BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No.135/2025

In : Complaint No. RAJ-RERA-C-N-2022-5341

Pushpender Maan S/o Shri Jain Singh Maan, aged 40 years, R/o House No.241/17, Arya Nagar, Jhajjar-124103.

…..Complainant-Appellant

Versus

Anurag Enterprises, Head Office- III-H-1, Rakesh Marg, Nehru Nagar, Ghaziabad-201001 (U.P.) Through Its Partner/Authorised Signatory Ved Vashistha. Site Office: - Anurag Homes, V.B. Marg, S-11, C.C. -9, Fort Road, Neemrana District-Alwar-301705, (Rajasthan).

…….Promoter-Respondent

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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

PRESENT:

For appellant : Mr. Arpit Jain, Advocate assisted by

: Mr. Manas Baloda, Advocate

For respondent : None present

ORDER

Reserved on 05th May, 2026:

Pronounced on 12th May, 2026:

Per: Justice Madan Gopal Vyas, Hon'ble Chairperson

The present appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "RERA Act, 2016") challenging the impugned-order dated 24/04/2025 passed by the learned Real Estate Regulatory Authority, Jaipur (hereinafter referred to as the "Regulatory Authority") whereby, the complaint was disposed of.

2) The facts in brief of the case are that the complainant booked a flat/unit No.404, Fourth Floor, situated in block 'Neelam Tower' on 21/06/2013 in the said project. The basic sale consideration for the said flat/unit was Rs.23,32,400/-, out of which, the complainant paid a total sum of Rs.10,45,824/-. This includes the loan amount. Since - **(i)** Since the promoter-respondent failed to complete the construction of said project till 02/05/2016 inclusive of 12 months grace period as promised, **(ii)** further failed to comply with the terms & conditions of the Agreement for Sale even after lapse of 6 years thereby not delivering the possession of the said unit and **(iii)** further the construction work remained standstill and no progress was made to deliver possession of the flat even after 6 years on account of inordinate delay; the complainant filed complaint seeking refund along with interest from the date of making payment to the promoter-respondent. The learned Regulatory Authority disposed of the complaint vide impugned-order dated 24/04/2025, as under:-

> *"9. In view of above facts and observations and findings, the promoter is directed to give possession to the complainant. The promoter is further directed to give interest @ 11.10% i.e. highest SBI MCLR 9.10% + 2.00% from 03.05.2016 to till 16.08.2022 i.e. the date on which first offer of possession was made to the complainant. No moratorium period is allowed. The complainant is directed to make payment of balance sale consideration to the respondent before taking over the possession of the allotted unit. The accurate interest for delayed period possession as allowed to him as above, will be adjusted against balance sale consideration.*
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> *10. Compliance be made within 45 days from uploading of this order on official webpage of the Authority. With these above directions, the present complaint is disposed of and consigned to record. The order will be uploaded on the webpage of the Authority and also a copy of order be sent to concerned parties and place a copy of order in the file."*

3) Hence, this appeal with the following prayer:-

> *"a) This appeal may kindly be allowed and the impugned Order dated 24/04/2025 passed by the Learned Real Estate Regulatory Authority, Jaipur in Complaint No.*

RAJ-RERA-C-N-2022-5341 Pushpender Maan Versus Anurag Enterprises may kindly be modified and the prayer of the Appellant-Complainant for refund of the amount deposited of Rs.10,45,824/- alongwith the prescribed rate of interest is kindly be granted.

b) Award the cost of litigation of in favour of the Appellant and against the Respondent".

4) Mr. Arpit Jain, counsel appearing for the complainant-appellant argued that:-

(i) The learned Regulatory Authority has erred in law while not properly examining the finding given with regard to the deposited amount of Rs.10,45,824/- and as such, the impugned order is liable to be set-aside.

(ii) The occupancy certificate dated 04/11/2021 and completion certificate dated 28/06/2022 were not obtained from the competent authority. The learned Authority also rejected the occupancy certificate dated 04/11/2021 for want of its authenticity and format. Letter No.872/28/06-2022 issued by the RIICO is merely a Partial Habitation Permit and not the occupancy certificate and hence, it cannot be termed either as Occupancy Certificate or Completion Certificate and both are related to other Towers and it does not relate to the present Tower-"Neelam", where the appellant's unit is situated and the learned Authority also did not rely on these two documents. In fact, neither of the certificates is sustainable being not related to the present tower "Neelam" 404.

In support of this submission, counsel has placed reliance upon the judgments of the Hon'ble Apex Court in the matters of ***Nexgen Infracon (P) Ltd. Vs.***

Manish Kumar Sinha : C.A. No.64-65/2021 and Pioneer Urban Land Vs. Govindan Raghavan : (2019) 5 SCC 725 to argue that the Hon'ble Apex Court in these matters held that possession without occupancy certificate is *ipso facto* illegal and the allottee cannot be compelled to accept such possession and is entitled to refund with interest.

(iii) While passing the impugned-order dated 24/04/2025, the project was under the "lapsed category", which fact has also been acknowledged by the Authority.

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

6) It is evident from the record that, complainant booked Unit No.404 at 4th floor situated in block "**Neelam Tower**" and deposited Rs.10,45,824/- on 21/06/2013 out of total sale consideration of Rs.23,32,400/- and promised date of possession was 02/05/2016 inclusive of 12 months of grace period as per agreement for sale but admittedly, promoter failed to handover the unit within the stipulated time. Learned Regulatory Authority while passing the impugned order relied upon an occupancy certificate dated 04/11/2021 and partial completion certificate dated 28/06/2022 but admittedly, both the certificates are not approved by the RERA Authority and not uploaded on the RERA website. ***Firstly***, both the certificates are related to other Tower A "Kanak" and Tower B "Kanchan" and not the present Tower "Neelam" 404, wherein the complainant has been allotted Unit No.404 but no occupancy certificate and completion certificate are available on record. ***Secondly***, this Tribunal has previously adjudicated two appeals, Appeal No.68/2021 and Appeal No.40/2021, both involving the

same respondent - M/s. Anurag Enterprises. By a common order dated 15/07/2022, this Tribunal examined the matters and considered the findings rendered by the Real Estate Regulatory Authority (RERA) and upon due consideration, it was observed, as under:-

> *"22. From a glance of order dated 10th June, 2022 (supra), it is evident that communication dated 04th November, 2022, which has been heavily relied upon by the counsel for the respondent-promoter during the course of arguments to state that the subject project is complete and the communication dated 04th November, 2022, is a "Completion Certificate" issued by Competent Authority; has not been treated as a "Completion Certificate", and rightly so, in view of the definition of "Completion Certificate" under the Act of 2016. Further, the very indulgence granted by the Raj-RERA, Jaipur, to the respondent-promoter for institution of an application for extension of validation of registration of subject project in the prescribed manner with requisite fee and in the meanwhile, to obtain "Completion Certificate"; conclusively proves that the subject project including the units of the appellants/complainants, is not complete till date. Thus, we have no hesitation to conclude that the subject project including the units of the appellants/complainants, has not been completed by the respondent/promoter even after lapse of almost nine years".*

This Tribunal also observed about the legal aspect of the matter in para 78, on the basis of judgement pronounced in **Imperia Structures Ltd. vs. Anil Patni and Another**, as under:-

> *"78. This Court while interpreting Section 18 of the Act, in Imperia Structures Ltd. Vs. Anil Patni and Another5 held that Section 18 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer's agreement in para 25 held as under:-*
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> *"25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."*

On the basis of above observations, this Tribunal found the conclusions of RERA to be untenable and accordingly the impugned order dated 09.07.2021 was quashed. Since this Tribunal already taken a view in above similar situated matter regarding Completion and Occupancy Certificate on the basis of various judgments of Hon'ble Apex Court, including **Newtech Promoters Vs State of U.P & Ors**. and allowed both the appeals. As per pronouncement of Hon'ble Supreme Court of India in Civil Appeal No. 6745-6749 titled as **Newtech Promoters Vs State of U.P & Ors**., passed a judgement on 11.11.2021, which is being reproduced as under:-

> *"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

So far as present status of the project is concerned, learned Regulatory Authority in the impugned-order dated 24/04/2025 also observed in para 7, as under:-

> *"7. The status of said project on the official website of the Authority is verified by the Law Officer. The project is currently marked under the **"LAPSED"** category. Two extensions were sought by the respondent for the said project, and the current extension has expired on dated 02-07-2021. No valid OC and CC have been uploaded on RERA website for the said project. The said project status on the official website of the Authority is taken in judicial notice by the Authority".*

It is not appropriate to compel the appellant-allottee to take possession of the unit in incomplete or **"LAPSED"** project.

7) In view of the above findings, appeal is hereby allowed. Appellant/complainant is held entitled for refund of the entire deposited amount along with delay interest @SBI highest MCLR (8.70%)+2%, i.e., 10.70 per cent per annum, from each date of deposit till date of realisation of the amount. The Promoter-Respondent is directed to make compliance of this order within a period of 45 days from the date of receipt of certified copy of this order.

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

File be consigned to records.

Yudhishthir Sharma,
Member (Judicial)

(Madan Gopal Vyas), J.
Chairperson

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