

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

Complaint No. RAJ-RERA-C-2023-6758

Mr. Ramawater Saini S/o Chanda Ram Saini aged about 43 years resident of Maliyo Ka Mohalla, Bassi, Jaipur, Rajasthan-303301.

.....Complainant No.1

Mrs. Santosh Devi Saini W/o Mr. Ramawater Saini aged about 38 years resident of Maliyo Ka Mohalla, Bassi, Jaipur, Rajasthan-303301.

.....Complainant No.2



Versus

M/s AKG Affordable Housing Private Limited, registered office at C-17, Panchsheel Colony, Ajmer Road, Jaipur, Rajasthan-302001.

.....Respondent

Present

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

Mr. Aviral Goyal, Advocate present for Applicant.

Mr. Abhinav Shekhar, Advocate present for respondent through V.C.

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Complaint No. 2023-6758


(R. S. KULHARI)
Adjudicating Officer
Rajasthan Real Estate Regulatory Authority
Jaipur

Date: 09.05.2024

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 on various grounds.

2. The brief facts of the matter are that the complainants have booked a flat bearing no. D-522 in the project of the respondent named as "**Pari Residency**" for total sale consideration of Rs. 10,02,700/- under Chief Minister's Jan Awas Yojna. An initial amount of Rs. 50,000/- was paid at the time of booking on 16.02.2016. Thereafter, more amounts were paid from their own resources as well as by taking loan from Axis Bank, making the total sum of Rs. 7.76 lacs. An agreement for sale was executed between the parties on 26.12.2017 wherein the expected date of delivery was agreed to be 31.03.2020.
3. The project was not completed in time and there was no hope for completion in near future, so the complainants filed a complaint bearing no. 2022-5128 before the Hon'ble RERA Authority for refund of the amount with interest. The Hon'ble RERA Authority vide its order dated 31.05.2023

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directed the respondent to refund the entire amount alongwith interest @ 10.70% p.a. from the date of each deposit till the date of refund.

4. Thereafter, the present complaint was filed with the averment that despite deposit of 80% sale consideration the promoter has not offered possession. The act of the respondent has caused serious financial losses, loss of opportunity as well as physical and mental agony to the complainants. Accordingly, compensation in the form of loss of interest and on account of deficiency in service was sought in addition to the cost of litigation.

5. The respondent has not denied the booking of the flat and receipt of the amount from the complainants. However, in reply an attempt was made to justify the delay stating that the agreed date for possession was not absolute rather it was conditional and subjected to *force majeure* reason. The project was not completed because of unavailability of building material, imposition of new Government policies, delay in payment of various other allottees, restrictions imposed by pollution control department and sudden outbreak of Covid-19. It was also stated that the project was struck due to paucity of funds also but now project had been duly financed under a Special window for affordable & Mid Income Housing (SWAMIH). Therefore, the development work was geared up in the month of April 2023. If the



respondent is held liable for compensation it would have adverse impact on the completion of the project.

6. Learned counsel for the complainants submitted that despite deposit of about 80% of sale consideration the project was not completed in time by the respondent and ultimately the complainants were compelled to withdraw from the project which has caused great financial loss and also loss of opportunity of having their own house. The Hon'ble RERA Authority has allowed interest only @ 10.70% p.a. whereas the complainants are paying interest @ 8.75% p.a. compoundable on monthly basis which is more than 12% p.a. Further, the complainants have also paid a premium of Rs. 30,000/- towards insurance which was necessary for getting the housing loan sanctioned. The refund of amount has not yet been made whereas the complainants have to pay EMI every month. The complainants are residing in the rented accommodation. Therefore, adequate compensation be granted.

7. On the contrary, learned counsel for the respondent submitted that no rent agreement has been filed. The Hon'ble RERA Authority has allowed the interest more than the rate which is being charged by the bank. Therefore, no financial loss is caused to the complainants. The project is now near to completion. The complainants have chosen to withdraw from the project on their own volition so they are not entitled to any relief.





8. Having heard the learned counsels for the parties and on consideration of the material available on record it is evident that the complainants have deposited Rs. 7.76 lacs as against the total sale consideration of Rs. 10,02,700/- which is about 78%. The agreed date for possession was 31.03.2020 but there is no iota of evidence that any offer of possession was given at that time.
9. The defence taken by the promoter for non-completion of the project is not convincing. Although, there was impact of Covid-19 during the period of March 2020 to June 2020, but that may cover a delay of about 2-4 months and it cannot justify the delay of more than 3 years. The alleged impact of new Government policies, unavailability of raw-material for construction etc. also do not render any assistance to the promoter, because the promoter was supposed to arrange the raw-material by any means. If the other allottees have not deposited the amount in time, the complainants could not be punished for the fault of others. The promoter was otherwise supposed to manage the funds for completion of the project. In the same way, waiting for any financial assistance like from SWAMIH is of no avail in contrast with the rights of the allottees with regard to getting the possession in time.
10. As soon as the agreed time is over right of the allottees triggers for getting the refund with interest and compensation or for possession with interest for every

month of delay. In the instant case, the promoter has failed to deliver the possession in time, thereby has violated the provisions of Sections 18 and 19 of the RERA Act and consequently the complainants are entitled to get the adequate compensation.

11. Adverting to the assessment of compensation it is apt to mention that the complainants are belonging to a weaker social sector and have booked a flat under Chief Minister's Jan Awas Yojna with a sanguine hope that on any fine morning they will have their own house. But all has gone in vain because of the fault of the promoter. They have lost opportunity cost as also the factor of appreciation in the property which occurs in normal course of time. If the complainants would opt to purchase a flat as on today in the same situation and the same vicinity. They will definitely have to pay more than the amount what was agreed with the promoter.

12. Besides, the complainants are paying compoundable interest @ 8.75% p.a. which comes to be around 12% p.a. simple whereas they will get 10.70% p.a. on the deposited amount. Thus, there would be a clear loss of approximate 1.5% p.a. interest on every month in terms of financial loss. On the other hand, the promoter has utilized the funds of the complainants for his own use in one way or the other. Had the promoter borrowed the funds from any financial institution, it would have paid more than 12% p.a. interest.



Therefore, the complainants are entitled to get the difference of interest in the form of compensation as well as compensation towards deficiency in service committed by the promoter, physical and mental harassment and loss of opportunity. In addition to it, the complainants have incurred cost of litigation before the Hon'ble RERA Authority as well as before this Tribunal. Therefore, they are also entitled to get the compensation for cost of litigation.

13. The complainants are also claiming compensation towards the rent and additional interest/income by investing elsewhere, but such reliefs cannot be granted. Firstly, because no payment of rent has been furnished. Secondly, even if the complainants are living in rented accommodation they have to bear their own charges. If rent is allowed in addition to the interest on the deposited amount it would be dual benefit to the complainants and would cause additional financial burden to the promoter. The compensation can only be granted for recouping the loss in restitutorial form and not as any additional financial gain. A balance has to be struck down between the rights and liabilities of allottees and the promoter. Thus, once the interest in the form of compensation is allowed along with some compensation for physical and mental harassment no further compensation can be given considering any anticipated investment or payment of rent etc.

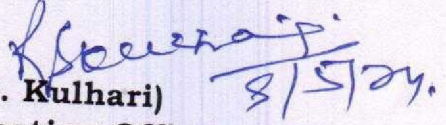




14. In view of the above discussion and considering the facts in its entirety the complaint is allowed in the following manner:-

- (i) The respondent shall pay interest @ 1.5 % p.a. simple as compensation on the total deposited amount from each date of deposit till the date of payment in addition to the interest paid by the Hon'ble RERA Authority.
- (ii) The respondent shall also pay Rs. 80,000/- on account of deficiency in service, loss of opportunity and physical and mental agony caused to the complainants.
- (iii) The respondent shall further pay Rs. 20,000/- towards cost of litigation to the complainants.
- (iv) The compliance of this order shall be made within 45 days, failing which the respondent shall have to pay interest @ 6% p.a. on the total due and recoverable amount under this order from today till the date of payment.
- (v) The order be uploaded on the website of RERA and also sent to both the parties. File be consigned to records.

Date - 09.05.2024


(R.S. Kulhari)
Adjudicating Officer

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