing inconvenience to the inmates of the flat. When the Complainant himself claimed for the interiors, as the flat was purchased in 'as it is, where it is condition' and they should have taken proper care to close either mesh or grills, out lets in the wash area. For his latches, he cannot blame the Opposite party and in the same manner when there is no provision for the third lift in the apartment itself, the Complainant cannot blame the Opposite party, when he purchased the flat after a thorough verification and after fully satisfied with the facilities amenities available to it. Thus, it is clear that the Complainant filed the present complaint with ulterior motives after 3 years of taking over possession of the flat with an intention to gain illegally and to harass the Opposite party. Therefore this Hon'ble commission may be pleased to dismiss the complaint as there is no contract of service between the parties herein, and there is no consideration paid for the alleged contract. As there is no cause of action and limitation filed the present complaint. Further the Complainant has suppressed various material facts before this Hon'ble commission with an intention to gain unlawfully, in addition to that the Complainant made a false complaint with false averments and allegations. As it is being a vexatious one, this complaint is liable to be dismissed with exemplary costs.



OPPOSITE PARTY No.3

Through: M. HARIBABU, Advocate

VERIFICATION

I, Bhavesh U Mehta S/o Vasanth U Mehta, aged about 55 years,
Occupation: Business do hereby state that the contents of the above written
submission are true and correct to the best of my knowledge and belief. Hence
verified on this 18th day of July 2023 at Hyderabad.

A handwritten signature in blue ink, consisting of stylized, overlapping loops and lines, positioned above the word 'DEPONENT'.

DEPONENT

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STATE CONSUMER
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ON BEHALF OF OPPOSITE
PARTY NO.3

FILED ON: 18.07.2023

FILED BY: _____

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