

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

COMPLAINT NO.438 OF 2023

11th day of July, 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 Reddy Srinivas

...Complainant(s)

Versus

M/s V.V.Homes rep by Sri Narsingh Raju

...Respondent

The present matter filed by the Complainant herein came up for final hearing on 27.02.2024 before this Authority in the presence of Complainant present in person and Counsel B.Madhusudhan Reddy 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 entered into an agreement dated 16.12.2019 to purchase a flat in plot no.22-22A, measuring 323.67 square yards, situated in ward no.4, Kamala Nagar, Boduppall Village, under Boduppall Municipality, Medipally Mandal, Mechal, Malkajgiri.

4. The flat was priced at 3600 per square foot (1000 square feet), amounting to 3,00,000/- (for amenities), with an advance payment of 5,00,000/- (five lakhs only).

5. Pursuant to the agreement, the Respondent was obligated to complete construction and hand over the property within 12 months from the agreement's date.

B. Relief(s) Sought:

6. The complainant requests the appropriate authorities to take necessary action against M/s V.V. Homes for their non-compliance with the construction project and failure to deliver possession. The complainant seeks a refund of Rs. 5,00,000/- along with accrued interest.

C. Hearing Conducted:

7. On 11.10.2023, the complainant appeared in person, while no representative appeared on behalf of the Respondent. The complainant presented evidence of having purchased a flat from the Respondent, and as possession was not delivered, sought a refund of the entire amount with interest. The complainant was directed to serve a summons notice to the Respondent for the next scheduled hearing on 02.11.2023. Subsequently, on 02.11.2023, both the complainant and the Respondent appeared. The Respondent's advocate filed a vakalatnama and requested time to file a reply. On 31.01.2024, the Respondent requested further time to file a reply, leading to the matter being adjourned to 27.02.2024, for filing a reply and presenting oral submissions. However, on the last scheduled hearing date, despite explicit directions from this Authority, the Respondent failed to appear. The Complainant appeared and prayed to this Authority to grant the reliefs as previously requested.

D. Points for consideration:

8. On the above averments, the following point would arise for consideration:

1. Whether the complainant are entitled for the relief claimed?

9. The grievance of the complainant is that they booked a flat on the 5th floor of Plot No. 22, 22A, measuring 323.67 square meters, situated at Ward No. 4, Kamla Nagar, in the respondent's project. The respondent was required to hand over possession of the said flat within 12 months from the date of the agreement of sale dated December 16, 2019. However, the respondent has failed to deliver possession within the stipulated timeline, thereby breaching the terms and conditions of the sale and construction agreements dated December 16, 2019.

10. 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."

11. 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.

12. 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."

13. From the averments made in the complaint, it is evident that the complainant has paid a substantial amount as sale consideration and is entitled to a refund along with interest. The complainant has claimed an amount of Rs. 5,00,000/- paid, as acknowledged in the sale agreement and payment receipts of the respondent for the concerned unit. The respondent has not submitted any reply despite several opportunities.

14. Therefore, it is incumbent upon the respondent to refund the amount owed to the complainant along with interest at 10.65% per annum, as per Rule 15 of the Telangana Real Estate (Regulation and Development) Rules (TG RE(R&D) Rules), which stipulates the Marginal Cost of Lending Rate (MCLR) plus 2%. The current MCLR of the State Bank is 8.65%, plus 2% from the due date, i.e., December 17, 2020.

15. Despite being served notices, the respondent's counsel filed a vakalatnama but did not appear before this Authority and remained absent on all hearing dates. Consequently, the respondent failed to file a statement of objections or furnish supporting documents for their defense, thus not contesting the matter. In the absence of any resistance by the respondent and considering the claim of the complainant corroborated by documentary evidence, this Authority has no option but to accept the claim of the complainant.

16. Considering all these aspects, the point raised above is answered in the affirmative.

E. Directions of the Authority:

17. The Authority hereby issues the following directions under Section 37 of the Act to ensure compliance with the obligations entrusted to this Authority under Section 34(f):

1. The respondent is directed to pay a sum of Rs. 5,00,000/- (Rupees Five Lakhs only) to the complainant.
2. The respondent shall also pay interest at the rate of 10.65% per annum, calculated at the State Bank of India's Marginal Cost of Lending Rate (MCLR) plus 2%, from December 17, 2020, until the date of realization.
3. This payment must be made within 60 days from the date of this order.

18. In light of the above-mentioned directions, the present complaint stands disposed of. If the Respondent Builder fails to comply with this Order, appropriate action, including the imposition of a penalty, will be taken as per the provisions under Section 63 of the Act, 2016.

19. If aggrieved by this Order, the parties may approach the TS Real Estate Appellate Tribunal (vide G.O.Ms.No.8, dated January 11, 2018, the Telangana State Value Added Tax Appellate Tribunal has been designated as TS Real Estate Appellate Tribunal to manage affairs under the Act until 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