BEFORE THE TELANGANA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, AT HYDERABAD

C.C. No. 8 of 2022

Between:

Smt. N. Prabavathi & another .... Complainant

AND

M/s. Villa Orchids LLP & another ... Opposite Parties

EVIDENCE AFFIDAVIT FILED ON BEHALF OF OPPOSITE PARTIES

I Anand S Mehta son of Suresh Mehta, aged about 48 years, resident of Hyderabad do hereby solemnly and sincerely affirm and state as follows:

1. I am the Managing Partner of the 1st opposite party herein as such I am acquainted with the facts of the case. I am filing this affidavit basing on the records and information available to our office. I am giving this affidavit on behalf of the other opposite parties also with their consent.

2. I submit that we and our predecessor are doing real estate and construction business and having good experience and reputation in the field. Our firm started the constructions of villas in the year.....in Villa Orchid in an extent of 21.33 In sy.No.3 to 8,& 33 situated at Kowkoor Village, Malkajgiri Mandal, While several villas construction at various

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levels in the year 2017 complainants themselves had approached the Opposite Parties requesting to provide the title deeds, plans and its land and construction villa costs, of the said villa as they have intention to have one villa in the said venture. We have provided the villa plan, GHMC plan and other related documents to them. After thoroughly going to the said documents and after satisfying about the title and the construction of villas by our firm, the complainant entered into an agreement with our firm, in respect of Villa 121, having land an extent of 147 sq yards and the construction to be made to an extent of 1820 sft area in M/s. Villa Orchids project. At the time of agreement, the complainant paid part sale consideration and agreed to pay the balance consideration as per the terms of the said agreements. As admitted by the Complainants that they themselves approached Opposite Parties to have villa in the project, after knowing the same though their friends. We have not given the Development Agreement misleading the Complainants and it is not the case of the complainants also. Further they have not purchased the villa basing on the Development Agreement only but they categorically stated that after coming to know the above villas and project, through their friends, they had approached the Opposite Parties. Thus the complainants made false and contra

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statements in para.1 & 2 of the complaint. These Opposite Parties admits about the receipt of payment from the complainants but the said payments are not in according to the terms of the contracts.

3. I submit that we have provided GHMC plan and link documents and they also admitted that they were given the entire check list i,e. total set of documents relating to the title of the property and they had verified and it is not open for the complainants to dispute it, saying that documents not provided. The construction of villa was made as per the sanctioned plan only and the complainants have personally supervising the construction of the villa, now after taking the possession of villa, turn around and say that the documents are not provided and construction is not as per the documents, is nothing but to make unlawful gain having unlawful intention and to file this complaint claiming huge amounts on the false grounds.

4. I submit that the provisions of RERA-2016 will not be applicable to the project that was undertaken and commenced even before the enforcement of RERA Act. After taking the possession of the villa, which personally supervised the construction and sought several modifications in it, the complainants cannot now put forth a plea that Agreement of

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Sale shall be in accordance with the provisions of RERA Act and in the same format, even knowing the same is not applicable. When the complainants they, themselves fully with open eye had entered into agreement and construction permission, it is not open for them to say that the format of the said agreement shall be in accordance with the RERA. When they had known that the provisions are totally inapplicable relating to the RERA and therefore the elaborate and lengthy averments in para.8 of the complaint are nothing but extractions of the Provisions of RERA Act and the same is made by the complainants with intention to misguide the commission and nothing else. When the same are totally unconnected and unrelated to the facts of the case on hand and not applicable to the complainant's case, as much as the project itself was commenced much earlier to the enforcement of the RERA Act in the State of Telangana. It is incorrect to say that the Force Majeure clause is not applicable and it is only applicable to natural calamities or riots and the total ban and restrictions imposed by the Government relating to COVID-19 situation whereby Country was shattered and the development activity could not be undertaken as was expected and the same is also applicable. The complainant cannot plead ignorance COVID-19 situation and say that there was a delay of 10 months for

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completion of the villa. The fact is that Government restrictions COVID-19 situation would amounts to the Force Majeure, whereby opposite parties cannot violate Government orders nor can be able to make the construction when there is lock down. Be that as it may, the opposite parties indeed had with all Vigour in risky completed the project and the construction is in accordance with the agreed conditions and stipulations, there cannot be any dispute or rouse that can be expressed by the complainants and only for the sake of blaming the opposite parties with a malafide intention to claim amounts. When the consideration is abysmally low with full understanding of the conditions and stipulations, the complainant voluntarily and willingly entered into agreement for construction with the opposite parties and personally inspecting and thoroughly. While construction, the complainants, created troubles in the construction activity, resorting several modifications, alterations against the plan and even reconstruction of various things in the villa. After completion of the construction and taking the possession of the villa, the complainants making claims and demands against the Opposite Parties which are untenable, atrocious and it shows the greediness and conduct of the complainants to further harass the Opposite Parties by driving them into litigation by filing the

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present complaint. Therefore, the Opposite Parties strongly dispute and denies that there is a delay of 10 months for the completion of Villa by Opposite Parties and for that the complainants are entitled for any interest or damages.

5. I submit that as per the conditions which were agreed upon mutually and reduced into writing in the form of Agreement of Sale as well as Agreement for construction, any dispute shall be resolved mutually through arbitration and such a procedure which is contemplated and agreed upon has not been exercise nor the complainants had raised any demand for arbitration but approached this Hon'ble commission which demonstrates the intention of the complainants of not to resolve the issues but to prolong the same with ulterior motives. I submit that even as per the conditions of the Agreement itself when the customers of the Opposite Parties cannot claim any damages or demand more than 10% of the total sale consideration and in the instant case, the complainants who are silent about the clause-20 in the said agreement whereby and whereupon it was specifically agreed and accepted by the parties that any demand shall not exceed 10% of the total sale consideration but the claims made by the complainants are far excessive and exorbitant and

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therefore the same are untenable and not maintainable and the claims itself are exaggerated and without any basis, therefore the same are liable to be dismissed by dismissing the above complaint in limini.

6. I submit that the agreement itself is in between the complainants as well as Opposite Party No.1 and the 2nd Opposite Party is a stranger to the agreement and therefore no reliefs can be claimed and demanded against the Opposite Party No.2 and the above Complaint is liable to be dismissed for mis-joinder of the parties as much as the reliefs are also sought against the Opposite Party No.2 also by the Opposite Parties. It is false to state that the that the sewerage and drainage connections for the Villa is illegal and it is connected from the Compound of neighbour Villa No.120 & 122 to the complainants' villa. I submit that the project itself is a Group Housing Project and also the utilities are common and shall be shared among the 343 houses within the project, power supply, power back up and drainage, water supply are common to all Villas, and one wall is shared with the neighbor. In the Group Housing Project, the utility services cannot be provided separately to each house, sewerage pipes to villas 99 are on the walls of Villa NO.122 and the photographs

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would demonstrate the same. In fact the arrangement was made even as per the sanctioned plan and the constructions were indeed made as per the same by giving drainage pipe lines and the No Objection was undertaken by the complainant nor it can be changed or made any alteration. When all the construction was made and possession was given to the Villa owners and therefore the demands for giving separate sewerage line and connecting the main drain on the road by the complainants is untenable and itself impossible. Further the complainant are supervised the each and every point of construction made several changes and modifications including common walls, drain and water connection to the villa. As regards any condition that was agreed upon and accepted by the Opposite Parties to provide separate sewerage lines to each individual villa and all the owners of the villas have accepted and agreed, constructions have been made by connecting drainage of each of the villa and the same was connected to the main drain and it is not open for the complainants. The demand that all the drainage connections shall have to be removed and restructured by connecting independently from each villa to the main drain, as much, as submitted above, this demand of the complaint against the present Group Housing Project of the opposite party wherein all the common

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amenities are common to all. It is false to contend that the sewerage, drainage connections from the neighbour villa and compound to the complainants is unauthorized, illegal and no proof whatsoever has been produced before the Hon'ble commission by the complainants to substantiate their claim, except falsely alleging and by making false accusation against the Opposite Parties herein. I submit that the payment of GST as the Statute, the complainants and should be excluded and should be borne by us against the law. The RERA Rules & Provisions did not apply the present complaint its villa including the project. The collecting of GST as per the terms of agreement itself as per the clause-3(3) that the purchaser solely responsible for payment of any sale tax, VAT, GST, Service Tax or any other similar levy that leviable or may be leviable with respect to the construction of the villa and such charges were not formed part of the construction consideration and having accepted and agreed for the same and again going back and giving go bye to the mutually agreed terms and conditions as was enumerated and agreed upon between the parties in the said agreement for construction. The complainant cannot make any grievance to the Opposite Parties collect GST from them as it is statutory liability, no one escape it. Even otherwise also it is a statutory obligation to pay the GST

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and the complainants themselves have to bear the statutory dues and it was also agreed and accepted by them and they cannot resent and falsely claim that the Opposite Parties have not collected GST from them and that it is illegal and unauthorized. As regards their proprietary right to demand and say that the Opposite Parties are not entitled to claim GST and that the complainants are not liable to pay GST to the Government. I submit that we have explained to the complainants as regards statutory liability apart from the drainage facility which is not feasible as demanded and wished by the complainants and they have not brought to the notice of this Hon'ble Commission but asserting without any valid point that the drainage connection has to be provided independently which is not possible.

7. I submit that with regard to No objection certification from GHMC, it was submitted to the complainants that it is only optional and even if it is demanded it should be given by the Venkata Ramana Constructions as much as the construction agreement as well as permission that were obtained is in the name of the said concern and the Opposite Parties have no role to get the Occupancy Certification from GHMC and the complainants cannot make any grievance. When the Opposite Parties

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cannot be able to do so and the same was clearly explained to the complainants and they cannot come up with the false plea that the said letters and No objection certificate as well as No due certificate and Satisfaction Certificate and Delivery of Possession were taken under duress. In fact, the complainants are educated and after getting benefit now approaching this Hon'ble Commission with false plea that the same were submitted documents under duress but the fact is that after satisfying themselves and taking the possession the villa, now complainants cannot raise any Objection that there is a duress in submission / execution of documents that was exerted by the Opposite Parties on the complainants. It is incorrect / false to state that the Opposite Party No.1 tried to deliver the unfinished villa to the complainants with a threat of levying, holding charges of Rs.5,000/- pm and in fact, the complainants, after satisfying about the completion of the villa and as per their satisfaction, they had taken delivery of villa. It is false to state that and even now also there are no unfinished works as mentioned by complainants and they have been in occupation of the same after taking delivery of the said villa from the Opposite Party.

For M/s. Villa Orchids LLP

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8. I submit that the provisions of RERA Act are totally inapplicable for the present disputed villa and project, which was commenced prior to enforcement of the provisions of RERA Act in Telangana State, as such the villa maintenance period of 5 years, as per the provisions of RERA Act is untenable. It is known fact that no complaint whatsoever were given by any of the residents or owners of the villas in respect of quality of the construction and there is no defects that were pointed out by the owners in the project except the complainant who with a malafide intention had come up before this Hon'ble Commission by making false accusations and allegations and complainants may be put to strict proof of each and every averment made by them in the above complaint as against the Opposite Parties. I submit that it is false to state that there is any delay in completion of the construction nor the complainants were put to inconvenience and monetary loss and in fact the Opposite Parties indeed have attended to each and every addition, modification suggested by the complainants even though they deliberately wantonly stopped the work on many occasions and the details as was furnished would demonstrate as how many times the Opposite Parties were forced to stop the construction, thus causing inconvenience to the staff of the Opposite Parties and the delay cannot be attributed to the Opposite Parties but is

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only for the acts and deeds of the complainants themselves who had forcibly stopped the work by claiming that the Opposite Parties have to monitor the progress and quality of the work at each and every stage by making additions, alterations up to the satisfaction and the same can be made and verified with the construction which was commenced along with the villa of the complainants No.160, villa NO.75, 113, 136, 186, 187, 188, 189, 190, 191, 201 & 202 have been completed during the same period and the owners have taken possession but for the delay and stoppage by the complainants, the possession could not have been given on par with the other constructed villas who are already completed and given possession as explained above and the complainants had given many additions by writing emails and to make it more precise on 03-8-2018, complainants refused to permit the engineer to start the work by addressing the unrelated water flooding issue and for clarification about plinth beam, column, etc. Again on 02-9-2018 work was stopped till curing was done to his satisfaction and again on 23-9-2018 again the work was stopped by requesting for better consolidation of the soil and on 27-9-2018 again work was stopped by suggesting modifications, alteration and against on 25-8-2018 he against requested several additions, alterations as requested and even though it was addressed on

For M/s. Villa Orchids LLP

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5-2-2018 and he dragged on the matter without permitting and allowing the staff to complete the construction work and on 28-11-2018 again the complainants requested for additional changes in the civil works in pooja room, terrace, toilet and utilities, etc., and on 5-4-2018 the work was stopped again for ensuring proper curing and on 27-4-2018 the work was stopped for correction of the wall by assuming that it was not properly done by the complainant, on 20-5-2019 again the complainants requested some rectification work, and on 2-6-2018 complainants stopped work for correction of entrance door frame and on 17-9-2019, the complainants requested for additional door frame in rest room and master bed room, on 21-9-2019 the complainant has requested for additional tap outside kitchen and on 23-11-2019 again complainants stopped the work for certain corrections and on 27-11-2019 requested for correction of pillar on north east side, on 04-2-2019 the complainants requested for concealed electrical pipe and certain other corrections and on 11-12-2019, the complainants requested to provide thresholds for 3 door frames, on 11-3-2020 again the complainants requested for laying tiles on one bath room and on 11-8-2020 the complainants sent a long email requesting the Opposite Parties for several additional changes and corrections, i.e., to put additional tap

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points on floor on the rear side, additional steps, etc. On 21-9-2020 again the complainants asked for additional corrections, i.e., cement flooring outside kitchen, on 30-12-2020 complainants requested for certain corrections, on 16-12-2020 again he requested for permission to start furniture and fixtures, even though permission was granted but in the meanwhile he forced the workers to stop the construction work and the above events and facts would demonstrate how the work was stopped on account of the continuous harassment and troubles created by the complainant in the progress of the construction being made by the Opposite Parties and again the complainants cannot turn around and express grievance that there was a delay in completion of the construction when all the villas which were commenced along with construction work of the complainants village were completed well ahead of the time frame but for the delay tactics adopted deliberately by the complainants, the work could not be completed and it cannot be said that the delay can be attributed due to the delay on the part of the Opposite Parties in the construction of the said villa, therefore it cannot be said that there is any delay in the completion of the construction and handing over delivery of physical possession to the complainants. Therefore the claim of the complainants that there is a delay in

For M/s. Villa Orchids LLP

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completion of the construction is untenable and he cannot claim that there is a deficiency of service and can claim any compensation on that ground and the complainants is in the habit of writing letters and to the extent possible the Opposite Parties and their staff has given priority and attention to respond by meeting and also by replying but as innumerable letters are being suited by the complainants and therefore for some of the letters the Opposite Parties could not be able to respond and that cannot be a basis for the complainants to express grievance that the Opposite Parties did not address the issues and that therefore they had suffered mental harassment and agony and it is in fact the other way around staff of the Opposite Parties have been tortured and put to inconvenience on account of the obstructive nature of the complainants. In so far as execution of the conveyance deed, the same was duly fulfilled as the sale deed was executed and delivered to the complainants and therefore such a relief cannot be sought in the above complaint before this Hon'ble commission as it was already fulfilled and no grievance can be expressed by the complainants.

9. As submitted above, having received the possession and signing on the no due certificate, the complainants had come up with their novel idea to

For M/s. Villa Orchids LLP

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make unreasonable demand against the Opposite Parties without any justifiable cause or reason and only with a malafide intention by distorting and twisting the facts for his convenience to make unreasonable and untenable demands and claims against the Opposite Parties herein. I respectfully submits that the complainants are not entitled to claim any compensation much less the exaggerated amount as claimed by the complainants and as submitted at the beginning itself that as per the terms of the agreement itself the compensation cannot be claimed more than 10% of the total sale consideration and forgetting and not disclosing the same, unreasonable claims have been raised by the complainants against the Opposite Parties without making out any ground much less valid grounds to claim that there is any deficiency of service on the part of the Opposite Parties.

I submit that the Hon'ble commission may be pleased to dismiss the above complaint with exemplary costs.

For M/s. Villa Orchids LLP

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Sworn and signed on this the
17th day of August,2023, his name
In my presence.

Deponent.

Before me, Advocate, Hyderabad

BEFORE THE TELANGANA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, AT HYDERABAD

C.C. No. 8 of 2022

Between:

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..Complainant

AND

M/s. Villa Orchids LLP & another
..Opposite Parties

EVIDENCE AFFIDAVIT FILED ON BEHALF OF OPPOSITE PARTIES

Filed on:

Filed by:

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List of documents

Sl.no	Date of document	Description of document
1.		Booking Form
2.		No due, Ltr of Possession, Membership Enrollment Form, Undertaking, Ltr of Confirmation, No objection
3.		Agreement of Sale
4.		Sale deed
5.		Agreement of construction
6.		Addition & Alteration
7.		Booking form and possession letter of 10 other customers
8.		Complaint website
9.		GO. M/s No/171
10.		Photograph of villa
11.		Email Correspondence

Deponent.

For M/s. Villa Orchids LL

Authorised Signator

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STATE CONSUMER DISPUTES
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