

Complaint No. 123 of 2024

Dated this 31st day of January 2025

Corum: **Sri K. Srinivasa Rao, Hon'ble Member**
 Sri Laxmi Narayana Jannu, Hon'ble Member

Versus

M/s Parijatha Homes & Developers Pvt. Ltd. ...Respondent

This present Complaint came up for hearing on 23.10.2024 before us for hearing in the presence of Complainant appeared in person and Sri C. Hanumantha Rao for the Respondent and upon hearing both the arguments on both sides and the matter reserved over for the consideration till this date, this Authority passes the present complaint order.

ORDER

2. The Complainant has filed complaint on hand 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"), alleging commission of violation and contravening of the provisions of the said Act and Rules and sought for the appropriate reliefs against the Respondent.

A. The Brief facts of the case as per allegations/averments contained in the complaint are as follows:

3. That he is a bona fide allottee of a flat bearing no.104 in the project "Parijatha Pride – Block 2," developed by the respondent, M/s Parijatha Homes and Developers Pvt. Ltd., represented by its director, Mr T. Naresh Kumar. The complainant asserted that in October 2020, he expressed

interest in purchasing Flat No. 104, located in Block-2 of the said project, measuring 975 sq. ft., for a total sale consideration of ₹26,00,325. This transaction was formalized through a Tripartite Agreement executed between himself, the respondent, and State Bank of India, that is his home loan provider.

4. That he made payments totalling to ₹27,50,000 between October 2020 and November 2021 to the respondent, which were duly acknowledged through receipts issued by the respondent that thereafter the sale deed for the flat was executed in his favour in April 2021, with the respondent assuring timely completion of the construction and delivery of possession of the flat by December 2021.

5. But, the respondent has failed to hand over possession of the flat despite multiple reminders and communications and continued to delay in delivery of possession. That while so meeting of all the members of P.P Block-II was held on 10/11/23 thatthereafterthe respondent vide letter on 22/11/2023 committed to handover possession by 31/01/2024 and so also to,compensate him with a monthly rent of ₹7,500 from 28/02/2024 in case of delay, to comply the obligation but this commitment was also not honoured.

6. The complainant contended that the delay in handing over possession and so also failure of the respondent in compensating him with a monthly rent of Rs. 7,500 caused severe mental harassment and financial hardship to him, as he continued to pay EMIs on the home loan without receiving the property. Hence the Complaint.

B. Relief(s) Sought for by the Complainant:

7. Direct the Respondent to complete the Construction, hand over possession of the flat with a possession letter, and pay the rental amount of Rs. 7500/—fromJanuary 2022 until the date of delivery of possession.

C. Interim relief:

8. Construction shall be completed with all amenities; possession of property should be arranged without any further delay.

D. Counter on behalf of Respondent:

9. The respondent in the counter has submitted that the complainant had been in regular contact with it (Respondent company) to ascertain the construction status of the residential building, including the complainant's flat. It was contended that the building, comprising stilt parking and five upper floors, was nearly completed, and steps were being taken to obtain an occupancy certificate from the HMDA authorities.

10. The respondent further contended that delays were caused by factors beyond their control, including the COVID-19 pandemic, labour shortages, and increased material costs. It has asserted that these delays were unintentional and that the company had made earnest efforts to complete the construction and secure the necessary approvals.

11. The respondent has, however, submitted in the reply to the effect that a registered sale deed for the flat was executed on 17-04-2021, vide document bearing Reg. number 2788/2021, explicitly stating therein that possession of the flat had been delivered to the complainant. However, the complainant could not occupy the flat due to the pending occupancy certificate. It is also contended that this recital in the sale deed negates the complainant's claim for a separate possession letter.

12. Additionally, the respondent highlighted financial challenges, including increased material costs and labour charges, as contributory factors to the delay. It was contended that awarding any monetary compensation to the complainant would impose irreparable financial loss on the respondent.

13. In conclusion, the respondent prayed to dismiss the complaint and sought 180 days to deliver the completed flat to the complainant.

14. Taking into consideration the allegations made by the complainant in his Complaint and the submissions made by the Respondent in the counter filed by it, and so also the arguments advanced on both sides, the points that arise for consideration are as follows:

I. Whether the complainant is entitled to the relief sought?

II. Whether the respondent is in contravention of provisions of section 18(1)(a) of the RE(R&D) Act?

E. Observation by the authority:

14. Points I and II are being taken up together for discussion/consideration for the sake of convenience and to ensure a comprehensive resolution of the dispute.

15. As is evident from the documents and submissions from both parties before this Authority, the facts which are not in dispute and admitted facts are that an agreement of sale was executed for Flat No. 104 in Block-2 of the project "Parijatha Pride – Block-2." The respondent had undertaken to complete the flat and hand over possession by December 2021.

16. While so the main facts/aspects which are in disputes in between the parties are about delivery of the possession of the flat and payment of compensation.

17. On the above said disputed aspects, the contentions of the complainant are that the respondent has failed to deliver physical possession of the flat to him as agreed in the tripartite agreement and as also the subsequent undertaking given by it in the letter dated 22/11/2023 after a meeting held on 10/11/2023 as so also that the respondent has failed to pay compensation in the form of rent of Rs. 7,500 /- per month as agreed to be paid by it. while so the Respondent, on the aspect of delivery of possession in one berth in para no 3 of its reply, contends that possession of the flat, as per the sale deed, was already delivered to the complainant and if the same is to be believed to be true, then there would have been no necessity for the respondent to issue the letter dated 22.11.2023,

undertaking to deliver possession of the flat by completing all the works by 03.04.2024. and so also to pray this authority in para no.5 of its reply dated 23/10/2024 to direct it(Respondent) to deliver the possession of the flat in 180 days. Given the material available on record before this Authority, it is evident that there is no proof/evidence, documentary or otherwise, to establish that the respondent had actually handover/delivered physical possession of the flat to the complainant, in terms of sale deed or as assured in its letter dated 22/11/2023 with all assured works completed.

17. Thus, in all probability, the inference that can be drawn is that the possession mentioned in the sale deed was merely symbolic and that same might have been mentioned solely for the purpose of getting sale deed registered but the same was not actual physical possession. On the other hand, the fact that remains is that the respondent has not delivered possession of the flat to the complainant as agreed upon by it(Respondent) and that the respondent continued to delay delivery of physical possession of the flat to the Complainant and as also demonstrates its(Respondent) inability to adhere to previously agreed deadlines.

18. The delay in handing over possession, as contended by the complainant, should have deliberately caused serious financial and mental hardship to the Complainant, who is servicing a home loan without enjoying the benefits of occupancy of the flat.

19. The respondent's contentions regarding disruptions caused by the COVID-19 pandemic, labour shortages, and increased material costs, even if are taken into consideration, these factors however, do not exonerate it from fulfilling its obligations under the agreement, nor do they negate the requirement to comply with Section 18(1)(a) of the Act, which reads as hereunder:

- (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 that 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.

21. Thus, as per section 18(1) of the said Act, the promoter is liable if they fail to deliver possession as per the agreement or within the stipulated timeline. If the allottee withdraws from the project, the promoter must refund the amount received with prescribed interest and compensation. But, if the allottee chooses to remain, the promoter must pay monthly interest for the delay until possession is handed over. This liability ensures the protection of allottee rights and compels the promoter to fulfil their obligations promptly, regardless of the cause of delay.

22. On the aspects mentioned in the foregoing para, in **M/s Imperia Structures Ltd. Vs. Anil Patni & Ors.** [Civil Appeal No. 3581-3590 of 2020] the Hon'ble Supreme Court held thus:

"25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made 'without prejudice to any other remedy available to him.' The right so given to the allottee is unqualified, and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."

23. Further, the Hon'ble Apex Court while explaining the scope of right of allottee under Section 18 of RERA in **M/s Newtech Promoters [Civil Appeal NOs.5745, 6749 and 6750 to 6757 of 2021]** has held in paragraph 25 as under-

"The unqualified right of the allottee to seek a refund referred to under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot, or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/ Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed"

24. Thus, in view of the facts and circumstances of the case, as discussed in the aforementioned paragraphs, and having due regard to the provisions of Section 18 of the RE(R&D) Act, as well as the interpretations provided by the Hon'ble Supreme Court and the provisions of Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016, it is evident that the Respondent is liable for failing to complete and hand over possession of the allotted unit/flat by the date specified in the tripartite agreement and so also in terms of the letter dated 22-11-2023. Furthermore, while the respondent's reliance on factors such as the COVID-19 pandemic, labor shortages, and inflated material costs may be understandable, but it is pertinent to note that the respondent, being fully aware of these challenges, nonetheless proceeded to execute the Sale Deed, entered into a tripartite agreement and also issued the letter dated 22/11/2023.

25. In this context, the interesting point that has to be taken note is that the Respondent falsely represented to the Complainant that the unit would be handed over shortly. Furthermore, the Respondent made contradictory submissions to this Authority on the one hand, asserting that the unit was

already over in accordance with the Sale Deed but blaming the Complainant's refusal to take possession on the non-issuance of the Occupation Certificate and on the other hand, acknowledging that the project remained incomplete due to pandemic-related delays.

26. Such inconsistent and misleading representations indicate an attempt by the respondent to mislead the Authority on the aspect of handing over of the possession of the flat to the complainant. The Authority notes that the Respondent has undertaken in the letter dated 23/11/2023 to the effect that it would deliver possession of the flat by completing all the works by 03/04/2024 after executing the Sale Deed on 17th April 2021, despite being aware of the prevailing circumstances at that time caused by the pandemic. Additionally, the Respondent failed to seek an extension under Section 6 of the RE(R&D) Act, which could have provided relief if the delay was genuinely attributable to “force majeure”.

27. From the record, it is apparent that the Complainant continued to bear the financial burden of EMIs without being able to occupy the flat. The Complainant's request for relief in the form of a monthly rent of ₹7,500 from January 2022 until the handing over of possession is supported by the Respondent's own commitment, albeit unfulfilled, to mitigate the hardship caused by continued delayed delivery of the flat to him.

28. Although the Respondent executed a sale deed on 17.04.2021, bearing document No. 2788/2021, the fact that remains is that the Respondent has not delivered the flat by completing all the agreed works as undertaken by it till today and on the other hand it will be clear that it is continuing to delay possession, consequently the complainant has been continuously suffering due to non-delivery of the flat and so also due to pendency of occupancy certificate and incomplete finishing works.

29. In the light of the above facts and observations made, this Authority is of the considered view that since the respondent has failed to deliver physical possession of the flat to the Complainant on the promised date and continued to delay the delivery of possession, which constitutes a breach of

its obligations under the act and hence it is held that the Respondent is liable to be proceeded against for contravention of Section 18(1)(a) of the RE(R&D) Act.

F. Directions of the authority:

30. Based on the facts submitted, evidence on record, and the findings given thereon by us as discussed herein above, this Authority holds that the complainant is entitled to the reliefs as prayed by him, and the same is allowed in his favour, and the Respondent is hereby directed as follows:

- i. The Respondent shall complete the remaining construction work of Flat No. 104, Block-2, in the project "Parijatha Pride," and hand over possession of the same to the Complainant within 90 days from the date of receipt of this order.
- ii. In accordance with Section 18(1)(a) of the RE(R&D) Act, the authority deems it fit to direct the respondent to pay the complainant interest for every month of delay, starting from 1st January 2022 until the date of handing over of possession. The rate of interest shall be calculated at the rate prescribed under the TG RE(R&D) Rule 2017, i.e., MCLR of SBI plus two per cent, i.e. 11% (9.0 + 2) per annum calculated from the date of receipt of each payment until the date of repayment.
- iii. The Respondent shall, at its own cost, take all necessary steps to procure the Occupancy Certificate from the competent authority. A copy where of shall be provided to the Complainant at the time of handing over of the possession.
- iv. Failure to comply with above said directions by the Respondent shall attract penalty in accordance with Section 63 of the said Act, 2016.

31. As a result, the complaint is disposed of accordingly. No order as to costs.

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

Sd-
Sri. Laxmi Narayana Jannu,
Hon'ble Member
TG RERA