

**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.3/2024/TG RERA

Between:

- 1) Sri Gugulothu Ramachandar, aged: aged: 51 yrs, Occ: KTPS Employee.
- 2) Smt.Gugulothu Laxmi W/o Ramachandar, aged 43 yrs, Housewife.
Both are R/o F-76, A-Colony, KTPS, Palvancha, Bhadradri-Kothagudem
Dist.

...Complainants.

and

M/s. G.R.R.Realties, 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.

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This complaint came up for hearing before me on 20.09.2024 in the presence of Sri Y. Satyanarayana, Counsel for the Complainants and the Respondent remained set *ex parte*, upon hearing the argument of Counsel for the complainants 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.45,56,000/-.

CASE OF THE COMPLAINANT:

2(a). The factual matrix as gathered from the complaint and sale deed dt.03.11.2016 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.202 in First floor with a total plinth area of 904 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.11,50,000/- and the complainants have agreed to purchase the same for the said consideration.

2©. In pursuance of said offer and acceptance, the complainant paid an amount of Rs.2,50,000/- as advance by way of cash and balance sale consideration of Rs.9,00,000/- through Syndicate Bank, Manasa Complex, Wyra Road, Khammam by obtaining loan. The respondent has executed a sale deed on 03.11.2016 vide Document No.11358/2016. But, the respondent has failed to hand over possession of the flat even after 7 years of execution of said sale deed. The complainants plead that they are entitled for refund of amount,

interest thereon, registration charges, damages for 7 years and compensation. Therefore, the complainants pray to award compensation of Rs.45,56,000/- (Rupees Forty Five Lakhs and Fifty Six 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 complainants have 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 complainants in support of their case, filed affidavit of Complainant No.1 in lieu of his evidence as CW1 and Exs.A1 to A9 are marked on their behalf.

POINTS FOR CONSIDERATION:

6. Now the Points for consideration are:

- 1) Whether the complainants are entitled for compensation?
- 2) If so, for what amount?

POINTS No.1 AND 2:

7. It is the case of the complainants that the respondent has offered to sell Flat No.202 with plinth area of 904 Sft. for Rs.11,50,000/- (Rupees Eleven lakhs and Fifty Thousand only) and the complainants have agreed to purchase the same. Later, the complainants paid an advance of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) through cash and balance amount of Rs.9,00,000/- (Rs.Nine lakhs only) through Syndicate Bank, Wyra Road Branch, Khammam by obtaining loan and the respondent executed Registered Sale deed on 03.11.2016, 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 complainants and remained *ex parte* as noted supra. The complainants filed affidavit of Complainant No.1 in lieu of his evidence as CW1 and got marked Exs.A1 to A9. Ex.A1 is the Registered Sale deed dt.03.11.2016 executed by the respondent in favour of the complainant. Exs.A2 to A7 are the documents relating to challans for payment of amounts and statement of account. Ex.A8 are colour photos of incomplete building constructed by the respondent. Ex.A9 is order of the Authority in Form-M vide complaint No.1673 of 2023.

8(b). The affidavit of complainant No.1 in lieu of his evidence coupled with said Exs.A1 to A9 and the fact that the respondent having sold the said flat, failed to hand over its possession to the complainants and the fact that the respondent did not choose to contest the claim of the complainants, go to prove the contention of the complainants 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 complainants are entitled for compensation.

9. In view of said conclusion that the complainants are 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 complainants 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 complainants are entitled. The complainants in the pleadings pleaded that the respondent executed sale deed Ex.A1 in the month of November, 2016 and failed to hand over possession, though a period of 7 years has passed and, therefore, they prayed to order for refund of total amount with interest, registration charges, bank loan, travelling charges and damages to a tune of Rs.45,56,000/-.

12(b). As noted above, the complainants have 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.1673/2023 vide order 10.04.2024 (Ex.A9). In view of this and in view of said categorical pronouncement by Hon’ble Supreme Court, it has to be held that the complainants are not entitled for said relief of refund with interest and Bank loan in this complaint.

13(a). The complainants have 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 they are entitled for damages.

13(b). The complainant No.1 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.A8. This evidence of CW1 gets support from photos Ex.A8 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 complainants have simply pleaded that there is delay of 7 years in giving possession of the flat and as such they are entitled for damages and travelling expenses.

15. The complainants did not plead in their pleading as to how much rent they are paying for the present accommodation in their occupation due to non delivery of possession of flat under Ex.A1 sale deed. They have also not pleaded as to how much rent they would have got from the flat purchased under Ex.A1 sale deed if possession was given as promised to contend that they sustained such and such loss and as such they are entitled for the same compensation towards loss of rent. On the basis of these factors, whether the plea of complainants for grant of compensation due to delay of 7 years in giving possession has to be rejected. In my considered view, when the complainants have 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 they are entitled for compensation, the plea of the complainants for grant of compensation cannot be rejected straightaway on said grounds. However, the said plea of the complainants 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 complainants 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.3,000/- 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.3,000/- per month if calculated for the delay of 7 years as pleaded by the complainants, the loss of amount of rent sustained by the complainants would be $\text{Rs.3,000/-} \times 12 \times 7 = \text{Rs.2,52,000/-}$ (Rupees Two lakhs and Fifty Two Thousand only). Therefore, the complainants are entitled for an amount of Rs.2,52,000/- (Rupees Two lakhs and Fifty Two Thousand only) as compensation towards loss of rent.

16. As observed above, the complainants are 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 complainants 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 complainants were induced to part an amount of **Rs.11,50,000/- (Rupees Eleven lakhs and Fifty Thousand 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 complainants, 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 complainants are also entitled for compensation towards legal expenses and other expenses at **Rs.20,000/- (Rs.Twenty Thousand only)**. Accordingly, the complainants are

entitled for such amounts under said heads as compensation. The Points are accordingly answered in favour of the complainants and against the respondent,

CONCLUSION:

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

Sl.No.	Head	Amount (in Rupees)
1	Compensation towards loss of rent.	Rs.2,52,000-00
2	Compensation towards harassment and mental agony.	Rs.1,00,000-00
3	Compensation towards cost of litigation.	Rs. 20,000-00
	TOTAL	Rs.3,72,000-00

(Rupees Three Lakhs and Seventy Two Thousand only).

25. IN THE RESULT, the respondent is directed to pay an amount of **Rs.3,72,000/- (Rupees Three Lakhs and Seventy Two 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 COMPLAINANTS**

CW-1: Sri Guguloth Ramachander.

Exhibits marked for complainants:

Ex.A1	Dt.03.11.2016	Registered Sale deed.
Ex.A2	Dt.27.08.2016	Sale Confirmation letter issued by Respondent.
Ex.A3	Dt.27.08.2016	Receipt Voucher for Rs.50,000/- (Rs.Fifty thousand only) issued on behalf of Respondent.
Ex.A4	Dt.01.11.2016	Copy of offline Challan Proforma of Registration & Stamps Department.
Ex.A5	Dt. 03.11.2016:	Copy of original challan issued by SBI Treasury Branch
Ex.A6	Dt,14.11.2016	Copy of offline Challan Proforma of Registration & Stamps Department.
Ex.A7	Dt.10.08.2024	Statement of Account in respect of Ramachander Gugulothu for the period from 03.11.2016 to 20.08.2024.
Ex.A8	Dt.NIL.	Color photographs (4 in number) showing incomplete building.
Ex.A9	Date: 10.04.2024:	Copy of order passed by the Authority in Complaint No.1673/2023.

Witnesses Examined for Respondent

None
(Respondent remained Ex parte)

Exhibits marked for Respondent

NIL

Sd/-

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