

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

31st July, 2024

**Corum: Dr. N. Satyanarayana, IAS (Retd.), Hon'ble Chairperson
Sri LaxmiNarayanaJannu, Hon'ble Member
Sri K. SrinivasaRao, Hon'ble Member**

COMPLAINT NO.522 OF 2024

Between

Sri Abdul Wahid

.... Complainant

AND

M/s Jayathri Infrastructures India Pvt Ltd

.... Respondent

COMPLAINT NO.523 OF 2024

Between

Sri Alamanda Krishna Prasad

.... Complainant

AND

M/s Jayathri Infrastructures India Pvt Ltd

COMPLAINT NO.291 OF 2024

Between

Sri Bala Mukunda

.... Complainant

AND

M/s Jayathri Infrastructures India Pvt Ltd

.... Respondent

COMPLAINT NO.952 OF 2023

Between

Sri Paravaram Chanakya

.... Complainant

AND

M/s Jayathri Infrastructures India Pvt Ltd

.... Respondent

There complaints have come for final hearing on 23.04.2024, before this authority, in the presence of Complainants party in persons and Respondent counsel Sri Ramabika in all the complaints and after hearing both the parties, the Authority passes the following:

COMMON ORDER

2. These complaints have 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.

3. The case of the complainants in all the complaints is on similar grounds. Similarly the stand taken by the Respondent in their counters is also same. Therefore for the sake of the convenience and to avoid repetitions the pleadings from the complaint no.952 of 2023 are referred below.

A. Facts of the Case:

4. The Respondent company published a pre-launch offer for the project "Jaya Gold" at Nizampet in January 2022. All the complainants purchased flats in the year 2022 and entered into a Memorandum of Understanding (MoU) with the Respondent. As per the MoU, the Respondent assured the handover of the flats by December 2021. However, no work has been initiated on the site to date.

5. The complainants have attempted to contact the Respondent and their Directors, but have received no response to calls or meetings. Consequently, the complainants have approached this Authority requesting a refund along with interest.

B. Relief(s) Sought:

6. Refund of the amount along with interest.

C. Respondent's Reply:

7. With the consent of the Authority, the Respondent will resolve the issues within a period of three months.

8. The Respondent is willing to settle the matter through cash or property with the complainants' consent.

9. If the Authority accepts the proposal, the Respondent shall arrange cash or substitute land for the complainants and repay the amount within three months.

D. Hearing Conducted:

10. During the hearing, both parties requested to consolidate the four complaints and issue a common order. Consequently, the four complaints are disposed of by a common order. Both parties were heard.

11. Hearings were conducted on 06.03.2024, 02.04.2024, and 23.04.2024. During the hearings, the complainants reiterated their original contentions. Given the Respondent's unclear role and the Authority's awareness of malpractices by M/s Jayathri Infrastructures Pvt Ltd in other projects, the Authority, under Section 35 of the Real Estate (Regulation and Development) Act, 2016 (RE(R&D) Act), directed the Engineering Staff College India (ESCI) via letter no. 1458/2023/TSRERA dated 10.10.2023 to conduct an inspection and submit a comprehensive evaluation report of the "Jaya Gold" project.

12. As per the ESCI report, the project is designed with a Ground + 5 upper floors configuration, featuring commercial spaces on the Ground and First floors, and residential flats on the four upper floors.

13. According to the complainants, when purchasing the units, the Promoter displayed a sale agreement between the Respondent and M/s Gayathri Homes for a land area of 2456.0 sq. yds., with a sale consideration of Rs. 16 crore. They had advanced Rs. 3.0 crore in January 2022, with the balance payable by April 2022 for land registration.

14. M/s Gayathri Homes owns 4840.0 sq. yds. of land, acquired from M/s Turbovent Industries Private Ltd. via sale deed no. 12313/20217 dated 25.09.2017. M/s Turbovent Industries converted the agricultural land to non-agricultural purposes through RDO Malkajgiri proceedings no. L/1334/2017 dated 24.10.2017.

15. Subsequently, M/s Gayathri Homes sold 1245.0 sq. yds. of land to Sri Gollapalli Venkat Ramaiah via sale deed 24755/2022 dated 01.09.2022.

16. Upon reviewing the documents provided by the complainants, it is observed that M/s Gayathri Homes submitted an application for building construction permission to HMDA in May 2022, vide file no. 004729/BP/HMDA/0899/MED/2022. The building construction permission was rejected by HMDA due to the surrender of land for road widening purposes and a standstill.

17. Upon perusing the documents furnished by the complainants, the ESCI team could not find any circumstantial evidence of either property rights or authorization or a sale deed of ownership of land by M/s Jayathri Infra for the "Jaya Gold" project. No progress has been made on the site.

18. M/s Jayathri Infrastructure Private Limited is not reflected anywhere in the hierarchy of possessing title rights or any authority as a builder/developer on the subject property. It is further opined that Jayathri has merely acted as an agent.

19. During the hearing, the Respondent informed the Authority that due to the non-performance of the contract with M/s Gayathri Homes, the Respondent could not initiate construction and is willing to repay the amount to the allottees within three months.

20. At the final hearing, the complainants consented to the Respondent's proposal and submitted a letter dated 23.04.2024 indicating their consent. However, they requested the Authority to ensure the settlement is made in cash with interest, not through property.

E. Points for Consideration:

a. Whether the Respondent is in violation of Section 3 of the RE(R&D) Act?

b. Whether the complainants are entitled to the relief sought?

21. Point a: The Authority has carefully reviewed the material on record and considered the contentions of the parties, along with the detailed and

comprehensive report submitted by ESCI. It is evident that the Respondent has advertised the project "Jaya Gold" on various websites, entered into MoUs with the allottees, and collected amounts for the flats in the concerned project. The Respondent, without acquiring any legal title, indulged in these acts despite having no RERA registration for the project. The Respondent has evidently violated Section 3 of the RE(R&D) Act, 2016. Hence, the answer is affirmative.

22. Point b: The complainants have sought a refund with interest. As the Respondent neither disputed nor refuted the relief sought by the complainants but instead submitted its willingness to refund the entire amount, the point is concluded. Hence, the complainants are entitled to a refund.

23. Now, whether the Respondent shall also pay interest is a point that needs clarification. The provision for interest for delayed possession applies when the promoter fails to complete the project and the allottee wishes to withdraw. The allottee is entitled to interest to safeguard their interests if the promoter fails to perform their obligations and is unable to hand over possession.

24. Attention is drawn to the decision of the Hon'ble Supreme Court of India in Civil Appeal Nos. 3581-359 of 2022, Civil Appeal Diary No. 9796/2019, M/s Imperia Structures Limited vs. Anil Patni & Others, wherein it was held:

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received in respect of that apartment if the allottee wishes to withdraw from the project. Such a right of the allottee is 'without prejudice to any other remedy available to him'. This right is unqualified, and if availed, the deposited money must be refunded with interest as prescribed. The proviso to Section 18(1) contemplates that if the allottee does not intend to withdraw from the project, they are entitled to interest for every month of delay until possession is handed over.

The allottee may proceed under Section 18(1) or the proviso thereto."

25. The RERA Act thus provides a remedy to an allottee who wishes to withdraw from the project or seek a return on their investment. Therefore, as per Section 18(1) of the RE(R&D) Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or deliver possession of the apartment as per the sale agreement.

26. Further, in the decision of the Hon'ble Supreme Court in Civil Appeal Nos. 6745-6749 of 2021, M/s Newtech Promoters and Developers Private Limited vs. State of UP & Others, it was held:

"Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot, or building in terms of the agreement for sale. The allottee/home buyer holds an unqualified right to seek a refund of the amount with interest as prescribed."

26. From the averments made in the complaint, it is evident that the Respondent kept the complainants on hold for two years, making false promises about registering the units in the complainants' names. After the complaints were filed, the Respondent revealed they failed to acquire the project, preventing registration. The Authority believes that the complainants, having paid a significant amount in the hope of acquiring units, have been wronged due to the Respondent's complete failure to execute the project. It is unjust for the complainants not to receive interest on the amount paid. Additionally, the Respondent has consistently violated the RE(R&D) Act by deceiving the public in various other projects, demonstrating malafide intentions.

27. Therefore, in the interest of the allottees, the Authority believes that the complainants are entitled to interest. Under Sections 37 and 38 of the RE(R&D) Act, the Authority opines that the Respondent should pay interest as per Rule 15 of the TG RE(R&D) Rules, which stipulates the Marginal Cost of Lending Rate (MCLR) plus 2% interest. The current MCLR of the State Bank is 8.65% plus 2%.

28. The Respondent shall repay the entire amount paid by each complainant along with interest of 10.65% per annum from the due date for handing over the units as mentioned in the MoU, i.e., 01.12.2023, until the actual realization within 90 days from the date of this order.

F. Directions of the Authority:

29. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint numbered 756 of 2023 is hereby allowed. In light of the findings of the Authority as recorded above, the following directions are issued under Section 37 of the RE(R&D) Act to ensure compliance with the obligations imposed upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the RE(R&D) Act:

- I. The Respondent is directed to refund the entire amount paid by the each complainant for the units in the project "Jaya Gold" as mentioned above, along with interest of 10.65% per annum from the due date of 01.12.2023
- II. The refund of the entire amount and interest accrued from the due date mentioned by the Authority, i.e., 01.12.2023, until the date of the order by the Authority, shall be paid by the Respondent to the allottee within a period of 90 days from the date of this Order.
- III. For contravening Section 3 of the Act, this Authority, exercising its powers under Section 59 of the Act, imposes a penalty of Rs. 9,78,812/-. This penalty is imposed for marketing/selling villas of the Project without registering the project before this Authority. The amount is payable in favor of TGRERA FUND through a Demand Draft or online payment to A/c No. 50100595798191, HDFC Bank, IFSC Code: HDFC0007036, within 30 days of receipt of this Order by the Respondents/Promoter.

30. In light 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.

31. If aggrieved by this Order, the parties may approach the Telangana Real Estate Appellate Tribunal 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

