BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No.150/2023
In : Complaint No.RAJ-RERA-C-2022-5250

M/s. Suncity Projects Private Limited, a company incorporated under the provisions of the Companies Act, 2013 having its's registered office at 180, 181, 184, 186, J.L.N. Marg, Jhalana Dungar, Jaipur-302018 through it's Authorized Signatory Mr. Manoj Narain, being duly authorized.

…..... Promoter-Appellant

Versus

Mr. Varun Sharda S/o Abhimanyu Sharda, R/o S-25, Mangal Marg, Bapu Nagar, Lalkothi, Gandhinagar, Jaipur.

.....Complainant-Respondent

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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

PRESENT:

For Promoter-Appellant **:** Mr. Gunjan Pathak, Advocate

For Complainant-Respondent **:** Mr. Vipul Sharda, Advocate

O R D E R

Reserved on 29th September, 2026:

Pronounced on 13th October, 2026:

Per : Justice Madan Gopal Vyas, Hon'ble Chairperson

The above captioned appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (shall hereinafter be referred to as the "RERA Act, 2016") challenging the impugned-order dated 22/08/2023 passed by the learned Adjudicating Officer in Complaint No: RAJ-RERA-C-2022-5250.

2) The facts of the case in brief are that the appellant has developed a residential project namely **"Jewels of India"** situated at J.L.N. Marg, Jaipur. The project

is registered vide Registration No. RAJ/P/2017/244, dated 27/09/2017. A sample flat was constructed at the project site to demonstrate the layout, design, ambience and possible interior arrangements to prospective buyers, without any representation that the furniture, fixtures and modular kitchen displayed therein would be provided in every flat. The respondent booked Flat No.801 in Phase-E of the project for a sale consideration of Rs.2,46,95,510/-. The Conveyance Deed was executed and registered and possession of the flat was handed over to the respondent on 12/09/2019. According to the appellant, the respondent acknowledged satisfaction with the facilities and amenities provided at the time of taking possession. The Appellant further contended that execution of the Maintenance Agreement and payment of maintenance charges were necessary for availing maintenance-related facilities, including lifts, electricity, water supply, parking, security and common areas. The respondent thereafter filed a complaint before the Permanent Lok Adalat, Jaipur as well as before the RERA Authority. The Appellant challenged the maintainability of the RERA proceedings under Section 10 of the Code of Civil Procedure on the ground that the same matter was pending before the Lok Adalat, following which the respondent withdrew the complaint before the Lok Adalat. The Appellant also contended that the electricity facility was restored upon deposit of the maintenance charges by the respondent and not pursuant to the order dated 27/07/2021, which, according to the appellant was limited to granting access to the flat. The complaint was decided vide order dated 22/08/2023; the operative part of which is, reproduced hereunder: -

> *"20. So far as the mental agony and cost of litigation is concerned it may be inferred from the facts of each case. In this case the facilities of light, water and access to lift*

had been withdrawn abruptly without any notice to the complainant and made him to suffer a lot. Further, the deputation of a person purchasing a flat of Rs. 2 crores and odd was at stake in the eyes of the society in general and the residents of the project in particular, that the access to the flat was denied by the promoter, was definitely a cause of mental agony and harassment to the complainant. The complainant was forced to fight the legal battle not only before the Hon'ble RERA Authority but also before this Tribunal and has incurred cost of litigation. Therefore, he is entitled to get the compensation on account of mental agony and the cost of litigation as well.

21. Considering the facts of the matter in its entirety an amount of Rs. 80,000/- towards mental agony and Rs. 20,000/- towards cost of litigation seem to be adequate to meet the ends of the justice.

22. Accordingly, the respondent is directed to pay Rs.4,00,000/- as detailed out herein above, to the complainant within a period of 45 days from today failing which the complainant shall be at liberty file the execution application before this Tribunal in accordance with the provisions of law".

3) Hence, this appeal has been filed seeking the following relief: -

"In view of the aforesaid facts of the case, the appellant hereby prays for the following reliefs:

6.1 The impugned order dated 22/08/2023 passed by the Adjudicating Officer be quashed and set aside.

6.2 The record be summoned from the Adjudicating Officer below.

6.3 Cost be granted to the Appellant.

6.4 Any other relief which this Authority deems proper in the facts and circumstances of the case may also be passed in favour of the complainant".

4) Mr. Gunjan Pathak, learned counsel appearing for the appellant-promoter has argued that the impugned order suffers from material errors of fact and law. It was submitted that the Authority vide order dated 22/07/2021 directed only the provision of access to the flat and not restoration of electricity or other facilities. The complaint was misconceived, as possession had been handed over to the complainant-respondent within the stipulated period vide Possession Letter dated 12/09/2019 and the relief claimed by the complainant had already been granted earlier. It was further argued that the complaint was defective for non-

joinder of necessary parties, particularly the other promoters and Varun Sharda had filed the complaint despite there being three co-owners, without establishing his authority to represent them. The Adjudicating Officer also failed to consider the respondent's default in payment of maintenance charges and non-execution of the Maintenance Agreement. Learned counsel further argued that the findings regarding deprivation of the use or rental income of the flat, social embarrassment and the award of litigation costs were based on conjectures and surmises, without adequate pleadings or evidence.

5) *Per contra*, Mr. Vipul Sharda, learned counsel appearing for the complainant-respondent has argued that after taking possession, it was found that the appellant-promoter did not provide the modular kitchen, fittings and other amenities as shown in the sample flat. Therefore, the appellant-promoter was requested for providing modular kitchen but instead of providing the same, the promoter removed the existing fittings and did not re-install thereafter. It was further argued that without providing modular kitchen, the appellant-promoter pressurized the complainant-respondent to execute the maintenance agreement and electricity agreement and on 25/08/2020, disconnected the electricity and dislodged the electronic card to avail the lift facility. Consequently, the complainant was deprived of making use of the flat. Being aggrieved, the complainant filed complaint before the RERA Authority. The Authority vide order dated 27/07/2021 directed the promoter not to restrict the entry of the applicant to his legally purchased apartment and to allow him to use of the lift or any other access to enable the complainant to

enter his apartment. In compliance of the said order, the promoter-appellant allowed the complainant-respondent to use the lift facility as also, provided him the electricity facilities etc. In the meantime, some payment towards maintenance charges was also made by the complainant-respondent to the promoter-appellant. The learned counsel for the respondent-allottee supports the order of the learned Adjudicating Officer. His case before the learned Adjudicating Officer was that he paid the full sale consideration of the flat but despite this, the promoter-appellant did not provide the complainant the Modular Kitchen as shown in the sample flat. The promoter pressurised the complainant to sign the maintenance and electricity agreements and that on 25/08/2020, the promoter discontinued the electricity and taken away from the complainant the lift card, without any prior notice, due to which, the complainant could not use his flat for about a year. In these circumstances, the complainant was compelled to approach the Lok Adalat, the learned Regulatory Authority and the learned Adjudicating Officer. Therefore, the appeal be dismissed.

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

7) On the basis of the pleadings of the parties, following questions do arise for consideration of this Tribunal:-

> ***(i) Whether the complaint is bad for non-joinder of parties, for want of authority of one co-owner, or as a second round of litigation?***
>
> ***(ii) Whether the promoter was justified in withdrawing electricity, water and lift access on 25/08/2020, and whether the***

learned Adjudicating Officer rightly held it liable under Section 18(3) of the RERA Act, 2016?

(iii) Whether the compensation of Rs.3,00,000/- for the period of deprivation is proper?

(iv) Whether the award of compensation of Rs.80,000/- granted towards agony and Rs.20,000/- towards costs are proper?

Analysis:-

Scope of Appeal

The learned Adjudicating Officer refused the allottee's claim for the modular kitchen and the other prayers. The allottee has not filed any cross-appeal or cross-objection against that refusal. That part of the order has therefore become final, and we do not go into it. The only question before us is whether the compensation awarded for withdrawal of facilities from 25/08/2020 until they were restored, and the connected awards of agony and costs, can be sustained.

Point (i): Objections about parties and the earlier proceedings

Landowner and "other promoters". The complaint is about the promoter's own act of cutting electricity, water and lift access. The promoter does not say who the "other promoters" are, and does not claim that anyone other than itself withdrew the facilities. The landowner, M/s Jai Drinks Pvt. Ltd., only signed the sale deed. No relief was claimed against it and nothing is alleged against it. It is not a necessary party, and the complaint cannot fail for its absence. We agree with the findings of the learned Adjudicating Officer.

Co-owners. The sale deed is in three names, but the agreement for sale of 07/06/2019 is in the name of the allottee alone, and it was he who dealt with the

promoter and who used the flat. The learned Adjudicating Officer noted that the promoter never raised this objection in its reply nor at the time of hearing, and the promoter does not say otherwise. It also does not show that any co-owner objects to this complaint. The compensation is for the loss suffered by the allottee himself. The promoter has shown no prejudice, and the objection fails.

Second round of litigation. The earlier complaint before the learned Regulatory Authority asked for possession, the modular kitchen, the use of the lift and electricity. The learned Regulatory Authority gave interim directions on access and then disposed of that complaint on 23/02/2022. In doing so, it said clearly that any claim for compensation was a matter for the learned Adjudicating Officer under Section 71, and the allottee's counsel agreed to approach the learned Adjudicating Officer. Compensation was therefore never decided earlier. This is also the scheme of the Act: refund and interest are matters for the learned Regulatory Authority, while compensation is decided by the learned Adjudicating Officer **(*Newtech Promoters and Developers Pvt. Ltd. v. State of U.P.*, (2021) 18 SCC 1)**. The present complaint is the very step the learned Regulatory Authority pointed the allottee to. It is not an abuse of process.

Point (ii): Was the withdrawal of facilities justified?

The main facts are not in dispute. The allottee did not sign the maintenance agreement and did not pay maintenance charges between 12/09/2019 to 25/08/2020. The promoter nevertheless provided him electricity, water and lift access during all this time. On 25/08/2020, the promoter withdrew that facilities from the

complainant. The promoter accepted in its own reply before the learned Adjudicating Officer that the facilities were stopped because the charges were not paid, and its memo of appeal calls the earlier supply a "gesture" and defends the withdrawal. So, the stoppage itself is not denied; the promoter's case is that it was justified.

We have examined the promoter's arguments and do not accept it, for four reasons: -

First, the promoter relies on Clause 12 of the sale deed. The learned Adjudicating Officer has accepted that the allottee was agreed to sign the maintenance agreement and pay charges and that the allottee was wrong not to do so. We agree. But the allottee's default gave the promoter a right to demand and recover its dues. It did not give a right to cut off essential services without notice.

Second, the promoter itself supplied electricity, water and lift access for about eleven months after possession without any maintenance agreement. Having chosen to give these facilities, whether as a "gesture" or otherwise, it could not stop them overnight. If it wanted to insist on Clause 12, it should have said so before discontinuing the supply. By its own conduct, it gave the allottee reason to think the arrangement would continue until he was told otherwise.

Third, the record has no notice asking the allottee to sign the agreement by a fixed date and no demand stating the amount due is there. The learned Adjudicating Officer found this on the record and the promoter has not shown otherwise. Without any notice, the allottee was having no chance to put things right. A person who

pays a price of about Rs.2.46 crores for a flat and finds on one day that he has no electricity, water or lift, cannot be said to have had a fair opportunity.

Fourth, electricity, water and lift access are essential services. Section 11(4)(d) of the RERA Act, 2016 makes the promoter responsible for providing and maintaining essential services, on reasonable charges, until the maintenance of the project is taken over by the Association of Allottees. Section 11(4)(g) of the said Act requires it to pay the outgoings until then. It is undisputed that no Association of Allottees had been formed or had taken over at the relevant time. If the allottee did not pay, the promoter's remedy was to claim its dues before the proper forum. It could not take the law into its own hands.

Learned counsel for the promoter also argued that the learned Adjudicating Officer wrongly recorded that electricity and water were restored in compliance with the Authority's order of 27/07/2021 because that order dealt only with access. In its own memo, the promoter accepts that it gave access to the flat after that order. The Authority's order of 23/02/2022 records that the allottee had by then deposited maintenance charges, including electricity and water charges, and that free access had been given. It does not matter for our decision whether the facilities came back because of the Authority's order, or because the allottee began to pay. In either case, it is undisputed that the facilities were off from 25/08/2020 until they were restored and that they were discontinued without notice. This is the basis of the finding of the learned Adjudicating Officer and it stands.

Learned counsel for the promoter also argued that the allottee deliberately defaulted and that withdrawal protects other allottees who pay on time. This might be a reason for the promoter to claim its dues. The allottee remains bound by Clause 12 and the promoter remains free to recover reasonable charges by lawful means. But the interests of other allottees do not allow the promoter to stop essential services to one flat without notice.

For these reasons, the promoter failed to discharge its obligations under the Act and the learned Adjudicating Officer was right in holding it liable to compensate the allottee under Section 18(3). The promoter's argument that no evidence of deficiency in service was recorded (Ground P) has no substance, since the facts relied upon are admitted or undisputed.

Point (iii): Compensation of Rs.3,00,000/- for the period of deprivation

We can safely presume that without electricity and water and with the lift card taken away, the allottee could not live in or use the flat during the period. This is a matter of common sense. He also could not let the flat to someone else, which he could otherwise have done.

The allottee claimed Rs.1,000/- per day for the loss of use of his flat, which is about Rs.30,000/- per month. The flat is a high-value residential flat in Jaipur, and the AO's view that it would fetch a rent of Rs.30,000-40,000 per month is reasonable. Compensation for loss of use cannot be worked out with mathematical accuracy, and a fair estimate is enough. For a period of about one year, the rent at Rs.30,000/- per month

would come to about Rs.3,60,000/-, and for even eleven months it would come to Rs.3,30,000/-. The learned Adjudicating Officer awarded a lump sum amount of Rs.3,00,000/-, which is less than this and cannot be called excessive. It also takes care of the fact that the allottee had not paid his maintenance dues.

We find no perversity or error in the award of Rs. 3,00,000/-, and no reason to interfere.

Mental agony and costs

The withdrawal of facilities of electricity, water and lift access from a flat bought for about Rs.2 crores, without any notice, would naturally cause stress and embarrassment to the owner including in the eyes of the other residents of the project. The allottee also had to approach the Lok Adalat, the learned Regulatory Authority and the learned Adjudicating Officer to get his rights. The learned Adjudicating Officer awarded Rs.80,000/- for agony and Rs.20,000/- as costs. These sums are modest compared to the claim of Rs.3,00,000/- for harassment and mental agony. They are fair, and we see no ground to reduce them.

Learned counsel for the promoter argued that costs should not go to an allottee who defaulted in payment (Ground S). The allottee's default does not take away his right to compensation for an unlawful act of the promoter, and it was the promoter's act that forced him to litigate. The allottee's default may be a ground for the promoter to recover its dues; it is not a ground to refuse costs.

All the questions are thus decided.

8) Order

In the result, the appeal is dismissed. The order dated 22/08/2023 passed by the learned Adjudicating Officer in Complaint No.RAJ-RERA-C-2022-5250 is upheld.

This judgment does not affect the promoter's right to recover reasonable maintenance charges from the allottee by lawful means.

9) The Registry is directed to transmit the amount deposited by the appellant-promoter with this Tribunal under the mandatory compliance of Section 43(5) of the RERA Act, 2016, into the bank account of the respondent-allottee, after expiry of limitation period of appeal.

10) The interim-order and any other pending Misc.Application, if any, shall stand vacated/rejected.

11) There is no order as to costs.

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

File be consigned to record.

Yudhishthir Sharma,
Member (Judicial)

(Madan Gopal Vyas), J.
Chairperson

Anil Goyal/Suppl.1