

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

COMPLAINT NO.1837 OF 2023

20th August, 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 Ramakrishna Rampally

...Complainant

Versus

M/s Nebula Aavaas

...Respondent

The present matter filed by the Complainant herein came up for final hearing on 25.04.2024 before this Authority in the presence of Complainant present in person and Counsel S.S.Prakash 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. Complainant a resident of Hyderabad booked a flat in an under-construction project by Aavas Hyderabad with project registration number P02200000223. The payment of Rs. 8,06,875 was made in instalments from December 2016 to July 2020. However, unable to secure a home loan, Ramkrishna discontinued payments, leading to the cancellation of his flat booking in January 2021.

4. Subsequently, Ramkrishna made multiple refund requests via email, messages, and phone calls. Aavas company processed a refund of Rs. 5,67,656 on 6th October 2023, after an 18-month delay. It is important to note that the instalments were paid with GST, and all payment receipts have been attached.

B. Relief(s) sought:

5. (a). Full refund of the total payment made from December 2016 to July 2020, amounting to Rs. 8,06,875.

(b). Consideration for the delayed refund process, which took place almost 18 months after the cancellation of the flat booking.

C. Respondent Reply:

6. The Respondent denies each and every allegation made in the complaint unless expressly admitted herein.

7. The Respondent alleges that the complainants have approached the forum with unclean hands, suppressing material facts, thereby invoking the doctrine of suppressio veri and suggestio falsi.

8. Mr. Ramakrishna Rampally booked Flat/Unit No. CW3-401 on 20th March 2017 with an initial payment of Rs.50,000/-. He agreed to pay 20% of the initial down payment via 36 EMIs, with the remainder to be paid through construction-linked payments or a bank loan. The complainant was paying the EMIs by way of cheques and NEFT from March 2017, during which some cheques were dishonored. Despite being informed of the dishonor, the complainant continued to issue the same cheques for EMIs, which were again dishonored with different endorsements. A notice regarding this was issued to the complainant on 10.08.2018, which the complainant acknowledged. However, the complainant neither replied nor paid the EMI. The last notice and final reminder were issued to the complainant on 06.01.2019 through RPAD post, informing about the dishonored cheques and unpaid EMI. The complainant received and acknowledged this notice but neither paid the amounts nor responded to it.

9. The company issued a cancellation notice dated 21.01.2022 through RPAD regarding the concerned unit. Despite receiving this cancellation notice, the complainant did not respond. Under these circumstances, the company refunded an amount of Rs. 5,67,656/- through NEFT on 06.10.2023 to the complainant. The booking was cancelled due to non-payment of dues as per the construction-linked payment schedule.

10. The complainant has lodged a false complaint by making baseless allegations against the respondent while suppressing the true and material facts, including the dishonour of cheques and non-payment of amounts. The complainant has no locus standi to represent, and thus the complaint is not maintainable.

11. Furthermore, the complainant is seeking compensation from the respondent despite failing to pay the amounts as per the construction-linked payment schedule. Without fulfilling their part of the obligation, the complainant's claim for compensation from the respondent is unfair and unjust. Therefore, the complainant is not entitled to any relief from this Hon'ble forum.

D. Written Arguments filed by the Complainant:

12. The Complainant booked Flat/Unit No. CW3-401 in the Respondent's apartment complex on March 20, 2017, by paying a token advance of Rs. 50,000/-. The Complainant agreed to pay 20% of the total sale consideration through 36 equated monthly installments (EMIs), with the remaining 80% to be paid as per the construction-linked payment scheme or through a bank loan.

13. It is essential to note that the Complainant has never denied making any payments, as stated in the counter filed. The Complainant's defense is that the cheques he deposited bounced, and when the Respondent reminded him about these cheques, he promised to deposit the amount as soon as possible, as he was experiencing financial difficulties. This explanation by the Complainant should be taken into consideration when evaluating the case, as it provides context for the payment issues in question.

14. The Complainant faced financial difficulties after losing his job during the COVID-19 pandemic in August 2020, which prevented him from obtaining a home loan. Due to these unforeseen circumstances, the Complainant's financial situation has changed, making it challenging for him to meet the remaining payment obligations.

15. The Respondent made a payment reminder call every month to the Complainant. However, due to financial hardship, the Complainant, unable to pay, requested the Respondent to cancel the flat in November 2020. The Respondent did not acknowledge this request and continued sending payment reminders. Finally, after 13 months, the Respondent canceled the flat in January 2022.

16. In light of these circumstances, the Complainant has requested the Respondent to consider refunding the amount paid in installments for the registration of the flat, which totals Rs. 8,06,875/-.

17. The complainants' request highlights the importance of considering the individual circumstances when dealing with financial agreements. Unforeseen events can significantly impact one's ability to fulfill financial commitments, and it is crucial to approach such situation with empathy and understanding.

18. In conclusion, the complainant's request to revert back the amount paid for the flat reflects their genuine financial hardship. The Respondent should carefully assess the situation and work towards a fair and equitable outcome for both parties involved.

19. It is submitted that Section 18(1)(b) of the Real Estate (Regulation and Development) Act, 2016 (RE(R&D) Act) clearly stipulates that due to the discontinuance of a developer's business on account of suspension or revocation of the registration under this Act, or for any other reason, the developer shall be liable, on demand, to the allottees. In such a case, if the allottee wishes to withdraw from the project, the developer is required to return the amount received in respect of that apartment, plot, or building, as the case may be, with interest at such rate as may be prescribed, including compensation in the manner provided under this Act. Provided, however, that where an allottee does not intend to withdraw from the project,

the promoter shall pay interest for every month of delay, until the handing over of possession, at such rate as may be prescribed.

20. It is most important to note that developers registered under the RERA are bound to return the amount collected at the time of purchase or booking in case of cancellation within 45 days of cancellation. However, in this case, it has exceeded the prescribed time as per the Act. Additionally, the Haryana Real Estate Regulatory Authority has directed a Gurugram-based builder to refund the amount paid to a homebuyer who defaulted in making timely payments, after forfeiting the predetermined earnest money. A three-member bench comprising Sanjeev Kumar Arora, Ashok Sangwan, and Vijay Kumar Goyal stated that while canceling the flat buyer's unit on account of default, it was an obligation of M/s Martial Buildcon Private Ltd. to return the paid amount after forfeiting the earnest money. The Authority relied on **Maula Bux v. Union of India** (1970) and **Sirdar KB. Ram Chandra Raj Urs v. Sarah C. Urs** (2015), wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable. If the forfeiture is in the nature of a penalty, then the provisions of Section 74 of the Indian Contract Act, 1872, are applicable, and the party forfeiting the amount must prove actual damages. "After cancellation of allotment, the unit remains with the builder; as such, there is hardly any actual damage."

21. In accordance with this complaint, it may be noted that as per the RERA Act, the refund shall be paid within 45 days. However, the Respondent has not adhered to this requirement. The Complainant has been regularly following up with the Respondent via phone calls, emails, and personal visits to the Respondent's office to recover his money. Despite these efforts, the Respondent took 20 months to refund only a partial amount. In view of the foregoing, I earnestly appeal to this esteemed authority to consider our request and direct the Respondent to refund the entire balance amount of Rs. 3,29,000/-, along with applicable interest. Additionally, we seek compensation of Rs. 5,00,000/- for the damage and mental agony caused to the Complainant.

F. Findings on the relief sought by the complainant:

F:1. Direct the respondent to refund the paid up amount along with interest

22. The Complainant submitted that on 20.03.2017, he booked a flat with the Respondent and paid a token amount of Rs.50,000/-. An agreement was executed for an initial down payment of 20% through a structured plan of 36 equated monthly installments. The remaining 80% of the total sale consideration was to be paid according to the work schedule. The Complainant acknowledged that the cheques issued by him were dishonored, attributing this to job loss during the COVID-19 pandemic and a lack of funds, which prevented him from obtaining a loan and continuing the purchase process. Consequently, the Complainant submitted a cancellation request in November 2020, which the Respondent did not acknowledge, continuing instead to send payment reminders. The cancellation was finally executed after 13 months, in January 2022. Post-cancellation, the Complainant requested a refund of the amount of Rs.8, 06,875/-, but the Respondent refunded only Rs.5,67,675/- via NEFT on 06.10.2023. The Complainant contended that the remaining Rs.3, 92,000/- was forfeited in gross violation of the rules, terms, and conditions, and he is entitled to a refund of the entire amount with interest and compensation.

23. The Respondent's counsel submitted that as per the terms of the booking form duly signed and submitted by the Complainant, the cancellation policy was clearly communicated. The policy stipulates that timely payment of installments is essential, and in the event of a breach, the allotment can be canceled at the developer's discretion with certain deductions: Rs.25,000/- for 1BHK and Rs.50,000/- for 2BHK, primarily towards administrative charges. The management reserves the right to impose additional charges based on direct and indirect expenses related to the sale/project. It is also stated that the management would not be responsible for refunding any collected interest on late payments and would deduct any unpaid interest on delayed payments. The balance amount would be refundable without interest after deducting administrative expenses and only after the same apartment is allotted to another intending allottee. The developer may condone delays by charging penal interest at 1.5% per month for up to three months. The company reserves the right to cancel bookings with a default of three payments and

release the unit for resale. Hence, the cancellation was executed per the agreed terms and conditions signed by the Complainant during the booking process.

24. The Respondent further relied on the condition that any amount can be deducted for breach of contract, with the cancellation at the developer's discretion. The Complainant did not dispute the delay in payments. The Complainant approached the Respondent for cancellation in November 2020, which was acknowledged by the Respondent two years later. However, no evidence was provided by the Complainant to substantiate the cancellation request in November 2020. The Respondent claimed that the Complainant defaulted on payments until 10.09.2021, calculating the total amount due till that date, and that the Complainant owed Rs.14,30,882 as of the cancellation date. The applicable cancellation charges were Rs.3,03,943 (10% of the total consideration value of Rs.30,39,430).

25. For a proper appreciation of the submissions made by the parties, the admitted facts are as follows: The Complainant applied for an apartment in the concerned project, and an allotment letter was subsequently issued to him. It is also admitted that the Complainant sought the cancellation of the unit and a refund of the entire amount deposited by him. The Respondent later terminated the booking of the unit in favor of the Complainant. It is further admitted that the Complainant deposited Rs.8,06,875/- out of the total sale consideration of Rs.30,39,430/- for the allotted unit.

26. Upon careful examination of the facts, the Authority is of the opinion that no formal agreement of sale was executed between the parties. As such, the Respondent cannot rely on the cancellation policies or terms that are not explicitly mentioned in the allotment letter, which has been placed before this Authority. The cancellation policy relied upon by the Respondent appears to be based on a booking agreement that has not been presented to this Authority. Therefore, the Respondent cannot invoke a cancellation policy without providing substantive evidence. Moreover, the Authority finds the Respondent in violation of collecting more than 20% of the total sale

consideration without entering into a formal agreement of sale and further deducting 10% from the total sale consideration.

27. It is noted that the Respondent cannot forfeit amount at its discretion. The Telangana Real Estate (Regulation and Development) Rules, 2017, Annexure 38, clearly stipulates that only the booking amount may be deducted by the promoter in cases where there is no fault on the part of the promoter. Hence, if the promoter is of the view that any amount can be deducted at its discretion, such an act shall be considered a violation by this Authority.

28. In light of the above, there is no basis for the Respondent's contention regarding the forfeiture of 10% of the total sale consideration amount paid by the Complainant. However, the Authority notes that there is no fault on the part of the promoter in the cancellation sought by the Complainant and therefore allows the promoter to deduct the booking amount as per the TG RE(R&D) Rules, Annexure 38.

30. It is therefore held that the Complainant is entitled to a refund of the amount paid by him, subject to the forfeiture of the booking amount, i.e., Rs.50,000/-, paid by him to the Respondent.

31. Furthermore, the Complainant has sought interest on the substantial amount that was refunded after 1.5 years, with a deduction of 10% from the total sale consideration. As per Rule 9.3(ii) of the TG RE(R&D) Rules, the promoter is obligated to repay the amount within a period of ninety days after the termination or the date on which the promoter is able to resell the apartment. Given that the cancellation notice was issued to the Complainant on 21.01.2022, the Respondent should have repaid the amount by 21.04.2022; however, the Respondent only refunded the amount on 06.10.2023.

32. In the absence of evidence from the Complainant substantiating that he approached the Respondent for cancellation in November 2020, the Authority considers the cancellation letter dated 21.01.2022 issued by the Respondent to the Complainant. Furthermore, the Authority observes that the promoter utilized the amount paid by the Complainant for the development of the concerned project for approximately 2.5 years, retaining the total amount paid by the Complainant and returning only Rs.5,67,675/- on 06.10.2023. Consequently, the promoter deprived the allottee of the amount for 1.5 years without any justification.

33. In view of the above observations, the Authority is of the opinion that the forfeiture of an amount up to 10% of the total sale consideration is unreasonable, and depriving the allottee of the amount for approximately 1.5 years is not acceptable. Therefore, considering the peculiar circumstances of the case, the Respondent is directed to pay interest to the allottee on the refunded amount of Rs.5,67,675/- from 21.04.2022 to 06.10.2023 and refund the remaining balance amount along with interest from the due date of 21.04.2022 after deducting the booking amount. The interest at 2% above the State Bank of India's highest marginal cost lending rate, which as of 22.07.2024 is 8.85%, totaling 10.85% per annum, shall be payable by the promoter/respondent to the complainant.

34. Additionally, the Authority also notes that the Respondent collected more than 10% of the total sale consideration without entering into an agreement of sale, which constitutes a gross violation of Section 13 of the RE(R&D) Act, which prohibits a promoter from accepting a sum exceeding 10% of the cost of the apartment as an advance or application fee from the allottee without entering into a written agreement for sale. The Respondent's failure to adhere to the provisions of the RE(R&D) Act and the demand for more than ten percent of the total plot amount is a violation of the law.³³. We therefore proceed to pass the following order:

Directions of the Authority:

35. In light of the findings of the Authority as recorded above, the following directions under section 37 of the RE(R&D) Act to ensure compliance with obligations imposed upon the under the RE(R&D) Act are issued:

1. The Respondent is directed to pay interest to the complainant on the refunded amount of Rs.5,67,675/- from 21.04.2022 to 06.10.2023 and refund the remaining balance amount along with interest from the due date of 21.04.2022 after deducting the booking amount. The interest at 2% above the State Bank of India's highest marginal cost lending rate, which as of 22.07.2024 is 8.85%, totaling 10.85% per annum.
2. Parties to bear their own costs.
3. For contravening Section 13 of the RE(R&D) Act, the Authority, exercising its powers under Section 61 of the RE(R&D) Act, imposes a penalty of Rs. 2,00,000/-. This penalty is imposed for collecting a sum of more than 10% of the cost of the concerned apartment without entering into a written agreement for sale. The amount is payable in favor of TGRERA FUND through a Demand Draft or online payment to A/c No. 50100595798191, HDFC Bank, IFSC Code: HDFC0007036, within 30 days of receipt of this Order by the Respondents/Promoter.
4. The parties are hereby informed that failure to comply with this Order shall attract Section 63 of the Act.
5. If aggrieved by this Order, the parties may approach the TG Real Estate Appellate Tribunal 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