

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

Complaint No. RAJ-RERA-C-2023-6065

Vasudev Takwani S/o Mr. Thakur Das Takwani R/o 398, Tata Nagar, Opp. Pragati School, Housing Board, Shastri Nagar, Jaipur Rajasthan - 302016.

.....Complainant No. 1

Palavi Takwani W/o Mr. Vasudev Takwani, R/o 398, Tata Nagar, Opp. Pragati School, Housing Board, Shastri Nagar, Jaipur Rajasthan - 302016.

.....Complainant No. 2

Versus

M/s Riddhi Siddhi Infra Projects Pvt. Ltd. office at 201, Ujjawal Apartment- 4, Bhatt Ji ki Bari, Udaipur, Rajasthan and Branch office at Elements Mall, Near DCM Market, Ajmer Road, Jaipur, Rajasthan - 302021.

.....Respondent

Present

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

1. Mr. Arun VS, Advocate present for Complainants.
2. Mr. Ankit Juneja, Advocate present for respondent.

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Complaint No. 6065


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



Date: 02.05.2024

ORDER

2. The brief facts of the matter as gathered from records reveal that the complainant booked a flat bearing no. C-1805 in the project of respondent named as "SKY 25" for total sale consideration of Rs. 15,76,251/-. An agreement for sale was executed on 27.05.2013 whereby the flat was to be handed over by the end of December 2014 but no offer for possession has been made within stipulated period. The complainant had deposited Rs. 15,06,964/- with the promoter on various dates.
2. Being aggrieved by the fact that neither the possession was handed over nor registration of sale deed was done, the complainant filed a complaint No. 2019-3326 before the Hon'ble RERA Authority for such directions to the respondent. The Hon'ble RERA Authority vide order dated 30.11.2022 on furnishing NOC from Enforcement Directorate, decided the complaint with the direction to the respondent to give the possession of the allotted flat and get the sale deed registered with the appropriate Authorities. The complainant was given liberty to approach the Adjudicating Officer for compensation of any sort.



3. Thereafter, the complainant filed the present complaint before this Tribunal claiming compensation of Rs. 20 lacs for delay in possession alongwith cost of litigation.
4. The respondent in its reply has not denied the booking of the flat and receipt of the amount but it was stated that the complainant neither came forward for execution of the sale deed nor has tendered the remaining dues, as such, the possession could not be delivered and sale deed could not be executed. The factors for delay were narrated to be the intervention of enforcement directorate and delay in obtaining the NOC for execution of sale deeds. It was also stated that the current position of the project is that the same is complete with all amenities and facilities except the provision made for EWS/LIG which is to be released by the Jaipur Development Authority that is required for obtaining the completion certificate of the said project.
5. Heard the learned counsels for the parties and perused the records.
6. Learned counsel for the complainant submitted that almost more than 90% of the sale consideration has been paid by to the respondent but the possession of the flat has not been offered in time. The same was agreed to be delivered on 01.12.2014 as per agreement for sale because the building map was approved by JDA on 01.12.2011 from which 36 months period was to be reckoned. However, the possession has not been given despite order of the Hon'ble



RERA Authority. The complainant has been paying interest on the amount paid to the respondent. Had the possession been given in time he would have utilized the flat for his own use or would have rented out the same. Thus, the adequate compensation for delayed period be awarded.

7. On the contrary, learned counsel for the respondent contended that the delay in completion of the project was caused because of the investigation of the enforcement directorate and some other related issues. However, the promoter had tried its level best to complete the project at the earliest. The respondent had also sent registered letters on 10.10.2017 and 28.12.2017 to the complainant to take possession and get the sale deed registered, but the complainant has not approached nor he has tendered the remaining dues therefore, the delay is attributable to the complainant. The Hon'ble RERA Authority has not granted any interest considering the facts of the matter. Therefore, the complainant is not entitled to any compensation.
8. Having heard the learned counsel for the parties and considering the material available on record there is no dispute on the booking of the flat, sale consideration and the amount paid by the complainant. It is also a matter of record that the Hon'ble RERA Authority has not allowed any sort of interest for delayed period to the complainant. The respondent has not shown any other reason for delay in completion of the project except the intervention of the



enforcement directorate. The complainant has also not brought on record any specific financial loss towards interest paid or the loss of interest etc. except that it was deliberated during the course of argument. In these circumstances it is to be seen whether the complainant is entitled to any relief or not.

9. As stated above, the complainant is seeking possession of the flat and claiming compensation on account of delay in delivery of possession. Undisputedly the possession was to be given within 36 months from the date of release of approved map by JDA as mentioned in Para 11 of the agreement for sale. The letter dated 01.12.2011 of JDA written to the director of the respondent discloses that the maps were approved vide said letter. Thus, after 36 months therefrom the agreed date for possession came to be 01.12.2014. This is not the case of the respondent that any offer for possession was given to the complainants in December 2014 or January 2015 or even a month or two thereafter. The correspondences submitted by the respondent reveal that the first letter of offer for possession was sent on 10.10.2017 giving 60 days time to the complainant for taking possession and again letter dated 28.12.2017 was sent to the complainant for taking possession and for completing formalities of registration. However, even if it is taken that such offer was given to the complainant yet this offer was in the month of December



2017 and never before. So much so the completion certification of the project has not yet been obtained by the promoter may be for any reason whatsoever.

10. The learned counsel for the respondent on being asked, during the course of arguments was not in a position to furnish any completion certificate obtained by the competent authority for the project in question. Thus, it is proved that the offer for possession was not made within stipulated period. The respondent has failed to bring on record any convincing reason for not completing the project in time. Not even a single reason has been stated to be an impediment for completion upto December 2014. The only reason stated was the interference/ investigation of Enforcement Directorate that too was not within that period and the other correspondence with JDA were also only during the year 2015 and 2016 as demonstrated by the correspondence submitted by the respondent. Thus, the respondent has failed to offer the possession whereby it has violated the provisions of Section 18 of the RERA Act which entitles the allottees for interest/ compensation for the delayed period.

11. In the judgment of **M/s. Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. and others** (Civil Appeal No(s). 6745-6749 of 2021, 2021 (11) ADJ 280) the Hon'ble Supreme Court held that if the promoter fails to deliver the possession in time, the unqualified right of the allottees



trigger on that date for refund with interest or for possession with interest including compensation. It is noteworthy that still the completion certificate has not been obtained and there exists doubt that all the amenities and facilities have been provided or not but for that allottee may approach the proper forum for redressal of their grievances after taking possession. That apart, the complainant cannot claim any compensation towards delay beyond December 2017 because offer was sent at that time. However, in my considered view the allottees are entitled to compensation for delayed period from January 2015 to December 2017 i.e. to say for 3 years which is quite attributable to the promoter.

12. Coming to the assessment of compensation the allottee has deposited approximately 95% of the amount which was not utilized in completion of the project and the promoter has utilized this amount for other purposes and gained wrongful advantage. On the other hand, the allottee remained without having his flat for more than 3 years. Had the possession been given in time he might have utilized it for his own use or was free to earn the rent of the premises. If the compensation for delayed period is not allowed it would be undue enrichment to the promoter and an apparent financial loss to the allottee. Had the promoter borrowed this amount from any other financial institution he would have to pay interest at least @ 12% p.a. On the



other hand, although the allottee has not furnished any proof on record that he has borrowed this money from any financial institution but still he would have fetched some return if the amount was invested somewhere else.

13. The allottee is getting the possession of the flat so the aspect of appreciation in property is also to be taken into account. In normal course the return of the rent in residential building is about 6% of the cost of the property and the minimum rate of interest on FDR in bank is also about 6%. Therefore, considering all these facts it would be appropriate that the compensation be allowed on the basis of 6% return on the deposited amount for relevant delayed period of 3 years. By applying the this formula the quantum of compensation on the deposited amount in lump sum comes to be Rs. 2,70,000/-.

14. Besides, the allottee was deprived of having his own house and had to fight the legal battle which caused the mental agony and physical harassment including cost of litigation. Therefore, he is entitled to get the adequate compensation on these counts also. Considering the facts in its entirety a lump sum amount of Rs. 50,000/- towards mental agony, cost of litigation etc. appears to be justified.

15. It was also stressed upon on behalf of the complaint that respondent is neither giving the possession nor executing the sale deed, so the compensation till possession be also considered. But I do not find any substance in this

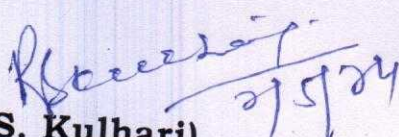


argument because the Hon'ble RERA Authority has already considered this matter and passed the order in this regard. If there is any non-compliance thereof such aspects are to be considered by the Hon'ble RERA Authority and not by this Tribunal.

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

- (i) The respondent is directed to pay Rs. 2,70,000/- as compensation for delayed period.
- (ii) The promoter shall also pay Rs. 50,000/- as compensation towards mental agony and cost of litigation to the complainant.
- (iii) The aforesaid awarded amount shall be paid within 45 days from today failing which the complainant shall be entitled to get interest @ 6% per annum on the total awarded amount under this order.
- (iv) The order be uploaded on the website of RERA and also sent the parties. Files be consigned to records.

Date:- 02.05.2024


(R.S. Kulhari)
Adjudicating Officer

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

