

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

COMPLAINT NO. 49 OF 2024

14th November, 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 Ganapathi P. Gorekar

...Complainant

Versus

M/s Aliens Developers Pvt.Ltd

...Respondent

The present matter filed by the Complainant herein came up for final hearing on 07.08.2024 before this Authority in the presence of Complainant present in person and Respondent counsel Jasmin Kaur and upon hearing the arguments of the party, 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. The complainant initially booked a flat in Aliens Space Station, Tellapur, Hyderabad, in 2012. Due to a lack of progress in the construction of the originally booked flat, the complainant, at the request of the Developers, changed the booking to Station No. 11, Flat No. 1865.

4. An Agreement of Sale for the newly booked flat was entered into on 17.02.2016, with a total consideration of Rs. 67,00,000/- (excluding applicable taxes). The Sale Deed and Construction Agreement were executed and registered on 01.07.2016 and 02.07.2016, respectively. The complainant has paid Rs. 63,75,951/- towards the cost of the flat (more than 95% of the total consideration) and Rs. 4,18,356/- towards applicable taxes. The remaining amount is to be paid based on the progress of the work or at the

time of possession. The construction has only reached the structural frame level; the finishing work is yet to be started and completed.

5. As per the Agreement of Sale, possession of the flat was to be delivered within three years from the date of the Agreement, i.e., by December 2017. The Developers have repeatedly assured the complainant that the finishing work will be completed and possession will be handed over once funds/loans are sanctioned. This assurance has been ongoing for the past five years.

B. Relief Sought:

6. The complainant requests the following:

- a. Intervene in the matter.
- b. Direct Aliens Developers (P) Ltd. to hand over possession of Flat No. 1865 at Aliens Space Station, Tellapur, Hyderabad, at the earliest.

C. Interim Request:

- a. Immediate direction to the Developers to complete the finishing work and hand over the possession of the flat.
- b. Consideration of the financial burden on the complainant due to continued rental payments.

D. Respondent's Reply:

7. The complainant's application is not maintainable under the facts and circumstances of the case, as the complainant has approached this authority by suppressing material facts. The instant application lacks any cause of action against the respondent and is liable to be dismissed. It is submitted that the complaint is misconceived, based on suppression and incorrect facts.

8. The averments made in the application are false, baseless, and concocted for the purpose of this application. The complainant is put to strict proof of the same. The respondent denies each and every allegation made by the complainant, except for those that are specifically and expressly admitted herein.

9. The respondent is a reputable construction company with its registered office at Aliens Space Station, Tellapur, RC Puram Mandal, Gachibowli,

Sangareddy District - 502032. The complainant expressed interest in purchasing residential flat No. 1865, a 3BHK of 1673 sq. ft. in super built-up area, located in Station 11 on the 18th floor of the residential project "Aliens Space Station," located at Survey Nos. 384 & 385, Tellapur, RC Puram Mandal, Sangareddy District - 502032, Telangana, for a total sale consideration of Rs. 67,00,000/- with a token amount of Rs. 32,00,000/-.

10. The project, "Aliens Space Station," located at Survey Nos. 384 & 385, Tellapur RC Puram Mandal, Sangareddy District, Telangana, commenced in 2008, long before the introduction of the RERA legislation. It is submitted that although the project was launched in 2008, it did not take off as planned due to several reasons, such as:

- a. The 2008 housing crisis and global economic slowdown, which adversely impacted the real estate market in India.
- b. Political turmoil during 2011-12 due to the Telangana-Andhra Pradesh bifurcation, which brought unrest in the real estate sector.
- c. Numerous external, technical, and financial challenges, which hampered the progress of the project.
- d. The COVID-19 pandemic, which severely affected the project. Several employees, including key managerial personnel of the respondent company, faced health challenges during this period, leading the company to divert its focus towards employees' welfare, including medical expenses and setting up quarantine centers, which caused a financial strain on the company. Consequently, it took considerable time for the respondent to recover from the pandemic's aftermath.

11. It is pertinent to mention that in order to revive the project, the respondent approached SWAMIH Investment Fund I (SWAMIH), a government-backed investment fund under SBI Cap Ventures Ltd., formed for completing stressed and stalled residential projects. The respondent received a total sum of Rs. 280 crore and an additional Rs. 52 crore, solely for the completion of the project, as per the SWAMIH Investment Committee's approval.

12. It is submitted that to proceed with the transactional documents and commence the funding process, the respondent was required to obtain requisite approvals from various authorities, including the Telangana Real Estate Regulatory Authority (TGRERA). To meet SWAMIH's stipulations, the project was registered with TGRERA, and a certificate bearing registration number P01000007265 was issued on 16/11/2023.

13. As per the RERA registration certificate granted on 16/11/2023, the respondent has been adhering to RERA guidelines in both letter and spirit. Furthermore, an expert committee has been formed to ensure the smooth completion of the project. It is submitted that, as per the affidavit dated 01/03/2023 submitted before the TGRERA, the timeline for the project's completion is March 2027.

14. The respondent sold the flat to the complainant for Rs. 67,00,000/- in 2016. Currently, similar flats in the same project are being sold for Rs. 1.45 crore. Despite the substantial increase in market value, the respondent is committed to handing over the flat at the agreed price of Rs. 67,00,000/-.

15. The respondent is fully committed to completing the final pending work on the flat and handing it over to the complainant. The project has progressed up to the 4th floor, and the structure of the 18th floor, where the complainant's flat is located, has been completed. The respondent is dedicated to fulfilling all remaining obligations to deliver the flat in satisfactory condition and to ensure compliance with quality standards.

16. As per the affidavit submitted, the deadline for project completion is March 2027. The respondent hereby undertakes to hand over the flat to the complainant well within the project's completion deadline.

17. Therefore, it is prayed before this Hon'ble Authority to stay all further proceedings, based on the undertaking to hand over the flat within the stipulated timelines, and to pass an order in favor of the respondent and against the complaint.

E. Rejoinder:

18. The reasons for the delay in handing over possession of the flat, as enumerated in paragraph 2 of the developer's letter dated 18/04/2024, are not true. The fact is that, before booking the flat with Aliens Developers Pvt. Ltd., the complainant visited the site of another housing project located in the vicinity of the respondent's project. The situation and reasons mentioned by the respondent were the same and equally applicable to the other housing project as well. However, the other developers have completed their projects and handed over possession of the flats long ago.

19. When the complainant booked the flat in December 2012 with the respondent's project, the bifurcation of Telangana and Andhra Pradesh was already over. The other developers faced the same situation but completed their projects on time. None of the builders delayed the issue, unlike the respondent.

20. The COVID-19 pandemic, cited by the developer as a reason for the delay, surfaced eight years after the complainant booked the flat. Therefore, this reason is irrelevant and misleading.

21. According to the registration of the project with TGRERA, the housing project must be completed by the end of 2026. However, this deadline should not apply to flats that were booked 11 years before RERA registration.

22. Initially, the complainant booked flat No. 1406 in Station 1 with an area of 1874 sq. ft. and one car parking space for a total cost of Rs. 64,54,284/- in December 2012. Due to a lack of progress in construction, the complainant changed to flat No. 1865 in Station 11, measuring 1673 sq. ft., on 31/01/2016, for a total cost of Rs. 67,00,000/- (at the prevailing rate), with possession promised by 31/12/2017. To date, the complainant has paid Rs. 62,98,000/-, which is 94% of the flat's total cost, excluding taxes. Additionally, the complainant paid Rs. 2,45,716/- extra due to the change to a smaller flat by 201 sq. ft.

23. The complainant is the only customer who booked a flat in 2012 and has not yet received possession. Other customers who booked during that time either received refunds or switched to other locations. The complainant is the only exception and should be considered for early possession on a priority basis.

24. The developer sold the flat for Rs. 67,00,000/- in 2016, yet they are comparing today's prices to those of over nine years ago. The complainant has taken a housing loan, for which the bank charges 10% interest compounded monthly. If the amounts paid by the complainant are calculated at the same 10% interest, compounded quarterly, the total would amount to Rs. 1,56,95,067/- by 10/07/2024, and more if compounded monthly.

25. In light of this, the complainant requests the Hon'ble Authority to determine who has actually incurred losses in this case. The respondent's statement that the flat will be handed over by the end of 2026 is unacceptable. If calculated from the date of booking, this would result in a 14-year delay, which is abnormal. This delay has caused significant mental distress to the complainant.

26. The Hon'ble TGRERA is requested to direct the developer to pay compensation by way of monthly interest at 10% per annum on the amount paid by the complainant (excluding taxes) from the agreed handover date until the actual handover of possession. Additionally, it is requested that the respondent be directed to complete the final finishing/touch-up work on the flat as a priority.

F. Observation of the Authority:

27. We have carefully considered the arguments advanced by both parties and have thoroughly examined the record along with the documents submitted by the Complainant and the Respondent. It is an undisputed fact, as per the Agreement of Sale dated 17.02.2017, that the Respondent was obligated to deliver possession of the unit by December 2017. The Respondent has admitted that the project remains incomplete as of today and has stated

that they have received funding under the SWAMIH Fund for the purpose of completing the construction. The stipulated date for completion was December 2017, seven years ago. The Respondent attributes the delay to political turmoil during 2011–12, various external, technical, and financial challenges, and the impact of the COVID-19 pandemic.

28. While the SWAMIH Fund, sanctioned by the Government of India, was indeed established to support real estate projects affected by certain economic conditions, the Authority notes that the reasons cited by the Respondent, such as the 2008 housing crisis and political instability, are events that occurred prior to the execution of the Agreement of Sale with the Complainant in February 2017. At the time of entering into the Agreement, the Respondent committed to delivering possession by December 2017. If the Respondent was aware of these pre-existing challenges, it is inexplicable why such a timeline was promised. The invocation of the COVID-19 pandemic as a reason for delay is also untenable, as this event occurred only after the agreed possession date and cannot be retroactively justified as a cause for the delay.

29. The Respondent has further submitted that they have approached the SWAMIH Investment Fund, a government-backed initiative managed by SBI Cap Ventures Ltd., formed to complete stalled residential projects. To facilitate funding, the Respondent had to obtain requisite approvals, leading to the issuance of a TGRERA certificate (No. P01000007265) on 16.11.2023. The Respondent claims to have complied with the RERA guidelines and has revised the project's completion timeline to the end of 2026, which has been communicated to RERA at the time of registration.

30. The Authority emphasizes that the RERA registration granted to the Respondent was issued with due consideration to protect the interests of all project allottees, demonstrating the Respondent's commitment to complete the project and deliver units to both existing and prospective allottees in good faith. While obtaining RERA registration, the Respondent affirmed and documented that all current allottees had consented to the projected completion date. Notably, a condition of the RERA Registration certificate required the formation of a Resident Association comprising all existing

allottees of the project, along with a formal resolution affirming their agreement on the completion of development. However, when the Authority requested the Respondent to furnish specific consent from the Complainant regarding the project completion timeline, the Respondent acknowledged that the Complainant is not among the consenting allottees. The Respondent, therefore, cannot solely rely on the registration's validity period, which extends until 14.12.2026, as grounds to defer possession for allottees who have not provided consent. Non-compliance in this regard shall invoke consequential actions.

31. The Complainant has waited for over a decade for the promised unit, which was assured to him in 2017. The Complainant cannot be deprived of his rightful possession due to the Respondent's inability to complete the project. The Complainant is fully within his rights to seek redress from this Authority for the delay in possession. The Respondent's reliance on the revised completion date of 2026 does not absolve them of their obligation to deliver possession as per the original Agreement.

32. In this context, the Authority would like to reference the decision of the Hon'ble Supreme Court in *Newtech Promoter & Developers Pvt. Ltd. v. State of Uttar Pradesh* (11.11.2021), where it was held:

“The unqualified right of the allottee to seek refund referred 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 Legislation 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 attributable to the allottee/homebuyer, 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.”

33. In the present case, the Complainant has chosen not to withdraw from the project and prays that the Respondent be directed to hand over possession immediately. The Authority acknowledges that the Respondent's project is distressed and has received financial backing from the Government of India through SBI Cap Ventures Ltd- SWAMIH Fund. In light of the Respondent's good faith efforts to complete the project, the Authority deems it reasonable to allow them the opportunity to deliver the unit within the RERA-registered completion date, i.e., 14.12.2026. However, the Respondent cannot indefinitely delay possession, and the unit must be handed over as soon as possible.

34. The Authority finds that the Respondent has not delivered possession of the subject unit to the Complainant, thereby breaching its obligations under the Agreement of Sale. This constitutes non-compliance with Section 11(4)(a), read in conjunction with the proviso to Section 18(1) of the Real Estate (Regulation and Development) Act, 2016. Consequently, the Respondent is liable to pay the Complainant interest for the delay in possession.

In calculating this interest, the Respondent shall be entitled to benefit from waivers applicable for the COVID-19 pandemic period, as per the Orders of this issued as follows:

- From 15.03.2020 to 14.09.2020, pursuant to Circular Order No. 14, dated 13.05.2020, From 15.09.2020 to 15.03.2021, pursuant to Order No. 15, dated 29.09.2020, and From 15.03.2021 to 14.09.2021, pursuant to Order No. 16, dated 01.06.2021, as issued by TGRERA.

35. After deducting these exempted periods, the Respondent is directed to pay interest to the Complainant for each three-month delay period, calculated from the due date of possession (December 2017) until the actual possession is delivered or occupancy certificate is issued, whichever is earlier, at the rate prescribed under Section 18 of the Act, read with Rule 15 of the TG RE(R&D) Rules.

36. Additionally, acknowledging the Respondent's commitment to completing the project in good faith, the Authority deems it equitable to permit the Respondent to pay the accrued interest for the balance period in

three equal monthly instalments from the date of issuance of occupancy certificate (OC) obtained. This arrangement is intended to ensure project completion within the stipulated RERA-registered timeframe, which is December 2026, thereby serving the interests of other flat buyers in the project, at large.

37. As per the website of the State Bank of India (<https://sbi.co.in>), the marginal cost of lending rate (MCLR) as of 01.10.2024 is 8.95% p.a. accordingly; the prescribed interest rate shall be MCLR + 2%, amounting to 10.95% p.a.

Directions of the Authority:

38. 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

- i. The Respondent is directed to pay interest at the prescribed rate of 10.95% per annum from the due date of possession, i.e., December 2017 to till date within 45 days, calculated, excluding the COVID-19 waiver period as per orders issued by TG RERA and for the balance period in three monthly equal instalments from the date of issue of Occupancy Certificate. This interest shall continue to accrue until the issuance of the occupancy certificate (OC) or partial OC for the relevant tower.
- ii. The arrears of interest accrued from December 2017 until the date of this Order shall be paid by the Respondent to the Complainant within 45 days from the date of this Order. Thereafter, interest for each subsequent three-month delay period shall be paid by the Respondent to the Complainant on or before the 10th day following each three-month period until possession is actually delivered.
- iii. The Respondent is hereby directed to expedite the completion of the project and hand over possession of the subject unit to the Complainant at the earliest possible date, without any further undue delay.

- iv. Complaint stands disposed of.
- v. Parties to bear their own costs.
- vi. The parties are hereby informed that failure to comply with this Order shall attract Section 63 of the Act.

**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**

