

BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No.271/2024

In : Complaint No. RAJ-RERA-C-N-2018-2459

1. Anil Singh Gaur S/o Lt. Man Singh Gaur, R/o I-17, IInd Floor, Sharma Colony, Budhvihar, Phase-II, Delhi-110086.
2. Mrs. Rekha Gaur W/o Anil Singh Gaur, R/o I-17 IInd Floor Sharma Colony, Budhvihar, Phase-II, Delhi-110086.

....Complainant-Appellants

Versus

Terra Realcon Pvt. Ltd. through its Director Mahender Arora and Sunil Kumar, Terra Realcon Pvt. Ltd Project, Terra Castle, Sector-101, Bhiwadi, Rajasthan.

....Promoter-Respondent

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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

PRESENT:

For Applicant-Appellant : Ms. Pooja Vijay Vargiya, Advocate

For Respondents : Mr. Saurabh Patria, Advocate

ORDER

Reserved on 07th July, 2026:

Pronounced on 14th July, 2026:

Per: Justice Madan Gopal Vyas, Hon'ble Chairperson

The complainant-appellant has filed the present appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA Act, 2016") against the impugned-order dated 04/09/2024 passed by the learned The Rajasthan Real Estate Regulatory Authority, (hereinafter be referred to as the "Regulatory Authority") for refund with interest. By the impugned order, the complaint was disposed of.

2) The case of the complainant in brief is that the complainant-booked a Flat bearing No.R-1001 in the project of the respondent namely; "Terra Castle" bearing Registration No.RAJ/P/2017/140. Complainant has allotted the said unit in the aforesaid project and deposited Rs.12,76,056/- against the sale consideration of Rs.16,09,200/- agreed upon by the parties through buyer agreement dated 30.10.2013. Delivery of the possession was expected within 36 months according to clause 14 of the said agreement but possession has not been delivered within the specified period. Therefore, the complainant prayed for relief to refund the deposited amount with interest.

3) On the basis of the pleadings and after hearing the parties, the Regulatory Authority has passed the impugned-order dated 04/09/2024, as under:-

"Hence, the complainant is directed to take possession of the unit. Since there has been delay in handing over possession, delay interest is granted from the expected date of possession, i.e, 30.10.2016 till the date of possession was offered, i.e., 26.06.2023 @ 9.10% highest MCLR of SBI + 2%, i.e., 11.10% per annum excluding moratorium period, if any. Since the complainant has not made full payment, the delay interest may be adjusted from the amount to be paid by the complainant and in case of any excess/shortfall, the amount may be paid by the party towards whom the shortfall accrues. Compliance may be made within 45 days of uploading of this order on the RERA web portal".

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

- "1. That Hon'ble Tribunal may kindly quash the Order passed by Hon'ble RERA Authority dated 04/09/2024, in the present matter consequently the respondent be directed to refund the entire deposited amount of Rs.12,76,337/- paid by the appellant to the respondent along with interest from the date of each deposits commencing from 28.03.2013 till the date of payment as per the Real Estate (Regulation and Development) Act, 2016 and rules made thereunder;*
- 2. That Hon'ble Tribunal be most humbly prayed to issue order or direction to call the original files of complaint from the Rajasthan Real Estate Regulatory Authority, Jaipur and examining the same passed in favour of appellant.*

3. *That Hon'ble Tribunal be most humbly prayed for attachment of Bank Account for the purpose of recovery of claim and compensation as may be awarded/granted to the appellant from receipts and or profits of the other real estate projects of the respondent and their company in which they are directly or indirectly interested or holding a beneficial interest as registered with RERA".*

5) Ms. Pooja Vijay Vargiya, learned counsel appearing for the complainant-appellant argued that the learned Regulatory Authority has passed the impugned order dated 04/09/2024, without application of mind and against the provisions of law as well as record of the case ignoring the fact that the project is delayed by 11 years and till date, the completion certificate has not been obtained and same has also been mentioned in the Annual Progress Report of 2022-2023 submitted by the respondent. The learned Regulatory Authority has wrongly held that refund may not be allowed in completed projects while misinterpreting the judgment of the Hon'ble Supreme Court in ***IREO Grace Realtech Private Limited Vs. Abhishek Khanna & Others : AIR 2021 Supreme Court 437***, whereas Hon'ble Supreme Court held in para 21.2 of the said judgment that the allottees before this Court in the present batch of appeals, can be categorized into two categories – where the Developer has been granted occupation certificate and offer of possession has been made, are enlisted in Chart A and where the occupation certificate has not been granted so, are set out in Chart B below. However, the developer does not fall under Chart A as neither completion certificate nor occupancy certificate has been obtained nor offer for possession has been issued. Therefore, the learned Regulatory Authority has incorrectly held that the appellant is bound to take possession of the uncompleted project. Therefore, in view of the pronouncement of the Hon'ble Supreme Court in

Newtech Promoters and Developers Pvt.Ltd. Vs. State of Uttar Pradesh and others : 2021 SCC OnLine SC 1044, the appellants are entitled to receive refund with interest.

6) *Per contra*, Mr. Saurabh Patria, learned counsel appearing for the promoter argued that the complainant-appellant expressed interest in Flat/Unit No.H-1001 on 10th Floor of Tower “Hever-R” (which was previously known as “Tower-G”), which is as per brochure. As per Agreement for Sale dated 30/10/2013, the expected date of possession was 30/10/2016 and with 6 months grace by 30/04/2017. As per Registration Certificate dated 05/09/2017, the initial project completion time was 31/03/2018. The extension was granted to the project upto 31/03/2022, as per Extension Certificate dated 01/04/2021. Partial completion certificate was obtained on 21/06/2023, according to which, Tower “Hever-R” (which was previously known as “Tower-G”) is complete. According to the partial completion certificate, construction work in Tower-A & Tower-G is complete. As per Section 19(7) of the RERA Act, 2016, the allottee is statutorily bound to pay interest for any delay in payment towards any amount or charges payable as per the terms of the Agreement. Despite the clear directions given by the learned Regulatory Authority vide order dated 04/09/2024, the appellant did not make timely payments of the due amount. Therefore, claim of the appellant for refund with interest cannot be allowed.

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

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

“QUESTION A:-

As to whether the appellant-allottee is entitled for refund with interest?

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As to whether the appellant-allottee should take possession of the unit?

9) **Finding on Question A:-**

It is admitted position between the parties that Flat/Unit No.H-1001 on 10th Floor of Tower “Hever-R” (which was previously known as “Tower-G”) was allotted to the appellant in the respondent-project namely; “Terra Castle” bearing Registration No.RAJ/P/2017/140. The appellant complainant deposited Rs.12,76,056/- against the sale consideration of Rs.16,09,200/-. As per Agreement for Sale dated 30/10/2013, the expected date of possession was 30/10/2016 and with 6 months grace by 30/04/2017.

9.1 It is admitted position between the parties that the possession was never handed over within the stipulated period upto 30/04/2017. Agreed date of possession is not affected by Covid-19 Pandemic and admittedly, partial completion certificate issued by empaneled architect was obtained on 21/06/2023 although, the details regarding completion of Tower-G are not attached with the partial completion certificate but if we presume that the partial completion certificate is genuine one then also partial completion certificate was obtained after lapse of 6-7 years from agreed date of possession despite the fact

that a considerable sale consideration was already deposited by the allottee, whereas the reasonable period for completion of unit was 3 years as per pronouncement of Hon'ble Apex Court in the matter of **Fortune Infrastructure and Ors. Vs. Travor D' Lima and Ors : (2018) 5 SCC 442**. It is also noted that at the time of passing of the impugned-order, the promoter has obtained the partial completion certificate in year 2023 but the complaint was preferred long back in the year 2018 bearing Complaint No.RAJ-RERA-C-N-2018-2459; meaning thereby, during long pendency of complaint, the partial completion certificate obtained by the promoter, therefore, right of allottee to get refund with interest cannot be affected adversely, which already accrued in favour of the appellant-complainant. In case of inordinate delay, the allottee can also get refund of entire deposited amount with interest despite the fact that partial completion certificate was obtained during pendency of complaint.

9.2 It is also noted that this Tribunal has already took a view in **Appeal No.74/2021 : Sanjay Kumar Vs. Terra Realcon Pvt.Ltd. & Anr. vide order dated 16/07/2024**, whereby refund with interest was granted. It is not appropriate to adopt a double standard in the same project.

9.3 The Hon'ble Apex Court in the matter of **M/s.Newtech Promoters and Developers (supra)** took a view that in case of delay as per terms & conditions of the Agreement for Sale, the allottee has acquired an unqualified right to get refund with delay interest, which may be 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.”

9.4 In view of the above, therefore, the appellant is entitled to get refund with delay interest from the each date of deposit in terms of the judgment of the Hon’ble Apex Court in the matter of **Experion Developers Pvt.Ltd. Vs. Sushma Ashok Shiroor : 2022 SCC Online SC 416**, wherein in somewhat identical factual matrix relying upon earlier opinions while dealing with the issue of payable interest on the amount deposited, in uncertain terms, the Hon’ble Apex Court observed, as under:-

“32. We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of deposit of the amounts. The Commission in the order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. Following the decision in DLF Homes Pamchula Pvt. Ltd. Vs. D.S. Dhanda and in modification of the direction issued by the Commission, we direct that the interest and the refund shall be payable from the dates of deposit. Therefore, the appeal filed by the purchaser deserves to be partly allowed. The interest shall be payable from the date of such deposits.

33. At the same time, we are of the opinion that the interest of 9% granted by the Commission is fair and just and we find no reason to interfere in the appeal filed by the consumer for enhancement of interest.”

9.5 This view was followed by this Tribunal in **Appeal No.30/2021 : Renu Bhargava Vs. Aakriti Landcon Pvt.Ltd.**, which is in consonance with the Explanation Clause of Section 2(z)(ii) of the RERA Act, 2016. Section 2(z)(ii) may be reproduced, as under:-

“(za) “interest” means the rates of interest payable by the promoter or the allottee, as the case may be;

Explanation-For the purpose of this clause-

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date interest payable by the allottee to the promoter

shall be from the date the allottee defaults in payment to the promoter till the date it is paid.”

9.6 Therefore, the impugned-order dated 04/09/2024 is required to be modified for refund of the entire deposited with delay interest from the each date of deposit.

10) In the result, the appeal is allowed. The impugned-order dated 04/09/2024 passed by the learned Regulatory Authority in Complaint No.RAJ-RERA-C-N-2018-2459 is quashed and set-aside. The respondent-promoter-Terra Realcon Pvt. Ltd. is directed to refund the entire deposited amount along with delay interest from the each date of deposit as per Rule 17 of the RERA Rules, 2017 @SBI Highest MCLR (8.70%)+2%, i.e., 10.70 per cent per annum, to the appellants-complainants/allottees within 45 days from the date of receipt of certified copy of this order.

11) There is no order as to costs.

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

File be consigned to record.

**Mr. Yudhisthir Sharma,
Member (Judicial)**

**Justice Madan Gopal Vyas,
Chairperson**

Anil Goyal-PS