

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

COMPLAINT NO.943 OF 2023

31st day of May, 2024

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

Sri M.Raj Kumar

...Complainant

Versus

M/s Janapriya Upscale

...Respondent

The present matter filed by the Complainant herein came up for final hearing on 07.03.2024 before this Authority in the presence of Complainant present in person and Sri Nagendra authorised representative on behalf of the Respondent and upon hearing the arguments of the parties, this Authority passes the following **ORDER:**

2. The present Complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "RE(R&D) Act") read with Rule 34(1) of the Telangana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the "Rules") seeking directions from this Authority to take action against the Respondent.

A. Brief Facts on behalf of the complainant:

3. The complainant purchased a unit in "Silver Meadows," a project by Janapriya Ventures, located in Vemunagauta, Sainikpuri, Secunderabad. He bought a 470 sq. ft. unit in the said project in 2019. The Respondent promised to hand over possession of the unit within 24 months. However, in 2021, even when the construction was not completed, they pressured the complainant to register the unit, threatening cancellation of the agreement and forfeiture of 10% of the amount.

4. At the time of registration, the Respondent assured the complainant that possession would be given by December 2021. However, the Respondent has yet to finish the construction work.

5. The complainant opted for a home loan and has been paying interest for the past 2 years without being able to rent or sell the property.

B. Relief(s) Sought:

6. Requesting the Authority to intervene and direct the Respondent to cancel the registration and refund the entire amount with interest.

C. Reply of the Respondent:

7. Denying to the allegations made by the Complainant submitted that it is not true that the work in the his booked flat no. S-507 admeasuring super built up area 470 sq.ft in 5th floor of Block no.6 S(LIG/EWS) in Silver Meadows at Silver Crest at Sainikpuri, Secundrabad, has not been completed.

The following works have been completed except minor works.

1. Block work completed & Platering completed
2. Water proofing completed
3. Bulket lights fixing completed.
4. White wash completed
5. Flooring completed
6. Doors & Windows are fitted
7. Lift work is in progress

8. CP sanitary works will be fixed along with snag for which Customer needs to come to site for identifying minor snags. Respondent sales and CRM staff have sent mail to Complainant on 16.02.2024 stating completion of the above works and requesting customer to visit his flat and called him over phone also, but the Complainant has not responded.

9. Therefore, Respondent requests this Authoity to direct the Complainant to visit his flat/property and help them addressing minor snags and clear the said unit due amount of Rs. 3, 13,640/- including parking and amenities.

D. Rejoinder:

10. The complainant submitted that as per his visit to the concerned unit, below works have been noticed:

- a. Block work completed
- b. Corridors are full of dust & not clear
- c. Stairs are not perfectly layered
- d. Parking area is not completed

11. Requesting this Authority to take the below mentioned points into consideration:

- a. Flat should be handed over within 15 days along with the lift.
- b. All the amenities which were promised were to be given within 15 days.
- c. That the complainant has paid Rs. 27,000/- towards maintenance charges for 2 years to be justified
- d. That the Respondent shall pay him Rs.10, 000/- per month from the date of registration till they give the handover.
- e. The final payment will be paid after the handover of the unit.

E. Hearing Conducted:

12. On the 20th of February, 2024, both parties were present. During the last hearing, the Complainant submitted that they had paid 90% of the sale consideration amount, yet the flat remains incomplete. Therefore, they seek the cancellation of the unit and request the Respondent to refund the amount with interest.

13. However, the Respondent requested an adjournment to file a reply. On the subsequent date of hearing, the Respondent did not dispute or denied the allegation about the delay, however, submitted the Authority that the said flat is ready and only lift work is pending which shall be provided within few days. However, as the complainant has not paid the balance amount, the handover of the possession is pending.

14. On contrary the complainant reiterated the contentions made in the complaint, stating that the lifts have not been provided, the staircase work is pending. However, the complainant submitted that he is willing to take the possession of the flat if the Respondent completes the pending work and

handover the possession immediately. Authority, on this submission, asked the Complainant whether he is willing to continue with the project and take the possession or withdraw and seek for refund. The complainant prayed for direction of handing over the concerned flat.

15. On the other hand, in support of defense the respondent have produced current photographs of the completed unit and stated that the works are completed; only lift work is pending and the same shall be completed soon.

F. Observation of the Authority

F.1. Whether the complainant is entitled for the relief claimed?

16. The complainant has approached this forum seeking the relief of direction to the respondent to repay the amount paid for the concerned flat with interest. However, during the hearing, the Complainant agreed upon the completion of the flat and prayed for direction to respondent to handover over the possession along with interest on delay period. The ground urged that the complainant has booked an apartment unit.no S-507 admeasuring super built up area 470 sq.ft in the project "Silver Meadows at Silver Crest" of the Respondent promoter for a total sale consideration 14,09,530/-. The Respondent was required to handover the possession of the said unit to the complainant within 24 months from the date of the Agreement dated 21.11.2019, with a grace period of 6 months, subject to the purchaser having completed the payments as per clause 2.2. Respondent also agrees to pay sum of Rs.3/- per square feet per month till the flat is ready to handover, if the construction of the flat has been delayed beyond the period agreed mentioned.

17. The same is resisted by the Respondent on the ground that the work is now completed and the same was alerted to the complainant through mail on 16.02.2024. But has neither disputed nor denied to the allegation of delayed possession.

18. Based on the averments of the agreement, the parties herein have executed a sale agreement on 21.11.2019. The sale agreement constitutes a pivotal document binding the parties in a contractual relationship, subject to

proper enforcement in accordance with the law. Ensuring freedom from ambiguity and vagueness is imperative. Pursuant to the terms stipulated in the sale agreement dated 21.11.2019, the respondent was obligated to transfer possession of the specified unit to the complainant within 24 months, i.e., by 21.11.2021, with a grace period of 6 months, i.e., until 21.05.2022.

19. However, the respondent executed a Sale Deed on 10.11.2021, wherein Clause 6.1 explicitly states that the respondent shall confer possession of the scheduled property to the complainant on the same day. Nevertheless, the respondent failed to fulfill this obligation. Upon careful examination of the completion date, the Authority has duly considered that since the possession due date fell within the year 2021, the respondent is entitled to leniency regarding the grace period and force majeure, granted to all projects due to the COVID-19 pandemic. Consequently, it is prima facie evident that the project falls within the period affected by the COVID-19 pandemic. Thus, a grace period of 1 year, in addition to the existing grace period, shall be extended. Consequently, the revised due date for possession is set for 21.05.2023.

20. As per the decision of the Hon'ble Supreme Court of India in appeal no. 6750-57/2021, M/s Newtech Promoters V. The State of Uttar Pradesh, it is held as under:

Para 22- "If we take a conjoint reading of sub sections (1),(2) and (3) f section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project (B) such refund could be made together with interest as may be prescribed; (C) in addition, can 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rated as may be prescribed"

21. The said principle is aptly applicable to the present case on hand.

22. As per section 18 of RE(R&D) Act, the respondent is liable to pay interest for delay period. Since the claim of the complainant is supported with

cogent materials, the delay in handing over possession being apparent, this Authority see no legal impediment in allowing the request of the complainant. The complainant have paid 90% of sale consideration amount towards the unit..The fact the Sale deed was entered in November 2021, with the clause of handing over the possession from the day, the same has been failed. Also it is noted that the Respondent has not provided an explanation as to why a delay has been occurred, nor denied that a delay has not taken place. Further, the mail copy submitted by the Respondent wherein the Respondent is mentioning that the work has been completed and to clear the dues is dated on 16.02.2024, there has been a evident delay by the Respondent. Infact, the Respondent is yet to provide lift work, which shows the delayness in completing the project.

23. As in view of the provision of section 18 which provides interest till the date of possession and hence this Authority is of the view to grant delay period charges till the date of the possession is given along with the lift, electricity and plumbing facility.

24. Therefore, it is incumbent upon the respondent to pay interest on delay period to the complainant which is determined as below:

S.no	Period	Amount	Date
1.	Total payment till possession	14,09,530/-	21.11.2021
2.	Subsequent paid till date	10,62,583/-	12.11.2021
3.	Total amount pending by the complainant	3,46,947	
4.	Delayed charges to be paid as per Clause 6.1 of the Agreement of sale dated: 21.11.2019	Rs.3- per square feet per month till date.	Date of agreed possession – 24 months from the date of agreement along with grace period of 6 months i.e plus the extension

			provided of 1 year due to Covid 19 - 21.05.2023
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25. Having regards to all these aspects, the complainant is entitled for interest on delay period.

G. Directions of the Authority

26. In exercise of the powers conferred under section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing no. 943 of 2023 is hereby allowed as follows:

1. The Respondent is hereby directed to pay delay charges for delay period as agreed in the Agreement of Sale dated 21.11.2019, i.e., Rs. 3 per square foot per month. The arrears of such interest accrued from the due date of possession, i.e., 21.05.2023, until the date of possession of the said unit, shall be paid by the Respondent to the allottee within 60 days from the date of this Order.
2. Further, the Complainant is directed to pay the outstanding dues, after the adjustment of delay charges for the delayed period, and the respondent shall hand over the possession within 30 days after the receipt of this Order.
3. Respondent is directed to complete the pending work of the entire project within 30 days from the date of this Order. If the Respondent fails to complete the pending works within the stipulated timeframe mentioned by the Authority, Respondent shall be liable to continue to pay interest to the complainant in case of default.
4. In lieu of the above findings and directions, the present complaint stands disposed of. The parties shall bear their own costs. The parties are hereby informed that failure to comply with this order shall attract section 63 of the Act.

25. If aggrieved by this Order, the parties may approach the TS Real Estate Appellate Tribunal (vide G.O.Ms.No.8, Dt.11-01-2018, the Telangana State Value Added Tax Appellate Tribunal has been designated as TS Real Estate Appellate Tribunal to manage the affairs under the Act till the regular Tribunal is established) as per Section 44 of the Act, 2016.

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

Sd/-
Sri. Laxmi NaryanaJannu,
Hon'ble Member
TG RERA

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

