

BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No.232/2024

In : Complaint No.RAJ-RERA-C-N-2022-5900

1. Deepak Jhawar, R/o 71 A, Sukhanand Ji Ki Bagechi, Siwanchi Gate, Jodhpur, Rajasthan-342003.

2. Sanju Soni, R/o 71 A, Sukhanand Ji Ki Bagechi, Siwanchi Gate, Jodhpur, Rajasthan-342003.

..... **Appellants**

Versus

The Love Homes LLP, E-97, Ria Avenue, Subhash Marg, C-Scheme, Jaipur-302001.

.....**Respondent**

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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

PRESENT:

For Appellants	:	Ms. Abhilasha Sharma, Advocate
For Promoter-Respondent	:	Mr. Prashant Daga, Advocate assisted by
	:	Ms. Khushi Kabra, Advocate &
	:	Mr. Ajay Singh, Advocate

ORDER

Reserved on 16th July, 2026:

Pronounced on 21st July, 2026:

Per : Justice Madan Gopal Vyas, Hon'ble Chairperson

The above captioned appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter be referred to as the "RERA Act, 2016") has been filed against the impugned-order dated 27/05/2024 passed by the Rajasthan Real Estate Regulatory Authority, Jaipur (hereinafter referred to as the "Regulatory Authority") in Complaint No: RAJ-RERA-C-N-2022-5900 whereby, the complaint was dismissed.

2) The brief facts of the case are that the respondent-promoter launched an Affordable Housing Project under Chief Minister Jan Awas Yojana- 2015 in the name and style of "Love Home Marwar Phase-I" (hereinafter referred to as "Project") in the year 2019 situated at Village Pal, Dist. Jodhpur, Rajasthan in the form of Affordable Housing Scheme of residential flats including EWS (1BHK) & LIG (2&3 BHK). The Promoter mentioned in the brochure amenities like - Kids aqua pool, Floating Gazebo, Senior citizen park, Rooftop party area, Cafeteria, Box Cricket & many more designated spaces which were of the utmost importance. The Promoter gave assurances to the appellants to deliver high-quality flats and of guaranteed on time possession of the unit. Accordingly, the appellants applied for booking of a unit in the said project and after depositing requisite booking amount, an allotment letter was issued to the appellants on 06/08/2019. The parties thereafter executed Agreement for Sale dated 06/09/2019 for unit bearing No.D-04 in Block-D of the project having carpet area of 629.80 sq.ft. along with an exclusive balcony of 34.01 sq.ft. for a total consideration of Rs.26,49,047/-. As per Clause 7.1 of the said Agreement, it was explicitly agreed that the possession of the unit would be handed over along with complete common areas with all specifications, amenities & facilities on 31/03/2023 and as per clause 7.6, the allottee will be compensated for the delayed period. Appellants made payments as per the Construction Linked Payment Plan. The promoter vide letter dated 08/08/2022, issued demand-cum offer of possession to the appellants, wherein the promoter mentioned that the construction work was ongoing and by doing so, the promoter violated Clause 7.2 of the Agreement for Sale by making unwarranted demands and issuing vague letters, which

were merely raised in order to attain unlawful gains and to coerce the appellants to make payments, failure of which would lead to cancellation and/or delay in sanitary fitting, paint and other quintessential works. The appellants approached the office of the promoter to enquire about the completion of the project along with all specifications, amenities & facilities but the promoter did not allow the appellants to see the progress of the project and swindled the appellants by stating that the project is complete and completion certificate will be issued within 15 days and asked the appellants to make final payment and execute sale deed of their unit. The appellants were misguided and as a result of the same, they made payment of complete consideration and were left with no other option but to rely upon the false assurances of the promoter and, thereafter, executed sale-deed on 19/10/2022. The said Satisfactory form dated 30/9/2022 was never signed by the appellants in their knowledge and signatures, if any, taken on such documents were merely in disguise. The checklist and the mentioned documents under the name of “Possession Kit” attached with Anx.R/8 were never provided to the appellants and were not even put on record by the promoter before the Authority along with the reply. Till date, the said project is under the “Lapsed” category as per the official website of RERA Authority and as per the last QPR filed by the respondent, the said project is merely 70% complete. Learned Authority dismissed the complaint vide order dated 27/05/2024, the operative portion of which reads, as under: -

“Heard the arguments and examined the record. Sale deed has been executed on 19/10/2022 and the respondent has also issued a possession letter dated 13/09/2022 and the complainant has taken paper possession. A satisfactory form was also issued with regard to the same on 13/09/2022. The incomplete works mentioned by the complainants seem to be of a very petty nature. If the unit was indeed incomplete and was not in a habitable condition, the complainant should not

have accepted the possession nor signed the satisfaction report. Hence, the complaint does not appear to be justified and deserves to be dismissed."

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

"1. Quash and set aside the impugned-order dated 27/05/2024, passed by the Real Estate Regulatory Authority;

2. Direct the respondent to hand over the physical possession of the unit in the manner promised with complete fittings and fixtures;

3. Direct the respondent to pay interest for the period of delay from the actual date of handover of possession till the possession is handed over;

4. Direct the respondent to pay litigation cost of Rs.50,000/- AND/OR Pass such further orders in favour of the Appellant as this Tribunal may think fit in the interest of justice".

4) Ms. Abhilasha Sharma, learned counsel appearing for the appellants has argued that the Authority has failed to consider the fact that the promoter has miserably failed to complete the project on time and has cheated the appellants by way of raising undue demands which were in direct contravention to the Construction Linked Payment Plan. The Authority failed to consider the fact that the promoter threatened the appellants to execute sale deed which is much evident from the letter dated 08/08/2022 and has taken signature on documents under disguise. The Authority failed to consider the fact that the promoter neither obtained Completion Certificate from the administrative wing of Authority itself nor Occupancy Certificate of the project. The Authority failed to consider the fact that the promoter's project is lapsed as on date and as per last QPR filed, the project is merely 70% complete. The Authority has passed the judgment in most capricious and arbitrary manner which is in direct contravention to its own precedents and has dismissed the complaint by observing that the grievances of the appellants to be of "Very Petty Nature". The Authority has overlooked the observations made by the

Hon'ble Apex Court in the matter of ***Debashish Sinha Vs RNR Enterprises (Civil Appeal No.3343 of 2020)***. It is out rightly clear from the factual matrix that the appellants have made on time payments as and when demanded by the promoter despite this, the project is incomplete till date.

5) *Per contra*, Mr. Prashant Daga, learned counsel appearing for the respondent-promoter has argued that on 06/09/2019, an Agreement to Sale was duly executed and registered between the promoter and appellants for Flat Unit No.D-04, Block-D having a carpet area of 629.80 sq. ft. along with an exclusive balcony area of 34.01 sq. ft., for a total sale consideration of Rs.26,49,047/-. On 08/08/2022, an offer of possession was duly sent by promoter to the appellants for the Flat No.D-04, Block-D, of the said project titled as "Love Home Marwar Phase-I". It is germane to state here that the promoter obtained Partial Completion Certificate on 06/09/2022 from the competent Authority. Thus, the project was complete much prior to the expected date of possession i.e. before 2023. The appellant obtained vacant and peaceful possession of the said flat on 30/09/2022 and submitted an undertaking and acknowledgment vide letter dated 30/09/2022. On 19/10/2022, a registered sale deed was duly executed between the promoter and appellants for the aforesaid unit. The promoter has also received the Partial Completion Certificate for project on 16/08/2023. The promoter has at all times complied with the terms & conditions of Clause 7.2 of the Agreement for Sale. The Completion Certificate was duly obtained by the promoter on 06/09/2022 and subsequent to which, the sale-deed was executed on 19/10/2022. It is argued that while the overall project may be reflected as 70% complete and marked as lapsed on the official RERA website,

but the unit allotted to the appellants is fully completed and ready for use. The possession of the unit including the keys was duly handed over to the appellants on 30/09/2022 in accordance with the terms of the Agreement.

6) We have heard learned counsel for the parties and with their assistance, perused the entire material available on record.

7) It is admitted position between the parties as is evident from the record that the appellants not only took possession of allotted unit bearing No.D-04 in Block-D of the project “Love Home Marwar Phase-I” but also executed the sale-deed with the promoter on 19/10/2022. It is also admitted position between the parties that prior to execution of the sale-deed, one Agreement for Sale was also executed between the parties on 06/09/2019. According to Clause 7.1 of the Agreement for Sale, the agreed scheduled completion date of the project was 31/03/2023 and prior to the scheduled date of completion, not only possession was handed over but also the sale-deed was executed between the parties and Partial Completion Certificate was also obtained by the Promoter on 06/09/2022, which is available on record. It is noted that as per QPR submitted by the respondent-promoter before the Regulatory Authority, Tower-D is completed. Status of Tower-D is “completed” in which Flat No.D-04 is situated.

7.1 The main grievance pointed out by the appellants is regarding some amenities like - Kids aqua pool, Floating Gazebo, Senior Citizen Park, Rooftop party area, Cafeteria, Box Cricket & many more designated spaces which were of the utmost importance as promised by the promoter in the brochure. As per Condition No.1, the parties mutually agreed at the time of execution of sale deed, as under:-

“(i) *The Buyer(s) purchasers, acquires and the promoter transfer the ownership rights of the unit, service room, exclusive balcony area along undivided interest in the common areas and facilities described herein in this Schedule-7”.*

7.2 Meaning thereby, the ownership rights including common areas and facilities were transferred to the appellants-complainants as described in Schedule-7. Further, one satisfaction form Anx.5 was also executed by both the appellants in which they have mentioned, as under:-

“I/we declare that we have taken over the possession of the Flat in satisfactory conditions and claim no deficiency in the quality of the Flat.”

7.3 Furthermore, one letter was also issued by the appellants in favour of respondent-promoter on 30/09/2022 in which the appellants categorically admitted, as under:-

“I have paid the entire amount of the agreed sales consideration and have taken the peaceful, vacant, physical possession of the flat. I have thoroughly inspected the flat and building, fixtures and finishing done in the flat and have satisfied myself about the ownership, approvals, layout and specifications of the flat and building”.

7.4 It is crystal clear from above documents that at the time of execution of sale-deed and other documents no deficiency was pointed out by the appellants and rather the appellants categorically issued a satisfaction note along with checklist.

7.5 Execution of above documents was not categorically denied by the appellants that the above documents were not executed by the appellants and presumption can be drawn that the facts mentioned in the above documents are true and correct. The appellants fail to rebut this legal presumption.

7.6 So far as some shortcomings pointed out by the appellants including the amenities and quality of construction is concerned, the appellants are at liberty to take

legal recourse in terms of Section 14(3) of the RERA Act, 2016, which may be reproduced, as under:-

“14. Adherence to sanctioned plans and project specifications by the promoter-
(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act”.

7.7 Further, the appellants are free to approach the appropriate forum to seek compensation against the promoter, who alleged to have violated certain provisions of the RERA Act, 2016 but looking to the facts and circumstances of the matter, the impugned-order does not suffer from any manifest error and not required any interference.

8) Resultantly, the appeal fails and is hereby dismissed. The impugned-order dated 27/05/2024 passed by the learned Regulatory Authority in Complaint No.RAJ-RERA-C-N-2022-5900 is affirmed.

9) There is no order as to costs.

10) 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)

(Madan Gopal Vyas), J.
Chairperson