

**BEFORE THE ADJUDICATING OFFICER,
TELANGANA REAL ESTATE REGULATORY AUTHORITY,
HYDERABAD.**

Dated, this, the 7th day of OCTOBER, 2024.

Present:- Sri Syed Lateef-ur Rahman,
Adjudicating Officer.

COMPLAINT No.2/2024/TG RERA

Between:

Sri Yalla Eswar Rao S/o Subba Rao, aged: 57 years,
Occ: Singareni Collieries employee R/o Qr.No.C-435,
Rudrampur, Penagadapa, Kothagudem.

...Complainant.

and

M/s. G.R.R.Realities, Khammam, having its Registered
Office at H.No.11.3.111/2, Nehru Nagar, Khammam, rep.,
by its Managing Partner Sri Gurram Prakash S/o Rama Rao,
aged: 49 yrs, Occ: Business, R/o Chandra Heights, Flat No.302,
4th Floor, VDOs Colony, Khammam 507002.

...Respondent.

This complaint came up for hearing before me on 20.09.2024 in the presence of Sri Y. Satyanarayana, Counsel for the Complainant and the Respondent remained set *ex parte*, upon hearing the argument of Counsel for the complainant and having stood over for consideration till this day, the following order is passed:

ORDER

The present complaint has been filed u/s 31 read with Sec.71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') to grant compensation of Rs.69,68,000/-.

CASE OF THE COMPLAINANT:

2(a). The factual matrix as gathered from the complaint and sale deed dt.27.09.2016 reveals that the respondent GRR Realities, Khammam rep., by its Managing Partner Sri

Gurram Prakash is the owner and possessor of open land admeasuring 22,022 Sq.yards of Sy.No.156/A situated at Velugumatla Revenue village, Khammam Mandal, Khammam District. The respondent decided to construct a Gated-community named as "GRR - Sreenivasam". They approached the authorities for approval of permission for construction of residential apartment Block "VASISTA" with cellar stilt (i.e., earmarked for parking) plus ground+ 4 upper floors (each floor consisting of 10 flats) as per sketch plan. The permission was accorded by the Secretary, Village Panchayat, Velugumatla with due approval and technical clearance by the Director of Town and Country Planning, Warangal vide Proc.BP No.41/2012/W, dt.23.02.2012.

2(b). The respondent later offered to sell RCC roofed residential Flat No.108 in Ground floor with a total plinth area of 1102 Sft. (including common area) together with proportionate undivided share of 39 Sq.yards out of total extent of 22,022 Sq. yards in said land along with one Car parking area as shown in schedule for sale consideration of Rs.14,00,000/- and the complainant has agreed to purchase the same for the said consideration.

2©. In pursuance of said offer and acceptance, the complainant paid an amount of Rs.1,40,000/- as advance by way of cash and balance sale consideration of Rs.12,60,000/- through Canara Bank, Kothagudem Branch by obtaining loan. The respondent has executed a sale deed on 27.09.2016 vide Document No.10031/2016. But, the respondent has failed to hand over possession of the flat even after 7 years of execution of said sale deed. The complainant pleads that he is entitled for refund of amount, interest thereon, registration charges, damages for 7 years and compensation. Therefore, the complainant prays to

award compensation of Rs.69,68,000/- (Rupees Sixty nine lakhs and sixty eight thousand only).

REGISTRATION OF COMPLAINT:

3. On filing of present complaint, it was numbered by the Authority and made over to the Adjudicating Officer for disposal in accordance with law.

NOTICE TO THE RESPONDENT:

4. Notices were issued to the respondent number of times by RPAD and the same were not served properly to treat the service as proper. At last, when the case was posted for steps, the complainant has engaged an Advocate, who filed a petition for substituted service and allowed. Accordingly, as per order, the complainant published a publication in "Namasthe Telangana" Telugu Daily edition of Khammam District edition for appearance of the respondent on 19.07.2024. The respondent called absent on 19.07.2024 and he has been set *ex parte*.

EX PARTE EVIDENCE:

5. The complainant in support of his case, filed his affidavit in lieu of his evidence as CW1 and Exs.A1 to A4 are marked on his behalf.

POINTS FOR CONSIDERATION:

6. Now the Points for consideration are:

- 1) Whether the complainant is entitled for compensation?
- 2) If so, for what amount?

POINTS No.1 AND 2:

7. It is the case of the complainant that the respondent has offered to sell Flat No.108 with plinth area of 1102 Sft. for Rs.14,00,000/- (Rupees Fourteen lakhs only) and the complainant has agreed to purchase the same. Later, the complainant paid an advance of Rs.1,40,000/- through cash and balance amount of Rs.12,60,000/- (Rs.Twelve lakhs and sixty thousand only) through Canara Bank, Kothagudem Branch by obtaining loan and the respondent executed Registered Sale deed on 27.09.2016, but failed to hand over possession though a period of 7 years passed. As such, the complainant has filed this case for compensation.

8(a). The respondent failed to appear and contest the claim of the complainant and remained ex parte as noted supra. The complainant filed his affidavit in lieu of his evidence and got marked Exs.A1 to A4. Ex.A1 is the Registered Sale deed dt 27.09.2016 executed by the respondent in favour of the complainant. Ex.A2 is the letter dt.03.08.2024 issued by Branch Manager, Canara Bank, Kothagudem about sanction of loan to the complainant. Exs.A3 are colour photos of incomplete building constructed by the respondent. Ex.A4 is order of the Authority in Form-M vide complaint No.1592 of 2023.

8(b). The affidavit of complainant in lieu of his evidence coupled with said Exs.A1 to A4 and the fact that the respondent having sold the said flat, failed to hand over its possession to the complainant and the fact that the respondent did not choose to contest the claim of the complainant, go to prove the contention of the complainant that the respondent has failed to act upon the promise made by him and he is certainly at fault and conduct of the

respondent squarely falls within the purview of Section 18 (3) of the Act. As such, the complainant is entitled for compensation.

9. In view of said conclusion that the complainant is entitled for compensation, it has to be noted that the compensation has to be granted under the heads pecuniary and non-pecuniary. Though compensation has not been defined under the Act, Section 72 of the Act speaks about factors to be taken into consideration while adjudicating the question of compensation, which reads as under:

*“Sec.72. Factors to be taken into account by the Adjudicating Officer:-
While adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following factors, namely:-*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused as a result of the default;*
- (c) the repetitive nature of the default;*
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.”*

10. For determining the compensation to be granted to the complainants for loss or injury due to non-delivery of possession on time, there is Authority of the Hon’ble Apex Court in **“M/s. Fortune Infrastructure (now known as M/s.Hicon Infrastructure) and another vs. Trevor D’Lima and others, Civil Appeal No.(s) 3533-3534 of 2017 decided on 12.03.2018,** wherein it is held :

“No hard and fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid, but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer had to stay in rented premises, then on the basis of rent actually paid by

him. Along with recompensing the loss, the Commission/Forum may also compensate for harassment/injury, both mental and physical.”

In the aforesaid case, the Hon’ble Apex Court laid down the principle for entitlement of the compensation due to loss or injury and its scope in cases where the promoter of real estate failed to complete the project and defaulted in handing over its possession.

11. In the instant case, it is not the case of the complainant that the respondent has got any disproportionate gain or unfair advantage as a result of his default.

12(a). Now the question is for how much compensation the complainant is entitled. The complainant in the pleadings pleaded that the respondent executed sale deed Ex.A1 in the month of September, 2016 and failed to hand over possession, though a period of 7 years has passed and, therefore, he prayed to order for refund of total amount with interest, registration charges, bank loan, travelling charges and damages to a tune of Rs.69,68,000/-.

12(b). As noted above, the complainant has prayed to order refund of amount with interest and Bank loan. In “**M/s. Newtech Promoters and Developers Pvt.Ltd. vs State of UP & others etc**” vide Civil Appeal No(s).6745 to 6749 of 2021 vide order dated: 11-11-2021, Hon’ble Supreme Court in Para 86 held as under:

“From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and

determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act, 2016.”

12©. Admittedly, Hon’ble Authority has disposed of the matter in Form-M complaint filed by the complainant in Complaint No.1592/2023 vide order 10.04.2024 (Ex.A4). In view of this and in view of said categorical pronouncement by Hon’ble Supreme Court, it has to be held that the complainant is not entitled for said relief of refund with interest and Bank loan in this complaint.

13(a). The complainant has pleaded that a period of 7 years has passed from the date of execution of sale deed Ex.A1, but possession of the flat is not yet given and as such he is entitled for damages.

13(b). The complainant in affidavit in lieu of his evidence as CW1 has stated that at the time of execution of sale deed Ex.A1, the respondent promised to make the flat ready for habitation within one or two months. However, the respondent did not fulfil his promise and the building is still in semi-construction stage. He has further stated that he has filed photographs showing stage of construction of flats Ex.A3. This evidence of CW1 gets support from photos Ex.A3 coupled with the fact that the respondent did not choose to challenge/contest the case of the complainant. In Ex.A1 sale deed, the respondent at Page

No.3 in condition No.6 has stated that the vendor delivered vacant physical possession of the flat to the purchaser, which is admittedly false.

14. It is settled law that the party has to first plead his case and then seek relief. The complainant has simply pleaded that there is delay of 7 years in giving possession of the flat and as such he is entitled for damages and travelling expenses.

15. The complainant did not plead in his pleading as to how much rent he is paying for the present accommodation in his occupation due to non delivery of possession of flat under Ex.A1 sale deed. He has also not pleaded as to how much rent he would have got from the flat purchased under Ex.A1 sale deed if possession was given as promised to contend that he sustained such and such loss and as such he is entitled for the same compensation towards loss of rent. On the basis of these factors, whether the plea of complainant for grant of compensation due to delay of 7 years in giving possession has to be rejected. In my considered view, when the complainant has pleaded that there is delay of 7 years in giving possession of the flat having executed Ex.A1 sale deed by the respondent and as such he is entitled for compensation, the plea of the complainant for grant of compensation cannot be rejected straightaway on said grounds. However, the said plea of the complainant for grant of compensation has to be taken into consideration and decided cautiously. Keeping in view all the facts and circumstances of the case and cost of the flat purchased under Ex.A1 sale deed, place of location of flat etc., and the rent which the complainant would have fetched if the flat purchased let out on rent, I am of the considered view that the flat in question would have fetched a rent of minimum of Rs.4,000/- per month from the date of sale deed, if the respondent had delivered its

possession as mentioned in sale deed Ex.A1. This amount of rent of Rs.4,000/- per month if calculated for the delay of 7 years as pleaded by the complainant, the loss of amount of rent sustained by the complainant would be Rs.4,000/- x 12x 7= Rs.3,36,000/- (Rupees Three lakhs and thirty six thousand only). Therefore, the complainant is entitled for an amount of **Rs.3,36,000/- (Rupees Three lakhs and thirty six thousand only)** as compensation towards loss of rent.

16. As observed above, the complainant is also entitled for compensation under head non-pecuniary. Normally, Indians are emotionally attached to own a residential house for the family. They will be prepared to spend major share of their life time earnings and ready to obtain loan from the financial institutions with the hope of getting home for the family. Because of fault and mischief on the part of the respondent, the complainant could not get possession of the flat and stay therein with their children and had to seek remedy under existing law and for that they had to suffer mental agony due to harassment and had to incur expenditure to obtain legal assistance to pursue his claim. Considering such harassment and mental agony, which fall under the scope of Section 72 (d) of the Act, other reasons assigned supra and the fact that the complainant was induced to part an amount of **Rs.14,00,000/- (Rupees Fourteen lakhs only)** for purchase of flat and the same was retained by the respondent without any justification, especially for no fault on the part of the complainant, I am of the considered view that award of compensation under non-pecuniary head for mental agony and harassment at **Rs.1,00,000/- (Rs.One lakh only)** would meet the end of justice. Besides this, the complainant is also entitled for compensation towards legal expenses and other expenses at **Rs.20,000/- (Rs.Twenty thousand only)**. Accordingly, the complainant is entitled for such amounts under said

heads as compensation. The Points are accordingly answered in favour of the complainant and against the respondent.

CONCLUSION:

In view of findings on Point Nos.1 and 2, the conclusion that emerges is that the complainant is entitled for compensation from the respondent as under:

Sl.No.	Head	Amount (in Rupees)
1	Compensation towards loss of rent.	Rs.3,36,000-00
2	Compensation towards harassment and mental agony.	Rs.1,00,000-00
3	Compensation towards cost of litigation.	Rs. 20,000-00
	TOTAL	Rs.4,56,000-00

(Rupees Four lakhs and fifty six thousand only).

25. IN THE RESULT, the respondent is directed to pay an amount of **Rs.4,56,000/- (Rupees Four Lakhs and Fifty Six Thousand only)** towards compensation within sixty (60) days from the date of this order, failing which, he shall also be liable to pay interest @ 10% per annum (today's highest MCLR rate of 8% plus 2%) from the date of complaint till realization as per Rule 15 of the Rules. The complaint is partly allowed accordingly.

Typed to my dictation, corrected and pronounced by me in open Court on this, the 7th day of OCTOBER, 2024.

Sd/-

**ADJUDICATING OFFICER,
TG RERA: HYDERABAD.**

**WITNESSES EXAMINED
FOR COMPLAINANT**

CW-1: Y.Eswar Rao.

Exhibits marked for complainant:

Ex.A1	Date: 27.09.2016:	Registered Sale deed.
Ex.A2	Date: 03.08.2024:	Letter issued by the Branch Manager, Canara Bank, Kothagudem.
Ex.A3	Date: NIL	Color photographs (5 in number) showing incomplete building.
Ex.A4	Date: 10.04.2024:	Copy of order passed by the Authority in Complaint No.1592/2023.

Witnesses Examined for Respondent

None
(Respondent remained Ex parte)

Exhibits marked for Respondent

NIL

Sd/-

**ADJUDICATING OFFICER,
TG RERA: HYDERABAD**