THE ANDHRA PRADESH REAL ESTATE REGULATORY AUTHORITY
AT: VIJAYAWADA

On 12th day of May,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. 32/2024

Between:

1. Mr Kosana Venkata Ramana,
   S/o. Kosana Pydi Raju,
   Aged about 48 years,
   R/o. Flat No. FTF IV, Subha Residency,
   Behind Srikanya, 3rd Lane Railway New Colony,
   Visakhapatnam – 530016.
2. Mrs. K L Sulochana,
   W/o. K V Ramana,
   R/o. Flat No. FTF IV, Subha Residency,
   Behind Srikanya, 3rd Lane Railway New Colony,
   Visakhapatnam – 530016.

...Complainants

And

AIRMID REAL ESTATE LIMITED,
Having its registered office at M- 62 & 63, First Floor,
Connaught Place, New – Delhi – 110001.
Rep by its Managing Director/ Authorised Signatory

...Respondent

ORDER

This complaint is filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") against the Promoter for failure to fulfill contractual obligations and for violating the provisions of the Act and corresponding rules.

Case of the Complainant:

The Respondent launched a residential project, *Indiabulls Sierra Vizag*, in Madhurawada, Visakhapatnam. Relying on the Respondent's promotional materials, the Complainant booked a residential unit (Flat No. K-1402, 14th Floor, Block K) on 27.01.2015 by paying ₹1,00,000/-. Subsequent payments totaling ₹56,21,715/- were made by 22.07.2024, and an additional sum of ₹71,714/- was paid on 22.07.2024, bringing the total amount paid to ₹56,93,429/-.

An *Agreement to Sale* was executed on 12.02.2015, wherein the Respondent, AREL, promised to deliver possession by 11.02.2018, with a grace period extending until 10.08.2018. However, possession, along with the occupancy certificate and assured amenities, has not been delivered to date.

Despite repeated follow-ups, the Respondent failed to provide timely updates and milestone proofs. The Complainant also alleges that the Respondent imposed unjustified penalty interest. Upon inspection, the Complainant observed poor construction quality and deviations from the agreed specifications. A site visit further revealed the use of substandard materials and incomplete amenities.

Additionally, the Respondent levied exorbitant taxes and failed to pass on the Input Tax Credit (ITC) as mandated under GST norms.

The Complainant requested the Authority to direct the Respondent to Pay interest at the rate of 20% per annum from the date of the order until actual possession is handed over along with the occupancy certificate and Complete the project and hand over possession within four months, along with all assured amenities, Appoint a certified civil engineer to inspect and report on the construction quality of the project, Pass on the Input Tax Credit (ITC) benefit to the Complainant, Declare that no penalty interest is chargeable due to delays attributable to the Respondent, Pay ₹50,000/- towards legal expenses incurred by the Complainant, Pay ₹3,00,000/- as compensation for mental agony and harassment suffered by the Complainant and Grant any other relief deemed appropriate by the Hon'ble Authority.

The Respondent is the promoter of the residential project "Indiabulls Sierra" at Visakhapatnam, wherein the Complainants had booked Apartment No. K1402 in Block-K, pursuant to an Agreement for Sale dated 12.02.2015. The Respondent contends that the complaint under Section 18(1) read with Section 31 of the Real Estate (Regulation and Development) Act, 2016, is misconceived, premature, and not maintainable. It is the Respondent's case that the Agreement for Sale stipulates a construction period of 42 months, and that the RERA-registered project completion date, being later, is the statutorily binding timeline for determining any delay.

The Respondent relies on the decision in *Ajay K. Agarwal v. Radius Infratel Pvt. Ltd.* (MahaRERA) to assert that delay must be reckoned with reference to the RERA-committed completion date. Further, the Respondent submits that delays, if any, were due to uncontrollable events such as a statewide sand ban (Dec 2016–Aug 2017), disruptions from the introduction of GST in 2017, and material shortages, all of which qualify as Force Majeure under Section 6 of the Act. It is also submitted that the Complainants failed to make timely payments, causing disruption to construction activity, and that penalties levied on them were in accordance with the Agreement.

The Respondent disputes the Complainants' allegations regarding poor construction quality and excess taxation, stating that the project complies with applicable standards, and all taxes were charged as per statutory norms. It is further submitted that possession of the unit was duly handed over on 10.08.2024, and the Sale Deed was registered on 25.07.2024, without any protest from the Complainants, thereby discharging the Respondent from further liability under Section 18(1), absent any structural defect or fraud.

In light of the above, the Respondent prays for dismissal of the complaint and contends that the Complainants are not entitled to any relief under the Act.

The counsel for the complainant present and the counsel for the respondent is also present and filed his counter. Heard the matter in detail.

Observations:

Upon reviewing the records, this Authority notes that the Complainant has filed the present complaint under Section 31 of the RERA Act and the rules framed thereunder.

The main contention of the Respondent is that the Agreement for Sale contains a possession clause providing for a construction period of 42 months, and that the relevant statutory commitment under RERA is the completion date specified in the registered project, which is binding on both parties. It is further contended that the relevant date for determining delay is the RERA-committed completion date and not the date stipulated in the Agreement for Sale, and therefore, the present complaint—filed alleging delay prior to the RERA end date is premature and not maintainable under Section 18(1) of the Act.

However, the Hon'ble Supreme Court in *M/S. IMPERIA STRUCTURES LTD VS. ANIL PATNI AND ANOTHER (Civil Appeal Nos. 3581-3590 of 2020, November 02, 2020)* has clarified that merely because the RERA registration remains valid does not mean that the entitlement of the allottee to initiate action under the Act stands deferred. The Court held that for the purpose of invoking Section 18, the relevant period must be reckoned in terms of the Agreement for Sale and not solely with reference to the RERA registration.

Therefore, in view of the above binding precedent, the relevant date for determining delay is the date stipulated in the Agreement for Sale. Accordingly, the Complainant's claim under Section 18(1) of the Act is maintainable.

The *Agreement for Sale* provides a stipulated possession period, including a six-month grace period, totaling 42 months. Clause 1(iii) and 1(v) state that:

- Clause 1(iii): Timely payment by the Complainant is essential. Any default in payment entitles the Promoter to cancel the agreement or condone the delay by charging 18% per annum interest, compounded quarterly.

Upon analyzing the submissions and the provisions of the RERA Act, this Authority refers to Section 18, which states that:

- If the Promoter fails to deliver possession within the agreed timeline, the allottee is entitled to:
    - Withdraw from the project and receive a refund with interest and compensation, or
    - Remain in the project and receive interest for every month of delay until possession is handed over.

This Authority acknowledges that the period from 23.03.2020 to 25.09.2020, being affected by the COVID-19 pandemic and constituting a Force Majeure event, shall be exempt from liability for delay. However, the reasons cited by the Respondent for the delay beyond this exempted period are not found to be valid or justifiable.

The Complainant stated that the Respondent charged penalty interest @ 18% for minor delays, which were due to reasons attributable to the Respondent. The Respondent denied this, arguing that penalties were levied due to delayed payments and missing documentation from the Complainant.

However, this Authority finds that the Respondent is not entitled to collect penalty interest, as the primary delay was caused by its failure to fulfill obligations.

If the Complainant fails to meet obligations under the agreement or RERA, the Respondent may file a separate application for compensation.

Regarding GST-related claims, the Complainant may seek redress before the National Anti-Profiteering Authority.

Similarly, claims for compensation due to mental agony or substandard construction may be pursued before the Adjudicating Officer, if deemed appropriate.

Relief Granted:

In light of the above findings, exercising the powers conferred under Section 37 of the RERA Act, the Authority issues the following directions:

i. The respondents are directed to pay interest @ 11% (SBI MCLR 9% + 2%) p.a, calculated from the date of deposit until realization, excluding the period covered under the RERA-granted exemption for COVID-19.

ii. The Complainant may seek relief for GST and compensation before the appropriate forums.

iii. No penalty interest shall be charged by the Respondent for delays caused by its own default.

iv. The respondents are directed to pay ₹10,000/-(Rupees Ten thousand only) towards the legal expenses incurred by the complainant.

v. In case of non-compliance with this order, additional penalties shall be imposed as per Section 63 of the RERA Act, 2016.

*An appeal lies to the Appellate Tribunal within a period of 60 days from the date of receipt of a copy of this order, as per Section 44 of the Real Estate (Regulation and Development) Act, 2016.

(Typed as per the dictation of the Authority, corrected, and pronounced by the Authority in open court on this 12th day of May, 2025.)

MEMBER MEMBER MEMBER