

**BEFORE THE ADJUDICATING OFFICER  
THE RAJASTHAN REAL ESTATE REGULATORY AUTHORITY,  
JAIPUR**

**Complaint No. RAJ-RERA-C-2022-5273**

Mr. Randhir Brar, S/o Late Sh. Trilochan Singh Brar, R/o D-175 Defence Colony, New Delhi-110024.

.....Complainant No. 1

Mrs. Meenakshi Brar, R/o D-175 Defence Colony, New Delhi-110024. (Vide order dated 19.10.2023)

.....Complainant No. 2

Versus

M/s R-Tech Housing Pvt. Ltd. Having Office At- Building No. 80, 2<sup>nd</sup> floor, Adjoining Ramada Hotel, Gurgaon-122002.

.....Respondent

**Present**

**Hon'ble Shri R.S. Kulhari, Adjudicating officer**

Mr. Varun Bansal, C.A. present for Complainants.

Mr. Samkit Jain, Advocate present for respondent.

**Date: 11.09.2024**

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Adjudicating Officer  
Rajasthan Real Estate Regulatory Authority  
Jaipur





## ORDER

The present complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as 'RERA Act') read with Rule 36 of the RERA Rules, 2017 for seeking compensation.

2. Briefly stated the facts of the matter are that the complainants booked a flat bearing no. G-1204 in Tower 'G' of the project of respondent named as "**Capital Greens**" situated at Bhiwadi for total sale consideration of Rs. 37,28,750/-. An initial amount of Rs. 3,00,000 was deposited and thereafter further amount was paid to the respondent totaling to Rs. 18 lacs. An agreement for sale was executed on 23.04.2014 wherein the possession was agreed to be delivered within 4 years with a grace period of further 6 months which expired in the month of October 2018.

3. It is averred by the complainants that the offer for possession was not given as per terms of the agreement. The respondent has also agreed vide Email dated 17.04.2014 to pay penalty @ Rs. 10 per sq.ft. for every month of delay. The complainants had to reside in the alternative accommodation. It was also stated that the complainants have booked a retail shop in another project of the respondent wherein the respondent was required to





pay rent for some stipulated period but the same was not paid. Hence, they requested the respondent to adjust due amount of this flat towards dues of retail shop. Ultimately, a prayer was made for award of compensation on account of mental agony, financial losses and cost of litigation.

4. The respondent in its reply has not disputed the booking of the flat and receipt of the amount from the complainants except that it was inclusive of taxes. The preliminary objections taken by the respondent were that the complainants are seeking possession which is not within the domain of this Tribunal and also that Mrs. Meenakshi Brar was to be co-allottee of the flat who was not arrayed as complainant. Thereafter, the complainant has added Mrs. Meenakshi Brar as complainant no. 2 and the issue of possession has not been pressed. Therefore, these preliminary objections have become redundant.
5. On the merits of the case, it was stated that the project was completed as per agreement and completion certificate was obtained on 04.10.2018 from the empanelled architect which was submitted before the competent local body who has ultimately issued the completion certificate on 04.02.2019. Thereafter, letter dated 10.04.2019 was written to the complainants to get the possession of the flat but neither they have paid remaining dues nor have taken the possession.





6. Learned counsel for the complainants submitted that the lift was not functional on the spot and the other facilities were also not provided by the respondent therefore, no purpose would have been served by taking possession. Without such completion the respondent could not have offered the possession of the flat. Learned counsel referred some copies of Emails to contend that even in the month of February 2020 the respondent stated that lift was made functional by that time. The amount was not paid because of dispute with the respondent with regard to another booking with them. Even as on today the requisite facilities have not been provided. Therefore, adequate compensation be granted.

7. On the contrary, learned counsel for the respondent submitted that no pleadings with the regard to lift and other amenities have been made by the complainants and the Emails as referred were exchanged with another allottee and not with the complainants. The project was completed in time. As such, complainants are not entitled to any compensation. They have filed this compliant in order to harass the respondent so it be dismissed on cost.

8. Having heard the learned counsels for the parties and on perusal of records. There is no dispute with regard to booking of the flat, deposit of amount, execution of agreement for sale and agreed date of possession to be October 2018 including grace period. It is also undisputed





that vide letter dated 10.04.2019 respondent made offer for possession to the complainants but prior to that no any other intimation has been given to the complainants for taking possession.

9. As per settled proposition of law the respondent is required to deliver the possession in terms of agreement and in case of failure an unqualified right of allottee triggers to get the refund alongwith interest or to get the interest for every month delay in case of possession, irrespective of the fact that whether the extension was granted by the competent authority or not or there was any impediment in getting completion certificate or occupancy certificate etc. In the instant case, the expected date of delivery was in the month of October 2018 and no letter for possession was given before 10.04.2019. Thus, there is apparent delay for a period of 6 months in offering the possession. Although, the completion certificate was obtained in October 2018 and also submitted before the competent authority but the approval was made in the month of February 2019 but no communication for offer for possession was made to the complainants and first offer for possession was given in April 2019.

10. The contention of the complainants that the amenities were not there and the lift was not functional, is not worth considerable on the basis of pleadings and relief sought in this complaint. No such pleading was made so there was no







occasion for the respondent to rebut the same. Secondly, the Emails referred by the complainants were shared with one 'Kabir Seth' of another flat no. G-1203 and not with the complainants. Furthermore, once an offer for possession was given after obtaining completion certificate the complainants were supposed to take the possession and then if there was lack of any facility, they were free to claim the compensation from the respondent for such inconveniences but they should not have avoided taking of possession. Therefore, in totality they are entitled to get the compensation only for the period of 6 months.

11. Adverting to the assessment of the compensation the complainants have referred an Email dated 17.04.2014 in para 4(i) (Annexure 4) mentioning that the respondent agreed to pay penalty of Rs. 10 per sq.ft. per month but Annexure- 4 placed at page 89 in the file, nowhere speaks about such condition and instead it is a letter with regard to obtaining loan from the bank and details of the financial institution. Be that as it may, but even without any assurance of penalty for delayed period the complainants are entitled for compensation as a matter of right for the unexplained delay caused by the promoter. In this context, an amount of Rs. 18 lacs remained with the promoter during that period, so considering the market rate of return and other factors around 12% return may be considered appropriate on such amount which comes to be Rs. 1 lac

  
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lump sum for a period of 6 months. Thus, the complainants are entitled to get this amount towards financial losses.

12. The complainants have also prayed compensation on account of alternative accommodation and interest on the deposited amount but no such relief can be given because they are getting the possession and in that situation they were otherwise required to make the payment. If interest or the rent is allowed in addition to the compensation, then it would be a dual benefit to the complainants and financial burden to the promoter.

13. However, the complainants have suffered the physical and mental agony and have also incurred cost of litigation for no fault on their part. Therefore, they are entitled to get the compensation on these counts which is quantified to be Rs. 50,000 lump sum considering the facts of the case in its entirety.

14. Accordingly, the complaint is allowed in the following manner:-

- (i) The respondent shall pay Rs. 1,00,000/- as lump sum compensation to the complainants towards financial loss.
- (ii) The respondent shall also pay Rs. 50,000/- towards deficiency in service, mental and physical agony and cost of litigation to the complainants.
- (iii) The respondent shall be free to adjust the above amount towards the dues which are due from the



  
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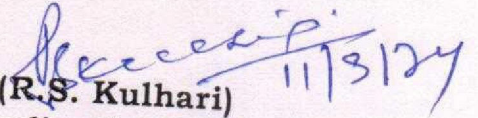




complainants against cost of flat at the time of possession. In case of any excess amount, the same shall be paid within 45 days from the date of possession failing which the amount due under this order shall attract interest @ 6% p.a. simple from the date of possession till the date of payment.

- (iv) The order be uploaded on the website of RERA and also sent to the parties by registered post. File be consigned to records.

Date:-11.09.2024

  
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