

**BEFORE THE ADJUDICATING OFFICER,
TELANGANA REAL ESTATE REGULATORY AUTHORITY,
HYDERABAD.**

Dated, this, the 23rd day of JANUARY 2025.

Present:- Sri Syed Lateef-ur Rahman,
Adjudicating Officer.

C.C.P.No.5/2024/TG RERA

Between:

Smt.Chiruvolu Naga Brunda W/o Sri Chiruvolu Ravi Shankar,
H.No.1.8.22/71/202, S.V.Nivas, Shashikanth Nagar,
North Kamala Nagar, Kapra, Medchal-Malkajgiri District – 500 062.

...Complainant.

AND

M/s.Modi Realty Genome Valley LLP, rep., by Mr.Soham Modi, the
authorized representative of its Partner M/s.Modi Housing Pvt.Ltd,
H.No.5-4-187/3 & 4, 2nd Floor, Soham Mansion, M.G.Road,
Secunderabad – 500 003.

...Respondent.

This complaint came up for hearing before me on 03.01.2025 in the presence of Sri P.Rama Krishna, Counsel for the Complainant and of Sri M.A.Lateef, Counsel for the Respondent, upon perusing the material on record and on hearing argument of both sides and having stood over for consideration till this day, the following order is passed:

ORDER

The present complaint has been filed under Section 31 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as 'the Act') read with Rule 35 of the Telangana State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as 'the Rules') by the complainant against the Respondent for award of compensation.

CASE OF THE COMPLAINANT:

2(a). The factual matrix as gathered from the complaint reveals that the complainant booked a Flat bearing No.117 on First floor in Block-A admeasuring

800 Sq.Ft. with single car parking in the Project to be constructed at Muraharipalli village, Yadaram Gram Panchayat, Shamirpet Mandal by the respondent on 30.07.2021, for a consideration of Rs.23,75,000/- (Rs.Twenty Three Lakhs and Seventy Five Thousand only). On the same day, the complainant paid an initial amount of Rs.25,000/- (Rs.Twenty Five Thousand only) to the respondent and an Agreement of Sale was executed. As per Broucher and Agreement of Sale, the respondent is under obligation to deliver possession of Flat by 31.01.2023, with a grace period of six months delay, i.e., by 31.07.2023.

2(b). According to the complainant, the construction work was not completed stage-wise and the Bank officials stopped further payments after inspection. The respondent then issued a notice on 11.10.2021 to make payment of 2nd instalment. Again, the respondent issued another notice dt.01.12.2021 demanding payment of third instalment. It is stated that these notices were issued inspite of the fact that the stage-wise construction was not completed.

2(c). It is stated that the complainant made repeated requests and made multiple visits to see that the construction is completed. At last, the respondent sent a letter to the complainant that possession can be taken by 1st May, 2024 after making full payment. The respondent assured that the complainant shall make full payment and got sale deed registered on 15.03.2024.

2(d). The complainant pleads that the electrical meter was not erected and water connection supply was also not provided even by the date of registration of Sale Deed. The respondent informed the complainant that she will be provided electrical meter in June, 2024. Similarly, water plant facility, as agreed under Agreement of Sale, is not provided till date. The complainant demanded compensation @ Rs.8/- per Sq.Ft for the area of Flat admeasuring 800 Sq.Ft as per agreement due to delay in giving possession, which comes to Rs.1,02,400/-

(Rs.One Lakh, Two Thousand and Four Hundred only). The respondent sent a message on 17.05.2024 through WhatsApp stating that the complainant cannot claim compensation due to Corona and low availability of construction material and labour. According to the complainant, the Lockdown was lifted on 20.06.2021 and thereafter she booked the Flat on 30.07.2021. There was no Corona at all in Hyderabad at the time of booking of Flat. As such, the said contention of the respondent is not tenable.

2(e). The complainant further pleads that she booked the Flat in order to have residence at the outskirts of the City for peaceful living. However, due to delay in delivery of possession of Flat by the respondent, the plan of the complainant failed. Due to such delay and harassment and mental agony caused by the respondent, the husband of the complainant fell sick and had to take treatment.

2(f). Therefore, the complainant prays to award Rs.1,02,400/- (Rs.One Lakh, Two Thousand and Four Hundred only) towards loss of rent, Rs.1,75,000/- (Rs.One Lakh and Seventy Five Thousand only) towards harassment and mental agony and Rs.25,000/- (Rs.Twenty Five Thousand only) towards legal expenses.

3. Originally, the complainant filed her complaint narrating certain facts. Later, she filed a petition for amendment of pleadings and such petition was allowed.

4. The respondent had filed their counter before filing of said amendment petition. After allowing of amendment petition and filing fair copy of complaint, the respondent filed additional counter.

5(a). The respondent in their counter and additional counter contends that the complaint filed by the complainant is false and not maintainable. According to respondent, they are the reputed Developers and they have 30+ years of experience

in construction of Houses and Flats in and around twin Cities of Hyderabad and Secunderabad.

5(b). According to the respondent, the real facts are that the complainant has not made payment of instalments in time as per the schedule mentioned in Agreement of Sale. The last instalment was paid by the complainant in the month of January, 2024. The respondent contends, according to the complainant, the Bank has not released payments due to incomplete stage of construction, whereas clause 8.5 of Agreement of Sale envisages that the purchaser at his discretion may avail housing loan from Bank/Financial Institutions and payment of instalments to the vendor by the purchaser shall not be linked with housing loan availed/to be availed by the purchaser. The respondent also contends that Clause 8.6 of Agreement of Sale mandates that in the event the purchaser is arranging/has arranged finance under housing finance scheme or any other scheme for the purchase of schedule flat and payment of sale consideration under the agreement, it shall be the sole responsibility of the purchaser for timely payment from such Financiers to the vendor and any default in payment by such Financier to the vendor shall be deemed to be the default by the purchaser.

5(c). The respondent further contends that due to Nation-wide Lockdown, the Ministry of Housing & Urban Affairs in its Office Memorandum dt.13th May, 2020 declared the Pandemic as a “*Force Majeure*” event for the purpose of Real Estate (Regulation and Development) Act, 2016 and extended timelines for completion of real estate projects. Clause 21 of Agreement of Sale clearly speaks about ‘*Force Majeure*’ and it squarely applies to the case of the respondent.

5(d). The respondent also contends that they have informed the complainant through letter dt.10.02.2024 that the Flat is ready and to clear the dues and take possession. The complainant then cleared the dues on 16.03.2024 and on the very

next day, Sale Deed was registered. According to the respondent, the complainant delayed to take possession by signing possession letter and after repeated reminders, she took possession letter on 30.06.2024 and thereafter filed the present complaint. It is contended that in a recent land mark order dt.08.11.2024 MahaRERA clarified and highlighted that home-buyers are not entitled to claim compensation for delayed possession, if the complainant delayed payment after taking possession.

5(e). It is further contended that the complainant has appointed an Advocate on 23.09.2024 and filed a petition for amendment of complaint. Under such amendment, she sought to amend the amount of compensation from Rs.75,000/- to Rs.1,25,000/-. According to the complainant, her husband fell sick and took treatment due to the harassment and mental agony caused by the respondent. It is stated that if any amount has to be granted for alleged mental agony, it should be granted for such mental agony to the complainant and not to the mental agony caused to her husband. Further, the Discharge Summary of Hospital filed by the complainant shows that her husband aged 46 years old was admitted with complaints of bilateral lower limb weakness since three months and left foot burning since three days. When such is the case, where the question of mental agony does arises. It is contended that the complainant has filed the present complaint suppressing and misrepresenting material particulars to gain wrongfully and to harass the respondent. Therefore, the respondent prays to dismiss the complaint.

6. The complainant and respondent did not choose to adduce oral evidence. The complainant got marked Exs.A1 to A30 on her behalf, whereas the respondent got marked Exs.B1 to B6 to support their case, with consent.

7. Learned Counsel for both parties have advanced oral arguments and also filed written arguments.

8. Now the POINT for consideration is *whether the complainant is entitled for compensation? and if so, for what amount?*

9. POINT:

At the outset, it is pertinent to mention that the complainant on one hand and the respondent on the other blame each other and try to contend that the other side is at fault in complying the terms and conditions agreed upon at the time of entering into agreement and booking flat. The complainant contends that the respondent failed to complete construction and hand over possession as agreed and caused much delay and as such she is entitled for compensation. On the other hand, the respondent contends that the complainant failed to make payments of instalments as per terms and conditions as mentioned in Agreement of Sale and as such the complainant has no right to claim compensation.

10. It is the case of the complainant that she booked Flat on 30.07.2021 by making payment of Rs.25,000/- and an agreement of sale dt.04.08.2021 was executed. As per agreement, the possession of flat was to be given by 31.01.2023 with grace period of six months delay, i.e., by 31.07.2023. She further pleaded that she took loan of Rs.23,75,000/-, but since the construction work was not completed stage-wise, the Bank officials stopped further payment. She has also pleaded that the respondent issued notices to make payment of second and third instalments on 11.10.2021 and 01.12.2021.

11. On the other hand, the respondent contends that the complainant has not made payment of instalments in time as per schedule mentioned in Agreement of Sale and last instalment was paid in February, 2024. According to respondent,

clause 8.6 of Agreement of Sale states that the purchaser at his discretion and cost may avail housing loan from Bank/Financial Institutions and payments of instalments shall not be linked with housing loan and if purchaser is arranging finance under finance scheme, it is the responsibility of purchaser; for timely payments. Therefore, the respondent contends that the complainant having not paid instalments as per agreement is not entitled to claim compensation.

12. As noted supra, the complainant got marked Exs.A1 to A30, whereas the respondent relied on Exs.B1 to B6.

13(a). Ex.A1 is Agreement of Sale dt.04.08.2021. Clause 4.11 of Agreement of Sale lays down that all terms and conditions shall be deemed to be part of agreement. Clause 8 of Agreement deals with payment terms. Clause 8.2 says that the purchaser shall pay the balance consideration as per payment schedule given in Annexure-A. It is also mentioned that the vendor shall intimate the purchaser stage of construction for payment of instalment in writing and purchaser shall not raise any objections for non receipt of such an intimation and delay the payment of instalment on that count. Clause 8.5 says that the purchaser at his discretion and cost may avail housing loan from Bank and shall endeavour to obtain necessary loan sanctioned within (30) days from the date of provisional booking. Further, the vendor shall, under no circumstances, be held responsible for non-sanction of the loan and the payment of instalments shall not be linked with housing loan availed/to be availed by the purchaser. Clause 8.6 says that in the event the purchaser is arranging finance under housing finance scheme, it shall be the responsibility of purchaser for timely payment and any default shall be deemed to be the default by the purchaser and the consequence as regards default in payments under the agreement shall become operative.

13(b). Admittedly, as per Annexure-A to Agreement of Sale, there is mention to the mode of payments, which reads as under:-

18	Payment terms:		
	Instalment	Due date for payment	Amount
	I	Within 15 days of booking	2,00,000/-
	II	Within 30 days of booking	3,80,000/-
	III	Within 7 days of completion of plinth beam	2,10,000/-
	IV	Within 7 days of casting slab	6,39,000/-
	V	Within 7 days of completing brick work and internal plastering	5,40,000/-
	VI	Within 7 days of completing flooring, bathroom tiles, doors, windows & first coat of pain.	4,45,000/-
	VII	On completion	2,00,000/-
19	Schedule date of completion :: 31.01.2023		

13(c). The complainant has purchased the Flat for Rs.23,75,000/-. The complainant did not plead the details of payment of amounts with dates in complaint or in written arguments. But she has filed receipts Exs.A9 to A17, which reveal the dates and payments, as under:

Mode of payment	Exhibit	Date of receipt	Amount paid
Through Cheque	Ex.A-9	30.07.2021	Rs. 25,000-00
Through Cheque	Ex.A-10	07.09.2021	Rs.1,50,000-00
Through Cheque	Ex.A-11	07.09.2021	Rs. 50,000-00
Through Cheque	Ex.A-12	16-04-2022	Rs,5,71,231-00
Through Cheque	Ex.A-13	19-05-2022	Rs.6,60,000-00
Through Cheque	Ex.A-14	09-01-2023	Rs.5,40,000-00
Through cash	Ex.A-15	12-07-2023	Rs.3,83,711-00
Through cash	Ex.A-16	13-02-2024	Rs. 40,000-00
Through Cheque	Ex.A-17	16-03-2024	Rs.5,15,718-00

13(d). The complainant herself pleaded in complaint that she booked the Flat on 30.07.2021 and paid initial booking amount of Rs.25,000/-. As per Agreement of Sale Ex.A1, the complainant is under obligation to pay Rs.2,00,000/- within fifteen days of booking and Rs.3,80,000/- within thirty days of booking. These payment

do not refer to any stage of construction. From the said payments, the complainant did not make said two payments in time. The very first and second payment of Rs.1,50,000/- and Rs.50,000/- were made by the complainant after one month and seven days as against payment within fifteen days from the date of booking. The complainant has also failed to make second payment of instalment of Rs.3,80,000/- within thirty days of booking. The respondent has issued notices Exs.B3 and B4 dt.11.10.2021 and 01.12.2021 stating that the complainant failed to make payment of Rs.3,80,000/- due on 27.08.2021 and demanding payment. Later, the respondent has issued notice dt.04.03.2022 Ex.B5 cancelling the booking of Flat. The very payment made after said payment of Rs.1,50,000/- and Rs.50,000/- was of Rs.5,71,231/- on 16.04.2022 under Ex.A12. Firstly, the complainant did not make payment of Rs.3,80,000/- within thirty days from the date of booking, which was to be made without reference to stage of construction. Secondly, the said payment of Rs.5,71,231/- was made after eight months fifteen days of booking. The complainant did not plead anything with regard to this payment, as this payment was to be made within seven days of completion of plinth beam. The complainant having approached for compensation, she has to plead and prove that there is no fault on her part. Therefore, it has to be held that the complainant has failed to perform her obligation as per Agreement of Sale Ex.A1 as contended by the Respondent and the contention of the Respondent is supported from the said notices.

14(a). It is the contention of the complainant that the respondent did not complete the stage of construction as mentioned in Annexure-A of Agreement of Sale Ex.A1 and as such she cannot be found fault for any delay as contended by the respondent. There does not appear to be any force in this contention. The said payment of first and second instalments do not refer to stage of construction. The payment of said two instalments were to be made within 15 and 30 days from the

date of booking without reference to stage of construction. Therefore, the said contention of complainant is not acceptable.

14(b). The possession of the Flat was agreed to be given by 31.01.2023 with grace period of six months, i.e., by 31.07.2023. The complainant contends that the construction of Flat was not done in time stage-wise and as such she cannot be found fault for delay in payment. The respondent has not denied straightaway about delay in construction, but he took the pleas of default on the part of complainant in payment of instalments and also pleaded that due to Covid, delay occurred. As far as the plea of respondent on the ground Covid pandemic is concerned, it is of no avail, as Flat was booked on 30.07.2021, which is after Covid period. However, the contention of complainant that she cannot be found fault for delay in payment as the construction was not done in time stage-wise is not acceptable, as the complainant failed to make said payments of first and second instalments in time, which do not refer to stage of construction as discussed above. As such, the said contention of the complainant is also of no avail.

15. It is pertinent to note that the possession of Flat was to be given by 31.01.2023 with grace period of six months, i.e., by 31.07.2023. But the complainant went on giving payment till 16.03.2024 as evident from Exs.A15 to A17, which fact does not appear to support the case of the complainant. Having failed to make payments as referred above and having failed to make out a case as pleaded that it is only respondent who is at fault for delay in giving possession of Flat, it is very difficult to accept the case of complainant that she is entitled for compensation.

16. The complainant has relied on mails/letters sent by her to the respondent during the months of April, May and July, 2024, i.e, Exs.A19 to A26 in regard to delay in construction and certain other incomplete works. These documents, no

doubt, support the contention of the complainant regarding delay in giving possession. But the fact remains that the complainant did not make payments of first and second instalments in time as discussed above and other two payments under receipt dt.13.02.2024 and 16.03.2024 Exs.A16 and A17 are also much after the due date of delivery of possession of Flat, i.e., 31.07.2023. There could have been fore in the contention of the complainant to rely on said Exs.A19 to A26 if she had made payments as agreed in time, which is not the case in present case.

17. No doubt, the respondent tried to take the ground of Covid pandemic for delay in completing construction and giving possession of Flat relying on Clause 21 of Agreement of Sale Ex.A1 as referred in letter dt.17.05.2024 Ex.A8 sent to the complainant. According to the complainant, this is an admission by the respondent about delay in completing the construction and giving possession of Flat. It is true that the very booking of Flat under letter dt.04.08.2021 Ex.A1 is after Covid pandemic. As such, the said ground relied by the respondent is of no help to them. Now the question is whether on this ground, the complainant can claim compensation? It is pertinent to note that the respondent did not contest the claim of the complainant only on said ground. The respondent has also opposed the claim of the complainant on the ground that the complainant has failed to pay the instalments as agreed and as such she is not entitled to claim compensation. On this count, the contention on behalf of the respondent as discussed and held above is found to be true. It being so, it is not open to the complainant to contend that the respondent has admitted about delay in completing construction and as such she is entitled for compensation.

18. I have gone through the documentary evidence relied by both the parties. The documentary evidence on record is of no help, in the facts and circumstances

of the case, to find force in the contentions advanced on behalf of the complainant that she is entitled to claim compensation.

19. For all the foregoing reasons, the conclusion that emerges on the Point is that the complainant failed to prove that she is entitled for compensation. The Point is accordingly answered against the complainant and in favour of the respondent.

20. In the result, the complaint is dismissed. However, having regard to peculiar facts and circumstances of the case, the parties shall bear their own costs.

Typed to my dictation, corrected and pronounced by me in open Court on this, the 23rd day of JANUARY, 2025.

Sd/-
ADJUDICATING OFFICER,
TG RERA: HYDERABAD.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED
NONE

Exhibits Marked for Complainant (marked by consent).

Exhibit	Date	Description of Document marked
Ex.A1	04.08.2021	Copy of agreement of sale between the parties.
Ex.A2	15.03.2024	Copy of sale deed between the parties.
Ex.A3	04.08.2021	Letter of provisional booking of Flat issued by the respondent in favour of the complainant.
Ex.A4	11.10.2021	Notice issued by the respondent to Ch.Ravi Shankar.
Ex.A5	01.12.2021	Notice issued by the respondent to Ch.Ravi Shankar.
Ex.A6	04.03.2022	Cancellation notice issued by respondent to Chiruvolu Ravi Shankar.
Ex.A7	10.02.2024	Letter issued by respondent to Ch.Ravi Shankar.
Ex.A8	17.05.2024	Letter issued by respondent to the complainant.
Ex.A9	30.07.2021	Receipt issued by the respondent in favour of complainant.
Ex.A10	07.09.2021	Receipt issued by the respondent in favour of complainant.
Ex.A11	07.09.2021	Receipt issued by the respondent in favour of complainant.
Ex.A12	16.04.2022	Receipt issued by the respondent in favour of complainant.

Ex.A13	19.05.2022	Receipt issued by the respondent in favour of complainant.
Ex.A14	09.01.2023	Receipt issued by the respondent in favour of complainant.
Ex.A15	12.07.2023	Receipt issued by the respondent in favour of complainant.
Ex.A16	13.02.2024	Receipt issued by the respondent in favour of complainant.
Ex.A17	16.03.2024	Receipt issued by the respondent in favour of complainant.
Ex.A18	20.06.2024	No Due Certificate issued by Respondent in favour of complainant.
Ex.A19	08.04.2024	Mail sent by the complainant.
Ex.A20	08.05.2024	Mail sent by the complainant to the respondent.
Ex.A21	11.05.2024	Mail sent by the complainant to the respondent.
Ex.A22	15.05.2024	Mail sent by the complainant to the respondent.
Ex.A23	17.05.2024	Mail sent by the complainant to the respondent.
Ex.A24	20.05.2024	Mail sent by the complainant to the respondent.
Ex.A25	21.05.2024	Mail from the Respondent.
Ex.A26	15.07.2024	Mail from the Respondent.
Ex.A27	...	Photographs (5 in number)
Ex.A28	...	8 GB SanDisk Pendrive.
Ex.A29	15.02.2024	Discharge summary issued by Citi Neuro Centre in respect of Sri Ch.Ravi Shankar.
Ex.A30	08.09.2024	Power (Electricity) Bill.

Exhibits Marked for the Respondent (marked by consent).

Exhibit	Date	Description of Document marked
Ex.B1	...	Copy of Electricity Sanction letter and payment Receipt.
Ex.B2	...	Colour Photos of RO Drinking Water Plant.
Ex.B3	11.10.2021	Copy of Notice issued to the complainant by the Respondent.
Ex.B4	01.12.2021	Notice issued by the respondent to the complainant.
Ex.B5	04.03.2022	Cancellation Notice issued by the respondent to the complainant.
Ex.B6	13.05.2020	Office Memorandum issued by the Govt. of India, Ministry of Finance in respect of Force Majeure Clause (FMC).

Cc

Sd/-
ADJUDICATING OFFICER,
TG RERA: HYDERABAD.