

BEFORE TELANGANA REAL ESTATE REGULATORY AUTHORITY

[Under the Real Estate (Regulation and Development) Act, 2016]

Complaint No. 182 of 2024

09th May, 2025

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

Chatragadda Sri Tulasi

(W/o Ch. Rama Krishna, R/o Flat No.401, Plot No-549, Vindhya Classic Apt, Peacock Center, Pragathi Nagar, Hyderabad)

...Complainant

Versus

1. M/s. Pagadala Constructions Private Limited

(H.No. 8-10, Fortune Chambers, 5th floor, Image Gardens lane, Madhapur Hi-Tech city, Hyderabad, Telangana-500081)

2. Venkata Ramana Rao Kondadasula

(H.No. 8-10, Fortune Chambers, 5th floor, Image Gardens lane, Madhapur Hi-Tech city, Hyderabad, Telangana-500081)

...Respondents

The present matter filed by the Complainants herein came up for hearing on 22.02.2025 before this Authority in presence of Complainant and her counsel Sri Suresh Pallerlamudi and Respondent through Counsel, Sri Ashwin Reddy; upon pursuing the material on record and on hearing arguments of the both sides and having stood over for consideration till this day, the following order is passed:

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. The complainant herein above, Mrs. Chatragadda Sri Tulasi, entered into an agreement with Pagadala Constructions Pvt. Ltd. for the purchase of Flat No. 103, a 3 BHK unit admeasuring 1520 square feet in the residential project titled "ANYA", situated at Bowrampet, Hyderabad. On 28.12.2022, the complainant paid a booking advance of ₹2,00,000/- via cheque, which was duly acknowledged by the builder. Pursuant to this, a Confirmation Letter was issued on 13.01.2023, confirming the allotment of the flat and stipulating that 20% of the total sale consideration, amounting to ₹76,96,000/-, would be payable initially, with the balance amount to be paid at the time of registration by availing a housing loan.

4. Relying on these representations, the complainant paid an additional sum of ₹13,39,200/- through multiple transactions between January and May 2023, thereby completing the payment of the agreed 20%. Subsequently, at the request of the builder, who cited delay in project registration, the complainant made further payments amounting to ₹9,00,000/- between March and July 2024, bringing the total amount paid to ₹24,39,200/-.

5. During the course of these transactions, the complainant came to know that the flat in question was under mortgage and that no bank would process a housing loan until the Occupancy Certificate (OC) was issued. Despite this, the builder began to pressure the complainant to pay an additional amount of ₹24,09,280/-, thereby demanding 60% of the total consideration upfront, contrary to the earlier understanding. When the complainant expressed her inability to make any further payments until the OC was obtained and the loan was sanctioned, the builder threatened to cancel the booking.

6. Nevertheless, the complainant expressed her willingness to pay an additional ₹5,00,000/- and requested a short period of time to arrange the same. However, before the payment could be made, the builder issued a cancellation letter on 07.08.2024, unilaterally terminating the allotment and later re-allocating the same flat to another buyer, Mrs. Swapna Rapol, as evidenced by the confirmation letter dated 06.08.2024.

7. The complainant contends that this cancellation was carried out in bad faith and with an ulterior motive of reselling the property at a higher price, despite her having paid over 31% of the total sale consideration. It is further submitted that the builder was fully aware, from the

inception of the transaction, that the flat was a mortgaged unit and that loan disbursement and registration would be contingent upon the issuance of the Occupancy Certificate. The complainant asserts that she is eligible for a housing loan and is prepared to complete the registration process upon issuance of the OC, and that the unilateral cancellation of the flat allotment, despite substantial payments made, amounts to an unjust and arbitrary act intended to enrich the builder at her expense.

B. Relief Sought:

8. In light of the facts and circumstances set forth above, the complainant respectfully prays that this Hon'ble Authority may be pleased to:

- i. Direct the builder to obtain the Occupancy Certificate at the earliest, thereby enabling the complainant to avail a housing loan and complete the registration of the subject flat;
- ii. Restrain the builder from selling or alienating the subject flat, which was originally allotted to the complainant, to any third party under the pretext of it being a mortgaged unit;
- iii. Grant any such other order or relief as this Hon'ble Authority may deem fit and proper in the interest of justice and equity; and
- iv. Pass an order restraining the builder from demanding any further payment from the complainant until the Occupancy Certificate is obtained, so as to facilitate the complainant's access to a housing loan for the mortgaged flat.

C. Counter on behalf of the Respondent:

9. The Respondent filed a counter against the complaint raising multiple objections. The main contentions of the counter are as follows:

- i. That the complaint is liable to be dismissed as it does not cite any specific violation of the RE(R&D) Act, 2016, and lacks a legal basis.
- ii. That the Complainant was clearly informed at the time of booking that the flat was mortgaged to HMDA and that registration could proceed only after the Occupancy Certificate (OC) was obtained.
- iii. That the booking was conditional and was accepted based on the Complainant's oral assurance of financial readiness and agreement to follow the payment schedule despite

- the mortgage. Though ₹24,39,200/- was paid, the Complainant failed to make payments as per the construction-linked schedule agreed under the Confirmation Letter.
- iv. Multiple written reminders and demand notices were issued (from April 2023 to January 2024), but the Complainant did not comply.
 - v. The Respondents deny that OC was a precondition for loan sanction and argue the Complainant's loan ineligibility was due to personal factors.
 - vi. Due to persistent default, the flat booking was rightfully cancelled on 07.08.2024, as per the terms of the agreement.
 - vii. That the reliefs prayed for are baseless and vague, inconsistent with the contractual terms, and not supported by law or facts and therefore request that the complaint be dismissed with exemplary costs.

D. Observations of the Authority:

10. Upon careful consideration of the material available on record, and after examining the rival submissions advanced by both parties, the controversy in the present matter turns on two key questions: (i) *Whether the Complainant is entitled to seek registration of Flat No. 103 in the project "ANYA,"* and (ii) *Whether the unilateral cancellation of the said allotment by the Respondent was legally sustainable under the RE(R&D) Act, 2016 and the applicable Rules and Regulations.*

11. It is not in dispute that the Complainant paid a sum of ₹24,39,200/- towards the purchase of Flat No. 103, which formed approximately 31% of the total sale consideration of ₹76,96,000/- as agreed between the parties. The Complainant contends that she remained unaware of the mortgaged status of the flat until she approached a financial institution for housing finance, whereupon she was informed that the said unit was under mortgage and thus ineligible for loan sanction.

12. However, a thorough scrutiny of the documents placed on record, particularly the Price Confirmation Letter dated 21.12.2022 issued by the Respondent and duly acknowledged by the Complainant, reveals that the mortgage status of the unit was explicitly disclosed therein. There is no evidence of suppression or misrepresentation on the part of the Respondent in this regard. The Complainant, having voluntarily acknowledged the said letter, cannot now feign ignorance of a fact that was communicated in unequivocal terms.

13. The plea of the Complainant that she was shocked to discover the mortgaged status of the unit, and that she was unaware that loans cannot be sanctioned for such units, appears untenable and contrary to the record. The assertion is inconsistent with the principle of reasonable due diligence expected of a prudent buyer.

14. It is a settled tenet in consumer jurisprudence, reinforced by the doctrine of *caveat emptor* (let the buyer beware), that a purchaser must exercise appropriate caution and conduct due diligence before entering into a transaction involving immovable property. In the present case, the Complainant proceeded to book a mortgaged property with full knowledge of its status, without seeking clarifications or insisting upon necessary safeguards or assurances regarding loan disbursement. Her grievance, in hindsight, appears to be the result of her own oversight

15. This Authority, therefore, finds no merit in the submission that the Complainant was unaware of the mortgage status or the banking restrictions arising therefrom. Every prospective homebuyer is under a duty to verify essential legal and financial aspects of the property and cannot seek indulgence for having made a decision without adequate inquiry.

16. On the other hand, the Respondent asserts that the Complainant was in default of the agreed payment schedule, and accordingly, the allotment was cancelled. It is submitted that the cancellation was effected strictly in terms of the agreed timeline as recorded in the Price Confirmation Letter.

17. To evaluate the legality of such cancellation, it is imperative to consider the statutory obligations of the allottee under Section 19 of the RE(R&D) Act. Section 19(6) mandates that an allottee shall be responsible for making necessary payments within the timeline specified in the agreement. Further, Section 19(7) renders the allottee liable to pay interest for delayed payments. In the instant case, the Complainant admits to not having paid the subsequent installments, attributing the delay to her inability to obtain a loan. However, having entered into the transaction with knowledge of the mortgage status, she cannot now invoke the same as a ground to justify the default.

18. While this Authority does not find fault with the Respondent for asserting its right to receive payments as per the agreed terms of the confirmation agreement, it finds procedural impropriety in the manner in which the Respondent proceeded to cancel the allotment. The legislative intent in such cases is clearly reflected in Clause 9.3(ii) of Annexure 38 to the

Telangana Real Estate (Regulation and Development) Rules, 2017 (Model Agreement for Sale), which stipulates that a promoter may cancel an allotment only after issuing prior notice of the intended cancellation and affording the allottee an opportunity to cure the default. The said clause reads as follows:

“...the Promoter may cancel the allotment...provided that the Promoter shall intimate the Allottee about such termination at least thirty days prior to such termination.”

19. The Respondent has failed to furnish any evidence before this Authority to show that a notice of atleast thirty days was served upon the Complainant prior to the cancellation. Such a unilateral act of cancellation, in breach of the mandatory requirement of notice, cannot be sustained in the eyes of law. Therefore, this Authority holds the said cancellation to be legally unsustainable and hereby sets it aside.

20. In view of the fact that the Complainant has already paid approximately 31% of the total consideration and has evinced a clear intention to proceed with the purchase, this Authority is inclined to afford an opportunity to the Complainant to regularize the default by paying the outstanding amount along with delayed interest as per Rule 15 of TG RE(R&D) Rules, 2017 in accordance with the stage-wise construction progress as recorded in the Price Confirmation Letter.

21. Accordingly, in consonance with the spirit of the Preamble to the RE(R&D) Act, 2016, which mandates protection of homebuyers' interests this Authority directs that the Complainant shall be given a final opportunity to comply with the agreed payment schedule linked to construction milestones. Upon such compliance, the Respondent shall reinstate the allotment.

22. Furthermore, it is noted with concern that the Respondent collected over 10% of the total sale consideration from the Complainant without executing a registered agreement for sale, thereby contravening the express mandate of Section 13(1) of the said Act. This statutory violation is viewed seriously by this Authority. Promoters registered under the RE(R&D) Act are duty-bound to comply with all regulatory provisions.

23. Accordingly, the Respondent is directed to ensure immediate execution of a registered agreement for sale, incorporating the payment schedule outlined in the confirmation letter, if the Complainant is willing to honour her obligations, including interest for delayed payment,

applicable as per section 19(7) of RE(R&D) Act read with rule 15 of TG RE(R&D) Rules, 2017.

G. Directions of the Authority:

24. In light of the foregoing observations and findings, and in order to strike a balance between the interests of both the Complainant and the Respondent, while upholding the objectives of the Real Estate (Regulation and Development) Act, 2016, this Authority issues the following directions:

- a. The complainant shall pay the default amount with applicable interest calculated at the rate prescribed under Rule 15 of the Telangana Real Estate (Regulation and Development) Rules, 2017 namely, the current Marginal Cost of Lending Rate (MCLR) of the State Bank of India plus two percent (i.e., 11% per annum, as applicable on the date of this Order), computed on the defaulted sum. The Complainant shall, within 45 days from the date of this Order, rectify the default in payments by remitting the outstanding balance strictly in accordance with the payment schedule outlined in the Price Confirmation Letter dated 21.12.2022.
- b. In the event the Complainant fails to arrange the balance consideration within the said period, Respondent 1 shall be entitled to cancel the allotment of Flat No. 103. Thereafter, the Respondent shall refund the entire amount paid by the Complainant within a maximum period of 30 days from the date of cancellation, deducting the booking amount.
- c. It is further directed that upon the Complainant agreeing to curing the default by making the requisite pending payments, the Respondent shall immediately execute and register an Agreement for Sale in accordance with Section 13(1) of the Real Estate (Regulation and Development) Act, 2016, reflecting the mutually agreed terms as contained in the Price Confirmation Letter.
- d. The Secretary of TG RERA is directed to immediately initiate suo motu proceedings against Respondent 1 for violation of Section 13(1) of the Real Estate (Regulation and Development) Act, 2016.

25. The Complainant and Respondents are hereby informed that failure to comply with the directions issued herein shall attract further penal consequences under Section 63 of the RE(R&D) Act.

26. The complaint is disposed of with these directions. There shall be no order as to costs.

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

**Sd-
Sri. Laxminaryana Jannu
Hon'ble Member
TG RERA**

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

