

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, JAIPUR, RAJASTHAN

APPEAL No.76/2023

IN

COMPLAINT No.RAJ-RERA-C-2019-3105

Satish Sharma S/o late Shri Prem Chand, aged about 70 years, R/o House No.B43, Surya Vihar, Opposite Sector 4, Gurugram, Haryana-122001.

---Appellant-Complainant

Vs.

VVA Developers Private Limited having its registered office at S-207, Second Floor, Ajnara Tower, Plot No.1, L.S.C., Savita Vihar, New Delhi-110092.

----Non-Appellant/Respondent

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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

PRESENT:

For appellant : Ms. Kritika Singh, Advocate

For respondent : Mr. Hemant Kothari, Advocate

ORDER

Reserved on 28th October, 2025:

Pronounced on 11th November, 2025:

Per: Justice Madan Gopal Vyas, Hon'ble Chairperson

The appellant has filed the above captioned appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "Act of 2016") challenging the impugned-order dated 27/04/2023 passed by the learned Rajasthan Real Estate Regulatory Authority (hereinafter referred to as "Regulatory Authority") whereby, the complaint filed seeking refund was disposed of with certain directions to the respondent-promoter.

2) The facts giving rise to the filing of this appeal in brief are that complainant booked a unit in the project of the respondent-promoter on 07/06/2013, whereupon Unit

No.A2-0905 was allotted to the complainant-appellant for the total sale consideration of Rs.28,45,250/- out of which, he paid a sum of Rs.6,47,212/-. A provisional allotment letter was also issued to him on 15/04/2014. However, Agreement for Sale was not executed between the parties. Since the project delayed by 3 years, the complainant filed the complaint seeking refund of the entire deposited amount with interest.

3) The learned Regulatory Authority disposed of the complaint vide impugned-order dated 27/04/2023, as under:-

- “(i) The promoter may hand over the possession to the complainant after payment of the outstanding consideration. A fresh demand notice be raised after adjustment of accrued interest mentioned herein below for taking over possession of the unit by complainant.*
- “(ii) The promoter is directed to adjust the accrued interest on deposit @8.6% of highest MCLR of SBI+2% w.e.f. date of complete i.e. 31.01.2021 till making such offer for possession.*
- “(iii) In case complainant does not intend to take over the possession, respondent is having right to deduct administrative charges @10% against the deposit made by the complainant and refund the rest of the amount with interest aforesaid since 01.02.2021 (excluding notified moratorium period)”.*

4) Hence, this appeal challenging the impugned-order dated 27/04/2023 with the following prayer:-

- “i. to accept and allow the present appeal;*
- ii. to be pleased to set aside the impugned order dated 27.04.2023 passed by Ld. RERA, Jaipur in complaint bearing no.RAJ-RERA-C-2019-3105 in case titling Satish Sharma vs. VVA Developers Pvt.Ltd.;*
- iii. to graciously be pleased to direct the Respondents to refund the total deposited monies Rs.6,47,212/- along with an interest at the rate of 2% + applicable MCLR per annum;*
- iv. Pass any appropriate order(s) as this Hon'ble Tribunal may deem fit in the interest of the Appellant”.*

5) Ms. Kritika Singh, learned counsel appearing for complainant-appellant argued that the learned Regulatory Authority has erred in law while not taking into consideration the vital aspect of the matter that the project was incomplete at the time of

filing of the complaint and has now been partially completed, which does not include the block of the appellant. The learned Authority did not consider the fact that the respondent-promoter malafidely changed his unit from A2-0905 to A3-0702 and very casually stated that partial completion certificate has been obtained for Blocks A1 and A2 but did not apprise the Authority that his unit has been changed from Block A2 to Block A3, which is still incomplete. The complaint was filed in 2019, whereas partial completion certificate was issued on 20/03/2022. Now, the promoter is offering possession of another Unit No.A2-0406 in Tower No.A2, which was never booked by the complainant. The construction is still not completed, which is evident from the photographs of the site (Anx.10 colly). The complainant has paid the promoter more than 10% of the total consideration but despite this, the promoter did not execute the Agreement for Sale, which act of the promoter is contrary to the provisions of Sections 13(1) & 13(2) of the RERA Act, 2016. But, the learned Authority did not consider the above aspects of the matter and issued directions for taking possession instead of refund. The learned Authority has also arbitrarily issued directions for deduction of the administrative charges @10% in case the appellant wishes to withdraw from the project. The Authority has further erred in law while not taking into consideration the fact that as per tax invoice presented by the promoter, the appellant was allotted the unit in Block A3, which is yet not complete and appellant cannot be forced to take possession after an inordinate delay of almost 10 years.

It is argued that appellant is a retired senior citizen and has invested his retirement money so that he along with his family could enjoy living a peaceful life. He cannot be forced to take possession of a unit which has been delayed.

During the course of arguments, counsel for the appellant has placed reliance on the order dated 06/02/2024 passed by the learned Regulatory Authority in similarly situated case in Dharmendra Kumar Sharma Vs. VVA Developers Private Limited arising out of Complaint No.RAJ-RERA-C-2019-3104 (Appeal No.50/2025), which is also pending consideration before this Tribunal, wherein the complaint filed seeking refund was allowed by the said order directing the same respondent-promoter to refund the entire amount paid along with interest w.e.f. the expected date of delivery of the possession till the date the refund is made to the complainant (excluding the moratorium period notified by the Authority) within 45 days from the date of uploading of the copy of the orders on the webpage of the Authority. Hence, this appeal may also be allowed quashing and setting aside the impugned-order and the order granting refund may be passed in the light of the abovesaid order dated 06/02/2024.

6) *Per contra*, Mr. Hemant Kothari, learned counsel appearing for the respondent-promoter argued that the promoter offered possession of the unit of a completed block against the payment of balance sale consideration. The learned Authority rightly issued directions for deduction of administrative charges @10% of the consideration. The promoter is willing to offer the appellant the unit in the project, provided the appellant fulfils his obligation to pay the balance consideration. It is further argued that the project was likely to be completed on 31/01/2021 but could not be completed and the extension was allowed upto 31/03/2023. It is further argued that against consideration of Rs.23.85 lacs, complainant has paid only a sum of Rs.6,27,812/- and despite issuing demand notices, complainant did not pay the balance consideration of Rs.16,95,288/-. A partial completion certificate was issued on 20/03/2022 with regard to Block A-1 & A-2. It is argued that ratio of the judgment dated 06/02/2024 passed in the case of *Dharmendra*

Kumar Sharma supra is not applicable to the facts of the present case being different. Hence, the appeal be dismissed.

7) We have heard learned counsel for the parties and perused the material available on record.

8) On the basis of the pleadings of the parties, two substantial questions of law do arise for consideration of this Tribunal, as under:-

“A) Whether the promoter changed allotted unit from A2-0905 to A3-0702 to the allottee?

B) Whether the appellants-allottees are entitled for refund in terms of the order dated 06/02/2024 passed by the learned Regulatory Authority in Dharmendra Kumar Sharma Vs. VVA Developers Private Limited, despite the project being partially complete?

QUESTION NO.A:-

9) As per contention of the respondent-promoter, Unit No.A3-0702 was inadvertently mentioned in the demand notice dated 10/08/2020. The allotment letter dated 15/04/2014 was issued for Unit No.A2-0905 and accordingly, complainant also mentioned in his complaint before RERA for Unit No.A2-0905. Therefore, it is not correct to say that Unit No.A2-0905 was changed to Unit No.A3-0702. Only mentioning of the wrong unit number in the demand notice dated 10/08/2020 issued by the promoter, it cannot be treated as a proposal of the promoter to change the unit, which was never accepted by the allottee in writing. Therefore, it cannot be presumed by this Tribunal that the allotted Unit No.A2-0905 was subsequently changed to Unit No.A3-0702 after allotment because even complainant-allottee himself prayed for refund with regard to Unit No.A2-0905. Therefore, this contention of the appellant is not acceptable.

Question No.A is accordingly decided against the appellant-allottee.

QUESTION NO.B:-

10) As per factual matrix of the matter, the appellant booked his unit on 07/06/2013 and he was provisionally allotted Unit No.A2-0905 on 15/04/2014 (Anx.5) for total consideration of Rs.28,45,250/- out of which, he paid a sum of Rs.6,47,212/-. Though, no Agreement for Sale was executed but according to the settled law, possession was deemed to be given within 3 years in absence of any agreement. According to the respondent-promoter, the project was liable to be completed on 31/01/2021 but the extension was granted upto 31/03/2023 due to Covid-19 pandemic situation.

11) It is noted that several duties cast on the promoter under Chapter-III of Sections 11 to 18 of the RERA Act, 2016; to provide possession within the specified time limit (where time is not provided then, within 3 years from the date of allotment), as per the pronouncement of Hon'ble Apex Court in the matter of ***M/s. Fortune Infrastructure Vs. Trevor Dlima & Ors. : 2018 (5) SCC 442*** with promised specifications including execution of Agreement for Sale in terms of Section 13(2) of the RERA Act, 2016.

In the present matter, the complaint was filed in 2019 and several legal notice-cum-demand letters were issued that too for the unallotted Unit No.A3-0702 instead of allotted Unit No.A2-0905. The last notice was issued on 10/08/2020 and that too also for the said unallotted Unit No.A3-0702. Later on, Partial Completion Certificate was issued on 20/03/2022 with regard to Block Nos.A-1 & A-2.

It is evident from the above factual aspect that obviously, the complainant-allottee did not pay remaining installments in time but promoter also failed to provide possession of the unit within the stipulated time. The project was likely to be completed

on 31/01/2021 but was extended upto 31/03/2023 but it cannot adversely affect the rights of the allottee.

As per mandate of Section 13 of the RERA Act, 2016, it is the duty of the promoter to execute the Agreement for Sale after getting 10% advance amount and it is not the duty of the allottee to execute the Agreement for Sale. Therefore, in such circumstances, non-execution of Agreement for Sale, cannot affect the rights of the complainant-allottee/appellant in the present matter.

It is apposite in this regard to reproduce the provisions of Sections 13(1) & 13(2) of the RERA Act, 2016, as under:-

“13. (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed”.

It is also evident from record that in compliance of impugned-order dated 27/04/2023, the respondent-promoter offered the complainant-appellant possession vide offer letter dated 22/06/2023 (Anx.10) for Unit No.A2-0406 instead of Unit No.A2-0905 after getting Partial Completion Certificate regarding Tower Nos.A1 & A2.

It is pertinent to mention herein that appellant originally booked unit for Unit No.A2-0905 and now vide offer letter dated 22/06/2023 (Anx.10), possession of Unit No.A2-0406 has been offered to the appellant after impugned-order having been passed.

No demand notice was issued for allotted Unit No.A2-0905 but several demand notices were issued that too for non-allotted Unit No.A3-0702 on 06/11/2017, 17/01/2018, 11/04/2018, 03/07/2018, 05/11/2018, 01/02/2019, 05/04/2019, 22/05/2019, 05/02/2020 and 10/08/2020 and now in 2023, Unit No.A2-0406 has been offered to the appellant. All the abovesaid legal notices were issued for unallotted Unit No.A3-0702 and offer of possession was also given for the unallotted Unit No.A2-0406. Therefore, neither the abovesaid legal notices nor the letter offering possession are valid. Though, the Partial Completion Certificate dated 20/03/2022 has been issued for Tower Nos.A1 & A2 but the appellant is not interested in taking possession of either Unit No.A2-0406 or Unit No.A3-0702, which were never booked by him. An allottee cannot be forced to take possession of the unallotted unit. The Agreement for Sale was not executed and there was no privity of contract between the parties regarding deduction of 10% of the Administrative Charges of the total deposited amount, as so directed by the learned RERA in the impugned decision. The delay in project is apparent. Therefore, the appellant has gained the unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf in terms of para 19 of the judgment rendered by the Hon'ble Apex Court in the matter of **M/s.Newtech Promoters And Developers V/s. The State of Uttar Pradesh** dated 11/11/2021, which reads as under:-

"19. Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf".

Question No.B is thus decided in favour of the appellant and against the respondent-promoter.

12) In the present case, since the complainant-appellant is not intended to take over the possession and since there is no privity of contract between the parties and project certainly has been delayed, the appellant is entitled for refund of the entire deposited amount with interest without deduction of 10% of the administrative charges against the total deposit made by the complainant.

13) The appeal is, therefore, allowed and Direction No.(iii) contained in the impugned-order dated 27/04/2023 is modified to the extent that respondent-promoter is directed to refund the entire deposited amount of Rs.6,47,212/- (as per Anx.8 annexed with memo of appeal) along with applicable rate of interest w.e.f. 01/02/2021 (excluding notified moratorium period) without deducting 10% of the Administrative Charges; to the complainant-appellant, within a period of 45 days from the date of receipt of certified copy of this order.

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

15) There is no order as to costs.

16) A copy of this order be transmitted to the learned counsel for the parties and Raj-RERA, Jaipur.

File be consigned to record.

Yudhishtir Sharma,
Member (Judicial)

Justice Madan Gopal Vyas,
Chairperson