BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No.7/2024

In : Complaint No.RAJ-RERA-C-2021-4155

1. Bhagwan Prakash Dwivedi S/o Chandra Prakash Dwivedi, C/o Abhimanyu Singh Advocate, E-27, Brijmandal Colony, Jhotwara, Jaipur-302012 (Raj.).

2. Ms. Namita Dwivedi W/o Bhagwan Prakash Dwivedi, C/o Abhimanyu Singh Advocate, E-27, Brijmandal Colony, Jhotwara, Jaipur-302012 (Raj.).

...Complainants-Appellants

Versus

M/s.Terra Developers, 118, Vipul Agora, Mehrauli Gurgaon Road, Gurugram, Haryana.

...Promoter-Respondent

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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

PRESENT:

For Appellant : Mr. Abhimanyu Singh Yaduvanshi, Advocate

For Respondent : Mr. Lokendra Singh, Advocate

O R D E R

Reserved on 21st May, 2026:

Pronounced on 26th 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") against the impugned-order dated 30/11/2023 passed by the Rajasthan Real Estate Regulatory Authority, Jaipur (hereinafter referred to as the "Regulatory Authority"), which was disposed of.

2) The facts in brief of the complainant are that:-

- Complainant-appellant booked a unit in the project of the respondent-promoter – "Terra Heritage". He was allotted Unit No.L-801 in the project for total consideration of Rs.37,13,825/- out of which, the complainant paid a sum of Rs.24,54,486/-. Agreement for Sale was executed between the parties on 27/12/2014 (Anx.1 of complaint) and according to clause 14 of the said Agreement, possession was to be handed within 42 months from the date of execution of the agreement i.e. by 27/06/2018. Hence, complaint was filed seeking "interest".

- Subsequently, complainant amended the relief clause by way of application under Order 6 Rule 17 CPC seeking relief of "refund with interest".

- Learned Regulatory Authority disposed of the complaint vide impugned-order dated 30/11/2023 in the manner as aforesaid.

3) The learned Regulatory Authority disposed of the complaint vide order dated 30/11/2023, as under:-

"In light of the foregoing observations: -

(i) The respondent promoter is directed to make an offer for possession to the respective allottee within 30 days along with interest @ 8.75% of highest MCLR of SBI + 2% w.e.f. expected date of delivery of possession (excluding moratorium period notified by the Authority) as mentioned in the agreement.

(ii) The respondent promoter may issue a fresh demand letter for offer of possession after adjustment of the said accrued interest on deposit of the respective allottee.

(iii) Possession of the unit be ensured along with all requisite certificates i.e. Completion Certificate and Occupancy Certificate and other documents prescribed under the Scheme of the Act.

(iv) Interest be paid in excess of consideration unit cost up to 10th day of every calendar month if possession is not be delivered within the specified period within 30 days of issuance of offer for possession".

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

"(i) That the order dated 30.11.2023 passed by learned RERA Authority may kindly be quashed and set aside the complaint filed by appellant may kindly be allowed and amount of appellant may kindly be refunded with interest".

5) Mr. Abhimanyu Singh Yaduvanshi, learned counsel appearing for the complainant-appellant argued that:-

(i) The learned Regulatory Authority passed the impugned-order directing the respondent-promoter to make an offer for possession and to pay interest @18%, which is contrary to the pleading and prayer made in the complaint. An allottee cannot be force to take possession if there is an inordinate delay in handing over possession. In support of his contention, learned counsel has placed reliance upon the order dated **30/06/2021** passed by the Authority in **Complaints No.RAJ-RERA-C-2020-3587 Rajni Verma Vs. Terra Developers** and **RAJ-RERA-C-2020-3590 : Vijay Singh Vs. Terra Developers.** Learned counsel has further placed reliance upon the judgment dated **02/07/2024** passed by the Hon'ble Rajasthan High Court in **SBCWP No.2289/2024 : Smt.Rajni Verma Vs. State of Rajasthan & Ors.**

Learned counsel for the appellant has also placed reliance upon the judgments of the Hon'ble Apex Court in the matters of **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan : AIR 2019 SC 1779**

and **The Chief Officer, Nagpur Housing and Area Development Board (A MHADA Unit) & Ors. Vs. Manohar Burde : 2025 LiveLaw (SC) 360.**

(ii) The order dated 12/06/2023 passed by the Authority allowing application of the appellant seeking amendment in the prayer clause of the complaint, has not been challenged by the respondent-promoter hence, this order has attained its finality.

(iii) The complainant prayed for refund with interest in view of the fact that the project belatedly delayed, which is evident from the "partial completion certificate" dated 09/08/2023 but the learned Authority directed the promoter to make an offer of possession to the complainant, which is against the principles laid down by the Hon'ble Supreme Court in catena of judgments, two of which, have been referred to above.

6) *Per contra,* Mr. Lokendra Singh, learned counsel appearing for the respondent-promoter has argued that:-

(i) Appellant was allotted the unit on 07/11/2014 and as per clause 14 of the Agreement for Sale dated 27/12/2014, possession was to be given within 42 months from the date of the said Agreement i.e. by 27/12/2018. The project was further extended. The delay was bonafide and due to the reasons beyond the reasonable control of the promoter due to (a) Ban on Bajri as per Hon'ble Rajasthan High Court's directions, (b) Demonetization, (c) imposition of the Goods and Service Tax in 2017, (d) Covid-19 outbreak and (e) national

lockdown due to Covid. The delay is not solely attributable to the promoter but also on the part of the complainant-appellant who was the defaulter in making timely payments as out of the total sale consideration of Rs.37,13,825/-, the appellant has deposited only a sum of Rs.24,54,486 but rest of the sale consideration is still outstanding.

(ii) The appellant was offered possession thereby to shift his unit to the another completed towers vide letter offering possession dated 02/09/2019 (Anx.R/2) but the appellant neither accepted nor denied to take possession in the alternate unit.

(iii) The promoter completed the project in question and obtained the completion certificate on 09/08/2023 (Anx.R/3) and again the appellant was offered possession of the unit with the request to clear the outstanding dues and IFMS, vide Anx.R/4 (colly) but this time also, appellant did not accept offer of possession. The project is in absolute habitable condition having 1372 families residing therein, which proves the fact that as of today, the project is complete and in a habitable condition. This Tribunal also in catena of judgments acknowledged the completion certificate as valid offer of possession.

(iv) In the above scenario, the learned Regulatory Authority has rightly passed a reasoned order directing promoter to make an offer for possession to the respective allottee within 30 days along with interest but the appellant instead

of taking possession of the unit, filed complaint before the Authority claiming 'refund with interest'.

(vi) Learned counsel has placed reliance upon the judgment dated **24/02/2026** passed by this Tribunal in ***Appeal No.288/2024 : Lalita Soni Vs. M/s.Shree Ram Balaji Developers and Infrastructures Pvt.Ltd. & Ors.*** *& 19 other similar connected appeals*, whereby all the 20 appeals were dismissed by this Tribunal affirming the order dated 28/08/2024 of the learned Regulatory Authority whereby, the complainants were directed to take possession and pay the remaining amount, if any and delay interest was offered from the expected date of possession till the offer of possession.

7) We have heard learned counsel for the parties and perused the material available on record as well as the case law cited by the learned counsel for the parties on the issue.

8) It is not in dispute that:- **(i)** Partial Completion certificate was obtained on 09/08/2023, **(ii)** no Occupancy Certificate has still been obtained in the present case & **(iii)** Partial Completion Certificate was only obtained after delay of five years on 09/08/2023 from the agreed date of possession i.e. 27/06/2018 and Promoter is only entitled to get benefit of one year due to Covid-19 Pandemic as *force majeure.* As per Agreement for Sale dated 27/12/2014, the unit was to be handed within 42 months i.e. by 27/06/2018 but till date, only possession was offered to the appellants and that too for shifting their unit to the another completed towers vide letter offering

possession dated 02/09/2019 (Anx.R/2), which is not a valid offer of possession. Except this, no offer of possession has been offered to the appellant till today.

9) In ***Rajni Verma*** & ***Vijay Singh (supra)*** against the similar Promoter-***Terra Developers*****,** the learned Regulatory Authority allowed the complaints *directing Promoter to refund the entire amount received with interest*. Thereafter, the Recovery Certificate was issued on 18/01/2023 but when the same was not adhered to, allottee-Rajni Verma approached the Hon'ble Rajasthan High Court by filing **SBCWP No.2289/2024 (supra),** which was disposed of vide order dated 02/07/2024 directing the District Collector-respondent No.1 to make all endeavours to execute the recovery certificate dated 18/01/2023. Meaning thereby, the issue of 'refund with interest' has been upheld by the Hon'ble Rajasthan High Court, which was not challenged in higher forum, therefore, the order dated 02/07/2024 has attained its finality. Therefore, it is not appropriate to adopt double standard in same project.

10) In terms of the pronouncement of the Hon'ble Supreme Court in ***M/s.Newtech Promoters And Developers V/s. The State Of Uttar Pradesh dated 11/11/2021*****,** the complainant-appellant has acquired the unqualified right to seek refund on demand and entitled to refund of entire deposited amount under Sections 18(1)(a) and 19(4) of the Act of 2016. It was held, 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 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".

11) In ***Pioneer Urban Land & Infrastructure Ltd. (supra)*****,** the Hon'ble Supreme Court has safeguarded the interest of the allottees holding that an allottee cannot be forced to take possession of a property after an undue delay and is entitled to a refund if the unit is not delivered within the agreed time frame**.**

12) In ***Fortune Infrastructure Vs. Trevor D'Lima : 2018 (5) SCC 442*****,** the Hon'ble Apex Court has held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation.

13) The ratio of the judgment in ***Lalita Soni (supra)****,* is not applicable in the facts of the present case. Further, Allottee-Complainant is not under an obligation to deposit remaining instalments where Promoter fails to complete the project within stipulated time.

14) Hence, we are of the considered view that the complainants-appellants are entitled for refund of the entire deposited amount along with interest, as per applicable law.

15) In view of above observations, therefore, the appeal is **Allowed** and the impugned-order dated 30/11/2023 passed by the Regulatory Authority in *Complaint No.RAJ-RERA-C-2021-4155 : Bhagwan Prakash Dwivedi Vs. Terra Developers* is quashed and set-aside. The Respondent-Promoter / M/s.Terra

Developers is directed to refund the entire deposited amount along with interest to the complainant-appellants @SBI Highest MCLR (8.70%)+2%, i.e., 10.70 per cent per annum from the each date of deposit within a period of 45 days from the date of receipt of certified copy of this order.

16) Pending interim application or any other application, shall stand closed.

17) 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