BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No.51/2026

In : Complaint No.RAJ-RERA-C-N-2025-7856

1. Mr. Anand Swaroop Gupta S/o Late Shri Harbansh Lal Gupta, R/o D-28, Saraswati Marg, Banipark, Jaipur, Rajasthan.

2. Shri Kamal Gupta S/o Shri Anand Swaroop Gupta, R/o D-28, Saraswati Marg, Banipark, Jaipur, Rajasthan.

…Complainant-Appellants

Versus

1. M/s. Prem Sagar Infra Project Private Limited, 11, S-1, Rishi residency, 2nd floor Mission Compound, Ajmer Road, Jaipur, Rajasthan.

2. Shri Sita Ram Todawat S/o Shri Hari Krishan Todawat, R/o Khasra No.87, Kesar Nagar, Village Sukhiya, Tehsil Sanganer, District Jaipur (Raj)

3. Housing development finance Corporation Limited, registered office at Raman House, HT Parekh Marg, 169, Backbay Reclamation, Churchgate, Mumbai- 400200.

……Respondent

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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

PRESENT:

For complainant-appellant : Mr. Rishi Raj Maheshwari, Advocate

For respondent : Ms. Neetika Kalakar, Advocate

O R D E R

Reserved on 01st October, 2026

Pronounced on 06th October, 2026

Per : Mr. 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 order dated 27/01/2026 passed by the Rajasthan

Real Estate Regulatory Authority, Jaipur (hereinafter referred to as the "Regulatory Authority"), in Complaint No.RAJ-RERA-C-N-2025-7856.

2) Facts of the case in brief are that the appellant booked Flat No. B-510**,** Type 2 BHK, Tower B, Terraza Greens**,** developed by M/s Prem Sagar Infra Projects Pvt. Ltd.**,** in the project registered as RAJ/P/2017/046, for a total consideration of Rs. 48,08,450/-**.** Learned counsel for the appellant stated that an amount of Rs.39,00,064/- has been paid towards the flat. The Agreement to Sale dated 17.07.2015 stipulated completion and delivery of possession within 36 months**,** i.e. by August 2018, and provided for consequences in case of delay. Despite the stipulated date having expired, possession was not handed over even after approximately seven years. Hence, complaint was filed before the learned Regulatory Authority, which was disposed of by the learned Regulatory Authority vide order dated 27/01/2026, the operative part of which reads, as under:-

> *"10. In view of the above discussions and observations the respondent no.1 is directed to make valid offer of possession to the complainant after obtaining occupancy certificate. The respondent will also make payment of interest for delay period in handing over the possession of the rates prescribed under the RERA Rules & Regulations i.e. Highest MCLR of SBI plus 2% i.e. 8.80% + 2.00% = 10.80 per annum form the expected date of possession i.e. 18.07.2018 till the valid offer of possession is made. No interest shall accrues for the period 01.07.2020 to 30.06.2021.*
>
> *The complainant will make payment of balance sale consideration after adjustment of accrued interest, as allowed in para 10 above.*
>
> *11. Compliance of the order shall be made within 45 days of the uploading of this order on the official webpage of the Authority."*

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

"1. By an appropriate order or direction allow this present Appeal and set-aside and quash the order dated 27.01.2026.

2. By issuance of an appropriate order or directions to pay the entire amount of Rs.13,02,288/- as per the agreement (Annexure-5) deposited by the complainant to the builder.

3. By issuance of an appropriate order or directions direct the respondents to foreclose the loan Account of the complainant by paying the entire dues of Rs. 32,60,118/-and further to bear any and every charges imposed by the Respondent no.3 in foreclosing the said loan account inclusive and not exclusive of Pre-EMIs, Outstanding charges, Penal Interest, Legal Charges etc.

4. By issuance of an appropriate order or directions direct the respondents to comply with the agreement and immediately grant the interest @24% per annum on the amount deposited of Rs. 39,00,064/- from each date of deposit till actual realization. By issuance of an appropriate order or directions direct the respondents to pay additional 10% amount of the total amount deposited as the compensation to the complainant.

6. By issuance of an appropriate order or directions direct the respondents to pay Rs. 50,000/- as the litigation cost.

7. By issuance of an appropriate order or directions direct the respondents to pay Rs. 1,00,000/- in lieu of the mental agony and legal costs."

4) Mr. Rishi Raj Maheshwari, learned counsel appearing for the appellant argued that the respondent developer has failed to comply with the construction-linked payment arrangement under the Tripartite Agreement and that the respondent-bank has disbursed loan amount without adequately verifying the progress of the construction. It is further argued that an MOU dated 19.06.2018 provided an exit/buy-back option, which was exercised by the appellant; however, the respondent failed to refund the amount as agreed, including the applicable interest. The prolonged delay and failure to honour the buy-back/exit arrangement caused substantial financial loss, mental agony and hardship. The learned counsel for the appellant relies upon Sections 11, 12 & 18 of the RERA Act, 2016, contending that the promoter failed to discharge its contractual and statutory

obligations. Reliance is also placed upon the judgment of the Hon'ble Supreme Court in ***Kolkata West International City Pvt. Ltd. v. Devasis Rudra*** **(Civil Appeal No. 3182 of 2019 (@SLP (c) No(s). 1795 of 2017),** wherein it was observed that a buyer cannot reasonably be expected to wait indefinitely for possession and that a period of seven years is beyond what may reasonably be expected.

5) *Per contra*, Ms. Neetika Kalakar, learned counsel appearing for the respondent No.3-Bank has argued that the Bank has acted strictly in accordance with the Loan Agreement and Tripartite Agreement executed by the parties, its contractual and security interests are independent of the dispute between the Appellants and the Respondent-Builder and, therefore, any relief granted in the appeal, cannot prejudice or override the Bank's rights. After payment of Rs.6,39,946/- towards booking, the Bank sanctioned a home loan of Rs.38,50,000/- and disbursed Rs.32,60,118/- in phases. The appellants created an equitable mortgage over the property in favour of the Bank and the Bank's security interest was registered with CERSAI. Learned counsel has further argued that under the Tripartite Agreement dated 17.06.2016, the appellants' obligation to repay the loan was distinct and independent of any dispute with the Builder. The appellants had also agreed that in case of cancellation of the allotment, any amount refundable by the Builder would be paid directly to the Bank. The appellants had irrevocably subrogated their right to receive such refund in favour of the Bank, to

the extent of the outstanding loan dues. Thus, any refund ordered in favour of the Appellants must first be appropriated towards the outstanding liability of the Bank. It was further submitted that the appellants defaulted in repayment of EMIs and pre-EMIs, resulting in classification of the loan account as NPA on 03.02.2024. The Bank thereafter issued a notice dated 17.04.2026 and a demand notice dated 29.04.2026 under Section 13(2) of the SARFAESI Act, 2002, for recovery of the outstanding dues. In substance, respondent No. 3/Bank is seeking that if the allotment is cancelled and refund is directed to the appellants, the refund amount should be paid to the Bank to the extent of the outstanding loan dues, in accordance with the Loan Agreement and Tripartite Agreement, without affecting the Bank's independent contractual and statutory rights.

6) We have heard learned counsel for both the parties and perused the material available on record.

7) In view of the facts and circumstances of the case, the only question that arises for consideration is, as follows:

Q No.1:- Whether impugned order is liable to be set aside and appellant-complainant is entitled for refund with delay interest?

Finding on Question No.1:-

8) It is evident from the record that complainants booked a flat bearing No.B 510 in the project "*Terraza Greens*" for the sale consideration of

Rs.48,01,450/- out of which, the complainants deposited an amount of Rs. 39,00,064/- towards sale consideration. The Agreement for Sale was executed on 17/07/2015. A Tripartite Agreement was also executed between the parties and financial institution on 17/06/2016, wherein the agreed date of possession was promised to be 36 months from the date of signing of the agreement which come to August, 2018. The promoter availed five extensions, out of which, only one extension from 01/07/2020 to 30/06/2021 was on the ground of *Force Majeure* reasons. Now, the project is under the category of ***"Completed"*** and Completion Certificate was obtained by the promoter but still Occupancy Certificate is not available on record.

The promoter failed to provide possession of allotted unit within stipulated time as per terms & conditions of Agreement for Sale then, the appellant-complainant preferred one complaint on 09/01/2025 under Section 31 of the RERA Act, 2016 and prayed for refund along with interest but Regulatory Authority in impugned order dated 27/01/2026 directed the promoter to make valid offer of possession after obtaining Occupancy Certificate. The appellant-complainant referred this appeal against this direction of possession and prayed for refund of deposited amount with interest. The decision of the Authority is based on the fact that now the project is completed but learned Regulatory Authority also observed that project was delayed inordinately because the agreed date of possession was way back in August, 2018. It is revealed from the record that at the time of execution

of Agreement for Sale, the allottee Anand Swaroop was 80 years old and now he is 91 years old approximately.

Learned counsel for the appellant argued that due to inordinate delay of possession of the flat, all the scenario is changed and now the appellant does not want to continue with the project. Learned counsel has placed reliance on a judgement rendered by this Tribunal in Appeal No.76/2023 : Satish Sharma Vs. VVA Developers as well as judgment passed in Appeal No.80/2024 : Udayraj Palace Pvt. Ltd. Vs. RERA & Anr. During the course of arguments, learned counsel for the appellant produced a notice dated 17.09.2026 issued by the Bank, whereby the appellant was called upon to discharge the outstanding loan amount of Rs. 44,03,492/- within 60 days from the date of the said notice. The notice further stated that, in the event of failure on the part of the appellant to clear the aforesaid outstanding amount within the stipulated period, the Authorized Officer of the Bank would take possession of the flat purchased by the appellant in the aforesaid project.

So far as legal position is concerned, Section 18(1) mandate for refund with delay interest. For the sake of clarity, it may be reproduced, as under:-

> ***"Section 18 (1)(b) of RERA Act, 2016***:-
>
> ***"Return of amount and compensation***.—*(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*
>
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee **wishes to withdraw** from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee **does not intend to withdraw** from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

It is evident from a bare perusal of above text that for both the reliefs, Legislature mentioned the words **"wishes"** for **"refund with interest"** in Section 18(1)(a) and **"intend"** in the proviso of Section 18(1)(a) that if allottee does not intend to withdraw from the project. Meaning thereby, the words **"wishes"** and **"intend"** are deliberately used by the Legislature to protect the rights of allottee, who may choose either of the relief enumerated in Section 18(1)(a).

The Hon'ble Apex Court in the matter of ***Newtech Promoters and Developers Pvt. Ltd. V/s State of UP*** **(202 INSC 716)**, Hon'ble Apex Court 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 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."

There is no doubt about that after completion of project generally allottee should not be allowed to withdraw from the project in case when project

only on the ground of *Force Majeure* or ordinary delay to handover the possession but if the project was inordinate delayed on the count grounds, which does not fall under the category of *Force Majeure* defined under the RERA Act, 2016. It is noted that RERA Act, 2016 only recognize the natural disasters like earthquake, landslides etc., in such circumstances the project delayed by the Jaipur Development Authority on count of approval and other reasons mentioned by the promoter is not tenable, only one year of extension should be counted on the ground of *Force Majeure* due to Covid-19 pandemic and the promoter may take exclusion of one year while computing the interest.

It is revealed from the record that apart from Agreement for Sale, one memorandum of undertaking was also executed between the parties on 17/07/2015 and Clause No.4 is relevant to decide the controversy involved in this appeal, which may be reproduced, as under:-

"EXIT OPTION:

> *a) In the event, Exit Option/ Buyback Option is exercised by the buyer (point 2 A above), Builder will be responsible to repay / foreclose the Bank Loan for the said unit and will procure the NOC from the financial institution within 60 days for which Buyer/part of Second buyer will appear, sign the documents pertaining to the financial institution. All penalty / cost applicable for the prepayment / foreclose if any for prepayment of loan will be borne by the first part / builder only.*
>
> *Consideration payable by Developer to Buyer(s) for buying back Buyers) all rights, claims and interest in said until is hereby fixed for a total consideration of Rs 13,02,290/- (Rupees Twelve Lac Seventy Nine Thousand Eight Hundred Ninety only)-inclusive of service lax, which has agreed to be paid by Developer to Buyers)*
>
> *b) In the event Option to sell in open market (third party) is exercised by the buyer (point 2B above), Second part / Buyer will ensure that Third party makes the entire payment to the builder / developer / first part according to the schedule of payment (as per*

> *agreement) on the day of sale. Post receipt of the payments outstanding as per Schedule Builder will be responsible to repay / foreclose the Bank Loan for the said unit and will procure the NOC: from the financial institution within 60 days for which Buyer / part of Second buyer will appear, sign the documents pertaining to the financial institution. All penalty / cost applicable for the prepayment / foreclose if any for prepayment of loan will be borne by the builder only and transfer cost of Rs. 50/-Per Sq. Ft. will be applicable on Second Part of this agreement.*
>
> *c) In case If Second party / buyer wishes to retain the until (point 2 C above). Buyer will be required to pay all outstanding payments, Additional cost as per agreement including registration & stamp duly etc... and buyer shall also bear all other expenses in respect of said unit in accordance with terms and conditions mentioned in the Agreement to sale executed between the developer and buyer. AND all the EMIs / Loan Obligations except of PRE EMI (till offer of possession is made in written will be full responsibility of second part / buyer. In no case / event Buyer will make builder responsible for payment lo financial institution."*

Further, one more letter is available on record (ANX.1) condition no.2 thereof is also relevant which may be reproduced, as under:-

> "2) Penalty clause- If in any condition buy back scheme not availed by buyer in stipulated time of 36 months, Builder agreed to pay penalty charges of 24% pa to buyer."

9) In the present case, it is evident that the agreed date of possession was August, 2018, whereas the promoter failed to hand over possession within the stipulated period. Even after excluding the period of one year granted on account of *Force Majeure* due to the COVID-19 pandemic, there remains an inordinate delay in completion and delivery of possession. Though the project has subsequently been categorized as "Completed", the Occupancy Certificate is still not available on record. The appellant-allottee, who was about 80 years of age at the time of execution of the Agreement for Sale and has now attained an old age, has categorically expressed his unwillingness to continue with the project and

has opted for refund. In view of Section 18(1)(a) of the RERA Act, 2016 and the law laid down by the Hon'ble Supreme Court in ***Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P(Supra)***., the right of an allottee to seek refund with interest, upon failure of the promoter to deliver possession within the stipulated period, is an unqualified statutory right. The subsequent completion of the project cannot deprive the appellant of such accrued right.

10) We are also fortified by the view taken by this Tribunal in Appeal No. 76/2023, ***Satish Sharma Vs. VVA Developers***, and Appeal No. 80/2024, ***Udayraj Palace Pvt. Ltd. Vs. Rajasthan Real Estate Regulatory Authority & Anr.***, wherein, in cases of inordinate delay, the allottee's option to withdraw from the project and seek refund with interest has been recognized.

11) 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 Pamchkula 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."

Question No.1 is decided accordingly.

12) Accordingly, the appeal is allowed and the impugned order dated 27.01.2026 is hereby quashed and set aside. The appellant is held entitled to get refund of the amount deposited, i.e. Rs. 39,00,064/-, along with interest at the prescribed rate @SBI Highest MCLR (8.80%)+2%, i.e., 10.80 per cent per annum with effect from the each date of deposit till realization of the amount, excluding moratorium period notified by the Authority, within 45 days from the date of receipt of certified copy of this order.

13) Pending interim application(s), if any, shall stand(s) closed.

14) There is no order as to costs.

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

File be consigned to record.

Yudhishthir Sharma,
Member (Judicial)

(Madan Gopal Vyas), J.
Chairperson

Indrajeet/Anil Goyal/Suppl.6