

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

Complaint No. 304 of 2024

12th of March, 2025

Corum: **Dr. N. Satyanarayana, IAS (Retd.), Hon'ble Chairperson**
Sri K. Srinivasa Rao, Hon'ble Member
Sri Laxmi Narayana Jannu, Hon'ble Member

Kolla Lakshmi Kumari ...Complainant

Versus

M/s Aliens Developers Private Ltd.

Rep. by Mr. Hari Challa & Mr. Venkat Prasanna Challa ...Respondent

The present matter filed by the Complainant mentioned herein above came up for final hearing on 20.02.2025 before this Authority in the presence of the Complainant in person, and Counsel for the Respondents, and upon hearing the submissions of both the parties, this Authority passes the following **ORDER**:

2. This Complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “Act”) read with Rule 34(1) of the Telangana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the “Rules”) seeking appropriate action against the Respondents.

Brief facts of the case:

3. The Complainant, Kolla Lakshmi Kumari, paid an advance amount of ₹5,00,000/- to M/s Aliens Developers Private Ltd as a booking amount for purchasing a flat in the month of May, 2023. However, the complainant and the developer agreed to cancel and terminate the agreement of sale. Accordingly, the developer had sent a Deed of Cancellation to her on 10th July, 2023 requesting for signature which was duly signed by her on 14th July, 2023, and sent back to the developer via email. The developer assured her that the ₹5,00,000/- refund would be initiated in

five equal instalments of ₹1,25,000/-. These instalments were scheduled to begin in December 2023 and end by March 2024.

4. Further communication from the developer included a signed copy of the deed of cancellation sent to the complainant's registered email on September 14, 2023. However, as of September 28, 2024, the complainant had not received any refund. Multiple follow-ups via email and phone calls to the Respondent's official channels were met with unsatisfactory responses. The Respondent failed to confirm payment timelines or provide clarity on the status of the refund, leaving the complainant in financial distress. She asserted that this delay in refunding the amount represents a breach of commitment, an act of injustice and cheating.

Relief Sought:

Aggrieved by the actions of the Respondent, the Complainant approached this Authority for refund of Rs. 5,00,000/- and appropriate action against the Respondent.

Counter on behalf of the Respondents:

5. The respondent, Aliens Developers Pvt. Ltd., filed a counter before this Authority, raising multiple objections to the complaint filed. Primary contentions in the reply are as follows:

- i. That the complainant has not identified any specific violation of the RE (R&D) Act, 2016 which is required to make the complaint legally tenable. And that the Authority grants refunds only in cases of violations of Sections 7, 11(5), 12, 14, 18, or 19 of the Act, none of which apply here, as the complainant chose to cancel voluntarily.
- ii. That the complainant, by voluntarily cancelling the booking, relinquished her status as an allottee under Section 2(d) of the RE (R&D) Act, 2016. Since RERA jurisdiction applies only to allottees, the complaint is not maintainable.
- iii. That the dispute is contractual, arising out of a cancellation deed, and should be adjudicated by a civil court rather than RERA.
- iv. That the Respondent in good faith, has already refunded the said amount of Rs. 5,00,000/- to the Complainant. Therefore, there is no subsisting cause of action. Hence, the present complaint has no legal standing before the Authority and is liable to be dismissed as not maintainable.

Points to be Determined:

6. Based on the facts and circumstances of this case, the following questions came up for consideration before us:

- I. Whether the present complaint is maintainable before this Authority?
- II. Whether the Complainant is entitled for the relief sought?

Observations of the Authority:

Upon perusal of the written submissions and the documents produced by both the parties, this Authority makes the following observations.

Point I:

7. Firstly, we would consider the facts admitted before us by both the parties. It is undisputed that the Complainant has paid Rs. 5,00,000/- as booking amount towards the purchase of the flat in the Respondent Project, and the same has been confirmed by the Respondent through the 'Customer Information Sheet' produced. It is also agreed and admitted by both the parties that the said booking of the flat was cancelled subsequently vide a Deed of Cancellation dated 19.06.2023, which included a promise of refund of the entire amount of Rs. 5,00,000/- by the respondent within a specified timeline mentioned therein. However, the Complainant contends that she has not received any amount and that the Respondent failed to refund as per the payment schedule mentioned in the said cancellation deed.

8. In reply to the allegations made in the complaint, the Respondent filed a counter on 20th February, 2025 raising various objections as to maintainability of the complaint before this Authority. The main contentions of the Respondent as mentioned earlier (*supra para 5*) are reiterated precisely, that the Complainant, by cancelling the booking voluntarily, ceased to be an allottee, that there exists no specific violation of the RE (R&D) Act, 2016 necessary to establish legal tenability of the complaint, also that the dispute is contractual, stemming from a cancellation deed, and should be adjudicated by a civil court rather than RERA. Furthermore, the Respondent, has already refunded Rs.5,00,000/- to the complainant, leaving no subsisting cause

of action. Therefore, the complaint lacks legal standing and should be dismissed as not maintainable.

9. In order to determine the maintainability of the complaint, the status of the complainant as allottee needs to be considered first. Under the Real Estate (Regulation and Development) Act, 2016, the term "allottee" is defined in Section 2(d) as:

“‘allottee’ in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;”

10. It is undoubtedly clear from the provision that a person to whom a plot, apartment or a building has been ‘allotted’ in relation to a real estate project is considered an allottee. In the instant case, the Complainant has been allotted a 3BHK flat of 1792 sft., bearing No. 922 situated in 9th floor, Tower 22, Station 4 of the Respondent Project as evident from the Customer Information Sheet given to her by the Respondent, clearly making her an allottee in the impugned Project.

11. But now, the question before us pertains to the status of an allottee post cancellation or withdrawal from a project. Section 18 of the RE (R&D) Act, 2016 provides remedies to allottees in instances where a promoter fails to complete or deliver possession of a property in accordance with the terms of the agreement. This provision entitles the allottee to withdraw from the project and seek a refund of the amount paid, along with applicable interest. A fundamental feature of Section 18 is that, while pursuing a claim before the Authority under this provision, the complainant continues to seek relief in the capacity of an allottee, even after withdrawing from the project, until the adjudication process is concluded.

12. Here in the instant case, the Developer/Respondent has promised to refund the amount in full, to the Complainant according to the cancellation deed. After perusing the said cancellation deed dated 19.06.2023, we found it pertinent to consider clauses 4, 6, 7 stipulated therein, excerpts of which are iterated below:

“4.the Developer has refunded Rs. 0/- so far and the developer will refund the total amount of Rs. 5,00,000/- as per mentioned in the following manner and the Purchaser hereby admits and acknowledges the same...

6. The Purchaser agrees, declares and confirms that simultaneously with execution hereof, the purchaser shall have no claim, right, title and interest of whatsoever nature either concerning the said Apartment of any part thereof and/or against the Developer save and except to the entitlement of receiving the monies as provided in clause (4) ...

7. In view of the Purchaser having received the entire monies as per Clause 4 above, the said Agreement of Sale stands cancelled with mutual consent of the parties...”

13. A plain reading of the above-mentioned provisions makes it clear that the Agreement of sale between the parties stands cancelled only in the event of the receipt of the refund amount by the Complainant. Since the same has not been complied with at the time of filing of this complaint, the said agreement of sale which conferred allotment, remains binding on the parties and the Complainant herein retains the status of the allottee in the eyes of law, in turn becoming subject to the jurisdiction of this Authority.

14. The cancellation of allotment becomes final only when the entire refund amount is remitted back to the Complainant as agreed. It is observed that the said cancellation process only commenced when the parties executed the cancellation deed but remains incomplete due to the non-payment of the refund amount as per the agreed payment schedule. Since the cancellation has not attained its finality, the complainant continues to be recognized as an allottee, rendering the respondent's claim that the complainant has ceased to be an allottee untenable.

15. A similar view has been taken by the Hon'ble Maharashtra Real Estate Appellate Tribunal in the case of **Chandrika Dinesh Chowatia and Others vs. S.R. and Shah Developers** (Appeal No. AT0060000005265, 25 August 2022) where the promoter contended that accepting partial refund and accepting cancellation of booking, complainants have waived of their rights to be allottees in the project. Accordingly, complainants are no longer allottees and not liable to claim any further reliefs under the Act and the Tribunal rejected the argument by upholding allottee's status:

“14. In view of above, we find that the cancellation process appears to have been initiated but has neither been completed nor attained its finality for want of non-fulfillment of condition mentioned therein and also due to only partial refund. Therefore, contention of promoter that complainants are no longer allottees is ex-facie not tenable.”

16. To further emphasize, an allottee remains an allottee even after an order for refund has been passed by the Authority and when the same has not been complied with by the Promoter, as observed in the case of **Rahul Gyanchandani and Ors. vs. Parsvnath Landmark Developers Pvt. Ltd.** (Company Appeal (AT) (Insolvency) No. 309 of 2024), the Hon’ble National Company Law Appellate Tribunal (NCLAT) addressed a situation where the appellants had obtained a refund order from RERA, which the promoter failed to comply with. The promoter contended that the appellants ceased to be allottees once the refund order was passed. The NCLAT rejected this argument, stating:

“The mere fact that order has been passed by RERA on the complaints by the Appellants, Appellants do not cease to be allottee within the meaning of RERA Act, 2016. If it is accepted that merely by passing order by the RERA, they cease to be allottee, their right to recover the aforesaid amount cannot be prosecuted any further as allottee. Admittedly, Company Appeal (AT) (Insolvency) No.309 of 2024 & the orders for refund has not been complied with, hence the Appellants continued to be allottee within the meaning of the Code and the RERA Act, 2016.”

17. Having conclusively established that the complainant retains the status of an allottee for the purpose of seeking relief under this Act, we now proceed to address the next issue raised before us regarding the maintainability of the present complaint. The respondent further contends that the complaint at hand is liable to be dismissed as it has no subsisting cause of action as the Respondent had already paid the refund amount.

18. As gathered from *para* 14 of the counter, the entire amount of Rs.5,00,000/- was already remitted to the Complainant’s bank account as agreed. A Payment Slip dated 13.02.2025 of HDFC Bank, was produced as a proof of refund. A perusal of the payment slip reveals that Rs. 4,00,000/-

was deposited to Smt. K. Lakshmi Kumari's bank account, while so, during the hearing of the case on 20th February, 2025, the Complainant has admitted before this Authority that the total booking amount of Rs.5,00,000/- has been repaid by the Respondent.

19. However, the point to be taken note here is that the Respondent has not complied with the payment schedule mentioned in the cancellation deed, since it had to pay the entire amount of Rs.5,00,000/- in four equal instalments of Rs. 1,25,000/- commencing from December 2023 to March 2024. On the other hand, it has become clear that the payment was done only after March 2024 i.e., on 13.02.2025.

20. In view of the above, the contention of the Respondent that the complaint lacks any cause of action is untenable because the said cause of action was in existence at the time of filing of the complaint i.e. on 30.09.2024, when the refund was yet to be received by the Complainant; and it has been only resolved subsequently during the course of proceedings i.e., when the Complainant received the entire relief amount of Rs.5,00,000/- and the same has been admitted before us on 20.02.2025.

21. Having firmly established that a valid legal cause of action existed at the time of filing the complaint, and that the complainant continues to retain the status of an allottee, it follows that the developer's obligations under the agreement do not cease upon the mere execution of a cancellation deed. Rather, such obligations persist until all terms and conditions stipulated therein, including the refund of amounts due, are fully complied with. Failure to fulfil these obligations entitles the complainant to seek appropriate remedies before this Authority. Accordingly, Point I is answered in affirmative, the present complaint is maintainable before this Authority.

Point II:

22. The complainant in the present matter has sought a refund of Rs. 5,00,000/-. As established under Point I, the complainant continues to hold the status of an allottee and is therefore entitled to seek appropriate relief before this Authority. However, it has been admitted by the complainant, that the full amount of Rs.5,00,000/- was received by her as of 20.02.2025.

23. In light of the fact that the complainant as mentioned herein above, admitted that the refund of Rs.5,00,000/- sought for has already been received by her from the Respondent, and her relief has been met with, this Authority is of the considered view that the present matter may be disposed of accordingly as resolved.

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

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

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

