

5. Subsequently, the Respondents sold the unit and made the complainant wait for 3 months before returning 5 lakhs. They stated that the remaining 3 lakhs would be transferred later. Upon questioning them about the outstanding amount of Rs. 4 lakhs, they claimed they were deducting it due to the cancellation.

6. Further that there was no sale agreement signed or memorandum of understanding (MOU). Only two receipts of payment were provided to the complainant. It has been 5 months and no clear response has been given by the Respondents.

B. Relief sought:

7. To direct the Respondents to refund the paid amount to the Respondent for the concerned unit.

C. Respondent Reply:

8. The Respondent argues that the complaint is not maintainable as the Complainant suppressed material facts and the application lacks cause of action against the Respondent. They allege that the complaint is misconceived and based on false facts.

9. That the Respondent is a reputable construction company having its registered office at H.No. 8-10, Fortune Chambers, 5th floor, Image Gardens lane, Madhapur Hi-Tech city, Hyderabad, Telangana- 500081.

10. That Smt. Bhavani Velivala W/o Ramu (Complainant) had shown interest in purchasing a residential flat i.e., Flat No.105 a 2BHK size of 1100 SFT in Block D in a residential project namely 'PAGDALA SANYA' Located at Survey No.441, Plot No. Of Site: B- 181, B-182, B-183 and B-184, at Dundigal Bowrampet, Gandimaisamma, Medchal- Malkajgiri, Hyderabad, Telangana-500043 ('Flat') for a total sale consideration of 61,20,000 (Sixty-One Lakh Twenty Thousand Rupees) and the token amount for the same is 6,12,000 (Six Lakh Twelve Thousand). This Project has been registered vide project registration number: P02200004027.

11. It is submitted that after the issuance of the Confirmation Letter dated 11.04.23, the Complainant defaulted to make payments as per the payment timelines agreed between the parties. After repeated follow-ups by the Respondent, the Complainant has assured the Respondent that he will make payment to the Respondent by securing a Home Loan. Relying on the Complainant's assurances and request, the Respondent had granted them time. However, the Complainant failed to secure a loan for the same. It is pertinent to mention the Complainant has suppressed this material fact that he failed to secure the home loan amount.

12. It is pertinent to mention that the Complainant had requested the Respondent via a written letter dated 19.04.23 (Annexure VII) that they will make payment of Rs 30, 00,000 (Rupees Thirty Lakhs) by 30.04.23 and the balance amount on or before 20.05.2023 to which the Respondent agreed via sending the Updated Payment Schedule, and the same was shared with the Complainant. However, the Complainant failed to honour his commitment and again defaulted in making any payment to the Respondent even after agreeing to the new payment schedule as requested by the Complainant itself.

13. It is pertinent to mention that despite granting multiple opportunities to clear the pending due amount, the Complainant kept promising to make payment and requested to grant more time for payment. However, the Complainant failed to make any payments.

14. It is pertinent to mention that despite several follow-ups and sending Project Status updates & Payment Demand Notices sent to the Complainant, the Complainant defaulted in making payment which caused significant financial loss to the Respondent. Furthermore, it is pertinent to mention that the Complainant has suppressed this material fact of his default of non-payment of all milestone payments and his failure to secure the loan for the said Flat.

15. . It is submitted that the Complainant defaulted around 167 days upon the booking of the Flat and the expenditure incurred for the resale of the Flat costing around Rs.3,88,459 (Rupees three lakh, eighty-eight thousand and

four hundred and fifty-nine only) (Annexure X). This calculation has arrived as per Section 10 & 13 of the Confirmation Letter of Sale which reads as follows;

Section 10: "Timely payment of instalments as per the work progress is mandatory. In case of delay in making payments for the first 30 days, an interest of 1.5% per month will be levied on the due amounts, and beyond 30 days will attract an interest of 2.0% per month. Company reserves the right to cancel the booking in case of delay of such payments exceeds 3 months and resell/allot the flat 2 and alternate buyer without any further notice to the Customer.

Section 13: "In case of any cancellation request made by the customer for whatever reason after confirmation of the booking and substantial construction progress is made in the project, the company is entitled to forfeit certain amount paid by the Customer to cover the additional expenditure required to resell the flat. The Company shall refund the balance amount only after the said flat is resold and the amount from the re-sale is realized by the Company."

16. Further, to our shock and surprise the Complainant has sent us an email for cancellation of the booking after making repeated promises & assurance to clear the pending dues. It is pertinent to mention that on July 18, 2023, the Complainant abruptly notified the Respondent to cancel the booking of the Flat without providing any stated reason.

17. It is pertinent to mention that as per the Confirmation Letter dated 11.04.23 as per Section 12, in case of cancellation, an amount of Rs. 5,00,000 (5 lakhs) or 10% of the total sale consideration, whichever is less will be forfeited from the buyer towards cancellation charges.

18. As per Section 13, Such cancellation is subjected to the additional expenditure required to resale the premises, (more particularly described in Confirmation Letter of sale .

The cancellation charges as per the terms are detailed fully in this table below:

sn	Description	amount
1.	Cancellation charge (Rs.5,00,000/-) or 10% of total sale consideration)	5,00,000/-
2.	Financial loss due to delay in payments and additional expenditure	Rs. 3,88,459/-
3.	Total cancellation charges + expenditure	(5,00,000 + 3,88,459)
4.	Total sale consideration	Rs. 8,88,459/-

19. It is pertinent to mention that despite the loss borne by the Respondent, upon confirmation of the cancellation request made by the Complainant, the Respondent promptly acknowledged the notification and proceeded to issue a refund amounting to Rs. 5,00,000 (Rupees five lakh) on 28.07.23 (Annexure XII pg. 1-3). The Respondent had initiated and made a refund to the Complainant of Rupees 5, 00,000 (Rupees five lakhs) and the remaining balance has been adjusted towards cancellation charges as per the terms.

20. In light of the foregoing submissions, we humbly request the Hon'ble authority to dismiss the complaint on the grounds of suppression of material facts and the Complainant's default in making payment and for not securing the loan for the same despite the grant of the grace period and even after issuing demand notice. Therefore, it is humbly submitted that this Hon'ble Authority to pass orders in favour of the Respondent and against the Complainant and pass any such order that the court deems fit in the interest of justice and equality.

E. Rejoinder:

21. Despite the Complainants having made approximately 20% of the total sale value of the property (Rs. 12.10 Lakhs out of Rs. 61,20,00,000) within a month, why did the Respondent fail to execute the Agreement of Sale, despite multiple requests? How were the Complainants expected to pay the remaining amount without knowing the contents of the Agreement of Sale?

22. In point 7 of the confirmation letter referenced in the Respondent's counter, it is stated that the "Sale Agreement would be executed only after

payment of 30% of the total flat cost or the bank loan margin money, whichever is higher." On what basis was this 30% condition introduced? The RERA rules clearly stipulate that the Agreement of Sale should be executed after payment of 10% of the total property cost.

23. In point 3 of brief facts in the Respondent's counter, it is claimed that a Confirmation Letter was sent via email, containing rules framed unilaterally by the Respondent without the Complainants' signatures. Why did the Respondent not obtain the Complainants' signatures on the Confirmation Letter if the rules required their agreement? Additionally, the Complainants were unaware of when this Confirmation Letter was sent, as it was merely attached to an email.

24. The Respondent, in points 3-8 of brief facts, asserts that the Complainants provided a payment confirmation letter after the Respondent's accountant, Sudhakar, promised to execute the Agreement of Sale. However, after receiving the payment confirmation, the Respondent demanded payment of Rs. 47, 00,000, corresponding to the completion of six slabs, as a precondition for executing the Agreement of Sale. Upon realizing the Respondent's dubious conduct, the Complainants decided not to proceed without the Agreement of Sale and canceled the booking on 30th April 2022, with the Respondent agreeing to refund the amount after resale of the flat. Why did the Respondent request a cancellation email from the Complainants on 18th July 2023, disregarding the earlier communication on 30th April 2022 and misrepresenting the delay period as 167 days instead of 70 days?

25. In point 9 of brief facts, the Respondent refers to the Confirmation Letter as a basis for withholding 10% of the total property value or Rs. 5,00,000, whichever is lesser. How can the Respondent rely on a Confirmation Letter that lacks the Complainants' signatures? Furthermore, is this Confirmation Letter aligned with RERA documents, or was it arbitrarily framed by the Respondent?

26. In point 10 of brief facts, the Respondent mentions deductions of Rs. 8,88,459.00 (Rs. 5,00,000 + Rs. 3,88,459) as cancellation charges. Are these deductions in accordance with RERA norms, or were they independently determined by the Respondent? Detailed explanations of these deductions are

required.

27. In point 10 of the confirmation letter, the Respondent has imposed timelines and interest rates (1.5% within 30 days and 2% thereafter) on the Complainants. On what grounds were these timelines and interest rates established? Moreover, why did the Respondent fail to mention similar timelines and interest rates for delays in handing over the property? Are these conditions supported by any RERA provisions? If so, please provide the relevant details.

28. In point 14 of the confirmation letter, the Respondent includes the cost of amenities in the total property value in the event of cancellation and resale. Does this not suggest intent to deduct a higher amount from the first customer? Is this practice addressed under RERA provisions? If it is legitimate to include amenities in the total cost, kindly provide a copy of the relevant section.

29. In point 22 of the confirmation letter, the Respondent mentions that the property PAGADALA ANYA (P02200004027 - RERA number) is residential (supporting document attached - Doc 1). How can a customer be compelled to agree to the commercial use of another customer's residential property?

30. According to the Respondent's approved plan, the ground floor is designated for double-bed flats, but these have been sold for commercial use, as confirmed by the pagadala constructions marketing team (chat attached - Doc 2). This constitutes a violation of the sanctioned plan and misleads customers. RERA is requested to take action against the Respondent for these violations and notify all customers of the pagadala anya project (P02200004027 - RERA number) that commercial activities are prohibited in the said property, and there is no obligation to comply with point 22 of the confirmation letter issued by the Respondent.

30. In point 23 of the confirmation letter, the Respondent states that customers can use certain properties for commercial purposes but are prohibited from displaying signboards or advertising materials. How can the Respondent impose commercial rates on customers while restricting their ability to display signage? This appears to be an arbitrary rule devised by the Respondent.

31. In point 9 of the "Declaration in FORM B" (attached Doc 3), it is stated that the promoter shall not discriminate against any allottee. However, the Respondent has created a separate set of rules through the confirmation letter, as evidenced by the points mentioned above. This practice is in clear violation of the principles laid out in RERA.

F. Points framed for consideration:

32. Now, the points that arise for consideration, based on the pleadings submitted by both parties, are as follows:

1. Whether the complainant is entitled for the relief sought?
2. Whether the Respondent has violated Section 13 of the Real Estate (Regulation and Development) Act, 2016 (RE(R&D) Act)?

32. **Point 1:** The Complainant submitted that he booked Flat No. 105 in the "Anya" project developed by the Respondent and paid a total sum of ₹12,10,000/- towards the purchase of the unit. These payments include an initial booking advance of ₹50,000/- on 09.02.2023, ₹5,60,000/- via cheque no. 129815 on 23.02.2023, and ₹6,00,000/- via cheque no. 129817 on 03.04.2023. The Respondent issued a confirmation letter dated 11.04.2023 confirming the booking.

33. Due to unforeseen personal reasons, the Complainant sought to withdraw from the project and requested the cancellation of the booking on 18.07.2023, seeking a full refund of the amount paid. In response, the Respondent refunded ₹5,00,000/- on 28.07.2023 but withheld the remaining balance.

34. The Respondent contends that the deduction of the remaining amount was made due to the Complainant's default, which occurred 167 days after the booking. The Respondent also claims that they incurred expenses amounting to ₹3,88,459/- for the resale of the flat. The Respondent relied on clauses 10 and 13 of the confirmation letter, which purportedly permit the deduction of interest at 1.5% per month for the first 30 days and 2.0% per

month thereafter for delayed payments, as well as the forfeiture of certain amounts upon cancellation.

35. It is admitted that no formal agreement for the purchase of the flat was entered into between the Complainant and the Respondent. The only document provided to the Complainant was the confirmation letter, which was issued after 20% of the total amount was paid, and the letter was signed solely by the Respondent.

36. A reading of the terms and conditions in the confirmation letter reveals that, in the event of cancellation by the customer after confirmation of booking and significant progress in construction, the Respondent is entitled to forfeit a portion of the paid amount to cover expenses incurred for the resale of the flat. Furthermore, it is stated that the remaining balance shall only be refunded after the flat is resold and the resale proceeds are realized.

37. The Respondent, in its defense, stated that 10% of the total sale consideration was forfeited as cancellation charges and that the remaining balance was withheld to offset the alleged losses due to delayed payments and resale expenses, amounting to ₹8,88,459/- in total, as per the terms of the confirmation letter.

38. The Authority observes that Section 13 of the Real Estate (Regulation and Development) Act, 2016 (RE(R&D) Act) explicitly prohibits the promoter from accepting any deposit or advance without first entering into an agreement for sale. In the present case, the Respondent collected 20% of the total sale consideration and issued only a confirmation letter, without entering into any formal agreement, thereby violating Section 13 of the Act. The confirmation letter, provided after receiving a substantial sum from the Complainant, contains terms that are heavily skewed in favor of the Respondent, constituting an unfair trade practice.

39. Forfeiture implies the imposition of a penalty, which is only applicable in cases where a formal agreement, containing a forfeiture clause, has been executed between the parties. Since no such agreement was executed in this

case, the Respondent's attempt to forfeit the booking amount is baseless and unjustifiable under the law.

40. Furthermore, the Respondent's claim that the deduction of more than the booking amount was made to cover losses due to cancellation is unsubstantiated, as the Respondent has failed to provide any evidence of actual loss. The email correspondence dated 28.07.2023 between the parties also indicates that the flat had not been resold at that time. The Respondent initially refunded ₹5,00,000/-, with a suggestion that the balance would be refunded after the resale of the flat. However, the Respondent later claimed deductions amounting to ₹7,10,000/-, which is found to be unreasonable by the Authority.

41. The Authority finds that the Respondent's act of collecting 20% of the sale consideration without entering into a sale agreement, followed by issuing a mere confirmation letter with one-sided terms favoring the Respondent, amounts to a violation of the RE(R&D) Act. The forfeiture of any amount based on these confirmation letter terms and not agreement of sale is unjust and without merit. The inclusion of such one-sided and arbitrary clauses in the confirmation letter, which contradict the model agreement of sale as prescribed under the TG RERA Rules, is unacceptable. The RE(R&D) Act is welfare legislation designed to protect homebuyers, and it mandates that promoters should not incorporate terms that undermine the interests of buyers.

42. In light of the above, the Authority finds no legal basis for the Respondent's actions in forfeiting the booking amount and making further deductions for alleged expenses. Therefore, the Complainant is entitled to a full refund of the entire amount paid. Accordingly, the Respondent is directed to refund the full amount of ₹12,10,000/- to the Complainant without any further delay. It is noted that the Complainant has already received a partial refund following the initiation of the cancellation. The Respondent is, therefore, directed to immediately refund the remaining balance to the Complainant.

43. The point is answered in favor of the Complainant.

44. **Point 2:** Upon examination of the records, it is evident that the Respondent collected more than 10% of the total sale consideration without executing a formal agreement for sale, constituting a violation of Section 13 of the RE(R&D) Act. This provision explicitly prohibits promoters from accepting a sum exceeding 10% of the cost of the apartment as an advance or application fee without a written agreement for sale. The Respondent's actions in demanding and collecting more than the permissible amount without adhering to the statutory requirements are in clear violation of the law.

46. This point is answered in the affirmative.

G. Directions of the Authority:

47. In light of the findings of the Authority as recorded above, the following directions under section 37 of the RE(R&D) Act to ensure compliance with obligations imposed upon the under the RE(R&D) Act are issued:

1. The Respondent is directed to refund the remaining amount of ₹7,10,000/- (Rupees Seven Lakhs Ten Thousand only) to the Complainant within 15 days from the date of this order.
2. The Respondent is further directed to ensure full compliance with the provisions of the Real Estate (Regulation and Development) Act, 2016, and the Telangana Real Estate (Regulation and Development) Rules, 2017, in all future dealings.
3. Additionally, the Respondent is hereby instructed to refrain from incorporating any clauses in future agreements or communications that contradict or violate the statutory provisions of the aforementioned Act and Rules.
4. Parties to bear their own costs.
5. For contravening Section 13 of the RE(R&D) Act, the Authority, exercising its powers under Section 61 of the RE(R&D) Act, imposes a penalty of Rs. 2,69,874/- (Two Lakhs Sixty-Nine Thousand Eight Hundred and Seventy-Four Rupees Only.). This penalty is imposed for collecting a sum of more than 10% of the cost of the concerned

apartment without entering into a written agreement for sale. The amount is payable in favor of TGRERA FUND through a Demand Draft or online payment to A/c No. 50100595798191, HDFC Bank, IFSC Code: HDFC0007036, within 30 days of receipt of this Order by the Respondents/Promoter.

6. The parties are hereby informed that failure to comply with this Order shall attract Section 63 of the Act.
7. If aggrieved by this Order, the parties may approach the TG Real Estate Appellate Tribunal as per Section 44 of the Act, 2016.

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

