

BEFORE TELANGANA REAL ESTATE REGULATORY AUTHORITY

[Under the Real Estate (Regulation and Development) Act, 2016]

Complaint No. 453 of 2025

Dated: 30th December 2025

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

Satrajeet Gupta

*R/o: Flat #413, Block- A, G K Heights,
KPHB, Hyderabad- 500072*

...Complainant

Versus

M/s. Vasavi Realtor LLP,

*Rep by its Designated Partner, Vijay Kumar Yerram,
Vasavi Corporate,*

*H.No.8-2-703/7/1 and 8-2-703/7/1/A,
4th Floor, Vasavi Corporate Building, Amrutha Valley Apartments,
Road No. 12, Banjara Hills, Hyderabad, Telangana - 500034*

...Respondent

The present matter filed by the Complainant herein came up for hearing before this Authority in presence of Complainant and the Respondent; upon pursuing the material on record and on hearing arguments of both the parties and having stood over for consideration till this day, the following order is passed:

ORDER

2. The present Complaint has been filed by the Complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the "Act") read with Rule 34(1) of the Telangana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the "Rules") seeking appropriate relief(s) against the Respondents.

A. The brief facts of the case, as stated by the Complainant, are as follows:

1. The Complainant submits that the Complainant booked a residential apartment in the project known as Vasavi Lake City on 19th December 2020 and subsequently entered into an Agreement of Sale with Vasavi Realtors in November 2021 for the purchase of a flat situated

in Vasavi Lake City, East Wing, Tower-3, 13th Floor, Flat No. 1307, bearing RERA Registration No. P02500001821.

2. The Complainant submits that the address of the said property is Vasavi Lake City, Manjeera Pipeline Road, APGOs Cooperative Housing Society, Hafeezpet, Hyderabad, Telangana – 500050.

3. The Complainant submits that as per the original Agreement of Sale, the committed date for handing over possession of the said flat was on or before August 2023. Despite the Complainant having made all payments strictly in accordance with the payment schedule and within stipulated timelines, and despite multiple follow-ups, meetings, and discussions with the builder and its management, the flat has not been handed over even as of July 2025, resulting in a delay of approximately 23 months. The Complainant further submits that there is no certainty as to when possession will be handed over, as the builder has repeatedly pushed the possession date.

4. The Complainant submits that the Complainant has been continuously following up with the builder, its management, and CRM team for over a year regarding the delay in handing over possession. However, no clear or reliable assurance has been provided. In every meeting, a tentative handover date is mentioned, which is subsequently postponed without any meaningful explanation. After several visits to the builder's head office, a meeting was held in September 2024, during which the builder issued a written commitment on its letterhead stating that flats would be handed over for interiors by 14th February 2025. This date was later revised to 7th March 2025 and, as per the latest Minutes of Meeting, further postponed to June 2025. As the end of June 2025 approached, there was no formal communication regarding handover. Site inspection clearly shows minimal progress, making imminent handover highly improbable. Despite repeated follow-ups, the CRM team has failed to provide clear or consistent updates.

5. The Complainant submits that since September 2023, there has been negligible progress at the site for nearly one and a half years. Only minor works such as partial installation of doors, windows, and tiles appear to be taking place at an extremely slow pace. A substantial amount of work remains pending, which, if not addressed urgently, will further delay the handover.

6. The Complainant submits that upon communicating with other flat owners in the same tower, the Complainant came to know that the builder has issued different possession dates to different allottees of the same tower in their respective Agreements of Sale. Despite the Complainant having complied with all payment demands in a timely manner, the Complainant feels cheated and discriminated against due to the issuance of differing possession timelines.

7. The Complainant submits that even after a delay of more than 22 months from the committed possession date of August 2023, possession has not been handed over as of June 2025. Each newly proposed timeline has been repeatedly breached, and the possession date has been pushed at least three times in the last 6–8 months alone.

8. The Complainant submits that several critical works in the building remain incomplete, including but not limited to:

- Bathroom fixtures, windows, and door installations;
- Switchboards and water connections;
- Rectification of poor workmanship, including visible gaps between windows and walls, extremely narrow doors that restrict movement of household appliances, and water leakage across multiple floors;
- External painting, internal painting, and waterproofing works;
- Completion of society amenities such as the clubhouse, garden, and children's play area;
- Completion of parking ramps and parking areas;
- Installation of staircase railings, rendering staircases unsafe for use;
- Removal of large construction debris and dumps within the building, indicating substantial pending work.

9. The Complainant submits that the kitchen platform has not been installed, despite its cost being included in the total consideration for the flat. The builder has neither installed the same nor provided any clarity regarding reimbursement of the corresponding amount.

10. The Complainant submits that essential services such as electricity and water provisioning have not yet been initiated, further demonstrating that the project is far from completion and that the builder has failed to adhere to its contractual and statutory obligations.

B. Relief(s) Sought:

11. Accordingly, the Complainant sought the following reliefs:

- i. To pay interest in the total amount paid to Vasavi so far equivalent to what would have accrued through a Fixed Deposit during this period. Alternatively, to pay monthly rent equivalent to prevailing market rental value of a similar flat in Vasavi Lake City area.
- ii. To direct Respondent to pay the kitchen platform cost as per the Complainants kitchen size.

C. Counter filed by the Respondent:

12. It is submitted by the Respondent that the complaint is not maintainable either in law or on facts and is liable to be dismissed. It is submitted that the complainant has not followed the remedies available under the Agreement for Sale for resolution of disputes before approaching this Hon'ble Authority. Further, no prior legal notice was issued before filing this complaint, which itself renders the application defective and not maintainable.

It is submitted that the project "Lake City-East" was developed lawfully after obtaining rights from the landowners under registered documents, covering 34,704.37 sq. yds. While requisite land conversion permissions and building permissions for construction of multi-storied apartments were obtained on 07.02.2020. The project consists of six towers (4 cellars + ground + 14 upper floors), Tower No. 4, 5, and 6 (3 Cellars + ground + 14 upper floors) and a clubhouse (stilt + ground + five upper floors). The project was duly registered with this Authority vide Registration No. P02500001821 dated 20.03.2020.

13. It is further submitted that the Complainant was allotted an apartment in the project vide booking dated 26.09.2020, and was allotted an apartment No. E.31307 on the 13th Floor of Tower 3, admeasuring 1650 sq. ft., along with parking, for a total consideration of Rs.80,02,000/-. The Agreement of Sale sets out the carpet area, balcony/veranda area, common area, and undivided share of land. The Complainant has paid Rs.16,80,420/- towards the sale consideration, while the balance amount remains payable in accordance with the agreed payment schedule.

14. It is submitted that as per Clause 7 of the Agreement, the Respondent was obligated to hand over possession of the flat and common areas by 31.08.2023, subject to extension in the event of force majeure. The Agreement itself clearly records that timely delivery is the essence

of the contract but also recognises that the period of completion shall stand extended to the extent of delay caused by force majeure conditions, during which period the allottee is not entitled to claim compensation.

15. It is submitted that the complainants have not come before this Hon'ble Authority with clean facts but with an ulterior motive to make unlawful gain and that there has been material suppression of facts of the case with regard to the claim and the relief sought therein.

16. It is further stated that COVID-19 is a force majeure event duly recognized under law, and hence the timelines stood extended. The Respondent contended that the COVID-19 pandemic, subsequent lockdowns, and migration of labourers had severely impacted construction work. The Respondent further relies on the orders of the Hon'ble Supreme Court in *Suo Motu Writ Petition No. 3 of 2020*, whereby the period from 15.03.2020 till 28.02.2022 was excluded for the purposes of computation of limitation across various statutes. It is contended that the extension of time for completion of the project was not only factually justified but also recognised in law.

17. In addition to COVID-19, the Respondent submits that unforeseen site conditions such as rocky terrain requiring manual excavation further delayed the project. Owing to restrictions on blasting due to the residential nature of the surrounding locality, excavation could only be done manually, which compounded the delay. These challenges were communicated to all allottees through regular updates and meetings.

18. The Respondent also submits that certain third-party disputes adversely impacted the project timelines. These include cases such as RERA Case No. 190/2020, W.P. Nos. 2694/2021, 13898/2022, 33433/2023, W.A. No. 584/2023, SLP Nos. 9694–9695/2023, and W.P. No. 26301/2024, some of which are still pending. While most have been resolved, their pendency at various points of time hindered the smooth progress of the project.

19. It is contended that the project has been executed strictly in accordance with approved plans and specifications, and any clerical or typographical errors in the Agreement of Sale cannot be construed to create liability. It is the case of the Respondent that more than 90% of the project construction is completed and the project is presently in its final finishing stage. An extension of registration has already been granted by this Authority till 07.02.2026, within which period the Respondent undertakes to deliver possession of the apartments to all allottees. Communications have also been issued to purchasers for payment of balance amounts, as completion is nearing.

20. With regard to the claims for interest and compensation, the Respondent submits that in view of the force majeure conditions, no such relief is available to the Complainant under law. Section 6 of the Act specifically contemplates force majeure events such as natural calamities and other circumstances beyond the control of the promoter. The Respondent submits that the COVID-19 pandemic, together with the extraordinary circumstances outlined above, clearly falls within the scope of force majeure.

D. Rejoinder filed by the Complainant:

21. It is submitted by the Complainant that the objection raised by the Respondent is vague, misconceived, and legally unfounded. The present complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016, which confers a clear statutory right upon an aggrieved allottee to seek redressal before this Hon'ble Authority. The Agreement of Sale dated 19th December 2020 unequivocally stipulates the committed possession date as 31st August 2023. Till date, the flat remains undelivered, and therefore, the complaint is well within the bounds of law and merits full consideration.

22. It is submitted by the Complainant that the Complainant does not dispute the Respondent's development rights in respect of the project. However, the existence of such rights does not dilute or override the Respondent's contractual and statutory obligation to hand over possession within the agreed timeline. The core issue is the Respondent's failure to deliver possession in accordance with the executed Agreement of Sale.

23. It is submitted by the Complainant that while the Respondent may have obtained land conversion and building permissions dated 07th February 2020 for construction of multi-storied residential apartments, such approvals do not absolve the Respondent of liability for delay. Having regulatory permissions does not discharge the promoter from the legal duty of timely execution and lawful handover of the allotted unit.

24. It is submitted by the Complainant that although the project was registered under RERA, the Respondent has grossly failed to comply with the obligations that accompany such registration. RERA registration imposes strict statutory duties relating to transparency, accountability, and timely possession. The Respondent has repeatedly failed to update the project status, disclose realistic possession timelines, or act in a fair and accountable manner, thereby violating Sections 4, 11, and 18 of the RERA Act.

25. It is submitted by the Complainant that the Respondent's emphasis on the alleged booking date of 19-08-2020 is legally irrelevant. The Agreement of Sale dated 19th December 2020 is the only binding document governing the rights, obligations, and timelines between the parties, including the committed possession date of 31st August 2023. RERA mandates consideration of the Agreement date and not the preliminary booking date.

26. It is submitted by the Complainant that the Complainant has paid approximately ₹68,00,000/- (Rupees Sixty-Eight Lakhs only), constituting more than 83% of the total sale consideration, strictly in accordance with Schedule C of the Agreement of Sale. The balance amount is contractually payable only upon handover of possession, which has not occurred till date. There is no default on the part of the Complainant, and any suggestion otherwise is misleading and false

27. It is submitted by the Complainant that the Respondent has deliberately failed to address the core issue of inordinate delay in handing over possession and has instead attempted to divert attention to irrelevant matters such as specifications under Schedules D and E. The present complaint is confined to delay in possession, and such diversionary tactics deserve to be rejected.

28. It is submitted by the Complainant that the Respondent has never proactively communicated delays or construction progress, despite repeated follow-ups by the Complainant. Project schedules were shared only after persistent demands and were never adhered to. This conduct demonstrates a lack of transparency and accountability as mandated under the RERA framework.

29. It is submitted by the Complainant that the delay cannot be attributed to COVID-19 or force majeure, as the Agreement of Sale was executed on 19th December 2020, when the Respondent was fully aware of pandemic-related circumstances. The substantial delay occurred from the end of 2023 onwards, at a time when COVID-19 was no longer in effect. No demand letters were issued after September 2023 for over a year, clearly indicating that construction activity had largely stalled. The Complainant's unit in Tower-3, East Wing, was structurally completed more than 18 months ago.

30. It is submitted by the Complainant that the Respondent's claim that the possession date mentioned in the Agreement of Sale was an "error" is a dishonest afterthought. The Agreement

dated 19th December 2020, committing to possession by 31st August 2023, was freely and consciously executed by the Respondent without protest or correction at any stage until the filing of the present proceedings. Any retrospective attempt to disown this commitment reflects a complete abdication of responsibility.

31. It is submitted by the Complainant that the allegations made against the Complainant are unfounded, derogatory, and intended solely to divert attention from the Respondent's prolonged failure to deliver possession. The Complainant has placed extensive documentary evidence on record, including the registered Agreement of Sale, payment receipts evidencing over 83% payment, minutes of meetings, written correspondence, and a record of repeatedly shifting possession timelines extending into February 2024, August 2024, February 2025, and June 2025, none of which were honoured. No possession notice has been issued till date.

32. It is submitted by the Complainant that the Respondent's reliance on extension of RERA registration till February 2026 is misconceived. As per Section 19(2) of the RERA Act, the allottee is entitled to possession strictly in accordance with the Agreement of Sale and not as per the outer limit of project registration validity.

33. It is submitted by the Complainant that under Section 11(3)(a) of the RERA Act, it is the statutory responsibility of the promoter to ensure that the project is free from encumbrances and legal risks, and under Section 18(1) of the Act, the Respondent is liable to pay interest for every month of delay until handing over possession.

34. It is submitted by the Complainant that in view of the above facts and circumstances, this Hon'ble Authority may be pleased to reject the Respondent's baseless objections and hold the Respondent accountable under Sections 18(1) and 19(4) of the RERA Act for failure to deliver possession and for causing continuous hardship, financial loss, and mental agony to the Complainant.

D. Points for Consideration

35. Upon a careful perusal of the record and the submissions advanced by both parties, oral as well as written, this Authority is of the view that the following issues arise for determination in the present complaint:

1. Whether the present complaint is maintainable before this Authority?

2. Whether the Complainants are entitled to the reliefs as prayed for?

E. Observations of the Authority:

Point 1:

36. The Respondent has raised an objection as to the maintainability of the present complaint on the ground that the Complainants failed to first resort to the contractual dispute resolution mechanism envisaged in the Agreement of Sale, namely an amicable settlement by mutual discussion, prior to approaching this Authority.

37. The Authority finds this objection untenable for the following reasons:

The relevant Dispute Resolution clause in the Agreement of Sale is reproduced below for ready reference:

“33. Dispute Resolution clause in the Agreement of sale executed between the parties, the said clause stated that all or any disputes arising out of touching upon or in relation to the terms and conditions of this Agreement, including the interpretation and validity of the terms thereof and the respective rights and obligations of the Parties, shall be settled amicably by mutual discussion, failing which the same shall be settled through adjudication officer appointed under the Act.”

38. It is clear from the above that the clause only requires the parties to attempt an amicable settlement by mutual discussion. Such a clause is at best directory and cannot oust or restrict the statutory jurisdiction of this Authority. Section 79 of the RE(R&D) Act expressly bars the jurisdiction of Civil Courts in respect of any matter which this Authority, the Adjudicating Officer, or the Appellate Tribunal is empowered to determine. Likewise, Section 88 clarifies that the provisions of the RE(R&D) Act are in addition to, and not in derogation of, other laws. Thus, the intention of the legislature is that remedies under this beneficial legislation must remain open to allottees, irrespective of any private clause for amicable settlement.

39. Even in cases where agreements contained arbitration clauses (which is not the case here), the Hon’ble Supreme Court and the Hon’ble NCDRC have consistently held that such clauses cannot circumscribe the jurisdiction of consumer fora or statutory authorities constituted under special enactments.

40. In *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy* (2012) 2 SCC 506, the Supreme Court held that remedies under special statutes are in addition to, and not in derogation of, other remedies. For ready reference, the relevant extract is reproduced below:

“49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:- '79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.' It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Subsection (1) of Section 20 or the Adjudicating Officer, appointed under Subsection (1) of Section 71, or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act. 56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act.”

41. Similarly, in *Aftab Singh &Ors. v. Emaar MGF Land Ltd. &Ors.* (Consumer Case No. 701 of 2015, decided on 13.07.2017), it was held that arbitration clauses in builder-buyer agreements cannot oust the jurisdiction of consumer fora. The said view was later upheld by the Hon'ble Supreme Court in Civil Appeal Nos. 23512–23513 of 2017. The relevant para reads:

“25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being

an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength of an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

42. In the present matter, there is only a clause requiring amicable discussion before invoking remedies. Such a clause is directory at best, and cannot override or defeat the statutory right of the Complainant to approach this Authority under the RE(R&D) Act. Accordingly, this Authority has no hesitation in holding that the Complainant is well within its rights to approach this forum without being first compelled to pursue an amicable settlement under the Agreement. The objection of the Respondent as to maintainability is therefore rejected.

Point No. 2:

43. The Complainant has sought relief on the ground that there has been an inordinate delay in handing over possession of the subject flat, despite timely payments of approximately 83% of the total sale consideration, causing significant financial and emotional distress.

44. It is the case of the Complainant that the Agreement of Sale dated 19.12.2020 clearly stipulated that possession of the subject flat would be handed over by 31.08.2023, with a grace period of six months, ending on 28.02.2024. The Respondent has failed to hand over possession even as of February 2025. Further, although the project was registered with TG RERA up to February 2025 and later extended until 07.02.2026, the project remains incomplete, with construction progress stalled at approximately 70% as per the Complainant's submission, with key aspects such as interior finishing, common amenities, and supporting infrastructure remaining unfinished. The Complainant submits that the Respondent has issued multiple revised handover schedules without providing valid justification or a clear roadmap for completion.

45. The Complainant further submits that despite assurances made, including a promise to pay compensation for delay as per RERA guidelines, no such compensation has been provided. The Respondent, conversely, attributes the delay to the Covid-19 pandemic, claiming force majeure, citing the nationwide lockdown beginning March 2020, the impact on migrant labour, and consequential delays. The Respondent further cites rocky terrain at the site, third-party disputes, and typographical errors in the possession date as additional justifications.

(i) Whether the Covid-19 pandemic can be taken as a valid shield by the Respondent in the present case?

46. This Authority finds no merit in such a contention. The Agreement of Sale was executed on 19.12.2020, well after the onset and initial impact of the Covid-19 pandemic. The Respondent, being fully aware of the prevailing circumstances, nevertheless executed the Agreement by specifically assuring completion of the project by August 2023. Having consciously undertaken such commitment, the Respondent cannot now, with retrospective justification, rely on Covid-19 as a defense to escape its contractual and statutory obligations. Such conduct clearly amounts to holding out false assurances with mala fide intent.

47. It is a settled principle that once a promoter has chosen to register a project and enter into binding contractual commitments with allottees, he does so with full knowledge of the risks, constraints, and challenges of the market. At the time of entering into the Agreement of Sale with the present Complainant, the Respondent was already aware of the Covid-related disruptions, as well as the Government notifications granting moratoriums for project completion timelines. Despite this knowledge, the Respondent chose to provide a specific assurance of delivery by August 2023.

48. This Authority aligns with the observations of the Hon'ble Bombay High Court in *Neelkamal Realtors Suburban Pvt. Ltd. &Anr. vs. Union of India &Ors. [2017 SCC OnLine Bom 9302]*, wherein at para 119 it was categorically observed:

"While the proposal is submitted, the Promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the Promoter is expected to have a fair assessment of the time required for completing the project..."

49. The above dictum fortifies the principle that the promoter, being structurally at an advantageous position with respect to project information and market realities, is under a statutory duty to provide realistic timelines. The framework of the Real Estate (Regulation and Development) Act, 2016 reinforces this obligation by mandating timely completion and possession within the period stipulated in the Agreement of Sale.

50. Therefore, the plea of Covid-19 as a force majeure defence in the present case is wholly untenable. The Respondent, having executed the Agreement of Sale in December 2020 with specific possession timelines, cannot now seek to retrospectively attribute delays to the pandemic. Accordingly, this Authority holds that the reliance on Covid-19 as a shield stands rejected.

(ii) Extension of Registration

51. The Respondent has further contended that, since extensions have been granted by this Authority, the project timeline now stands extended up to February 2026, and therefore possession shall be delivered by then. The Complainants, however, have questioned the validity and effect of such extensions.

52. At the outset, it must be clarified that under the scheme of the RE(R&D) Act:

“An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.”

53. The paramount objective is twofold: protection of consumer interest, and ensuring completion of projects in an efficient manner. Denial of extension during the Covid-19 disruption would have resulted in projects being stalled, to the grave prejudice of allottees. It was in this context that this Authority, balancing the equities, granted extensions in line with the moratoriums issued by Telangana RERA:

1. 15.03.2020 to 14.09.2020 (Circular No.14 dated 13.05.2020),

2. 15.09.2020 to 15.03.2021 (Order No.15 dated 29.09.2020),

3. 15.03.2021 to 14.09.2021 (Order No.16 dated 01.06.2021).

54. Accordingly, an aggregate 18 months' extension was applied across projects to safeguard larger consumer interest. However, it is equally well settled that such regulatory extensions cannot dilute the contractual rights of individual allottees under their respective Agreements of Sale, nor can they displace the statutory rights flowing from Section 18 of the RE(R&D) Act.

55. In the present matter, it is evident that the Respondent has unilaterally revised possession timelines to February 2026 due to the extension taken without consultation or consent of the Complainants. Such unilateral revisions are impermissible. The Hon'ble Bombay High Court in *Neelkamal Realtors Suburban Pvt. Ltd. vs. Union of India & Ors.* [2017 SCC OnLine Bom 9302], while upholding the constitutional validity of RERA, categorically observed:

Para 119 "The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter."

Para 256 of this Judgment further clarifies that "by giving opportunity to the promoter to prescribe fresh timeline under Section 4(2)(l)(C), he is not absolved of the liability under the agreement for sale"

56. The above dicta makes it abundantly clear that any extension granted by the Authority, or revised timelines uploaded on the TG RERA project registration portal, do not ipso facto alter or bind the allottees' contractual rights. The agreed date of possession remains as stipulated in the Agreement for Sale, and unilateral extensions by the promoter cannot be foisted upon allottees to their detriment.

57. Accordingly, this Authority holds that the revised possession dates mentioned by the Respondent, whether while seeking extensions before the Authority or as updated on the registration portal, cannot be treated as binding on the Complainants.

(iii) Relief under Section 18 of the RE(R&D) Act:

58. It has been observed by this Authority that the total sale consideration is for an amount of Rs. 80,02,000/- (Rupees Eighty Lakh Two Thousand Only). That, as per the Agreement of Sale the Complainant has paid an amount of Rs. 16,80,420 /- (Rupees Sixteen Lakh Eighty Thousand Four Hundred And Twenty Only). However it is observed that as per the payment receipts placed before this Authority that a sum of Rs. 68,81,470/- (Rupees Sixty Eight Lakh Eighty One Thousand Four Hundred And Seventy Only) has been duly paid by the Complainant herein towards the sale consideration. Further, the Agreement clearly stipulated possession by 31.08.2023, with a grace period of 6 months to 28.02.2024. Admittedly, possession has not been delivered.

59. The Respondent's contention that 90% work is complete and that the Complainants have paid only a portion of the consideration is wholly unsustainable. The Complainants have already paid substantial sum of the agreed consideration as per their averments. Despite receiving such substantial sums, the Respondent has failed to honour its contractual obligations. It is manifest that the Respondent gave false assurances, being fully conscious of the market situation, yet assuring dates of completion that it had no capacity to honour. More than one year has elapsed beyond the stipulated date, yet the project is neither complete nor possession handed over.

60. The Respondent further seeks to shift the burden on the complainant by contending that the balance amount is unpaid. This plea is untenable. The law does not permit a defaulter to take advantage of its own breach. As held by the Hon'ble Supreme Court in ***Kusheshwar Prasad Singh v. State of Bihar [Civil Appeal No. 7357 of 2000]***:

"It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he, who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong"

61. In this context, it is pertinent to note that the Agreement of Sale linked the payment schedule to the progress of construction. While the allottees are indeed bound to adhere to the agreed payment plan, such obligation arises only when the promoter simultaneously fulfils its reciprocal obligation of executing construction in line with the assured progress. In the absence

of such progress, the Respondent cannot insist upon further payments as a condition to claim relief.

62. Section 18 of the RE(R&D) Act is categorical and unconditional. It does not make the grant of interest contingent upon the quantum of sale consideration paid, nor does it provide any defence to a defaulting promoter. Once delay in handing over possession is established, an allottee who elects to remain in the project is entitled to interest for every month of delay, irrespective of whether part or whole of the consideration has been paid, provided that the payments already made are in accordance with the Agreement of sale. The Respondent's plea that only "partial sale consideration" has been paid and hence interest cannot be granted is therefore vague, misconceived, and contrary to the express mandate of the statute.

63. Now, Section 18 of the RE(R&D) Act is categorical:

"(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, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for

compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

64. This statutory right of allottee is unqualified and absolute. Attention is drawn to the decision of the Hon'ble Supreme Court of India in ***Civil Appeal Nos. 3581-359 of 2022, Civil Appeal Diary No. 9796/2019, M/s Imperia Structures Limited vs. Anil Patni & Others***, wherein it was held:

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received in respect of that apartment if the allottee wishes to withdraw from the project. Such a right of the allottee is 'without prejudice to any other remedy available to him'. This right is unqualified, and if availed the deposited money must be refunded with interest as prescribed. The proviso to Section 18(1) contemplates that if the allottee does not intend to withdraw from the project, they are entitled to interest for every month of delay until possession is handed over. The allottee may proceed under Section 18(1) or the proviso thereto."

65. Similarly, in Civil Appeal Nos. 6745-6749 of 2021, ***M/s Newtech Promoters and Developers Private Limited vs. State of UP & Others***, the Hon'ble Supreme Court observed:

"Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an 9 of 10 apartment, plot, or building in terms of the agreement for sale. The allottee/home buyer holds an unqualified right to seek a refund of the amount with interest as prescribed."

66. Further, as earlier observed, the Hon'ble Bombay High Court in ***Neelkamal Realtors Suburban Pvt. Ltd. v. Union of India [(2017) SCC Online Bom 9302]*** clarified that RERA registration or its extension cannot rewrite the contract between parties. The date assured under the Agreement of Sale, executed with the allottee's consent, shall prevail. Thus, the Respondent

is bound by Section 11(4)(a) of the RE(R&D) Act, which mandates adherence to the terms of the Agreement of Sale.

67. At the same time, if the Complainant has indeed defaulted in adhering to the payment schedule, the Respondent is not without remedy. Sections 19(6) and 19(7) of the Act confer upon the promoter a right to claim interest for delayed payments, as per Rule 15 of the Telangana RE(R&D) Rules, 2017. Nevertheless, such entitlement shall be subject to the Respondent producing cogent and substantive documents demonstrating both the stage-wise progress of construction and the corresponding default, and not merely based on unilateral assertions.

68. In the present case, this Authority finds the Respondent in clear breach of both statutory and contractual obligations. The Complainant is therefore entitled to interest at the prescribed rate for the entire period of delay, i.e., from 01.03.2024 until the actual date of handing over possession. As regards claims of compensation, this Authority notes that jurisdiction for adjudicating compensation lies with the Adjudicating Officer under Section 71 of RE(R&D) Act with Form 'N'. The Complainant is at liberty to pursue such remedy separately.

69. Accordingly, while the Complainant is entitled to relief under Section 18 of the RE(R&D) Act, 2016 this entitlement is subject to the reciprocal statutory duty of the Complainant to discharge any outstanding amounts under the payment plan, if not already paid. Compliance on both sides is essential to ensure balance of obligations and timely delivery.

70. This Authority cannot remain oblivious to the larger pattern of violations. It is noted with grave concern that more than fifty complaints have already been received against this very Respondent in respect of the subject project. Such repeated defaults and false assurances strike at the very root of the confidence that homebuyers are entitled to repose under the protective framework of the RE(R&D) Act, 2016.

71. The Statement of Objects and Reasons of the RE(R&D) Act, 2016 explicitly emphasizes "greater accountability towards consumers and to inject transparency, efficiency, and discipline in the real estate sector". The conduct of the Respondent herein is in gross derogation of that legislative mandate. If such violations are permitted to persist, the very soul of the Act would stand diluted and the protection promised to allottees rendered illusory.

72. Accordingly, this Authority hereby sternly warns the Respondent promoter that any further default, non-compliance, or failure to deliver possession within the assured statutory timelines or any fresh grievances brought to notice by allottees shall invite invocation of Section 63 of the RE(R&D) Act.

73. This Authority shall not hesitate to take the strictest view in future, for the Act was enacted not as a mere regulatory framework but as a beneficial legislation to protect innocent homebuyers from the very malaise exemplified by the conduct of this Respondent.

74. The Respondent is hereby directed to complete the project and hand over possession to the Complainants within the stipulated period. It is further clarified that if the Complainants have defaulted in making payments as per the agreed schedule, the Respondent shall be entitled under Section 19(6) of the Act to claim interest on such delayed payments, provided that it substantiates such claim with credible documentary evidence of both construction progress and corresponding default.

75. In the event the Complainants have defaulted in making payments as per the agreed schedule, the Respondent shall be entitled, under Section 19(6) of the Real Estate (Regulation and Development) Act, 2016, to claim interest on such delayed payments in accordance with Rule 15 of the Telangana Real Estate (Regulation and Development) Rules, 2017. Nevertheless, such entitlement shall be subject to the Respondent producing cogent and substantive documents demonstrating both the stage-wise progress of construction and the corresponding default, and not merely based on unilateral assertions.

76. The Complainants are, in turn, directed to discharge any balance amounts due under the agreed payment schedule, if not already paid. Mutual compliance is essential to ensure timely completion and delivery of the project.

G. Directions of the Authority:

77. In view of the findings and observations recorded hereinabove, this Authority proceeds to issue the following directions:

- a. The preliminary objection raised by the Respondent regarding the maintainability of the complaint on account of the Dispute Resolution Clause in the Agreement of Sale stands rejected. The complaint is maintainable before this Authority.

- b. The Respondent's reliance on the Covid-19 pandemic as a ground of force majeure is held untenable, since the Agreement of Sale was executed after the subsiding of the pandemic and with full knowledge of the prevailing circumstances.
- c. The extension of registration taken by this Respondent cannot dilute the contractual rights of the Complainant under the Agreement of Sale. The date of possession as stipulated in the Agreement shall prevail.
- d. The Respondent is held liable for failure to hand over possession of the subject flat by the agreed date i.e., 28.02.2024 (inclusive of grace period).
- e. The Complainants are entitled to interest at the rate of 10.70% per annum (being SBI MCLR + 2% as per Rule 15 of the TG RE(R&D) Rules, 2017), computed on the amounts actually paid by the Complainants, with effect from 01.03.2024 until actual handing over of lawful possession. The exact computation shall be subject to verification of such payments by the Respondent at the stage of effecting payment. The Respondent shall pay the arrears accrued up to the date of this Order within sixty (60) days, and shall thereafter continue to pay the accruing interest on a monthly basis, on or before the 10th day of each succeeding month, until possession is delivered.
- f. Insofar as compensation is concerned, the Complainant is at liberty to pursue appropriate proceedings before the Learned Adjudicating Officer under "Form N".
- g. The Respondent is hereby directed to complete the project forthwith and hand over possession to the Complainants within the statutory timelines.
- h. The Complainants are directed to pay the balance consideration strictly in accordance with the agreed payment schedule. In the event of any default in adhering to such schedule, the Respondent shall be at liberty to claim interest on the delayed amounts, as provided under Rule 15 of the Telangana Real Estate (Regulation and Development) Rules, 2017. However, such claim shall be substantiated by valid documentary evidence demonstrating that the default is aligned with the actual stage-wise progress of construction, and not merely on the basis of unilateral assertions.

78. Having regard to the repeated defaults and the large number of complaints already pending against this Respondent in the same project, this Authority sternly warns the Respondent that any further delay, non-compliance, or grievance brought to notice by allottees shall invite section 63 of the RE(R&D) Act, 2016.

79. The Complaint is accordingly allowed in part, in terms of the above directions.

80. Failure to comply with above said directions by the Respondent shall attract penalty in accordance with Section 63 of the RE(R&D) Act, 2016.

81. As a result, the Complaint is disposed of accordingly. No order as to costs.

Sd/-
Sri K. Srinivasa Rao,
Hon'ble Member,
TG RERA

Sd/-
Sri Laxmi Narayana Jannu,
Hon'ble Member,
TG RERA

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