BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No.103/2026

In : Complaint No.RAJ-RERA-C-O-2024-7306

Sumit Agarwal S/o Col. Laxmi Narain Agrawal (Retd.), R/o 23154, Prestige Shantiniketan, ITPL, Main Road, Whitefield, Bangalore – 560048, Karnataka.

…..... Complainant-Appellant

Versus

Air Force Naval Housing Board, through its Authorized Representative, having its office situated at Air Force Station, Race Course, New Delhi-110003, also represented through its Project Director, having its office situated at Khasra No.55/1, Benar Road, Village Boyatawala, Jaipur- 302012, Rajasthan.

.....Promoter-Respondent

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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

PRESENT:

For Complainant-Appellant **:** Ms. Unnati Vijay, Advocate

For Promoter-Respondent **:** Mr. Mahendra Singh Yadav, Advocate

O R D E R

Reserved on 06th October, 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 16/10/2025 passed by the learned Adjudicating Officer in Complaint No.RAJ-RERA-C-O-2024-7306.

2) The facts of the case in brief are that the Respondent-Promoter launched a housing scheme in Jaipur for serving and retired Air Force and Naval personnel through a Welfare Society functioning on a “No Profit No Loss” basis. The Complainant-Appellant applied for booking of one unit and made a payment of Rs.1,01,000/- against the total sale consideration of Rs.36,50,000/- on 12/01/2012. The Respondent issued an allotment letter dated 09/02/2012. The possession was to be handed over by the end of year 2014. The Complainant-Appellant deposited a sum of Rs.8,30,000/- up to 2013. However, thereafter, the Respondent-Promoter re-launched the scheme with a revised cost, which was duly communicated to the Complainant-Appellant. A revised allotment letter was issued on 27/11/2014, enhancing the cost of the unit upto Rs.5,46,300/- and the revised date of possession was stipulated at the end of 2017. The Complainant-Appellant obtained a loan from HDFC Bank and continued to make payments to the Respondent-Promoter on various dates during 2015 and 2016. The Respondent subsequently raised demand letters in 2018 and 2020, pursuant to which, the Complainant also deposited the demanded amounts. In this manner, the Complainant paid a total amount of Rs.54,94,197/-. The grievance of the Complainant is that possession was not offered in the year 2017, as stipulated under the Agreement for Sale. Subsequently, the Respondent issued a possession letter dated 09/07/2021 without obtaining the Completion Certificate and Occupancy Certificate. The Completion Certificate was obtained on 28/10/2021 and the Occupancy Certificate was obtained on 20/06/2022. However, the Complainant took possession of the unit on 22/03/2022. The Complainant thereafter filed a complaint before the RERA Authority seeking interest on account of the

delay in handing over possession. The RERA Authority, vide order dated 23/11/2023, directed the Promoter to pay interest @10.75% per annum from 01/11/2019 to 08/07/2021, excluding the period of moratorium.

The said order was challenged before this Tribunal by filing appeal, which was decided by this Tribunal vide order dated 25/10/2024 modifying the order dated 23/11/2023 passed by the RERA Authority to the extent of holding the Complainant-Appellant entitled for the delayed interest w.e.f. 01/01/2018 till the date of possession.

3) The complainant-appellant thereafter complainant filed the present complaint before the learned Adjudicating Officer seeking compensation stating *inter-alia* that he is paying rent for the intervening period and has also paid interest and EMI on the loan amount, the respondent has not obtained the Occupancy Certificate and failed to provide agreed amenities, so the complainant prayed for compensation on all these counts including cost of litigation. The learned Adjudicating Officer allowed the complaint vide order dated 16/10/2025; the operative part of which is reproduced, as under: -

> *"20. In view of the aforesaid discussion the complaint is allowed in the following manner-*
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> *(i) The respondent shall pay Rs.1.50/- Lacs (One Lakh Fifty Thousand) as compensation towards financial loss for the delayed period, Rs.30,000/- (Thirty Thousand) towards physical and mental agony, and Rs. 20,000/- (Twenty thousand only) towards cost of litigation to the complainant.*
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> *(ii) The compliance of the order shall be made within 45 days from today failing which the complainant shall be entitled to get interest at the rate of 6% p.a. on the awarded amount from today till the date of payment.*
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> *(iii) The order be uploaded on the website of RERA and also sent to the parties by registered post".*

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

In view of the facts and grounds mentioned in Paragraph No.5 above, the Appellant most graciously prays for the following relief(s): -

(a) Enhance the compensation awarded vide Order dated 16/10/2025 passed by the Learned Adjudicating Officer and direct the Respondent to pay to the Appellant:

(i) Rs.37,13,061/- towards reimbursement of rental expenditure incurred due to non-delivery of lawful and habitable possession; and

(ii) such further amount as this Tribunal may deem just towards financial loss suffered by the Appellant;

(b) Award independent statutory compensation under Section 12 of the RERA Act, 2016 for false and misleading representations regarding completion schedule, facilities and amenities promised in the brochure and allotment documents;

(c) Grant compensation of Rs.10,00,000/- under Section 18(3) read with Sections 71 and 72 of the RERA Act, 2016 for non-provision of essential amenities, absence of valid Occupancy Certificate and continuing breach of contractual and statutory obligations by the Respondent;

(d) Enhance the amount awarded towards physical and mental agony to Rs.2,00,000/- to a just and reasonable sum commensurate with the prolonged suffering and hardship undergone by the Appellant;

(e) Enhance the litigation cost of Rs.60,000/- to the actual and reasonable costs incurred by the Appellant in pursuing the proceedings;

(f) Pass any other/further orders of directions, as this Tribunal deems fit and proper in the facts and circumstances of the present case in favour of the Appellant.

5) Ms. Unnati Vijay, learned counsel appearing for the complainant-appellant has argued that the respondent-promoter induced the appellant to invest in the project by making clear representations that the project would be completed by the end of 2017 with all promised amenities including a clubhouse, swimming pool, STP, power backup, parking and other civic infrastructure. However, the project remains incomplete and several basic facilities are still non-functional. Such false and misleading representations attract the provisions of Section 12 of the RERA Act, 2016. It is further submitted that the respondent violated Section 18(3) of the said Act by failing to discharge its obligations

under the Act and the Agreement for Sale. The respondent's own status report admitted deficiencies in the STP, potable water, electrical and parking infrastructure. Despite this, the learned Adjudicating Officer failed to assess compensation under the aforesaid provisions. The appellant incurred rental expenses of Rs.37,13,061/- due to the respondent's prolonged failure to provide lawful possession. Grant of only Rs.1,50,000/- towards compensation is wholly inadequate and does not correspond to the actual loss and injury suffered by the appellant. The appellant also incurred pre-EMI interest of Rs.71,274/- on the housing loan availed for making payments towards the unit. It is also argued that the appellant was compelled to take possession under threat of penalty of Rs.10,000/- per month and that too without an Occupancy Certificate, despite having paid the entire sale consideration of Rs.54,94,197/- within time. The respondent thereby committed gross and inordinate delay in handing over lawful and habitable possession. The appellant was thus compelled to approach the Adjudicating Officer for statutory interest & compensation for the prolonged delay, absence of essential amenities, rental expenditure, loan burden and mental harassment constituting loss and injury warranting substantial enhancement of compensation under Sections 12, 18(3), 19, 71 and 72 of the RERA Act, 2016.

6) *Per contra*, Mr. Mahendra Singh Yadav, learned counsel appearing for the Respondent-Promoter has argued that the learned Adjudicating Officer, after considering all relevant factors has awarded just and adequate compensation and therefore, no interference by this Tribunal is warranted. It is argued that the Appellant has failed to

establish the actual extent of loss suffered, the nature and repetitive occurrence of the alleged defaults, or the manner in which he was affected thereby. He has also failed to quantify the alleged direct financial loss and substantiate the same by cogent evidence. The Appellant has not specifically identified any contractual or statutory obligation allegedly breached by the Respondent or established the expenses claimed by him. The Respondent further argued that no representation was made by it which induced the Appellant to purchase the dwelling unit. The Appellant had earlier filed Complaint No. RAJ-RERA-C-N-2022-5467, "Sumit Agarwal v. Air Force Naval Housing Board" under Section 31 of the Act, wherein delay interest from 01/11/2019 till the date of possession was awarded vide order dated 01/11/2023. Accordingly, the Appellant has already received delay interest amounting to Rs.11,16,422/-. It is further argued that the Appellant has been enjoying possession since 08/07/2021 and has failed to establish any claim towards physical or mental agony. The rental receipts relied upon by him pertain to Bangalore with the last receipt dated 31/05/2024 and, therefore, cannot form the basis for assessing rental compensation for the property in question. The Respondent also submitted that the Appellant has failed to establish any alleged persistent non-compliance or misuse of his funds. Installments were demanded only during the progress of construction and no installments were demanded during 22-months period (from 28/09/2015 to 26/07/2017) when the JDA Stop Work Notices were in force. Thus, the Appellant has failed to establish any repetitive default within the meaning of Section 72(c) of the RERA Act, 2016. Mere reference to statutory provisions, without establishing the

claim through cogent evidence, does not entitle the Appellant to any further compensation.

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

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

(i) Whether the learned Adjudicating Officer was wrong in refusing compensation for amenities under Sections 12 and 18(3) of the RERA Act, 2016?

(ii) Whether the compensation for agony and costs needs to be increased?

9) Preliminary objections

New facts and documents. The claims for rent, loan interest, missing amenities and the Occupancy Certificate were all made in the complaint and the amended complaint. The learned Adjudicating Officer dealt with each of them, and the status report was filed by the respondent itself before the learned Adjudicating Officer. So, the appeal does not set up a new case. But documents that were not before the learned Adjudicating Officer cannot be taken as evidence in appeal without following the settled rules on additional evidence. We have therefore looked only at the record as it stood before the learned Adjudicating Officer.

Earlier proceedings. The earlier complaint and Appeal No. 159/2024 were about interest for delay under the proviso to Section 18(1). In ***Newtech Promoters and Developers Pvt. Ltd. v. State of U.P.*** **(2021) 18 SCC 1**, the Hon'ble Supreme Court held that refund and interest are decided by the Authority, while compensation under Sections 12, 14, 18 and 19 is decided by the Adjudicating Officer under Section 71, having regard to Section 72. So, a compensation complaint is a separate remedy and is not barred by the earlier orders. The interest already granted is relevant only to make sure that the same default is not compensated twice (***DLF Homes Panchkula Pvt. Ltd. v. D.S. Dhanda*** **(2020) 16 SCC 318**).

The respondent's status and the default

It is not disputed before us that the respondent is a "promoter". This is also settled by the High Court decisions relied on by the Adjudicating Officer and by Section 2(zk), which makes no difference between commercial builders and welfare societies. The delay in giving possession after December 2017 has already been held against the respondent by the Regulatory Authority and by this Tribunal in **Appeal No.159/2024.** The respondent's plea of force majeure because of the JDA stop-work notices, and its reliance on Clause 17 of the allotment letter, cannot be reopened here. In any case, a clause that takes away all interest and compensation for delay cannot override the allottee's right under Section 18 and would also be unfair **(*Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan*** **(2019) 5 SCC 725; *Fortune Infrastructure v. Trevor D'Lima*** **(2018) 5 SCC 442).**

What remains is the amount of compensation and the claims under Sections 12 and 18(3). Section 72 asks the AO to consider (a) any unfair gain made by the promoter, (b) the loss caused by the default, (c) whether the default is repeated, and (d) any other relevant factor. Compensation is meant to make good the loss and harassment actually suffered by the buyer. It must be based on proof and not on guesswork **(*Lucknow Development Authority v. M.K. Gupta* (1994) 1 SCC 243; *Bangalore Development Authority v. Syndicate Bank* (2007) 6 SCC 711; *Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor*, Civil Appeal No. 6044 of 2019, decided on 07/04/2022).**

Rent and financial loss

The claim for rent of Rs. 37,13,061/- is weak, for three reasons: -

First, the appellant lives in Bangalore, which is also the address in his appeal. The rent receipts are for Bangalore premises, the last being dated 31.05.2024. He has not pleaded or shown that he would have moved into the Jaipur flat but for the delay, or what rent he would have saved in Jaipur. Rent paid for a house in another city for his own convenience is not a loss caused by the delay in this project.

Second, the claim runs from January 2018 to May 2024, but the appellant took possession on 22/03/2022. Rent after possession cannot be blamed on the delay. His plea that the unit was not fit to live in is a bare statement. He has shown no specific defect that stopped him from living there.

***Third**,* the appellant has been given interest at 10.75% p.a. (Rs.11,16,422/-) on all his deposits from 01/01/2018 till possession. Interest is the accepted measure of compensation for loss of use of money and of the unit during the delay. Giving rent as well for the same period would be paying twice for the same loss.

The learned Adjudicating Officer looked at the extra burden the appellant actually bore, that is, the gap between the cost of his loan and the delay interest granted to him. This is a fair way to measure the loss that delay interest did not cover. The learned Adjudicating Officer found about 12% on the loan against 10.75% simple interest, and awarded about Rs.1.50 lacs. We find no error in this.

Amenities, Section 12 and Section 18(3)

The learned Adjudicating Officer gave certain reasons for refusing this claim. We do not need to decide whether each of them is right, because the claim fails on a more basic ground. A person who claims compensation for amenities not provided must first show what was promised, and then show which of those things were not provided. The appellant has done neither.

The appellant has given a long list of amenities in his pleadings and arguments. But he has not shown, from any clause of the brochure, the allotment letters or the sanctioned plans, which amenities were actually promised to him. He has also not shown, with proof, which of those promised amenities are still not provided. A list of items in the pleadings or in the memorandum of appeal is not proof. He leans on the respondent's status report (Anx.2) and says it admits many of the shortcomings but no

specific date was mentioned in it. The respondent says the same report shows the project is complete in all respects. The appellant has not pointed to any specific entry in the report that proves a promised amenity is missing, and has not matched any such entry to a specific promise made to him. No other evidence, such as photographs, an inspection report or any communication, was brought to the learned Adjudicating Officer to fill this gap.

The law supports amenity compensation where it is proved. In ***Wg. Cdr. Arifur Rahman Khan v. DLF Southern Homes Pvt. Ltd.*** **(2020) 16 SCC 512**, the Hon'ble Supreme Court held that amenities promised in the brochure and agreement must be provided. Sections 11(4)(a), 14 and 18(3) of the RERA Act, 2016 are to the same effect. But these provisions help a buyer only when the promise and the failure are shown. They do not allow compensation on a bare assertion.

The claim under Section 12 of the RERA Act, 2016 fails for the same reason. Section 12 applies when an allottee deposits money on the basis of a false or incorrect statement in an advertisement, prospectus or brochure, and suffers loss because of it. The appellant has not identified any particular false statement in the brochure or advertisement, and has not shown that he paid because of it or what loss followed. He also says that the delay in completion was itself a "false assurance". We cannot accept that. Delay is already compensated under Section 18(1), and the appellant has been given interest for it.

The Completion Certificate (28/10/2021) and the Occupancy Certificate (20/06/2022) have been issued. The appellant has not placed any material to show that they were wrongly obtained or are not valid. His reliance on Section 19(10) does not help him. That provision requires an allottee to take physical possession within two months of the Occupancy Certificate. It does not make an earlier offer of possession illegal, and does not by itself give a right to compensation. The appellant also took physical possession on 22/03/2022 and has not shown any loss specifically caused by the timing of the possession offer. The RWA has been looking after the project since 2022, and the appellant has not shown that he raised any complaint about missing amenities with the respondent or the RWA.

The appellant has not proved what amenities were promised or what amenities are not provided. He also led no evidence of any specific loss from such a failure. The AO's refusal of this claim is therefore proper, and no interference is called for.

Mental agony and costs

The learned Adjudicating Officer awarded Rs.30,000/- for agony and Rs.20,000/- as costs. We find these sums proper. The delay has already been compensated by interest of Rs.11,16,422/- on all the money paid, which covers the period of delay. The learned Adjudicating Officer has separately awarded Rs. 1,50,000/- for the extra loan cost. The appellant has not produced any medical record or other proof of the effect of the delay on his health or family. He took possession in March 2022, and

he continues to live in Bangalore by his own choice. The claim for Rs.2,00,000/- is not supported by any evidence.

Compensation for agony cannot be fixed by guesswork. It must be reasonable and based on what is shown on the record. Considering the facts, Rs. 30,000/- is a fair sum, and we see no reason to raise it.

The learned Adjudicating Officer's award of Rs.20,000/- as costs is also fair. The appellant asks for Rs.60,000/- but has not produced receipts or other proof of the amount he spent. The award of costs is a matter of discretion and no ground is shown to interfere therewith.

The respondent's argument that any further payment will burden the other allottees is no longer relevant, since we are not increasing the compensation. We also note that the amount already awarded is payable by the respondent as a promoter under the Act.

Conclusion on all points

The learned Adjudicating Officer's order on financial loss, agony and costs is proper. The claim for amenities fails because the appellant did not prove what was promised and what was not provided. The appeal has no merit.

All the questions are thus decided.

10) Order

In the result, the appeal is dismissed. The order dated 16/10/2025 passed by the learned Adjudicating Officer in Complaint No.RAJ-RERA-C-O-2024-7306 is upheld.

11) The parties shall bear their own costs of this appeal.

12) The interim order or any other pending Misc. Application, if any, shall stand vacated.

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

File be consigned to record after compliance.

Yudhishthir Sharma,
Member (Judicial)

(Madan Gopal Vyas), J.
Chairperson

Anil Goyal/Suppl.2