

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

**COMPLAINT NO.1297 OF 2023
COMPLAINT NO.1299 OF 2023
COMPLAINT NO.1298 OF 2023
COMPLAINT NO.1313 OF 2023
COMPLAINT NO.1314 OF 2023
COMPLAINT NO.1310 OF 2023**

15th Day of March, 2024

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

Smt Sowmya Pothuru
Sri Jasti Nihin Teja
Sri Surukanti Srinath Reddy
Sri Harsha Chitanya Vurugonda
Sri Badam Pradeep Kumar
Sri Yedla Krishna Murthy

...Complainant(s)

Versus

M/s Jaswitha Constructions

...Respondent(s)

The present matter filed by the Complainant herein came up for final hearing on 30.01.2024 before this Authority in the presence of Complainants present in person and Sri Srinivas and Sri Chandrshekar on behalf of the Respondent. Upon hearing the arguments of the parties, this Authority passes the following:

COMMON ORDER

2. This order shall be applicable to all 6 complaints filed under Form M, under section 31 of the Real Estate (Regulation and Development) Act, 2016 ("the Act"), read with rule 34(1) of the Telangana Real Estate (Regulation and Development) Rules, 2017 ("the Rules"). These complaints allege violation or contravention of the Act of 2016 or the Rules and Regulations made thereunder. The Act prescribes that the Promoter shall fulfil all obligations, responsibilities, and functions towards the allottee as per the agreed terms.

3. Captioned complaints are grouped together for hearing as they involve the same issues pertaining to the same project and the same respondent, M/s

Jaswitha Constructions– project "Jaswitha Luxor." The terms and conditions of the builder-buyer Sale Deeds, entered into between the parties, are also similar.

A. Facts of the complaint:

4. The present complaints revolves around the Respondent Firm's being the developer for the development of land admeasuring 6167.44 square yards in survey no.133, (out of A.c 1-24 guntas), situated at Gandipet Ranga Reddy, Telangana. In 2018, the Promoter obtained construction permission for a Residential complex from HMDA Proceeding no. 010049/SKP/R1/U6/HMDA/29/03/2018. The said Project is registered with TSRERA under registration no. P02400001886. The complainant contends that the Respondent has promised all the complainants that the possession of the units will be handed over to the Complainants by 31.03.2022. As per the Affidavit cum Declaration submitted to TSRERA, the said project shall have been completed by 21.12.2021.

5. Further, an extension of RERA registration of the project was granted to the Respondent, which is valid up to 31.12.2022. And yet, the Respondent has failed to complete the construction work of the said project.

6. Further, the Respondent has been constantly avoiding the allottees and has not been replying to any of the communication sources. Hence, with no clarity over the said project and inevitable losses suffered by the complainants, this complaint has been filed before this Authority.

B. Relief(s) sought:

7. The complainants sought for the following relief:
- a. To direct the Respondent to complete the real estate project and hand over the possession immediately.
 - b. To direct the Respondent to compensate the Complainants for the delay in completion.

C. Reply filed by the Respondent:

8. Respondent submitted the following:
1. The Respondent asserts that Jawitha Luxor is their project.
 2. The Respondent attributes project delays to the unprecedented challenges posed by the COVID-19 pandemic.
 3. The pandemic has resulted in a scarcity of skilled workers.

4. The Respondent highlights difficulties in procuring ordered materials, exacerbated by delays from suppliers in other states.
5. The Respondent engaged new vendors as the original vendors discontinued their work midway.
6. The Respondent provided a status update on complainant's specific flats: Flat no. 410, 210, 911, 310, 208 have completed works. The internal works of the remaining flats are also completed.
7. Further that, housewarming ceremonies has been conducted for completed flats by the Allottees.
8. Acknowledged there are pending works and assures they are in progress.
9. Lists specific flats with pending works and mentions ongoing efforts to complete them.
10. The Respondent expresses commitment to completing all pending works within the next three months. Also, assures the inclusion of promised amenities in the final project completion with O.C.
11. The Respondent has enclosed present building status photos and a list of pending works for the Authority's reference.

D. Hearing conducted:

9. When these complaints had been taken up for hearing both the parties requested to club all six complaints and pass a common order. As such, their complaints are disposed of by a common order. On 21.11.2023, a hearing was conducted wherein both parties were present. The Complainants reiterated the contentions raised in the complaints; however, the Respondent submitted that the delay took place because of the Covid-19 pandemic situation, as not available skilled workers and receiving ordered materials also delayed from other states, and after recovering from Covid, the Respondents have engaged new vendors as the old vendors have left the work midway. Due to the above said reasons, there has been a delay in completing the work, and they are committing towards the completion of work within 3 months, including all promised amenities. Whereas, with respect to the RERA registration, there has been a clerical mistake by the Respondent while making an application to RERA, HMDA gave permission for completion of the said project till 2026; they

have applied for correction of RERA registration, which is pending before this Authority.

10. On 22.11.2023, the complainants submitted a list of pending works across the project. However, the Respondent submitted a counter dated 1st December 2023, asserting that the complainants have provided a pending list encompassing all the flats. In contrast, the Respondents are prioritizing the completion of pending works for all sold flats first. Subsequently, remaining unsold flats will undergo modifications based on customer customization once they are sold. The Respondent stated their preparedness to grant living positions with major facilities (excluding amenities) such as lifts, water connections, and sewerage connections. They confirmed the availability of a 3-phase power supply for those intending to occupy by the end of this month. Furthermore, the Respondent assured that ongoing work on amenities will be concluded by the end of March 2024. The Respondent has also submitted the current status of the work list along with accompanying photographs.

11. However, the complainant raised a major issue, asserting that the Respondent has failed to address or respond to any concerns raised by the allottees regarding the project. Due to project delays, the allottees have attempted to contact the Respondent without success, alleging negligence. Consequently, the complainant prayed for this Authority to direct the Respondent to address the concerns raised by them regarding the project.

12. Additionally, the Respondent informed this Authority that they have applied for the correction of the RERA registration. They possess building construction permission from HMDA under file no. 010049/SKP/R1/U6HMDA/29032018 valid until 2026. The Respondent acknowledged an error in their application to this Authority and applied for correction in January 2023.

13. This Authority directed the Respondent to submit a date by which the construction of the concerned project can be completed by the next hearing date scheduled for the 19th of December 2023.

14. Meanwhile, an interim order was issued by this Authority on the 28th of November 2023. The Respondent is directed to take responsibility for addressing the concerns raised by the complainants regarding the progress of

the project. As a result, the Respondent is mandated to establish a dedicated desk to receive and respond to grievances from the complainants, specifically addressing issues raised by the allottees concerning the aforementioned project. The purpose of the desk is to acknowledge and appropriately respond to the concerns brought forth by the allottees.

15. On 19.12.2023, hearing was conducted, wherein the Respondent assured the authority that they are willing to handover the possession to the complainants as the units those belong to the complainants their construction is completed. The respondents submitted that the complainants will be given the possession in living condition with basic necessity amenities and the rest of amenities will be completed by the end of March. However, the authority has asked to submit an affidavit to this authority, that all the pending construction work shall be completed within the specified time frame.

16. On 21.12.2023, the Respondent submitted undertaking, stating that they have received some pending works list points from complainants, since the first hearing, they have initiated construction work and have completed some of the pending works to which even the complainants have acknowledged. The Respondents submit that they will complete the remaining amenities by the following dates:

1. Club house & Swimming pool – 31st March
2. Railing works (sold flats are 100% completed and for unsold flats work is in progress which will be completed by 11th January 2024.)
3. External Painting – 15th March
4. Planting works 70% completed balance 30% will b completed 20th March 2024.
5. Children play area all civil works completed playing equipment's to be install end of March 2024.
6. Transform works 85% completed balance will be completed by end of Feb.
7. Road flooring work around building will be completed 12th of March 2024.
8. Main gate 5th of March 2024.
9. MCH water connection works after receiving of NOC.

E. Findings on the objections raised by the Respondents:

E:1 Objection regarding delay due to force majeure circumstances:

17. The Respondent-promoter pleaded that though the due date of completion of the project was promised to the Allottes at the time of the purchase was 31.03.2022 as per the TS RERA regulations, the respondent failed to handover the possession due to Covid-19 outbreak. The Respondent also took the plea that they have HMDA permit vide no 010049/SKP/R1/U6/HMDA/2903218, valid upto 2026, hence the Respondent has also filed for a correction under this Authority.

18. In the present complaint, it is observed that the due date for the transfer of possession is silent in the contractual agreements of sale or sale deed of any of the complainants. However, it is noted by this Authority that the Respondent, in its Form B Affidavit cum Declaration dated 13.09.2019 submitted to this Authority during registration proceedings, declared that the timeline for completion of the project by the Promoter is 31.12.2021. Subsequently, due to the outbreak of the Covid-19 pandemic, the Respondent sought and was granted an extension valid until 31.12.2022. Henceforth, no further extension beyond this date shall be granted to the Respondent-promoter. Consequently, the objection raised by the Respondent regarding the delay in project completion is due to Covid -19 since January 2023 to the present date is hereby dismissed. Relief sought by the complainant's with respect to no interest shall be charged from them for delayed payments, if any from January 2023 to the date of this Order.

F. Findings on the relief sought by the complainants:

- 1. To award the due date possession, as the builder buyer agreement is silent on the possession clause and handover the possession immediately.**
- 2. Direct the Respondent to pay interest at the prescribed rate on delayed possession since the due date of the possession, till date of actual legal possession.**

19. In the present complaint, the complainants intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which is read under:

(1) 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

20. The apartment buyer's agreement was executed between the parties. As per the agreement there is no such clause that states about handing over the possession of the unit. However, as per the TS RERA Form B affidavit cum deceleration submitted to this Authority at the time of registration states that the project shall be completed by 31.12.2021, however the promoter was granted an extension till 31.12.2022. Even though the Respondent submitted this bench that HMDA project completion date is valid up to 2026, and hence a correction affidavit was submitted to this Authority in January 2023 and is pending before Desk 4 of the Authority, It is to be noted that no such Correction application was found to be pending before this Authority.

21. It is also noted by this Authority that the agreement of sale submitted to this Authority or Agreement of sale published on the website under Rule 14 of RE(R&D) Rules, and the Agreement of sale entered with the Allottees for the purchase of the units do not align with the provisions of the RE(R&D) Act and are different from what was presented to this Authority at the time of application. Agreement of Sale provided by the Respondent for the purchased unit does not align with the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERD Act). The Authority finds that the Respondent has indeed deviated from the Model Form Agreement of Sale under Rule 38 outlined in the RE(R&D) Rules, 2017 and also from the proforma of the agreement of sale submitted to this Authority while RERA registration, contravening section 4 of the RE(R&D) Act, 2016.

22. Admissibility of delay possession charges at prescribed rate of interest: The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till handing over of the possession.

23. Consequently, as per website of the State Bank of India, the marginal cost of lending rate (MCLR) as on date i.e 28.03.2024 is 8.65%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2%, that is a total of 10.65%.

24. 23. Consequently, as per website of the State Bank of India, the marginal cost of lending rate (MCLR) as on date i.e 28.03.2024 is 8.65%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2%, that is a total of 10.65%.

25. On consideration of the documents available on record and submissions made regarding contravention of the provisions of the Act, the Authority is satisfied that the respondents are in contravention of section 11(4)(a) of the RE(R&D) Act by not handing over the possession by the date as per the RERA registration validity. By the virtue of RERA extension sought vide P02400001886, and the promises made by the Respondent to the allottees to handover the possession by 31.12.2022, to the contention which the Respondent neither denied or disputed, therefore the Authority is of the view that the due date of handing over the possession comes out to be 31.12.2022. The Respondent has failed to handover possession of the subject unit till day of the 2nd hearing scheduled before this Authority. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibility as per the agreement to handover the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the Respondent to offer of the possession of the allotted unit to the complainant as per the RERA registered validity date. It is pertinent to mention over here that even after a passage of more than 11 months neither the construction is complete nor an offer of the possession was made to the allottees till the interference of the Authority.

26. Further, the Authority observes that there is no such application made to this Authority for correction of RERA registration made by the Respondent, as pleaded by the Respondent. Hence, the Authority will not be considering the plea submitted before this Authority. Accordingly, it is the failure of the promoter to fulfil its obligation and responsibilities as per the RERA registration mentioned dates. Accordingly, the non-compliance of the mandate

contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents is established. As such, the allottees shall be paid by the promoter, interest for delay from due date of possession ie. 31.12.2022 till actual handing over of the possession or offer of possession, whichever is earlier, as per section 18(1) of the RE(R&D) Act 2016.

Directions of the Authority:

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the RE(R&D) Act 2016 to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of RE(R&D) Act of 2016:

1. For contravening section 4 of the RE(R&D) Act and Rule 38 of RE(R&D) Rules, this Authority, exercising its powers under section 60 of the Act, imposes a penalty of Rs. 3,69,778/-. This penalty is imposed as the Agreement of Sale entered with the Allottees differs from the proforma of Agreement of Sale submitted to this Authority while obtaining RERA registration. The amount is payable in favour of TSRERA FUND through a Demand Draft or online payment to A/c No.50100595798191, HDFC Bank, IFSC Code: HDFC0007036, within 30 days of the receipt of this Order by the Respondents/Promoter.
2. The Respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.65% p.a from due date of possession i.e 31.12.2022 till actual handing over of the possession or offer of possession, whichever is earlier, as per section 18(1) of the RE(R&D) Act of 2016.
3. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and the respondents shall handover the possession within a period of 30 days after receipt of this Order.
4. The arrears of such interest accrued from due date of possession i.e 31.12.2022 till the date of the Order by the Authority shall be paid by the promoter to the allottee within a period of 90 days from date of this Order.

5. The Respondent is directed to complete the construction of the entire said project as per the undertaking submitted by the Respondent to this Authority before 30.03.2024. Also, handover the possession of the units of the complainants to them within 30 days from this order, if any of the complainants are willing to move in. If the respondent fails complete the project within stipulated timeframe mentioned to this Authority is its undertaking submitted dated 21.12.2023, he shall be liable to continue to pay the interest to the complainants, in case of default at the prescribed rate i.e., 10.65% by the respondents/promoter.

28. In lieu of above findings and directions, the present complaint stands disposed off. The parties shall bear their own cost. The parties are hereby informed that failure to comply with this Order shall attract section 63 of the Act.

29. If aggrieved by this Order, the parties may approach the TS Real Estate Appellate Tribunal (vide G.O.Ms.No.8, Dt.11-01-2018, the Telangana State Value Added Tax Appellate Tribunal has been designated as TS Real Estate Appellate Tribunal to manage the affairs under the Act till the regular Tribunal is established) as per Section 44 of the Act, 2016.

Sd/-
Sri. K. Srinivas Rao,
Hon'ble Member
TS RERA

Sd/-
Sri. Laxmi NaryanaJannu,
Hon'ble Member
TS RERA

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