

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

COMPLAINT NO.156 OF 2024

28th Day of April 2025

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

1. Sri Gadupudi Naresh Babu
2. Sri Shaik Abdul Samiullah
3. Sri K Srinivas Gandhi
4. Sri Srinivasa Ramarao Rao
5. Smt. Kalvala Venkata Naga Lakshmi Bharathi
6. Smt. G. Lavanya
H.No. 14-24/64/2/7, Plot No. 07
Krishna Devaraya Nagar, Phase 1,
Beeramguda, Hyderabad – 502032.

...Complainants

Versus

Smt. Sudharani Chekka
M/s R. Homes Resltors Global LLP,
Plot No. 33 & 35, Sai Krishna Villas,
Flat No. 503, 5th floor, AS Raju Nagar,
Kukatpally- 500072, Hyderabad.

...Respondent

The present matter filed by the Complainant herein came up for hearing on 17.10.2024, 12.11.2024 & 10.12.2024 before this Authority in the presence of Complainants in person and none for Respondent despite service of notice who are set *ex-parte*, and after hearing the arguments, this Authority passes the following **ORDER:**

2. The present Complaint has been filed by the Complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule (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 reliefs against the Respondents.

A. Brief facts of the case:

3. The Complainants submitted that the Respondent, through its Company, M/s R Homes Realtors Global LLP approached them in the year 2021 to buy property in the Project "Jai Vasavi's ORR Heights" Phase II with 3 towers (G+5) registered with this Authority vide Regn. No.P01100005314 dated 23.11.2022. The Complainants showed interest in buying their respective flats and booked them. The Respondent informed the Complainants that the Complainants will be provided with new sale agreements after approvals are obtained. That revised agreements were provided to some of the Complainants in the year 2023, however, few of the Complainants didn't receive any information about the new agreements.

4. The Complainants submitted that as per the allotment and Agreement of Investment, the total consideration for the property was Rs.1,52,01,720/- (Rupees One Crore Fifty-Two Lakhs One Thousand Seven Hundred and Twenty only) and attached copies of allotment letter and the Agreement issued by the Respondent. The Complainants paid a total amount of Rs.80,91,270/- (Rupees Eighty Lakh Ninety-One Thousand Two Hundred and Seventy only) during the year 2021 and Respondent issued the receipts for the same.

5. The Complainants further submitted that the Respondent promised to obtain the required approvals by end of 2021 and the construction will start from January 2022, however, there has been no progress till now. As per the agreement of investment, the project should be completed in 3 years from the date of final approvals, wherein, the HMDA approval (HMDA DPMS file No. 049501/SKP/R1/U6/HMDA/08102021) for G+5 for 3 blocks was issued in Sep 2022.

6. The Complainants also submitted that they had been visiting the site regularly, however there is no progress wherein the digging work started last year and the construction of the base structure is not completed till date. Despite several telephonic reminders, communications & Personal visits, the Respondent is delaying the construction.

7. It was submitted on behalf of the Complainants that, the Respondent had induced the Complainants to invest in their project by making false and misleading statements. That even after 2+ years from the date of investment in the said property, the Respondent has failed to handover the flats booked by the Respondent. As per the meeting held on 02.01.2024, at the construction site with the Respondent, a commitment was made to complete the first slab for all blocks by 31.03.2024. However, this commitment had not been fulfilled. It has now been communicated by the Respondent that an additional three months are required to obtain revised approvals for a G + 9 structure, whereas the initial plan was for a G + 5 structure.

8. The Complainants submitted that the Respondent is not sharing correct information with the Complainants. That the Master floor plan has been changed 6 times till now and that the revised the plan from G + 5 to G + 9 was made without the consent of the Complainants. Despite issuance of letters, there is no response from the Respondent.

B. Relief(s) sought:

9. Accordingly, the Complainants prayed that since they don't have any more trust on the Respondent, they sought for refund of total amount paid to the Respondent along with the interest from the date of payment till the date of realization.

C. Points for consideration:

10. After deliberation on the facts and circumstances of the present case and the documents filed in this behalf, following issues sprout for consideration:

- I. Whether the Respondent has violated Section 3 of the Act, 2016?
- II. Whether the Complainants are entitled to relief(s) as prayed for? If yes, to what extent?

D. Observations of the Authority:

Point I

10. Notice was issued to the Respondent and duly received by her, however, no response/representation was filed on her behalf. As the Complainants submitted that the respective agreements were executed prior to obtaining registration from this Authority, this Authority issued show cause notices to the Respondent to show cause as to why penalty should not be imposed for violation of Section 3 which prohibits any promoter to market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Authority.

11. Despite being in receipt of the same, there is no reply on behalf of the Respondent, thereby constraining this Authority to proceed further in the matter.

12. This Authority has perused the Agreements of Investment filed on behalf of the Complainants along with allotment letters and payment receipts issued by the Respondent. The Respondent has clearly promised the Complainants, in the respective Agreement of Investment, that the possession of the respective flat/Apartment shall be given within 30 (thirty) months from the date of final approvals along with a grace period of 6 (six) months, which shows that the said agreement was entered into before obtaining permission from the competent authority. As per the documents filed by the Complainants, on 26.09.2022, the HMDA accorded approval for construction of 3 Blocks consisting of Cellar + Ground + 5 upper floors each, and further directed the Respondent to approach Executive Authority, Kardanur Gram Panchayat, Patancheruvu Mandal for release & sanction of the same. This goes to show that the Respondent, without having permission from the competent authority and RERA registration, executed agreements in favour of the Complainant, grossly violating Section 3. Therefore, the Respondent is liable for penalty under Section 59 of the Act, 2016.

Point II

14. Coming to the reliefs prayed for by the Complainants, the Complainants only sought for refund of the amounts prayed as the Respondent has failed to start construction till date. That this delay on part of the Respondent is not agreeable to the Complainants, on account of which they are seeking refund of the amounts paid by them along with interest as per Rules, 2017.

15. Section 18(1) of the Act, 2016 stipulates that *“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.”*

16. A plain reading of the above provision goes to show that the Complainants are entitled to relief of refund along with interest in accordance with Rule 15 of the Rules, 2017 only when the “promoter fails to complete or is unable to give possession in accordance with the terms of the agreement for sale”. In the agreements of sale/investment, as has been filed by the Complainants towards purchase of the respective flat, it is categorically agreed to by the Complainants that the possession of the respective flat will be given within 30 (thirty) months from the date of final approvals along with a grace period of 6 (six) months. Admittedly, the HMDA approval was obtained on 26.09.2022 and therefore, the Respondent has time until 25.09.2025 to be able to handover the possession of the flat, in accordance with the respective agreement of investment.

17. Even though the Agreement of Investment is not in the format as provided under Annexure to Rule 38 of the Rules, 2017, as the plain reading of Section 18 stipulates that the agreement entered into between the parties shall decide the terms of refund or such other terms, then the same becomes sacrosanct. The Complainants cannot now turn back and seek refund submitting that the Respondent has not been able to provide possession of their respective flat without adhering to the terms of the agreement. However, if the Respondent failed to give possession after the stipulated time frame as agreed in the respective agreement executed with each Complainant, the Complainants are at liberty of approaching this Authority to seek refund in accordance with Section 18 read with Rule 15.

18. Therefore, this Authority is of the considered opinion that the Complainants, at their choice, may seek refund but cannot seek interest on the amount paid as there is no violation of the Agreement executed by the Respondent yet.

19. A detailed perusal of the Agreement executed by the Respondent in favour of the Complainant shows that there is no clause for voluntary cancellation of a flat by the Complainants. Therefore, this Authority has to rely on the Draft Agreement of Sale as provided under Rule 38 of the Rules 2017. Clause 7.5 of the said Draft Agreement of Sale stipulates that *"The Allottee shall have the right to cancel/withdraw his allotment in the Project only as provided in the Act: Provided that where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit the booking amount paid for the allotment. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within three months of such cancellation or at the time that the Promoter is able to resell the said Apartment/Plot to another purchaser, whichever is later."*

20. In line with the said provision, the Complainants are entitled to refund of the amounts paid by them minus the booking amount which shall be

forfeited by the Respondent. There is no clarity with respect to the booking amount paid by each Complainant as the Agreements do not speak about the same. Therefore, this Authority shall direct the Respondent to ascertain the same, comply with the directions of the Authority and accordingly submit an action taken report in this regard.

21. Point II is answered accordingly.

E. Directions of the Authority:

20. In light of the above discussion, the Authority vide its powers under Section 37 and 38, issues the following directions:

- i. Respondent is liable for penalty under Section 59 for violation of Section 3 and is therefore, directed to pay penalty of Rs. 6,06,520/- payable within 30 (thirty) days in favor of TG RERA FUND through a Demand Draft or online payment to A/c No. 50100595798191, HDFC Bank, IFSC Code: HDFC0007036; and
- ii. Respondent is directed to refund the amounts paid by the Complainants to the Complainants within a period of 90 days in accordance with Rule 16 of the Rules, 2017 excluding the booking amount paid by each Complainant and submit a compliance report to this Authority, failing which penalty shall be imposed on the Respondent in accordance with Section 63 of the Act, 2016.

21. In light of the above directions, the present complaint is disposed of. No order as to costs.

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