

Appeal No.70/2023  
In  
Complaint No.RAJ-RERA-C-2022-4936

**BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR**

Appeal Number: 70/2023  
In  
Complaint No.RAJ-RERA-C-2022-4936

Renu Singhal, 199/B-3, Railway Colony, Basant Road, Paharganj, New Delhi – 110 055.  
Mob: No.9868608366.

.....Appellant

**VERSUS**

1. Indian Railway Welfare Organisation, 2687, 2688, 2689, Jagatpura, Siroli, Sanganer, Jaipur-303905.

....Respondent

**CORAM:**

Mr. Yudhisthir Sharma, Hon'ble Member (Judicial)

Mr. Rajendra Kumar Vijayvargia, Hon'ble Member (Technical)

**PRESENT:**

For appellant: Mr. Abhishek Sharma, Advocate

For respondent: Mr. Samkit Jain, Advocate

**ORDER**

Reserved on 30<sup>th</sup> August, 2024:

Pronounced on 24<sup>th</sup> September, 2024

**Per Hon'ble Yudhisthir Sharma, Member (Judicial)**

1. The appeal captioned above, is directed against the order dated 19<sup>th</sup> April, 2023 passed by the Rajasthan Real Estate Authority (for short, "Regulatory Authority"), whereby following directions have been issued :

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- (1) *Accordingly, the respondent is directed to refund the entire amount of Rs.49.09 lakh to the complainant within 45 days from the date of the order and submit a compliance report to this Authority 15 days thereafter. No interest is being allowed as there was no agreement for sale executed between the complainants and the respondent.*
- (2) *While we accept that the obligation of the promoter not to except any payment in excess of 10% of the total sale consideration without executing the agreement for sale it is a duty of allottee also to seek the agreement for sale from the promoter. However since there is no agreement for sale we are constrained no to allow the interest on the amount paid by the complainant.*
- (3) *Since the respondent has failed to execute the agreement for sale and has received sale consideration up to 98% without executing the agreement for sale, a blatant violation of the provisions of Section 13 of the Act has been committed. For such laps on the part of the respondent-promoter a penalty of Rs. 2 lac is imposed on respondent-promoter. This amount shall be deposited by the respondent with the Authority within 45 days from the date of this order and submit a compliance report to this Authority 15 days thereafter.*
- (4) *If the respondent fails to pay the aforesaid sums as directed above within period of forty five days from the date of this order, the complainant is at liberty to recover the aforesaid sum from the respondent and their assets by executing this decree in accordance with Section 40(1) of the Act and the Rules made thereunder.*

2. Briefly, the essential skeletal material facts, which needs to be taken note for adjudication of the controversy raised are: that the complainant-appellant instituted a complaint petition before the Authority below, mentioning therein that the appellant, Renu Singhal, had booked a flat on 10<sup>th</sup> November, 2014, in the Group Housing project "RAIL VIHAR JAIPUR PHASE-III" located at Sector 37, Jagatpura, Jaipur, launched by the respondent Indian Railway Welfare Organization (for short, "respondent-organization"). Tentative cost of

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the flat was Rs.43.48,000/- (Rupees forty eight lac forty eight thousand only) plus taxes, and the respondent-Organisation had issued a booking letter. The appellant, Renu Singhal, argued that the project cost was enhanced to Rs.47,00,000/- (Rupees forty seven lac only), of which, the appellant made payment of Rs.45,09,000/- (Rupees forty five lac nine thousand only). Appellant contended that, vide communication dated 02<sup>nd</sup> March, 2017, the respondent-organization promised that the project would be completed by December, 2018. However, the respondent-organization, on false and frivolous grounds managed to obtain extension in completion of the project from the Authority below, up to 30<sup>th</sup> June, 2021. The appellant further added that after having frustrated of the delay in completion of the project and handing over possession of the project thereof, the appellant withdrew her name from the project, on 11<sup>th</sup> October, 2021 before the draw was held, and requested for refund. The respondent-Organisation, ignoring the request of the appellant for refund, sent her an allotment letter dated 08<sup>th</sup> December, 2021, which was protested vide her letters dated 14<sup>th</sup> December and 16<sup>th</sup> December, 2021. It was further contended by the appellant that the respondent-organization, has not obtained the "Completion Certificate" and "Occupancy Certificate" from the Competent Authority, and a "Completion Certificate" was obtained from an empaneled Architect and the same has been circulated by the respondent-organization, which reveals that only the building is complete and the project is not fit for habitation.

3. The appellant further contended that the Authority below, vide its order dated 19<sup>th</sup> April, April, 2023, directed refund of the deposited amount of Rs.45,09,000/- (Rupees forty five lac nine thousand only), but no interest was awarded; for no "Agreement to Sale" was executed between the complainant and the respondent. However, a penalty of Rs.2,00,000/- (Rupees

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two lac only) was imposed on the respondent for receiving 98% of the sale consideration, without executing the “Agreement for Sale”, which is in clear violation of Section 13 of the Real Estate (Regulation and Development) Act, 2016 (for short, “Act of 2016”).

4. The appellant, reiterating the pleaded facts and grounds of the appeal, contended that the Authority below, fell in gross error, in declining the interest component on the deposited amount of Rs.45,09,000/- (Rupees forty five lac nine thousand only) to the complainant-appellant, which is almost 98% of the total project cost.

5. The appellant further added that due to inordinate delay on the part of the respondent-organization in completion of the project, and handing over possession of the flat within the stipulated time period, the appellant decided to withdraw from the project on 11<sup>th</sup> October, 2021 by writing a letter to the concerned authorities of the respondent-organization, and on 22<sup>nd</sup> October, 2021, Form H was submitted stating that the appellant wants to withdraw from the project. However, no response was given by the respondent-organization, except sending her an allotment letter. Thereafter, the appellant approached the Authority below by way of filing the Complaint bearing No.RAJ-RERA-C-N-2022-4936, which has been disposed of by the impugned order dated 19<sup>th</sup> April, 2023.

6. Appellant argued that the Authority below, without taking into consideration the factual matrix of the case, partly allowed the complaint vide order dated 19<sup>th</sup> April, 2023, and directed the respondent-organization to refund the deposited amount of Rs.45,09,000/- (Rupees forty five thousand nine thousand only), without awarding any interest on the deposited amount, under the garb of non-execution of the “Agreement to Sale” between the complainant, and the

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respondent-organization. However, an amount of Rs.2,00,000/- (Rupees two lac only) was imposed on the respondent to be deposited with the Authority below, for receiving 98% of the sale consideration, without executing any "Agreement to Sale", which is contrary to Section 13 of the Act of 2016. Appellant, therefore, prayed for quashing and setting aside the impugned order dated 19<sup>th</sup> April, 2023, and also prayed for a direction to the respondent-organization to pay interest on the deposited amount, as stipulated under the Rajasthan Real Estate (Regulation and Development) Rules, 2017.

7. By referring the case of Mohan Singh Vs. International Airport Authority of India, (1997) 9 SCC 132, the appellant made an effort to establish the failure of the Authority below in taking in to consideration the judicial notice of the provision, while refusing to order interest on refund.

8. Further, referring to the text of Section 18 (1)(a) and 19(4) of the Act of 2016, the appellant emphasized that an allottee is in absolute and unqualified right for refund in the event of failure on the part of the promoters to complete the project within the stipulated period, relying on opinion of the Hon'ble Apex Court in the case of M/s. Newtech Promoters & Developers Pvt. Ltd. Vs. State of UP & Ors.

9. *Per contra*, the learned counsel for the respondent-Organisation argued that the respondent had complied with the order dated 19<sup>th</sup> April, 2023, by way refund of the entire amount of Rs.45,09,000/- (Rupees forty five lac nine thousand only) deposited by the appellant, and Rs.2,00,000/- (Rupees two lac only) of penalty imposed on the respondent. It was also stated that the amount was acknowledged by the appellant.

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10. Learned counsel further contended that the respondent-Organisation is a Welfare society registered with the Registrar of Societies, Delhi under Section XXI of the Societies Registration Act, 1860, having its registered at New Delhi, with the object of providing dwelling units to the servicing and retired railway personnel, as well as their spouse all over India, on a "No Profit and No Loss" basis by way of self-financing. Learned counsel further added that it does not receive any grant-in-aid either from the Government of India or from the Ministry of Railways for its welfare activities. It meets out the funds for the welfare housing scheme from its allottees, and borrowings from nationalized banks/public financial institutions. The cost of the flats have been calculated tentatively as per Central Public Works Department (CPWD) norms given in their Schedule. Learned counsel further added that the compliance of order dated 19<sup>th</sup> April, 2023 has already been made, by way of refunding the complete ordered amount, and the same has been duly accepted by the appellant in its instant appeal.

11. The learned counsel further added that the appellant has filed the present appeal, with ulterior motives, despite redressal of her grievance by the respondent-Organisation. The instant appeal has been filed by the appellant as an afterthought with malafides, therefore, the respondent-organisation prayed for dismissal of the appeal with cost.

12. We have heard the appellant, and also learned counsel for the respondent, and with their assistance, perused the material available on record, and also the order dated 19<sup>th</sup> April, 2023, passed by the Authority below.

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13. The appellant/complainant, in withdrawal application/letter and Undertaking submitted by the appellant for refund, and withdrawal from the scheme, vide Annexure H-2, reads thus:

*“Due to some unavoidable circumstances, I do not wish to continue in this scheme any longer. As such, I request that my withdrawal from the scheme may be accepted and refund be processed by IRWO under para 20 of the IRWO General Rules, as amended from time to time. The amount deposited by me may be refunded immediately after making deductions as per rules and without waiting for formation of a waiting list re-allotment of the dwelling unit.”*

Thus, it is abundantly clear that the appellant wants to withdraw from the scheme due to some unavoidable circumstances, and she also prayed for refund as per para 20.3 of the General Rules of IRWO. According to the appellant, when the respondent-IRWO failed in acknowledging the request made, she approached the Regulatory Authority by way of complaint, a copy of which is on record as Annexure-2 to the appeal, and the ground “5(b) is given as under :

**“5(b) : Rule No.20.3 of IRWO General Rules/Provision of RERA Act.**

In the matter, respondent-organisation issued letter for booking of DU on 26<sup>th</sup> May, 2015 and the same was accepted by the appellant which is on record as Annexure-B-3. In this letter, appellant stated as under :

- (i) I undertake to abide by the terms and conditions made applicable to IRWO in respect of the allotment or use of the land by the concerned authorities on allottee’s behalf.
- (ii) I shall abide by the IRWO General Rules and these contained in the Project Brochure as amended from time to time.

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14. It is very clear from the aforesaid facts that the complaint was filed for refund as per General Rules of IRWO. Clause 20.3 of General Rules of IRWO is reproduced hereunder :

**“20.3: After issue of Booking letter but before allotment of dwelling unit (where list wait does not exist:**

*In case of withdrawal after issue of confirmed booking letter but before allotment of the dwelling unit, full booking money plus 5% of instalments (whether paid or not) up to the dated of receipt of withdrawal letter plus interest due on delayed payment will be deducted and the balance paid without interest. This will be, however, on submission of Undertaking as per Annexure H-2.”*

15. As per the above clause, the appellant/complainant is not at liberty to withdraw the consent about the applicability of the General Rule of the IRWO. The appellant has not only booked the unit accepting the terms and conditions of General Rule of IRWO, but also consciously participated in the process, and deposited the instalments, after availing loan from financial institutions, and respondent-organisation constructed the unit on the basis of acceptance of appellant/complainant, and therefore, the appellant is estopped from claiming the entire deposited amount, at this belated stage, even after enactment of the Act of 2016.

16. In these circumstances, in our opinion, the appellant is bound by Clause 20.3 of the General Rules of IRWO, if she wants to withdraw from the project before allotment. But in the present matter, it is not disputed that the respondent-organisation not only deposited the entire amount as directed by the Regulatory Authority vide impugned order, but the same was also accepted by the appellant. The respondent-organisation has not challenged the impugned order of refund of the entire amount by way set off/counter claim in written statement or by



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cross appeal. In these circumstances, at this stage, we decline to interfere in the impugned order regarding refund to total amount.

17. The appellant only preferred this appeal to provide interest as per Rajasthan Real Estate (Regulation and Development) rules, 2017. Learned Regulatory Authority refused to grant interest to the appellant on the ground that no "Agreement to Sale" was executed. Learned Authority observed as under :

**"It is the duty of the allottee also to seek the agreement for sale from the promoter."**

18. A bare perusal of Section 13 read with Section 19 of the Act of 2016, it is the only duty of the promoter to execute "Agreement to Sale", if more than 10% cost of the apartment has been accepted. Section 19(1) provides that the allottee shall be entitled to obtain the information relating to sanctioned plans etc. including the information as per the "Agreement to Sale" signed with the promoter.

19. The Regulatory Authority, on the one hand imposed penalty of Rs.2.00 lac (Rupees two lac only) for violation of the provision of Section 13 of the Act of 2016 on the respondent promoter, but failed to provide interest to the appellant only for the simple reason that the allottee has not sought the "Agreement to Sale" from the promoter. We are of the view that it is not the duty of the allottee to seek the "Agreement to Sale" executed, rather allottee has right to obtain information as desired under Section 13 of the Act of 2016, regarding the "Agreement", and the promoter is duty bound to get the "Agreement to Sale" executed in compliance of Section 13 of the Act of 2016, and therefore, the order of the Authority below

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refusing to grant interest to the appellant for the reason that no "Agreement to Sale" was executed, needs to be quashed and set aside, and therefore, the appellant is entitled to interest at the rate prescribed in the prevailing RERA Rules, 2017 at SBI highest MCLR+2% i.e.  $7.30+2 = 9.30\%$  from the date of withdrawal letter up to the date on which the present refund is made to the allottee-appellant.

20. In the result, Appeal No.70/2023, filed by the appellant, is accepted to the extent of granting interest at the rate prescribed in the prevailing RERA Rules, 2017 at SBI highest MCLR+2% i.e.  $7.30+2 = 9.30\%$ , from the date of withdrawal letter up to the date on which the present refund is made to the allottee-appellant.

21. Respondent- promoter would do needful to ensure compliance of this order within forty five (45), days from the date of receipt of copy of this order, and submit compliance report to this Tribunal, within 15 days.

22. Pending Interim application(s), if any, stand(s) closed.

23. Costs made easy.

24. A copy of this order be transmitted to the appellant/learned counsel for the respondent/respondent and Raj-RERA, Jaipur.

25. File be consigned to record.

Mr. Rajendra Kumar Vijayvargia,  
Member (Technical)

Mr. Yudhisthir Sharma  
Member (Judicial).

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