THE ANDHRA PRADESH REAL ESTATE REGULATORY AUTHORITY
AT: VIJAYAWADA

On this 30th day of June,2025.

Corum: Sri E.Rajasekhara Reddy, Hon'ble Member,
Sri. U.S.L.N.Kameswara Rao, Hon'ble Member,
Sri. A.Jagannadha Rao, Hon'ble Member.

Complaint No:20/2025

Between:

Bandi Plasi Ahalya Jhansi,
W/o.Kotha Lakshmi Narasimha Rao,
R/o.D.No.42-3/1-8/5, Sarithasadan,
Gottumukkala Vari Cross Road,
Ramakrishnapuram, Vijayawada.

...Complainant

And

Sri Sai Durga Housing Estate,
Rep by its Managing Partner, Atluri Sudheer,
S/o.Late Seetharama Swamy, H.No.12-112,
Opp.D-Mart, Aravapalli Rajendra Prasad Street,
Near NTR Statue, Enikepadu, Vijayawada – 521108.

...Respondent

ORDER

This Complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act"), alleging that the Respondent, being the promoter of the real estate project, has failed to fulfill its statutory obligations, including execution of a registered sale deed, delivery of agreed amenities, and disclosure of encumbrances, despite having accepted substantial payment from the Complainant.

The Complainant is a 70 year old retired employee suffering from cardiac and age-related ailments. He alleges that, relying upon representations made by the Respondent promoter operating under the name *Sri Sai Durga Housing Estate*, he agreed to purchase Flat No.1 (later identified as Flat No.1C-GF-8) in the residential apartment project titled *Brundavanam Advaitha*, situated in R.S. No. 268/1,2,3,5,7; 269/1–8; and 277/4,5 of Telaprolu Village, Unguturu Mandal, Krishna District – 521109.

The Complainant paid a total amount of ₹18,00,000/- in two instalments (₹6,00,000/- on 28.01.2016 and ₹12,00,000/- on 01.02.2016). The Respondent issued valid receipts and executed an Agreement of Sale. Possession was handed over in March 2023, and the Complainant performed a housewarming ceremony on 18.03.2023.

Despite repeated requests, the Respondent failed to execute a registered sale deed in favour of the Complainant and did not provide the amenities as promised. The Complainant learned that the flat had been mortgaged with the municipal authorities, with the Respondent admitting that registration could only occur upon clearing the mortgage.

On 24.01.2025, when the Complainant approached the Respondent for registration, the Respondent allegedly refused and used threatening language.

The Complainant subsequently filed an application on 30.06.2025 before this Authority, stating that he no longer wished to continue in the project and sought a refund of ₹18,00,000/- along with interest for a period of 9 years and 5 months, as well as compensation.

The Respondent filed a counter raising a preliminary objection to the maintainability of the complaint, arguing that the transaction was initiated prior to the Act's commencement (01.05.2016).

On merits, the Respondent admitted receiving ₹18,00,000/- and executing an Agreement of Sale but claimed the total sale consideration was ₹30,00,000/-. It was alleged that possession was given conditionally, with the requirement that the balance amount be paid before registration.

The Respondent also contended that certain flats, including the subject flat, were mortgaged with the Capital Region Development Authority (CRDA) as part of layout compliance and that the release was pending. It was further argued that the Complainant failed to pay the balance amount and never raised any concerns earlier.

On the preliminary objection, this Authority notes that Brundavanam Advaitha is a project registered with AP RERA. Once registered under Section 3 of the Act, the promoter is bound by statutory obligations under the Act and Rules, even if the Agreement of Sale was executed before 01.05.2016, provided the cause of action or part thereof continues post-enforcement.

Section 3 of the Act prohibits any sale or offer for sale in an unregistered project. Once registered, all transactions, regardless of date, must comply with the Act. Therefore, the preliminary objection is untenable.

It is an admitted fact that the Respondent collected ₹18,00,000/-, executed an Agreement of Sale, and delivered possession in March 2023 but failed to execute the registered sale deed and disclose the mortgage. Selling a flat under encumbrance without disclosure amounts to breach of statutory duty and deficiency under the Act.

Section 18(1)(a) of the Act mandates that if the promoter fails to deliver possession in accordance with the terms of the agreement or by the promised date, the allottee is entitled to withdraw from the project and receive a refund with prescribed interest.

The Respondent's failure to clear the mortgage and register the sale deed even after many years constitutes non-performance of statutory obligations under the Act.

The Complainant, having paid the substantial part of the consideration and being in possession, cannot be penalised for the Respondent's failure to discharge its obligations, including clearing encumbrances and executing the sale deed.

The project being registered with AP RERA confirms that the Respondent is a promoter within the meaning of Section 2(zk) of the Act, bound to comply with all promoter obligations, including completing the project in accordance with the sanctioned plan and handing over a marketable title free of encumbrances.

Section 18(1)(a) of the Act provides that if the promoter fails to complete or deliver possession in accordance with the agreement, the allottee may withdraw and is entitled to refund with interest.

The Respondent's act of failing to register the flat, while admitting it was mortgaged, constitutes a failure to deliver marketable title.

Section 18(3) also mandates compensation for failure to discharge other obligations under the Act or the Agreement of Sale.

The sale of a mortgaged flat without disclosure is a clear violation of promoter obligations under the Act and Rules.

The Respondent's admitted collection of ₹18,00,000/- and failure to execute a sale deed due to an undisclosed mortgage amount to a breach of statutory obligations under the Act.

The Respondent's contention regarding pre-Act payments is irrelevant once the project was registered with RERA, and obligations continue under the Act.

The Complainant's decision to withdraw from the project and seek refund with interest is justified under Section 18(1)(a) of the Act.

As far as the relief claimed by the complainant for payment of compensation is concerned, the appropriate forum for such relief is the Adjudicating Officer. If the parties so desire, they may file a claim petition before the appropriate forum for compensation.

In exercise of the powers conferred under Section 37 of the Real Estate (Regulation and Development) Act, 2016, this Authority issues the following directions:

i. The Respondent is directed to refund the sum of ₹18,00,000/- (Rupees Eighteen Lakh only) to the Complainant along with interest at the rate of 11% per annum (being SBI MCLR 9% + 2%), calculated from the respective dates of payment until the date of realization within 60 days from the date of this order.

ii. The Respondent is further directed to pay ₹10,000/- (Rupees Ten Thousand only) towards the Complainant's legal expenses .

iii. Any non compliance with this Order shall attract further legal action including imposition of penalties as provided under Section 63 of the Act.

*As per Section 44 of the Act, an appeal against this order lies before the Real Estate Appellate Tribunal, Andhra Pradesh, within a period of sixty (60) days from the date of receipt of this order.

(Typed as per the dictation of the Authority, corrected and pronounced in open court on this 30th day of June, 2025.)

MEMBER MEMBER MEMBER