

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

Dated, this the 23rd day of July, 2024.

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

COMPLAINT No.4/2024/TG RERA

Between:

- 1) Sri Venkanna Gattu, H.No.6-2-1317, Balaji Colony,
Hyderabad Road, Nalgonda – 508 001.
- 2) Smt.Gattu Rajini, H.No.6-2-1317, Balaji Colony,
Hyderabad Road, Nalgonda – 508 001.

...Complainants.

and

M/s.Krishnaiah Projects Pvt.Ltd, H.No.8-2-502/1A,
JIVI Towers, Road No.7, Banjara Hills, Hyderabad 500 034.

...Respondent.

This complaint came up for hearing before me on 05.07.2024 in the presence of Sri M.Shyam Prasad, Counsel for the Complainants and of Sri Gudla Chakravarthy, Counsel for the Respondent, and after hearing the arguments 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 the 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”).

Case of the complainants:-

2(a). The factual matrix as gathered from the complaint reveals that the complainants Venkanna Gattu and his wife Gattu Rajini being residents of Nalgonda intended to buy a flat at Hyderabad, which is easily accessible to City and Airport, as their children settled

at overseas. Their children had a plan to visit Hyderabad during December, 2023 for a short vacation. The complainants were in search of litigation free property around western part of Hyderabad.

2(b). During the month of February, 2023, the complainants have come across the project by name "Bollineni Bion" under construction by the respondent. The complainants visited the site, verified title deeds and the fact that the project is already registered with TS Real Estate Regulatory Authority. It is stated that according to latest updates on RERA account by then, none of the flats were booked as on February, 2023.

2(c). The complainants with great trust on promoter/respondent agreed to buy Flat A2001 admeasuring 1840 Sq.feet of super built up area with single car parking on confirmation by the respondent that the flat is free from all encumbrances for sale consideration of Rs.1,78,83,633 (Rupees One Crore, Seventy eight lakhs, eighty three thousand, six hundred and thirty three only).

2(d). It is alleged that the complainants have paid Rs.10,00,000/- (Rupees Ten lakhs only) vide Cheque Dt.06.02.2023 as advance for booking the flat. They paid further amount of Rs.8,00,000/- (Rupees Eight lakhs only) vide Cheque dt.15.02.2023 and expressed readiness to execute agreement of sale. However, for want of proforma of allotment letter and agreement of sale, the complainants have entered into sale agreement with promoter for said flat on 25.02.2023. On the same day, they have also entered into construction agreement with promoter and Tripartite agreement with promoter and State Bank of India for availing a housing loan.

2(e). The complainants further plead that according to Construction Agreement Ex.A3, the respondent agreed to complete construction and hand over possession of flat to the

complainants by the end of March, 2023. However, the respondent is entitled for a grace period of six (6) months, which completed by end of September, 2023.

2(f). It is further pleaded that on payment of notes/demand notes from the respondent, the complainants have paid an amount of Rs.15,00,000/- (Rupees Fifteen lakhs only) through Cheque dt.24.03.2023 and Rs.41,00,000/- (Rupees Forty One lakh only) through cheque dt.10.04.2023. Thus, the total amount paid by the complainants stand at Rs.74,00,000/- (Rupees Seventy Four Lakhs only) and balance part was to be taken care by housing loan from State Bank of India, where the complainants had already applied in view of Tripartite Agreement and loan was sanctioned in principle and waiting for disbursement.

2(g). According to the complainants, they received a demand payment communication over e-mail from the promoter to pay Rs.1,04,83,632/- (Rupees One Crore, four lakhs, eighty three thousand, six hundred and thirty two only). Thereupon, the complainants approached the Bank with a request to disburse the housing loan amount to the promoter. But to their surprise, the Bank authorities refused to disburse the loan on the ground that they found that the subject flat A-2001 is already hypothecated to HDFC Ltd., on the names of two borrowers, viz., Sundaram S/o Subramanian Sundaram Kondaganallu and Venkateswaran S/o Sundaran Venkateswaran since 07.11.2022, i.e., much earlier than the complainants had entered into agreement of sale with promoter. Thus, the respondent had already sold the said flat to said persons, who availed housing loan. It is stated that the declaration made by the respondent that there are no disputes whatsoever nature over the land as well as flat proposed to be sold is false.

2(h). The complainants further stated that they approached the respondent multiple times and their team, viz., Vijay from Sales team reachable at Mobile 85490 00263, Naseem, Manager from customer care department reachable at Mobile 91542 46607 and Srinivas, Sr.Manager reachable at Mobile 72595 77778.

2(i). It is further pleaded that on 22.09.2023 the complainants have sent a WhatsApp message to Vijay about pre-existing hypothecation of flat A-2001, who responded to provide information by the end of the day, but in vain.

2(j). It is then pleaded that the respondent entered into agreement of sale concealing the fact of having already sold the flat to others and that the respondent in total collected Rs.74,00,000/- (Rupees Seventy four lakhs only) from the complainants.

2(k). Therefore, the complainants pray to grant reliefs as under:

(a) Refund of Rs.74,00,000/- (Rupees Seventy four lakhs only) with interest in addition to allotment of flat A-2001 free from encumbrances as per Section 19(4) of the Act, and

(b) To grant minimum compensation of Rs.75,00,000/- (Rupees Seventy five lakhs only) for harassment, mental agony and suffering due to cancellation of their plan of vacation of three week at US and Europe where their two children reside as per Section 18 (3) of the Act.

Reply by the Respondent:-

3(a). Respondent in its reply has not denied the booking of the flat A-2001 and deposit of amount of Rs.74,00,000/- (Rupees Seventy four lakhs only) and execution of agreement of sale on 25.02.2023, and also execution of construction agreement and Tripartite agreement on the same date.

3(b). However, the respondent has contended that the complainants have filed present complaint in Form-N on 28.12.2023 before passing of order by the Hon'ble Authority and as such it is not sustainable under law. It is stated that the respondent has also uploaded the reports of project status as ordered by the RERA authority as required under Section 11 (1) of the Act.

3(c). It is further contended that the complainants have failed to establish that the respondent did not deliver possession of property as agreed. According to respondent, he has written two e-mail communications to the complainants to make payment of balance sale consideration as per order of Hon'ble Authority dt.03.01.2024 and to come forward for registration of the flat. But the complainants did not come forward to get the sale deed executed.

3(d). The respondent also contends that the complainants have failed to plead and produce documents to prove alleged harassment, mental agony and any incident in that regard. The cancellation of vacation plan along with their children residing in USA is very flimsy and invented.

3(e). Respondent further pleads that the Hon'ble Authority has conclusively decided the subject matter between the parties vide order dt.03.01.2024 and the present complaint is hit by principles of *res judicata* under Section 11 of CPC.

3(f). The respondent also contends that there appears to be a mistake in showing the property under hypothecation in favour of HDFC Bank. It is then stated that the hypothecation has already been removed and resolved by October, 2023 as evident from 'No Objection Letter' No.H/OP/679497951 dt,26,11,2023 of the Bank and it was considered by Hon'ble Authority in order dt.03.01.2024. It is also contended that the

respondent had time to hand over flat A-2001 upto 30.11.2023 as permitted by TS RERA. The complainants instead of complying with the order of the Authority have preferred present complaint with ulterior motives.

Therefore, the respondent prays to dismiss the complaint.

Rejoinder by the complainants:-

4(a). The complainants with permission filed a rejoinder to answer new points raised in counter by the respondent. The complainants contend that Rule 35 of the Rules empower them to file Form 'N' complaint claiming compensation and interest, but not after passing of orders in complaint in Form "M". As such, their complaint for compensation is maintainable.

4(b). The complainants admit about receipt of two e-mail communications dated 17.02.2024 and 03.05.2024 to pay balance consideration from the respondent. According to them, they sent reply e-mail on 04.05.2024, which the respondent is conveniently ignoring.

4(c). The complainants further plead that the contention of the respondent that present complaint is hit by the principles of *res judicata* as Hon'ble Authority has decided the matter in Form-M complaint is false. According to the complainants, Rule 34 of the Rules enable the complainants to file complaint before the Authority in Form 'M', whereas present complaint has been filed in Form-N as provided under Rule 35 of the Rules. As such, the said contention of the respondent is not tenable.

4(d). It is further pleaded that the respondent offered to sell the flat A-2001 concealing the fact of hypothecation since 26.10.2022 on the name of third party. The complainants and respondent entered into agreement of sale on 25.02.2023. Six

months thereafter on 20.07.2023, the complainants have received an e-mail demanding to make payment of Rs.1,04,83,632/- (Rupees One Crore, four lakhs, eighty three thousand, six hundred and thirty two only). Then when the complainants approached State Bank of India to request for disbursement of loan amount, they were shocked to know that the said flat was already under hypothecation. It is stated that the complainants made multiple attempts by approaching the respondent since 20.07.2023 and their sales team, but in vain. On 22.09.2023, the complainants sent a Whats app message to one Vijay, one of the sales team member at Mobile 8549000263 about the issue of hypothecation, but in vain.

4(e). It is also contended that the respondent committed fraud as the fact of hypothecation was concealed. Further, though the respondent contends that the mistake of hypothecation is rectified, but no such letter has been shared with the complainants.

Hearing during enquiry:-

5. When the case was taken up for hearing, both the parties placed reliance on documentary evidence. Exs.A1 to 22 for complainants and Exs.B1 to B6 for respondent are marked with consent.

Points framed for consideration:-

6. Now the POINTS that arise, on the basis of pleadings of both parties, for consideration are:

- 1) Whether the complainants are entitled for refund of Rs.74,00,000/- (Rupees Seventy four lakhs only) with interest in addition to allotment of flat as pleaded?

- 2) Whether the complainants have made out a case that the respondent failed to discharge their obligations as envisaged under Sec.18 (3) of the Act to claim compensation?
- 3) If so, to what relief?

7(1). **POINT No.1:**

Beside claiming compensation, the complainants have also prayed to order for refund of amount of Rs.74,00,000/- (Rupees Seventy four lakhs only) paid with interest in addition to allotment of flat in question. The present complaint is filed in Form-'N' which relates to claim of compensation. In "**M/s. Newtech Promoters and Developers Pvt.Ltd. vs State of UP & others etc**" vide Civil Appeal No(s).6745 to 6749 of 2021 vide order dated: 11-11-2021, Hon'ble Supreme Court in Para 86 held as under:

"From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act, 2016."

7(2). Admittedly, Hon'ble Authority has disposed of matter in Form 'M' complaint filed by the complainants in Complaint No.1205 of 2023, dt.03.01.2024 (Ex.A22). In view of

this and in view of said categorical pronouncement by Hon'ble Supreme Court, it has to be held that the complainants are not entitled for said relief in this complaint. The Point is answered accordingly against the complainants and in favour of the respondent.

8(a). **POINT No.2:**

The admitted facts are that the complainants approached the respondent in the month of February, 2023 for purchase of flat in the project "BOLLINENI BION" of the respondent. At their request, the respondent offered to sell flat A-2001 admeasuring 1840 Sq.feet free from all encumbrances for a sale consideration of Rs.1,78,83,633/- (Rupees One Crore, Seventy Eight lakhs, Eighty Three Thousand, Six Hundred and Thirty Three only). The complainants have paid Rs.10,00,000/- (Rupees Ten lakhs only) as token advance for booking the flat through a cheque dt.06.02.2023. They have further paid an amount of Rs.8,00,000/- (Rupee Eight Lakhs only) through Cheque dt.15.02.2023. Later, the complainants and respondent have entered into Sale Agreement (Ex.A2) for purchase of said flat on 25.02.2023. On the same day, the complainants have entered into Construction Agreement (Ex.A3) with respondent and a Tripartite Agreement (Ex.A6) with the promoter/respondent and State Bank of India for availing bank loan.

8(b). It is also an admitted fact that according to construction agreement Ex.A3, the respondent agreed to complete construction and hand over possession of flat to the complainants by the end of March, 2023. However, the respondent is entitled for a grace period of six months, which completed by end of September, 2023.

8(c). There is also no dispute that the complainants on payment notes from respondent have paid an amount of Rs.15,00,000/- (Rupees Fifteen lakhs only) through

Cheque dt.24.03.2023 and Rs.41,00,000/- (Rupees Forty one lakh only) through Cheque dt.10.04.2023. Thus, the total amount paid by the complainants stands at Rs.74,00,000/- (Rupees Seventy four lakhs only) and balance part was to be taken care by housing loan from the State Bank of India, where the complainants had already applied in view of Tripartite agreement and loan was sanctioned in principle and waiting for disbursement.

9(a). Learned Counsel for the respondent contended that the complainants have filed present complaint in Form 'N' before passing of order by the Hon'ble Authority in Form- 'M' complaint. As such, the present complaint is not maintainable. *Per contra*, learned Counsel for the complainants contended that the said contention advanced is not tenable and the complainants have every right to file both complaints simultaneously.

9(b). I have considered the contentions on behalf of both parties. The provisions in Section 31 of the Act read with Rules 34 and 35 of the Rules are very clear on the aspect and there is no bar to file both complaints in Form-M before the Authority and Form-N before the Adjudicating Officer simultaneously. As such, the said contention on behalf of the respondent is not tenable.

10(a). Learned Counsel for the respondent next contended that the Hon'ble Authority has conclusively decided the subject matter between the parties vide order dt.03.01.2024 and present complaint is hit by the principles of *res judicata*.

10(b). On the other hand, learned Counsel for the complainants contended that the powers of Hon'ble Authority under the Act are different as envisaged under the Act on a complaint filed in Form-M, whereas the powers of the Adjudicating Officer are in respect of grant of compensation or otherwise on a complaint filed in Form-N before the

Adjudicating Officer. It is, therefore, the contention of the learned Counsel that the said contention on behalf of the respondent is devoid of merits.

10(c). On a careful consideration of the contentions of both sides, the contentions advanced on behalf of the respondent do not have any force. The contentions and reasons advanced on behalf of the complainants are supported by the provisions of the Act and Rules and the law enunciated by the Hon'ble Supreme Court in *M/s.Newtech Promoters and Developers's* case as referred above. Therefore, the said contention on behalf of the respondent is also of no help to the respondent.

11(a). Learned Counsel for the respondent has vehemently contended that there appears to be a mistake in showing the subject property, i.e., Flat under hypothecation in favour of HDFC Bank. According to the learned Counsel, the hypothecation has already been removed and resolved by October, 2023 as evident from no objection letter No.H/OP/679497951, dt.26.11.2023 of the Bank and the same was considered by the Hon'ble Authority in order dt.03.01.2024. Learned Counsel submits that the complainants instead of complying with the order of the Authority are pressing present complaint with ulterior motive.

11(b). On the other hand, learned Counsel for the complainants contended that the respondent offered to sell the flat A-2001 concealing the fact of hypothecation since 26.10.2022 on the name of third party. The complainants and the respondent entered into agreement of sale on 25.02.2023. Six months thereafter, on 20.07.2023, the complainants have received an e-mail demanding to make payment of Rs.1,04,83,632/- (Rupees One Crore, four lakhs, eighty three thousand, six hundred and thirty two only). When the complainants approached the State Bank of India to request for disbursement of loan amount, they were shocked to know that the said flat was already under

hypothecation. Learned Counsel also contends that the complainants made multiple attempts by approaching the respondent since 20.07.2023 and their sales team, but in vain. On 22.09.2023, the complainants have sent a Whats app message to one Vijay, one of the sales team Manager at Mobile 85490 00263 about the issue of hypothecation, but there was no response. Learned Counsel lastly contended that when the property in question is under hypothecation and admittedly the Hon'ble Authority has also accepted such contention of the complainants in said order and when the hypothecation was not removed, the demand by the respondent to make payment for execution of sale deed is not tenable, inasmuch as the Bank authorities would not release housing loan in view of hypothecation of property. Therefore, learned Counsel submits that the contention on behalf of the respondent has to be rejected.

11(c). The relevant documents to consider said contentions are, viz., order of Hon'ble Authority in Complaint No.1205/2023 dt.03.01.2024 Ex.A-22, Agreement of sale Ex.A2, Construction agreement Ex.A3, Tripartite Agreement Ex.A6, Whats app message Ex.A8, ,letter issued by Chief Manager, SBI, Nalgonda Branch dt.18.09.2023 Ex.A10, Letter issued by Authorized Signatory of HDFC Dt.26.10.2023 Ex.A12 and e-Mail dt.22.09.2023 sent by the complainant to the respondent Ex.A20.

11(c)(i). Last four lines of order in Complaint No.1205/2023 dt.03.01.2024 of Hon'ble Authority in Para 27 read as under:

"... ..However, since the parties have only entered into an agreement of sale and have not executed a sale deed, the Respondent is only liable in case he did not pay the mortgage amount while executing the sale deed or handing over possession of the unit".

11(c) (ii). First para at Page 7 of Agreement of sale Ex.A2 reads as under:

"AND WHEREAS the vendors have hence offered to sell schedule C property free from all encumbrances with right to construct through vendors and own schedule D property and the purchasers have accepted the said offer"

Similarly, Condition 4(3) at Page 10 of Ex.A2 reads as under:

"The vendors agree to secure necessary 'No Objection Certificate' from the Lending Bank/Institution and furnish the same to the purchaser/s at the time of conveyance of Schedule-C property, confirming that Schedule C property being free from the said charge of mortgage "

1 (c) (iii). One of the statements by the respondent at Page 3 in one para in bottom and at page 4 in top of Construction Agreement Ex.A3 reads as under:

"And Whereas the First Party along with the Owners by an Agreement for Sale of even date, has offered to Sell Schedule D Property free from all encumbrances with right to construct and own the Schedule D Apartment and the Second Party has accepted the said offer and agreed to purchase the SCHEDULED D Property free from all encumbrances with the right to construct and own Schedule D Apartment for consideration in accordance with the scheme, the Parties are entering into this Agreement on the terms and conditions stated herein below "

11 (c) (iv). First Condition of terms and conditions between parties at page No.4 of Tripartite Agreement Ex.A6 reads as under:

"The Builder states and declares that they have the absolute right, title land interest to develop and construct Flats over the land and that there are no encumbrances or disputes of whatsoever nature over the lands as well as the Flat that is proposed to be conveyed to the Borrower. The Builder and purchaser assure and declare not to create any encumbrances over the land or the Flat covered under the Tripartite Agreement".

11(c) (v). The Whatsapp message Ex.A8 sent by one of the Team Manager of respondent by name Vijay reads as under:

"Dear Sir, thanks for your patience. We are working on the timelines exactly when we can receive NOC from the Banker. End of the day will let you know exact".

11 (c) (vi). The letter from the Chief Manager of State Bank of India, Nalgonda Branch dt.18.09.2023 Ex.A10 reads as under:

"With refer your loan application on the captioned subject and advise that your housing loan application for purchase of residential flat at Hyderabad bearing flat No.2001, A Block, Bollineni Bion is not taken up favourably.

On verification/ search of your proposed flat in CERSAI (Central Registry of Securitization Asset Reconstruction and Security Interest of India) we understand that the proposed flat (under purchase) is already under mortgage on dated: 26/10/2022 by third party against loan availed from another financial institution.

This is for your information. The letter is issued at your request without any risk or liability on behalf of the undersigned or the Bank".

11(c) (vii). Another letter issued by Authorized Signature of HDFC dt.26.10.2023 Ex.A12 reads as under:

"This is to certify that subject to Mr.Venkateswaran Sundram & Mrs.Hema Venkateswaran repaying the loan of Rs.6300000 to HDFC Bank Ltd. together with all its related dues or furnishing alternate security acceptable to HDFC, HDFC shall have no objection in releasing its charge in respect of property being FLAT- 2001, FLOOR-20, BOLLINENI BION BLOCK A VIVA, S.No.42P, 43P, 45, 46. 47, 54-57P 75P,, KOTHAGUDA (V), SERILINGAMPALLY (M), R.R.DIST. Pin : 500084."

11(c)(viii). The e-mail dt.22.09.2023 Ex.A20 sent by the complainants to the respondent shows that the complainants mentioned all the details from the date of booking flat and till how the issue of hypothecation came to light subsequent to letter dt.20.07.2023 of the respondent demanding payment etc.

11(d). On consideration of said contentions on behalf of both the parties in light of said documentary evidence Exs.A22, A2, A3, A6, A8, A10, A12 and A20, it has to be said that the respondent has concealed the fact of hypothecation of flat in question much prior to execution of agreement of sale Ex.A2, construction agreement Ex.A3 and Tripartite agreement Ex.A6, though the flat was under hypothecation much prior to execution of Exs.A2, A3 and A6. Having regard to these facts and circumstances, I am of the considered view that there is force in the contentions advanced on behalf of the complainants and there is no force in the contentions on behalf of the respondent.

12. In view of aforesaid discussion, the respondent is certainly at fault and conduct of respondent squarely falls within the purview of Section 18 (3) of the Act and, therefore, the complainants are entitled for compensation. Point No.2 is answered accordingly in favour of complainants and against the respondent.

13. **POINT No.3:**

In view of finding on Point No.2, the complainants are entitled for compensation.

In my considered view, **compensation has to be granted under the heads pecuniary and non-pecuniary.** Though compensation has not been defined under the Act, Section 72 of the Act speaks about factors to be taken into consideration while adjudicating the question of compensation, which reads as under:

72. Factors to be taken into account by the Adjudicating Officer:

While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused as a result of the default;*
- (c) the repetitive nature of the default;*

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

14. For determining the compensation to be granted to the complainants for loss or injury due to non-delivery of possession on time, there is Authority of the Hon'ble Apex Court in **"M/s. Fortune Infrastructure (now known as M/s.Hicon Infrastructure) and another vs. Trevor D'Lima and others, Civil Appeal No.(s) 3533-3534 of 2017 decided on 12.03.2018,** wherein it is held :

"No hard and fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid, but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer had to stay in rented premises, then on the basis of rent actually paid by him. Along with recompensing the loss, the Commission/Forum may also compensate for harassment/injury, both mental and physical."

In the aforesaid case, the Hon'ble Apex Court laid down the principle for entitlement of the compensation due to loss or injury and its scope in cases where the promoter of real estate failed to complete the project and defaulted in handing over its possession.

15. In the instant case, it is neither the case of the complainants nor there is pleading in the complaint that the respondent has got any disproportionate gain or unfair advantage as a result of his default.

16. There is also no pleading or claim made by the complainants that due to default of the respondent in executing conveyance deed and giving possession of the flat, they had to pay such and such rent or they could have got such and such rent if possession of

flat was given in time and as such they may be granted such and such amounts towards loss of rent as compensation.

17. The complainants have filed Exs.A13 to A16 documents to contend that they had booked air tickets and cancelled due to alleged default on the part of the respondent. The complainants have also filed Exs.A17 to A19 medical reports and prescriptions to support their contention that on account of harassment and mental agony caused by the respondent, Complainant No.2 fell sick and had to take treatment. The complainants did not plead as to what was the loss due to such cancellation of tickets and how much expenditure they incurred for medical expenses. When there is no such pleading and claim by the complainants in the complaint, it is very difficult to consider their contention to grant compensation on said counts. At the most, the said contentions would be relevant while granting compensation for mental agony suffered by the complainants.

18. Apart from the factors for determining the quantum of compensation as envisaged under Section 72 (a), (b) and (c) of the Act, compensation has also to be considered and granted under Section 72 (d) of the Act, which reads as under:

“72. Factors to be taken into account by the Adjudicating Officer:-

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice”

19(a). It is the case of the complainants that all the circumstances from the sequence of events underwent by them from the date of booking/selecting the flat till they filed complaint in Form ‘M’, especially by the conduct of the respondent and his team with pre-plan to deceive the complainants and making them enter into agreement of sale

concealing the fact that the flat was already sold to others and siphoned Rs.74,00,000/- from them have to be taken into account to grant compensation. It is also their case that the respondent and his team willfully played a foul game with the emotions of the complainants and their family, who dreamed and planned their short vacation at new flat at Hyderabad. Therefore, the complainants prayed to award compensation of Rs.75,00,000/- (Rupees Seventy five lakhs only) towards harassment and mental agony.

19(b). *Per contra*, the respondent in counter contended that the complainants have not produced any documentary evidence to prove alleged mental agony and harassment. According to the respondent, the complainants must plead specific instances and details of harassment faced by them. In the absence of any such pleading and proof, the contention regarding harassment and mental agony is false.

19(c). During the course of arguments, learned Counsel for the complainants contended that due to harassment and mental agony, complainant No.2 fell sick and had to undergo treatment as evidenced from medical reports Exs.A17 to A19. Learned Counsel also contended that the complainants have booked Flight tickets to go to their children in US and because of failure of respondent in acting on the agreement of sale etc., they had to cancel the tickets as evident from Exs.A13 to A16.

19(d). Admittedly, the complainants and respondent entered into agreement of sale Ex.A2 and construction agreement Ex.A3. The complainants, respondent and the State Bank of India have also entered into a Tripartite agreement Ex.A6. Exs.A2, A3 and A6 have been executed on one date, i.e., 25.02.2023. In all these documents Exs.A2, A3 and A6, there is an undertaking by the respondent that the Flat offered for sale is free from all encumbrances. According to complainants, they had paid Rs.74,00,000/- and balance part of payment was to be taken care by Housing Loan from State Bank of India

where complainants had already applied by executing Tripartite agreement. On 20.07.2023 when they received a demand payment communication from respondent to pay Rs.1,04,83,632/- (Rupees One Crore, four lakhs, eighty three thousand, six hundred and thirty two only), they approached the Bank and the Bank refused to disburse loan as the flat is under hypothecation to HDFC Limited in the name of borrowers Sundaram and Venkateswaram since 07.11.2022, i.e., much prior to the agreement of sale, construction agreement and Tripartite agreement Exs.A2, A3 and A6. This contention of the complainants gets support from the letter of Chief Manager, State Bank of India, Nalgonda dt.18.09.2023 Ex.A-10 and letter issued by HDFC Dt.26.10.2023 Ex.A12.

20(a). Learned Counsel for the respondent contends that subsequent to orders of Hon'ble Authority in Complaint No.1205/2023, dt.03.01.2024, the respondent has issued notices dated 17.02.2024 and 03.05.2024 Exs.B5 and B6 to the complainants to pay balance consideration of Rs.1,08,82,267/- (Rupees One Crore, eight lakhs, eighty two thousand, two hundred and sixty seven only) to get registration of sale-deed in respect of the Flat in question, but the complainants have failed to obey the order of the Authority. Therefore, the complainants are not entitled for any compensation.

20(b). On the other hand, learned Counsel for the complainants contends that Ex.A20 e-mail dated 22.09.2023 sent by the complainants to the respondent and Ex.A8 dt.22.09.2023 Whats app message sent by one of the Team Managers of Respondent to the Complainants show that the demand for payment under said notices Exs.B5 and B6 without removing charge over the property is not tenable. Hon'ble Authority in order Ex.A2 observed that the respondent is liable to pay mortgage amount. Learned Counsel contends that it is not the case of the respondent that he has removed/cleared the

charge over the Flat and that on receipt of notices Exs.B5 and B6, the complainants approached the respondent and informed the fact of charge over the property and as such, there is no fault on the part of the complainants.

20(c). On consideration of contentions of both sides and finding on Point No.2 that the respondent is certainly at fault and conduct of the respondent squarely falls within the purview of Section 18 (3) of the Act, the contentions on behalf of the complainants have to be accepted. Therefore, the said contention on behalf of the respondent is rejected.

21. As noted supra, apart from the factors for determining the quantum of compensation envisaged under Section 72 (a), (b), (c) of the Act, this Authority has power under Section 72 (d) of the Act to consider other factors, which are considered necessary to the case in furtherance of justice.

22(a). It is pertinent to mention that the complainants could not get the title and possession of the flat in question by getting conveyance deed executed on release of housing loan by the Bank due to hypothecation of flat and reside peacefully and happily.

One has to consider the psyche of the Indian society. Normally, Indians are emotionally attached to own a residential house for the family. They will be prepared to spend major share of their life time earnings and ready to obtain loan from the financial institutions with the hope of getting home for the family. Because of fault and mischief on the part of the respondent, the complainants could not get title document executed and possession of flat and stay therein with their children as per their plan as pleaded and had to seek the remedy under existing law and for that they had to suffer mental agony due to harassment and had to incur expenses to obtain legal assistances to pursue their claim. The harassment of the complainants could be gauged from the fact that they were made to pay a total sum of Rs.74,00,000/- (Rupees Seventy four lakhs only)

towards part of sale consideration for purchase of flat, but the possession of the same was not delivered within stipulated period as Bank declined to release the housing loan for execution of conveyance deed for fault of respondent in creating charge over it, and thus the said amount paid by the complainant was retained by the respondent inappropriately. Considering such harassment and mental agony, the quantum of compensation has to be assessed especially keeping in view the amount paid and retained by the respondent coupled with other facts and circumstances of the case.

22(b). Thus, keeping in view the psychology of the Indian society in respect of owning a house for family, mental agony suffered by the complainants referred above which fall under the scope of Section 72 (d) of the Act and other reasons assigned supra and the fact that the respondent induced the complainants to part with a heavy amount of Rs.74,00,000/- (Rupees Seventy four lakhs only) for offering to sell the flat and retained the same without any justification, especially for no fault on the part of the complainants, I am of the considered view that award of compensation for mental agony and harassment, which is non-pecuniary at Rs.4,00,000/- (Rupees Four lakhs only) would meet the ends of justice.

23. Beside above, the complainants are also entitled for compensation towards legal assistance and other expenses to pursue the litigation. Having regard to the facts and circumstances of the case, this Authority is of the considered view that award of Rs.20,000/- (Rupees Twenty thousand only) towards cost of litigation would meet the ends of justice. Point No.3 is answered accordingly.

CONCLUSION:

24. In view of finding on Point Nos.2 and 3, the conclusion that emerges is that the complainants are entitled for compensation from the respondent as under:

Sl.No.	Head(s)	Amount (in rupees)
1	Compensation on account of mental agony.	4,00,000-00
2	Compensation on account of litigation expenses	20,000-00
	TOTAL	4,20,000-00

(Rupees Four lakhs and Twenty Thousand only)

25. IN THE RESULT, the respondent is directed to pay an amount of **Rs.4,20,000/- (Rupees Four Lakhs and Twenty Thousand only)** towards compensation within sixty (60) days from the date of this order, failing which, he shall also be liable to pay interest @ 10% per annum (today's highest MCLR rate of 8% plus 2%) from the date of complaint till realization as per Rule 15 of the Rules. The complaint is partly allowed accordingly.

Typed to my dictation, corrected and pronounced by me in open Court on this, the 23rd day of JULY, 2024.

Sd/-

**ADJUDICATING OFFICER,
TG RERA: HYDERABAD.**

**WITNESSES EXAMINED
NONE**

Exhibits marked for complainants:

Ex.A1	Dt.27.06.2019	Registration Certificate of Project issued by RERA
Ex.A2	Dt.25.02.2023	Photo copy of Agreement of Sale.
Ex.A3	Dt.25.02.2023	Photo copy of Construction agreement between the Respondent and Complainants.
Ex.A4	---	Photo copy of documents uploaded in the RERA Website.

Ex.A5	---	Photo copy information uploaded in the RERA Website stating that sales not started and allotment not done.
Ex.A6	Dt.25.02.2023	Photo copy of Tripartite agreement between the Complainants, respondent and State Bank of India.
Ex.A7	Dt.21.09.2023	Photo copy of Asset Based Search Report of CERSAI.
Ex.A8	Dt.22.09.2023	Photo copy showing the Whats app message.
Ex.A9	---	Photo copy of Form-B Affidavit cum Declaration of respondent.
Ex.A10	Dt.18.09.2023	Letter issued by Chief Manager, SBI Nalgonda stating that the loan application of complainants was not taken up favourably.
Ex.A11	Dt.02.05.2024	Photo copy showing status updated on RERA Website
Ex.A12	Dt.26.10.2023	Letter issued by HDFC vide file No.H/OP/L/679497951.
Ex.A13	Dt.07.06.2024	Copy of e-Mail containing Flight Tickets of complainants
Ex.A14	Dt.04.05.2023	Copy of flight ticket of Complainant No.2.
Ex.A15	Dt.04.05.2023	Copy of flight ticket of Complainant No.1.
Ex.A16	Dt.07.06.2024	e-mail sent to the Airlines for refund of flight cancellation amount.
Ex.A17	Dt.19.07.2023	Photo copies of diagnostic reports of Complainant No.2.
Ex.A18	Dt.16.09.2023	Photo copy of medical prescription of Complainant No.2.
Ex.A19	Dt.11.01.2024	Photo copy of medical prescription of Complainant No.2.
Ex.A20	Dt.22.09.2023	e-mail sent by Complainant to Sri M.S.Prasad.
Ex.A21	---	Extract showing what causes insomnia.
Ex.A22	03.01.2024	Photo copy of true copy of order dt.03.01.2024 passed in Complaint No.1205/2023 by TG RERA.

Exhibits marked for Respondent

Ex.B1	Dt.02.01.2024	Architect's certificate (F1).
Ex.B2	Dt.25.11.2023	Chartered Accountant's Certificate (Form-3)
Ex.B3	Dt.30.12.2023	Engineer's Certificate (F2)
Ex.B4	---	Organization Contact Details.
Ex.B5	Dt.17.02.2024	Copy of notice issued by Respondent Complainant No.1 to clear all dues and make arrangements for registration of Unit A-2001.
Ex.B6	Dt.03.05.2024	Another copy of notice issued by Respondent Complainant No.1 to clear all dues and make arrangements for registration of Unit A2001.

Sd/-

**ADJUDICATING OFFICER,
TG RERA: HYDERABAD**