BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No.161/2022

In : Complaint No.RAJ-RERA-C-2021-4316

1. Sachin Jain S/o Shri Shyam Sunder Jain, R/o 73/198, Shipra Path, Tagore Lane, Sector-7, Mansarovar, Jaipur.

2. MKSR Electricals & Instruments (P) Ltd., 14/124, Shipra Path, Mansarovar, Jaipur through its authorised signatory Mr.Mahesh Maliwal.

...Complainants-Appellants

V/s.

1. State of Rajasthan through its Additional Chief Secretary, UDH cum Chairman Rajasthan Housing Board, Government of Rajasthan, Government Secretariat, Jaipur.

2. The Housing Commissioner, Awas Bhawan, Jan Path, Jaipur.

3. The Deputy Housing Commissioner, IInd Circle, Agrawal Farm, Mansarovar, Jaipur (Rajasthan).

4. Resident Engineer, Division IX, Rajasthan Housing Board, Kaveri Path, Mansarovar, Jaipur.

....Respondents

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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

PRESENT:

For Complainants-Appellants : Mr. Jitendra Mitruka, Advocate
For Respondents : Mr. Prashant Daga, Advocate assisted by
: Mr. Yashwant Suwalka, Advocate

O R D E R

Reserved on 21st April, 2026:

Pronounced on 05th May, 2026:

Per: Justice Madan Gopal Vyas, Hon'ble Chairperson

The captioned appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the

"RERA Act, 2016") against the impugned-order dated 21/07/2022 passed by the Rajasthan Real Estate Regulatory Authority, Jaipur (hereinafter referred to as the "Regulatory Authority") whereby, the complaint was dismissed.

2) The facts in brief are that an e-auction was published by the Rajasthan Housing Board (hereinafter to be referred to as the "RHB") with regard to "RHB Aatish Market Scheme", Mansarovar on 09/09/2021 to 11/09/2021 for various showroom plots. Complainant-Appellants participated in the e-auction process and as per the prescribed procedure and in terms of the conditions of e-auction, Unit No.11 admeasuring 72 sq. meter was purchased on 11/09/2022 and deposited 15% of the bid amount amounting to Rs.23,54,400/-. The said unit was claimed highest bid @Rs.2,18,000/- per sq. meter. The RHB issued the Allotment-cum-Demand Notice dated 30/09/2020 for deposition of sale consideration of Rs.1,66,43,928/- (including tax) in instalments after adjustment of 15% deposited amount. The Complainants filed complaint alleging that the RHB is not authorized to seek deposit more than 10% of the sale consideration and that too without executing the Agreement for Sale and they prayed for issuance of directions to the Respondents to execute the Agreement for Sale and for imposition of penalty for violation of the RERA Act, 2016. The complaint was dismissed by the learned Regulatory Authority vide impugned-order dated 21/07/2022, as under:-

> *"The issue raised other than mentioned herein above i.e. removal of garbage depot and other issues are not directly related to the Authority. Therefore, it is suggested to the complainant that they should approach before the competent forum.*
>
> *In the light of aforesaid discussions, the complaint is dismissed".*

3) Mr.Jitendra Mitruka, counsel appearing for the complainants-appellants argued that:-

(i) The completion certificate produced by the RHB is not only incomplete but also contrary to the settled provisions of law. Since the project is registered with the RERA, the RHB is under obligations to provide a stage-wise time schedule of completion of project, which was not done and, therefore, the act of the RHB is in violation of Section 11(3)(b) of the RERA Act, 2016. But this important aspect of the matter has not been considered by the learned Regulatory Authority.

(ii) The learned Regulatory Authority has failed to appreciate that the allotment letter-cum-demand notice was issued contrary to the provisions of the RERA Rules, 2017. Promoter should pay interest to an allottee @SBI Highest MCLR +2% in conformity with the RERA Act, 2016.

(iii) Till today, the site is not technically clear to be allotted. The issue of Kachra Depot and 30 mtr. road towards Shipra Path is still under dispute and not legally clear. Secondly, due to COVID-19, neither the government departments nor the financial institutions are capable to accord necessary permissions as to construction and loan facilities. The conditions mentioned in the demand notice could not be complied with due to corona virus. Despite this, the demand notice was issued with intention to declare that the complainants are defaulters and with a view to forfeit their hard earned money deposited as advance.

(iv) In support of his arguments, counsel for the appellants has placed reliance upon the order of the RERA Authority dated 28/12/2020 in Complaint No.RAJ-RERA-C-2020-3984 and 15 other complaints : **Mahendra Kumar Sharma Vs. Rajasthan Housing Board**, to argue that the RHB in that case, agreed to execute the agreement for sale with the complainants and they were willing to do so immediately so that the respondent is enabled to accept the demanded amounts by 31.12.2020 without any violation of section 13(1) of the Act and the order dated 11/09/2025 passed by the RERA Authority in Complaint No.RAJ-RERA-C-N-2021-4075 : **RHB Aatish Market Sangharsh Samiti Vs. Rajasthan Housing Board**, to argue that in the similar set of facts & circumstances of the case as involved in the present matter, the learned RERA Authority directed the complainant-Samiti to execute the earlier order dated 28/11/2020 of the Authority for redressal of their grievances, if any against the RHB and if they wish, they can file an execution petition in accordance with law.

4) ***Per contra,*** **Mr.Prashant Daga, counsel appearing for the Respondents-RHB argued that:-**

(i) Unit No.10 was allotted to complainant-respondent No.2 and Unit No.11 was allotted to Shyam Sunder Jain, Sandeep Jain and Sachin Jain as co-allottee and they approached before RHB in the individual capacity. Therefore, there is defect of non-joinder of necessary parties.

(ii) The RHB is an autonomous body owned, regulated and controlled by the State Government through various circulars, notifications and other applicable laws. The RHB works with a sole motive to fulfil the housing needs of various sections such as EWS, LIG, MIG and HIG of the society in an extremely transparent manner and as per the prevalent policy of the RHB, which works on 'no prof mechanism', wherein the RHB concentrates only on the fulfil of housing needs at reasonable cost.

(iii) Before entering into the e-auction, the complainants were agreed and accepted the terms & conditions governing the e-auction desiring to purchase the units in the said project.

(iv) The complainants agreed to pay total sale consideration of Rs.3,22,11,824/- out of which, Rs.1,65,67,896/- is against Unit No.10 but the complainants paid only an amount of Rs.23,43,600/- till date. The amount of Rs.1,66,43,928/- was against Unit No.11 but the complainants only paid a sum of Rs.23,54,400/- till date and the complainants failed to pay the balance sale consideration.

(v) The project is complete in all respect as all civic infrastructures have been developed and plots are properly earmarked for the purpose of sale and the RHB has also obtained completion certificate dated 23/07/2020 (Anx.R/3).

(vi) The RHB did not violate Section 13(1) of the RERA Act, 2016 being the amount received more than 10% because the project received completion

certificate on 23/07/2020 and by that time, the project was complete in all respect. Section 13(2) clearly provides that the Agreement for Sale will specify details such as construction of the building along with specifications and internal development works and the manner by which payment will be made; meaning thereby, the agreement was to be executed at prior stage but when the project is complete and completion certificate is obtained then, there is no requirement for execution of the Agreement for Sale as the contents thereof provided in the prescribed format, covers the construction plan and other allied clause, which is not required in the present matter, as the RHB can directly execute the Conveyance Deed/Sale Deed with the complainants as the project is complete but the complainants defaulted in making payments and have not paid the balance sale consideration, therefore, the RHB could not execute the Sale Deed. However, the RHB sent email notice and several reminders to the complainants for entering into the Agreement for Sale but they did not come forward for execution of the Agreement for Sale.

(vii) The interest rate levied on the complainants is in consonance with the office order dated 18/05/2016 and being an autonomous government body, the RHB is bound by the orders and rules of the Government and it cannot act contrary to the same. The office order dated 18/05/2016 was issued prior to the commencement of the Act and Rules made thereunder. The RHB is acting in consonance with the said order and it does not have power to contrive or act contrary to the said order being bound by the same.

(viii) The issued raised regarding removal of garbage deposit and other issues were rightly discarded by the learned Regulatory Authority.

5) We have heard counsel for the parties and perused the material available on record including the case law cited on the issue.

6) It is evident from the pleadings of the parties and arguments of the counsel for the parties that the respondent No.1-Rajasthan Housing Board (in short, the "RHB") registered with the RERA Authority bearing Registration No.RAJ/P/2020/1170 issued one e-bid auction notification. The complainants-appellants No.1 & 2 participated in the auction proceedings and accordingly, the RHB on the basis of highest bid, issued allotment letter for commercial plot Nos.10 & 11 in Aatish Market on 30/09/2020 in favour of complainant-appellant No.2-MKSR Electricals & Instruments (P) Ltd. and in favour of Shyam Sunder Jain, Sandeep Jain & Sachin Jain-Complainant No.1 and they deposited 15% of the amount in terms of the e-bid auction. Thereafter, the respondent No.1-RHB issued allotment letter on 30/09/2020 for deposition of remaining sale consideration then, the complainants-appellants preferred one complaint before the RERA Authority and prayed for issuance of directions against the respondent-RHB to execute the Agreement for Sale as per mandate of Section 13 of the RERA Act, 2016 and also prayed for imposition of penalty for violation of the provisions of the RERA Act, 2016.

7) The learned Regulatory Authority after hearing both the parties, dismissed the complaint by the impugned-order dated 21/07/2022 on the grounds that - project is already completed prior to e-bid auction proceedings, non-joinder of necessary parties, non-disclosure of allotment for unit No.10 and non-execution of Agreement for Sale by appellants-allottees despite several emails issued by the respondent-RHB during the pendency of the complaint.

8) In the light of above factual matrix of the matter, the only questions remain to be considered by this Tribunal, are as under:-

A. Whether the respondent No.1-RHB violated the provisions of Section 13 of the RERA Act, 2016 in accepting advance payment of more than 10% of the total sale consideration without first entering into the Agreement for Sale?

B. Whether the impugned-order dated 21/07/2022 passed by the learned Regulatory Authority is liable to be quashed and set-aside?

Findings on Questions A & B:-

It is revealed from record that prior to e-bid notification of RHB, the project was completed and the completion certificate was already issued on 23/07/2020 by the Executing Engineer RHB Division-IX. Counsel for the appellants raised one objection regarding this completion certificate that the same was issued by one Engineer of RHB but it is not established whether or not the Executive Engineer was Empanelled Architect and the project was completed on the date when the Completion Certificate was issued. It is settled proposition of law that the validity of Completion Certificate cannot be adjudged by the RERA Authority or by

this Tribunal. It is not disputed that the appellants deposited 15% amount and participated in the e-bid auction proceedings and Commercial Units No.10 & 11 were provisionally allocated to the appellants but appellants did not pay the remaining sale consideration as per terms of the e-bid auction notification despite the allotment-cum-demand letter dated 30/09/2020 (Anx.2) issued by the RHB. Thereafter, the complainants-appellants preferred the complaint on the basis of non-compliance of provisions of Section 13 of the RERA Act, 2016. It is apposite to reproduce Sections 13(1) & 13(2) of the RERA Act, 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.*
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> ***13****. (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 clear from the text of Section 13(1) that a promoter shall not accept a sum more than 10% of the cost without first entering into written agreement for sale but provisions of section 13(1) should be read with Section 13(2) to understand the very intention of the legislature for enactment of above provisions. Section 13(2) mandated for ingredients of agreement for sale like – specifications, internal and external development works, cost, date of completion, manner of payments etc. We may conclude that Section 13 was incorporated in the Act to

regulate the project in an efficient and transparent manner and the Regulatory Authority may be able to supervise the progress of the internal and external works by way of filing QPR on quarterly basis. Whole scenario is changed if the project is completed prior to publication of the advertisement for sale. In the present matter, not only the project was completed prior to e-bid auction proceedings but the complainants-appellants also participated in the e-bid auction proceedings as per condition of e-bid notification (Anx.1) in which, some terms of this notification regarding payments have been mentioned. The said conditions are relevant to decide the controversy involved in this appeal, therefore, the relevant contents of the same are being reproduced, as under:-

''भुगतान की शर्तों में दी गई छूट

- *अब अमानत राशि (ई.एम.डी.) बिड मूल्य के 5 प्रतिशत के स्थान पर 2 प्रतिशत ली जाएगी।*
- *सफल बिड राशि की 15 प्रतिशत राशि 3 दिवस में जमा करानी होगी, जिसमें 2 प्रतिशत ई.एम.डी. समायोजित कर ली जाएगी।*
- *बिड स्वीकृति के पश्चात बिड मूल्य की (विभिन्न खर्चों सहित) 35 प्रतिशत राशि 240 दिवस में एवं शेष 50 प्रतिशत राशि 360 दिवस में जमा करवाई जा सकती है।*
- *सम्पूर्ण नीलामी राशि मांग पत्र जारी होने के 15 दिवस में जमा कराने पर नीलामी मूल्य में 2 प्रतिशत की छूट दी जाएगी''।*

As per above condition No.3, after deposition of 15% of the amount, 35% amount was required to be deposited within 240 days and rest 50% amount was required to be deposited within 360 days. We are of the considered view that once the appellants participated in e-bid auction proceedings, it can be assumed that they accepted all the terms & conditions of e-bid auction and accordingly, appellants were bound to fulfill all the terms of e-bid auction. Therefore, the appellants are estopped from raising any objection.

It is not evident from record that the appellants have issued any notice to the RHB in writing for execution of Agreement for Sale; on the contrary, one e-mail notice & 2 reminders were issued by the RHB along with proposed draft of Agreement for Sale, during the pendency of the complaint, but the appellants did not pay any heed for execution of the same. The learned Regulatory Authority observed in the impugned-order regarding the abovesaid fact, as under:-

> *"It is to be also noted after filing of the complaint promoter asked the complainant through e-mail dated 18.11.2021 to execute agreement for sale and subsequently on 07.01.2022 and 12.01.2022, a reminder through e-mail was also issued but with regard to progress for execution of aforesaid agreement for sale complainant failed to inform the grounds for non-execution of agreement for sale during the course of hearing. In the light of aforesaid documentary proof the grounds with regard to violation of statutory provisions by the promoter is not sustainable".*

So far as the order passed by the learned RERA in ***Mahendra Kumar Sharma (supra)*** is concerned, the RHB was agreed therein to execute the agreement for sale but in the present matter, the RHB asked the complainants-appellants to execute the agreement for sale during pendency of complaint but same was not executed by the complainants-appellants and in so far as the order passed by the learned RERA in ***RHB Aatish Market Sangharsh Samiti (supra)*** is concerned, the Authority while dismissing the complaint, advised the complainant-Samiti to execute the earlier order dated 28/11/2020 of the Authority for redressal of their grievances, if any against the RHB and if they wish, they can file an execution petition in accordance with law. Both the orders are not applicable in the present matter and the learned Regulatory Authority rightly observed and concluded as above.

9) Learned counsel for the appellants has also argued that the disputed site is not technically clear and the issue of 'kachra depot' and 30 mtr. road towards Shipra Path is still pending adjudication before the Hon'ble Rajasthan High Court in D.B. Special Appeal (Writ) No.302/2020 : Mithila Nagar Nyay Munch V/s. Rajasthan Housing Board & Ors., whereby the Hon'ble High Court has directed the respondents to maintain the status quo with relation to the disputed land. The order of the Hon'ble High Court is placed on record.

Issue raised that notification of e-auction is not valid or the respondent-RHB was exceeded in its jurisdiction or violated the order of the Hon'ble High Court; then also, the dispute cannot be adjudicated under the provisions of the RERA Act, 2016.

Questions A & B are decided accordingly.

10) In this appeal, the other ancillary issues have also been raised but we are only confined to the issue of violation of Section 13 of the RERA Act, 2016 but as per above discussion of the matter, the impugned-order passed by the learned Regulatory Authority is not found to be perverse or arbitrary being in consonance with the provisions of the RERA Act, 2016.

11) Therefore, the appeal fails and it is liable to be dismissed.

12) In the result, the appeal is dismissed. The impugned-order dated 21/07/2022 passed by the Rajasthan Real Estate Regulatory Authority in Complaint No.RAJ-RERA-C-2021-4316 is affirmed. However, the complainants-

appellants shall be at liberty to take legal recourse before the competent forum for other issues.

13) Pending interim order or any other application, if any, stands closed.

14) A copy of this order be transmitted to the counsel for the parties and RAJ-RERA, Jaipur.

File be consigned to record.

Yudhisthir Sharma,
Member (Judicial)

(Madan Gopal Vyas), J.
Chairperson

Anil Goyal-PS/Suppl.1