

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

Complaint No. 40 of 2024

Dated this 10th day of March 2025

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

Sri B. Vishal Gautham

*(Plot no.95/B, Babu Nagar Lano.05
Near Shivalyam Temple, Chintal Hyderabad – 500054)*

...Complainant

Versus

1. M/s Jain Constructions

*(#Flat203, 2nd floor, fortune chambers
Silicon Valley, Image garden street, Mahdapur Hyd- 500034)*

2. Suresh Jain

(R/o H.no. 8-3-978/16/A, Srinagar colony, Hyderabad 500073)

3. Praveen Jain

(R/o H.no 6-1-851, Khairataba, Hyd- 500034)

...Respondent(s)

The present matter filed by the Complainant herein came up for hearing on 13.12.2024 us for hearing in the presence of Counsel B Sudheer Gautham along with complainant in person and K.V.Maallikarjuna Rao and Counsel Bindu Madala for Respondents and upon hearing both the arguments on both sides and the matter reserved over for the consideration till this date, this Authority passes the present complaint order.

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 complainants, Mr. B. Vishal Goutham, S/o. B. Ramesh, Public Prosecutor at the National Investigation Agency, Ministry of Home Affairs, Government of India, residing at Bapunagar, Chintal, and his brother, Mr. B. Sudheer Goutham, jointly purchased a flat bearing No. G-B, Ground Floor, Block-B, in "Sri Ram Garden by Jains" by paying the entire sale consideration amount of Rs. 1,70,00,000/- (One Crore Seventy Lakh Rupees) to M/s. Jain

Constructions, as per Registration No. 2847/23 dated 02.02.2023. Despite the full payment, the respondents have allegedly failed to hand over the flat keys and have retained them unlawfully.

4. The complainants made payments as follows:

- i. Rs. 1,00,000/- (One Lakh Rupees) was transferred via Google Pay, in two transactions of Rs. 50,000/- each, on 14.04.2022 and 15.04.2022.
- ii. Rs. 10,00,000/- (Ten Lakh Rupees) was paid through ICICI Bank.
- iii. The respondents demanded Rs. 19,00,000/- in cash, to which the complainants objected. However, under duress, a self-cheque of Rs. 15,00,000/- was issued on 30.06.2023 by Mr. B. Sudheer Goutham from ICICI Bank in favor of one Subramanyam, an employee of Jain Constructions. The said cheque was encashed on 05.07.2022, and a confirmation was received via WhatsApp.
- iv. Further, Rs. 4,00,000/- (Four Lakh Rupees) was paid in cash: Rs. 3,00,000/- was paid at the site office on 18.06.2022, for which a receipt was provided upon persistent requests, and Rs. 1,00,000/- was paid to Subramanyam on 30.06.2022.
- v. Rs. 30,00,000/- (Thirty Lakh Rupees) was paid to M/s. Jain Constructions, following which an Agreement of Sale was executed on 16.07.2022.
- vi. Further payments of Rs. 10,00,000/- on 18.11.2022 and Rs. 2,15,000/- on 19.11.2022 were made via RTGS to Jain Constructions.
- vii. A home loan amounting to Rs. 1,27,85,000/- (One Crore Twenty-Seven Lakh Eighty-Five Thousand Rupees) was sanctioned by the State Bank of India, RACPC, Madhapur, and the demand draft bearing No. 339449, dated 31.01.2023, was received by M/s. Jain Constructions.
- viii. The sale deed was executed and registered on 02.02.2023 before the Sub-Registrar, Quthbullapur, vide Registration No. 2847/23.

5. In addition, the complainants entered into a Memorandum of Understanding (MOU) dated 16.07.2022 with Jain Constructions, Suresh Jain, and Praveen Jain for furnishing the flat, at a consideration of Rs. 31,00,000/-. A cheque bearing No. 265215, drawn on SBI, Quthbullapur Branch, was issued as security. A photocopy of the said MOU was provided by the respondents.

6. The complainants allege that they inspected the flat and documented pending works and required fittings through a video recording by their brother, Mr. B. Siddhartha Goutham. The respondents assured completion within two weeks, with keys to be handed over by 01.02.2023.

7. Subsequently, as part payment under the MOU, Rs. 20,00,000/- (Twenty Lakh Rupees) was paid as follows:

- a. Rs. 9,00,000/- via cheque No. 230206, drawn on SBI, dated 10.10.2022.
- b. Rs. 4,00,000/- via cheque dated 04.11.2022.
- c. Rs. 6,00,000/- via RTGS on 05.11.2022.
- d. Rs. 1,00,000/- in cash on 10.10.2022 to Subramanyam.

8. Despite receiving full consideration, the respondents allegedly failed to fulfill their commitment for fixtures and fittings under the MOU and have unlawfully retained possession of the flat keys. As a result, the complainants claim financial losses of Rs. 70,000/- per month in rental expenses and Rs. 7,500/- per month in maintenance charges.

9. A legal notice dated 26.12.2023 was issued to the respondents, demanding possession of the flat keys within three days. Following non-compliance, a criminal complaint was filed, leading to the registration of FIR No. 60/2024 at P.S. Pet-Basheerabad under Sections 406, 420, 448 read with Section 34 of the Indian Penal Code, 1860.

10. Subsequent to the filing of the FIR, the respondents issued a reply notice dated 11.01.2024, which was dispatched only on 17.01.2024 and received by the complainants on 18.01.2024. A rejoinder was sent by the complainants on 29.01.2024. The complainants contend that the flat sale deed and MOU are independent of each other and that the respondents have no legal right to withhold possession of the flat.

11. The complainant further state that they received a maintenance and electricity bill dated 04.01.2024 for Rs. 1,19,473.51/- from the Facility Manager of the Apartment Welfare Association for the period from 20.05.2022 to 31.12.2023. They assert that this liability should be borne by the respondents until possession is handed over.

12. Financial hardship has also been alleged, as the complainants claim to have taken additional loans, pledged family gold, and incurred heavy interest payments, including a monthly EMI of Rs. 1,14,000/-, of which Rs. 1,00,000/- is attributed to interest alone. The complainants assert that they planned to repay these loans using rental income from the flat, which has been rendered impossible due to the respondents' actions.

13. The complainants allege that though the Builders received the notices, but did not mend their ways neither came forward to repair the damages caused us by them, we have

been suffering since more than 1 year, as such I left with no other alternative and to seek effective remedy approached this Hon'ble Forum seeking justice.

B. Relief(s) Sought:

- a. To hand over Flat Keys to the Complainant by clearing pending Flat Maintenance Charges till the handing over the Flat Keys.
- b. To directed the respondents to pay the interest on the Sale Consideration amount from the date of Flat Registration i.e., 02.02.2022 till the date of the order.
- c. To take stringent action against the M/s. Jain Constructions, Praveen Jain and Suresh Jain for such irregularities, and violating rules under the TSRERA.
- d. To grant any other reliefs to the complainant as per TSRERA Guidelines as entitle to the complainant as deem fit and proper by this Hon'ble Forum

C. Respondents Reply

14. At the outset, Respondent submit that the complainant by twisting the factual position to suit his requirements submitted the instant complaint. Therefore, while denying all his false contentions, we would like to bring on record the correct facts.

15. It is true that a Sale Agreement was entered into between the Complainant and Respondent Firm namely, M/s. Jain Constructions on 16.07.2022. Under the said Agreement the Complainant agreed to purchase a flat bearing no. G-B on the ground floor in B block admeasuring 2200 sq. ft of saleable area, more fully described in the said Agreement for a sale consideration of Rs. 1.7 crores plus Corpus fund and 6 months advance maintenance charges. Later on receipt of the total sale consideration except maintenance charges, on various dates, the said flat was registered in the name of the complainant.

16. The complainant also entered into an MOU on 16.07.2022 for the purpose of furnishing and making the unfinished flat as habitable for residential use with all amenities and facilities. Under this MOU, the complainant agreed to pay an amount of Rs. 31.00 lakhs plus GST of 18% in 3 instalments on or before 31.12.2022 for the said furnishings. The furnishings to be done by us include Sofa, Cupboards, Dressing tables, ACs, Dining tables, Chairs, Beds, False ceilings with Lights, Curtains, Wall Paper, modular kitchen, Chimney etc. He delivered a post-dated cheque for payment towards these furnishing items. Accordingly, Respondent arranged all the items. However, the cheque issued by the complainant was dishonoured when submitted to the banker for payment. As a result, the complainant is still liable to pay to us an amount of Rs. 31.00 lakhs plus GST and interest for the delay in making payment, till the date of actual

payment. In addition to this amount, he is yet to pay the Corpus fund and maintenance for a period of 6 months.

17. The complainant delivered possession of the flat to Respondent for completing the furnishing works. Since the complainant has not paid the amount, they are holding the keys. Respondent are ready to give the keys to the complainant once complainant pays the amount as per the MOU. It is not their intention to create any problem to the complainant but have to recover a substantial amount from the Complainant for which we are entitled to exercise our right of lien for payment.

18. While the above is the correct factual position, the complainant to avoid the payment to Respondent concocted a story and started blackmailing Respondent. Being unable to exert pressure on Respondent through the police for delivery of keys without any payment, Complainant has filed this complaint by twisting the facts and misleading the Hon'ble Authority with false facts. This clearly establishes his manipulative tactics. His hands were not clean while filing the complaint as he defaulted in making payments for the furnishings done by us in his flat. The conduct of the complainant establishes his motto to avoid payments agreed upon by him under the MOU.

19. In the complaint, Complainant made certain false allegations like payment of Rs.15.00 lakhs and Rs.4.00 lakhs on 05.07.2022 which is contradicting and false. Respondent has never received the amount under the said MOU, and never provided complainant with any receipt under the MOU. It is pertinent to mention here that the MOU was done on 16.07.2022. According to the MOU, the payment of Rs. 31.00 lakhs was to be paid in 3 instalments, Rs. 11 lakhs on or before 31.10.2022, on or before 30.11.2022- Rs. 10 lakhs and on or before 31.12.2022-Rs. 10 lakhs. While this is the payment schedule surprisingly, complainant alleged that a payment of Rs. 19 lakhs was made on 05.07.2022 which is before entering into the Agreement. If the contention is true the MOU would have mentioned and acknowledged the said payment. A careful perusal of the MOU reveals that it doesn't have even an iota of reference to the said payment. This clearly indicates the malicious intention of the complainant to gain unlawfully.

20. Since the cheque for Rs. 31.00 lakhs has been dishonoured by the bankers, Respondent are in the process of initiating appropriate action under section 138 of the Negotiable Instruments Act in addition to filing of a civil suit to recover the amount along with interest. In

view of the above, we humbly request you to close the complaint and award costs In our favour and against the complainant.

D. Rejoinder

21. In reply to Para No.1, that contents made therein are partially true that the complainant has paid Rs.1,70,00,000/-(One Crore and Seventy Lakhs Rupees) to the Respondents along with corpus fund of Rs. 1,00,000/-(One Lakh Rupees). It is denied by the Complainant, that the complainant is due to pay 6 months maintenance charges to the respondents. In fact, the respondents has received Rs. 1,70,00,000/-, as sale consideration amount, Rs. 1,00,000/- as Corpus Fund and 6 months maintenance charges respectively, and only after receiving the entire said amount as per the Agreement of the Sale dated: 16.07.2022, the respondents has registered the Flat in the name of the Complainant on 02.02.2023 vide Document No.2847/2023.

22. In reply to Para No.2, the averments made to the extent of entering into MOU on 16.07.2022 for furnishing and providing with residential use of all the amenities and facilities, etc., for Rs.31,00,000/- (Thirty One Lakhs Rupees) plus GST of 18% in 3 installments on or before 31.12.2022 are true, and the rest of the averments made therein are absolutely false and baseless and the respondents is put to strict proof of the same.

23. It is humbly submitted before this Hon'ble Authority that the Complainant has paid part payments of Rs. 20,00,000/ (Twenty Lakhs Rupees) to the respondents out of said Rs.31,00,000/-. The Complainant has paid Rs.9,00,000/-(Nine Lakhs Rupees) through Cheque bearing No. No.230206, SBI bank drawn by respondents on: 12.10.2022, (Document No. 12), Rs. 4,00,000/-(Four Lakh Rupees), on 04.11.2022, by way of RTGS (Document No. 13), Rs. 6,00,000/-(Six Lakh Rupees) on 05.11.2022 by way of RTGS (Document No. 14) and Rs.1,00,000/-(One Lakh Rupees) Cash to Subramanyam on 10.10.2022 as per the Schedule of the MOU respectively. It is humbly submitted that only Rs. 11,00,000/- (Eleven Lakhs Rupees) of last instalment was remaining and the same were to be paid subject to completion of the entire work, providing bills and warranty cards of the appliances, etc. It is humbly submitted that the respondents has failed to fulfil his commitment, and even like basic bathroom amenities and other installation, etc., were missing. As such, we did not pay the last installment, accordingly we are taking measure to approach proper forum in connection with the MOU dated: 16.07.2022.

24. That the respondents has no hesitation in making false statement before this Hon'ble Authority as respondents stated that the complainant is yet to pay Corpus Fund is sheer falsehood. The complainant has already paid Corpus Fund, and only after receiving the Corpus Fund as per the Agreement of the Sale dated: 16.07.2022, the respondents has registered the Flat on the name of the Complainant on 02.02.2023 vide Document No.2847/2023.

25. It is further essential to note that the respondents has never claimed about said Corpus Fund in his both the Reply notices dated: 11.01.2024 and 19.02.2024 respectively. Had there been a due the respondents would have thumpingly claimed in said reply notices. Therefore, the very act manifest that the respondents is in habit of making false claim and allegations by misrepresenting before this Hon'ble Authority.

26. It is further humbly submitted that the respondents has made startling revelation that the Complainant has delivered 'post-dated cheque' of Rs. 31,00,000/- towards the said furnishing items and the same was dishonoured by the banker is 'Sheer Falsehood'. The Respondents is put to strict proof of the same. The Complainant has never delivered the said post-dated cheque, in fact the Complainant has given undated Cheque of Rs. 31,00,000/-, bearing No.265215 purely towards security purpose only. In fact, it can be clearly seen from the photo Copy of the Cheque filed by the respondents themselves in Respondents' list of the Documents the Cheque therein is undated cheque. But, to gain illegally and to mislead this Hon'ble Authority the respondents is making false statement out rightly regardless of law.

27. It is humbly submitted that the Complainant is unaware with such fact, and the act of the respondents in receiving Rs. 20,00,000/- (Twenty Lakhs Rupees) out of Rs.31,00,000/- of the MOU date: 16.07.2022, and again presenting the cheque of Rs.31,00,000/- that was given for security purpose for further encashing manifest the respondents' ill motive and an act of fraud.

28. In reply to Para No.3, the contents made therein are false and baseless. It is humbly submitted that the respondents has never delivered the possession till date, and despite the payments of 2 instalments paid by the complainant as per schedule in the MOU date: 16.07.2022. The respondents, to have wrongful gain holding the complainant Flat Keys with themselves illegally by causing lose to the complainant. It is utter falsehood that complainant has delivered the possession to the respondents when the respondents himself has retain complainant Flat Keys illegally the question of redelivering the same to the respondents will not arise at all The Respondent's reply Notice dated: 11.01.2024 and 19.02.2024 (Document

No.15) given by respondents Advocate Mr.PrabhakarRoa to the Legal Notices dated: 26.12.2023 29.01.2024 respectively issued by the complainant demonstrate the falsehood and deceitful act of the respondents as to how the respondents is trying to mislead this Hon'ble Authority on the face of it.

29. In 1 Reply Notice dated: 11.01.2024, the respondents at Paragraph No. 4 has falsely claimed that entire work and furniture has been completed by 31.12.2022, and

30. In 2nd Reply Notice Dated: 19.02.2024, the respondents at Paragraph No.2, has falsely claimed that the respondents has handed over the possession to the complainant after the registration of the flat dated: 02.02.2023 and again the complainant has handed over the possession to the respondents for the carrying out works as per MOU dated: 16.07.2022.

31. The above two versions are utter falsehood and sheer contradictions made by the respondents on the cost of harassment and loss caused to the complainant

32. The respondents after receiving Legal Notice date: 26.12.2023 issued by the complainant as an afterthought blaming the complainant as if he has committed default in making payments as per MOU date: 16.07.2022. If at all the respondents has got any grievance against the complainant in respect of the MOU the respondents should have initiated appropriate steps for claiming the alleged due amount at proper Forum at the earliest stage itself or at least thereafter, however he failed to do so. As a matter of fact, until the complainant has initiated legal steps against the respondents kept silent and now coming up with false claims The complainant has suffered both mentally and financially due to the illegal acts of the respondents. And the respondents has got no right whatsoever to withhold the keys of the complainant's 'Flat'. The very act of the respondents in withholding Complainant's 'Flat Keys' illegally by not allowing the complainant to enter into complainant's own flat is an offence and liable for appropriate legal action both civil and criminal as per law.

33. That, the respondents has in spite of breaching the terms of the MOU, illegally claiming the right of lien to withhold the flat the acts of the respondents clearly establish ill motive and high handedness of the respondents in claiming right of lien over the complainant Flat.

34. Further, the Respondents has failed to explained before this Hon'ble Authority under which Rule of Law or Special Statute respondents has the Right of Lien over Complainants property. The respondent has come up with the strange right of lien over the property which

involves substantial amount of value which has no connection to the MOU under which the respondents are claiming right of lien is completely alien to the Indian Judicial system.

35. The Respondent literally failed to show the clause of right to lien in the very MOU dated: 17.06.2022 is existing accordingly he acted up on.

36. The respondents have failed to submit before this Hon'ble Authority under which document respondents reserved the right of lien over the Complainant's Property. If at all, if the respondents got any claim it will be confined to the work that he has undertook as per MOU but not on the complainants Flat. Nothing but, the above acts of the respondents shows his high handedness and strategically to his illegal acts he is giving name of right of lien to gain illegally.

37. In reply to Para No. 4, it is absolutely false and baseless that the complainant has concocted a story to avoid the payment to the respondents. Hence, the same is denied. In fact, in the first place, the complainant has initiated steps by issuing a Legal Notice dated: 26.12.2023 for handing over the Complainants Flat keys, and in-spite of receiving the legal notice the respondents has neglected the same, consequently, the complainant has lodged complainant on 12.01.2024, and the P.S Pet-Basheerabad had registered a Crime bearing No.60 of 2024 as per law.

38. In reply to Para. No.5, the contents made therein are absolutely false and baseless. Hence the same is denied. The respondents in order to avoid prosecution are throwing the blame on the complainant. The allegations levelled against the complainant are in turn the acts of the respondents themselves. The truth stands undisputed with clinching evidence that the respondents has received total amount of Rs. 1,70,00,000/-(One Crore and Seventy Lakhs Rupees) as sale consideration amount, Rs. 1,00,000/- as Corpus Fund, 6 months maintenance charges and Rs. 20,00,000/-(Twenty Lakhs Rupees) under the MOU from the complainant and till date the complainant and his family are not enjoying their property for which they spends such huge amounts. Despite spending such huge amount besides paying monthly Home Loan instalments, they have been suffering from mental and huge financial losses and to secure their interest they acted as per law due to the acts of the respondents

39. In reply to Para No.6, the contents made therein are absolutely false and baseless. Hence, the complainant denies the same and the respondents is put to strict proof of the same. In fact, the complainant has stated in his complaint that they have paid Rs. 15,00,000/-(Fifteen Lakhs Rupees) and Rs.4,00,000/-(Four Lakhs Rupees) in connection with the Agreement of

Sale of the GB Flat, which is part of Rs. 30,00,000/-(Thirty Lakhs Rupees) transaction, after receiving such amount the respondents entered into the Agreement of Sale dated 16.07.2022.

40. That, the respondents herein is trying to confuse this Hon'ble Authority by giving wrong information as the complainant never claimed that Rs. 15,00,000/- and Rs. 4,00,000/- was paid with respect to the MOU date: 16.07.2022.

41. In fact, the Complainant has Rs.9, 00,000/-(Nine Lakhs Rupees) through Cheque bearing No. No.230206, SBI bank drawn by respondents on: 12.10.2022, (Document No. 12), Rs.4,00,000/-(Four Lakh Rupees), on 04.11.2022, by way of RTGS (Document No. 13), Rs. 6,00,000/-(Six Lakh Rupees) on 05.11.2022 by way of RTGS (Document No. 14) and Rs.1,00,000/-(One Lakh Rupees) Cash to Subramanyam on 10.10.2022 as per the Schedule of the MOU 16.07.2022.

42. It is pertinent to note that the complainant has entered into the MOU on 16.07.2022, and the above said instalments were paid subsequent to the execution of the said MOU, therefore, the question of mentioning and acknowledging said payments in the MOU dated: 16.07.2022 will not arise at all.

43. The respondents is in habit of making false claims to have wrongful gains is clearly visible, and to shocking surprise of the complainant is that, despite receiving Rs.20,00,000/- (Twenty Lakhs Rupees) under the MOU, the respondents is denying the same, in return making false allegations against the complainant. The complainant has placed irrefutable evidence in support of his claim which manifests the fact once for all that the respondents has held the complainant's flat illegally and want to squeeze further money from the complainant under false claims.

44. In reply to Para No.7, the contents made therein are absolutely false and baseless. Hence, the same is denied and the respondents are put to strict proof of the same.

45. This, very act of respondents Exposes their illegal activities in misusing the undated cheque that was given purely for the purpose of the security only. Further, it is pertinent note that, "No where in the MOU it is mentioned that the cheque is to be presented in the bank in the event of any arrears from the complainant in connection to the schedule payments mentioned in the MOU date 16.07.2022.

46. We have issued a notice dated 26.12.2023 to return the undated cheque bearing No.265215, and inspite of that, the respondents has falsely, to take undue advantage has

misused the said cheque as such the respondents will be held responsible for all the legal consequences for initiating false complainant and claims both civil and criminal.

47. Further, the respondents have failed to give any details of the dishonour of the cheque as to when it was dishonoured. Hence, the complainant has every right to initiate any such proceedings as per law who misused cheque issued for security and also posing false information in respect of the subject concerned more particularly to this Hon'ble Authority.

48. It is further pertinent to note that the respondents have made no claims whatsoever until the complainant has issued a legal notice, dated: 26.12.2023, and the registration of FIR bearing Crime No. 60 of 2024 against the M/s. Jain Constructions, its directors Praveen Jain & Suresh Jain. Further, The Hon'ble Authority may take note of the conduct of the respondents dishonestly and in making misrepresentation before this Hon'ble Authority despite irrefutable evidence subsisting on record. As such, when the respondents' holds audacity to deceitfully make false statement before this Hon'ble Authority can easily do the same to any ordinary person and would go to any extent to gain fraudulently which is established in the present case.

49. The MOU date 16.07.2022 is completely separate transaction has no bearing on the sale deed by virtue of law which the respondents are making basis to gain illegally. It is essential to not that this 'Hon'ble Authority' (TGRERA) being the regulatory body in real estate matters, the respondent made several false statement and made misrepresentation with an intention to mislead this 'Hon'ble Authority' is an serious illegal act, the respondent shall be punished and impose fine by this 'Hon'ble Authority' as per law.

50. In continuation of the reliefs sought by the complainant in the complaint, therefore, the complainant prays this Hon'ble Authority to grant following reliefs as under:

- a) To cancel the license that is issued to M/s. Jain Construction for committing such illegal acts in contravention of the TGRERA rules and policies.
- b) To impose exemplary cost for the illegal acts done by him regardless of the TGRERA rules and policies and his acts that is against the object and reasons of TGRERA.
- c) To direct the respondents to return the said undated cheque bearing No.265215.
- d) To take serious action for compelling the Complaint to pay money against the norms of TGRERA, and to pay interest illegally.
- e) To pass such order or orders as deem fit and proper in the public interest at large.

E. Observation of the Authority:

Points for consideration:

a.) Whether the complainant is entitled for the reliefs sought?

51. Upon a meticulous examination of the pleadings, submissions, and evidence placed on record, this Authority deems it necessary to first delineate the admitted facts. It is an undisputed fact that a sale agreement was executed between the complainant and the respondent 1 on 16.07.2022 for the purchase of Apartment No. G-B, admeasuring 2200 sq. ft., for a total sale consideration of Rs. 1.7 crore plus corpus fund. The sale deed, bearing registration No. 2847/23, was executed on 02.02.2023 after the complainant made full payment of the sale consideration amount, barring maintenance charges.

52. Subsequent to the execution of the sale deed, a Memorandum of Understanding (MOU) dated 16.07.2022 was entered into between the parties regarding interior furnishing, including items such as a sofa, cupboards, air conditioners, a dining table, beds, false ceiling, and a modular kitchen. The primary dispute arises from the respondent's withholding of the keys to the unit, allegedly due to the complainant's failure to pay Rs. 31 lakhs towards interior works, along with applicable GST and interest.

53. Upon perusal of the material on record, this Authority passed an interim order observing that the respondent 1 had admittedly registered the unit in favour of the complainant on 02.02.2023. Furthermore, due to the apartment association imposing maintenance charges irrespective of the complainant's ability to enjoy the amenities, the complainant has incurred maintenance dues for a year, leading to the filing of the present complaint. It is evident that there exist no valid grounds for the respondent to withhold the keys of the unit despite the complainant having paid the entire sale consideration amount. The respondents do not have the liberty to withhold possession of the said unit from the complainant on the basis of the MOU, which was entered into subsequently for furniture and fixtures. Upon receiving the entire consideration amount and executing a registered conveyance deed in favor of the allottee, it is the responsibility of the promoter to hand over possession of the apartment to the allottee as per Section 17 of the Real Estate (Regulation and Development) Act, 2016 ("RE(R&D) Act").

54. This Authority is of the view that depriving the complainant of possession of his duly registered flat for issues arising out of a subsequent MOU is unfair, unreasonable, and a violation of the RE(R&D) Act. Therefore, in exercise of its powers under Sections 36 and 37 of

the RE(R&D) Act, this Authority directed the respondents to hand over the keys of the concerned unit, i.e., Apartment No. G-B in the project "Sri Ram Gardens by Jain," to the complainant forthwith.

55. Subsequently, the respondents have submitted that the interim order has been complied with and that the keys of the unit have been handed over to the complainant. Accordingly, the relief sought for handing over of the possession stands granted vide interim order 15.06.2024.

56. Further, the complainant submitted that he has been charged maintenance fees by the apartment welfare association despite being deprived of possession. This Authority finds that maintenance charges are payable by an allottee from the date of execution of the sale deed. The imposition of maintenance charges is the responsibility of the welfare association, and the complainant shall be liable to pay the maintenance charges to the association for the upkeep of the common amenities & share Infrastructures.

57. This Authority further observes that the MOU, being a distinct contractual arrangement, cannot override the complainant's rights under the sale deed. Any non-payment under the MOU regarding the interior works is a separate contractual matter that does not fall within the jurisdiction of this Authority. The respondent 1, having received the entire sale consideration amount for the concerned unit, had no legal basis to deny possession to the complainant, particularly when the sale deed explicitly stipulates that vacant and peaceful possession was delivered. The respondent's act of withholding the keys amounts to an unfair trade practice and a deficiency in service.

58. Considering the facts, this Authority finds that the complainant is entitled to interest on the sale consideration amount for the period of delay under Section 18(1)(a) of the Act. The Hon'ble Supreme Court in *M/s Imperia Structures Ltd. vs. Anil Patni &Ors. and M/s Newtech Promoters vs. State of Uttar Pradesh* has affirmed the absolute right of an allottee to claim interest in case of delayed possession.

59. In *M/s Imperia Structures Ltd. vs. Anil Patni &Ors. [Civil Appeal No. 3581-3590 of 2020]*, the Hon'ble Supreme Court held:

"25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the

allottee wishes to withdraw from the project. Such right of an allottee is specifically made 'without prejudice to any other remedy available to him.' The right so given to the allottee is unqualified, and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."

60. Similarly, in ***M/s Newtech Promoters [Civil Appeal Nos. 5745, 6749, and 6750-6757 of 2021]***, the Hon'ble Supreme Court held:

"The unqualified right of the allottee to seek a refund referred to 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 legislature 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 not attributable to the allottee/home buyer, 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"

61. Thus, in view of the facts and circumstances of the case, as discussed in the foregoing paragraphs, and having due regard to the provisions of Section 18 of the RE(R&D) Act, as well as the interpretations provided by the Hon'ble Supreme Court, it is evident that a promoter is liable under section 18 to pay interest for failing to hand over the possession of the allotted unit by the date specified in the sale deed.

62. The interest at 2% above the State Bank of India's highest marginal cost lending rate, which as of 15.03.2025 is 9% totalling to 11% per annum on the sale consideration amount, shall be payable from the date of the sale deed executed i.e 02.02.2023 until the date of Interim order issued by this Authority i.e is 15.06.2024.

63. Therefore, Point 1 is answered as above and Respondent 1 is liable to pay interest for the delayed possession to the complainant in accordance with section 18 of RE(R&D) Act, 2016.

F. Directions of the Authority:

64. In view of the findings recorded hereinabove, and in exercise of the powers conferred under Section 37 of the Real Estate (Regulation and Development) Act, 2016, the Authority issues the following directions to ensure compliance with the statutory obligations imposed upon the Respondents:

- a) The Respondent 1 is directed to pay interest at the rate of 11% per annum on the total sale consideration amount from the date of execution of the sale deed, i.e., 02.02.2023, until the date of the interim order, i.e., 15.06.2024. The said amount shall be paid to the Complainant within ninety (90) days from the date of receipt of this Order.
- b) The Respondent 1 is hereby informed that failure to comply with this Order shall attract the penal consequences as envisaged under Section 63 of the Real Estate (Regulation and Development) Act, 2016.

65. In light of the foregoing, the complaint stands disposed of accordingly. There shall be no order as to costs.

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