

TSRERA No: A02500000290. The said layout is identified as "Green Meadows."

4. As part of the aforementioned development, the complainant entered into a Sale Agreement on 06/04/2021 for a Mortgage Plot (Plot No: 140, measuring 226 Sq.Yards), with an immediate payment of 50%. The remaining 50% was to be paid post-Mortgage release but prior to Registration.

5. Contrary to the terms agreed upon, the respondent executed a Sale Deed for five Mortgage plots (Plot Nos. 139/140/141/142/143) at the Sangareddy Registrar's Office to another customer on 06.07.2022, even before obtaining the Mortgage release from HMDA.

6. Additionally, the Nala process for the entire venture is incomplete, and mutation for nearly 14 acres was not completed at the time of obtaining approvals from HMDA & TSRERA. An application to address this was submitted in July 2023.

7. The respondent is unwilling to refund the complainant's amount, justifying their actions as common in the real estate sector.

B. Prayer:

8. The complainant seeks a refund of the amount paid for the plot.

C. Reply filed by the Respondent:

9. The respondent asserts that both parties have reached an amicable resolution, settling the matter out of court. The respondent voluntarily issued three cheques (No: 00196, 000198, and 000199) to repay the advance to the complainant. However, the complainant deposited cheque No: 000199 without notifying the respondent, resulting in its dishonor on 25.09.2023. The complainant served a statutory legal notice on 05.10.2023. As of the current date, the agreement of sale dated 06.04.2021 is canceled, and the complainant has received her due amounts through post-dated cheques.

10. The respondent requests the Authority to dismiss the complaint as the matter is being amicably settled out of court.

D. Hearing Conducted:

11. On 15.11.2023, a hearing was conducted. The Complainant attended in person, while no representative appeared on behalf of the Respondent. The Complainant asserted that she had paid Rs. 22,61,000/- for the mortgaged plot, alleging that the Respondent had illegally registered the same plot. Consequently, the Authority issued a fresh summons to the Respondent for the next date of hearing.

12. On 21st December 2023, the Respondent submitted a counter-reply, asserting that the dishonour of the cheques occurred solely due to the complainant's failure to provide prior intimation. The Respondent, invoking Section 138 of the Negotiable Instruments Act, seeks dismissal of the matter. Nevertheless, both parties express a willingness to amicably resolve the dispute. An extension of time was granted to facilitate the settlement and reimbursement of the amount to the complainant.

13. On 10.01.2024, none appeared on behalf of the Respondent, whereas the complainant was present in person. The complainant submitted to the Authority that Respondents did not approach them regarding the refund and has neither responded to the communications made by the complainant during the time provided by the Authority. The complainant denies the submissions made by the Respondent, stating that the said cancellation of Agreement of sale was not a mutual decision and that they have not received the entire amount. Further, that the Respondent has voluntarily executed a declaration letter dated 03.05.2023, along with post-dated cheques, and the said cheques were dishonoured for want of funds. Hence, the complainant prays for the Authority to direct the Respondent to repay the amount committed by the Respondent in the Declaration, along with interest as of the date, and also to direct the Respondent to compensate for the expenses for mental agony that the complainant has been suffering for the past two years.

E. Observations made by the Authority:

14. Considering the various points stated in the foregoing paragraphs and arguments given by both parties, the following point arise for consideration:

Point 1: Whether the complainant is entitled to the relief sought?

15. It is evident from the Agreement of sale dated 06.04.2021 executed between the parties wherein the complainant has paid a total of 22,61,000/- as an advance sale consideration for the purchase of a plot in the said project. The balance sale consideration of Rs. 22,59,000/- was to be paid by the complainant within one week after the mortgage release from HMDA or before the registration.

16. However, the contention raised by the complainant that the 5 mortgaged plots not released by the HMDA were registered to another allottee vide document no: 24460/2022 dated 06.07.2022. These contentions were neither denied nor disputed before the Authority by the Respondent.

17. It is also observed that a Declaration dated 03.05.2023, was made by the Respondent, wherein the Respondent assured the complainant that he would return the amount of Rs.22,61,000/- paid by the complainant along with expenses and Interest earned till date. The amount was to be paid in three instalments and shall be honoured accordingly. A total amount of 32,66,000/- with interest was being returned through post-dated cheques. However, the provided cheques were bounced, and evidence for the same was provided.

18. The provision under section 18 clearly shows the remedy/relief to the allottee for the refund of the amount, compensation & interest for delayed possession in case the promoter fails to complete the flat or is unable to deliver possession of the flat as per the Agreement of sale.

Section 18 read as below:

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot, or building—

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason***

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

19. In the present case, the Agreement of sale was signed on 06.04.2021, and the promoter was supposed to register the plot in the said project as soon as the mortgage is released, but the same is not handed over, rather, he has sold it to someone else. Since the said plot has already been sold to some other allottee and the complainant wishes to withdraw from the project, complainant is entitled to get the return of the advance amount along with applicable interest under the provision of section 18 of the RE(R&D) Act read with Rule 15.

20. The rate of interest shall be calculated as per the provision of Rule 16 of the Telangana Real Estate (Regulation and Development) Rules, 2017, from the date on which such refund becomes due i.e. from 03.05.2023. Consequently, as per the website of the State Bank of India, the marginal cost of lending rate (MCLR) as of the date i.e., 22nd January 2024, is 8.65%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2%, totalling 10.65%.

Rule 16 and 17 read as below:

15. Interest payable by promoter and allottee.— The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be highest Marginal Cost of Lending Rate of State Bank of India plus two per cent. Provided that in case the Marginal Cost of Lending Rate of State Bank of India is not in use it would be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

16. Timelines for refund.— Any refund of monies along with the applicable interest and compensation, if any, payable by the promoter in terms of the Act or the rules and regulations made thereunder, shall be payable by the promoter to the allottee within ninety days from the date on which such refund along with applicable interest and compensation, as the case may be, becomes due.

F. Directions of the Authority:

21. In view of the above, the Authority directs the respondent to return the amount of Rs. 22,61,000/- along with applicable interest of 10.65% per annum from 03.05.2023, which is the date on which such refund becomes due, within a period of 45 days from the date of issue of this order.

22. With regard to compensation, the complainant did not seek compensation in its original complaint. However, in its rejoinder, the complainant requested the Authority to award compensation, and there are no submissions from the respondent regarding the compensation claim. The complainant is at liberty to approach the Adjudicating Officer under Section 71 of the RE(R&D) Act by filing a separate complaint in Form "N" under Rule 35 of the Telangana RE(R&D) Rules, 2017.

23. With the above order, the complaint petition dated 30.08.2023 is hereby disposed of.

24. 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 until the regular Tribunal is established) within 60 days from the date of receipt of this Order.

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

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

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