

**RAJASTHAN REAL ESTATE REGULATORY AUTHORITY
JAIPUR**

Comp. No. RAJ-RERA-C-N-2023-6783

KAPIS MALIK

P-18, Model Town Extn.,
Near Guru Chowk,
Rewari, Harayana, 123401

COMPLAINANT

Vs

TERRA REALCON PVT. LTD.

5th Floor, Plot No. 18,
Sector - 44,
Gurgaon, 122003

RESPONDENT

HON'BLE MEMBER: SUDHIR KUMAR SHARMA

PRESENT

1. Adv Prateek Khandelwal on behalf of the complainant
2. Adv Rubal Tholia on behalf of the respondent

ORDER

22.05.2025

1. The complainants filed the present complaint vide Form -N on 03.11.2023 under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act'), regarding the project "**Terra Castle**" registered with the Authority bearing registration no. **RAJ/P/2017/140**.

2. The brief facts of the case are that the complainant booked an Apartment I-901 on 9th Floor in Tower - Hever-I of the said project. Buyer's Agreement was executed between the parties towards the said apartment on



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27.02.2014 mentioning the total consideration as Rs. 14,69,000/- with remarks that the price as mentioned is firm subject to strict compliance of the terms of the agreement by the allottee. The complainant has paid Rs. 13,50,000 /- against the total sale consideration. As per para 14 of Buyer's agreement possession of the said premises was proposed to be delivered by the developer to the allottee within 36 months (including 6 months grace period), but the same has not been handed over to the allottee by the due date. The said project lacks necessary certifications such as Fire NOC, CGWA clearance, Pollution Certificate issued by competent authorities till date. Hence, the said project is incomplete and illegal as per the current status on the Authority's portal and thereby, the complainant prayed for refund of deposited amount along with delayed interest from each date of payment.

3. The respondent in its reply stated that the original date of completion was 27.02.2017, which was later extended by the Hon'ble Authority until 31.03.2024. The respondent-promoter claims that the said project has been delayed due to several unforeseen and uncontrollable reasons such as Bajri ban, widening debt-to-equity ratio, outbreak of COVID-19 pandemic, etc. The respondent promoter was able to complete the 81% construction of all



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the 13 towers in the said project and has also already offered the possession in 5 of its towers including Tower – I (Hever) consisting of said unit. A valid completion certificate dated 21.06.2023 has been issued by the competent authority for said project. Subsequently, a valid offer for possession dated 24.06.2023 has been made to the complainant along with demand of balance consideration i.e. Rs. 2,55,239/- which includes the outstanding amount against the total sale consideration, holding charges, due maintenance charges as well as other charges. Therefore, the respondent promoter claims that the said project is at the verge of completion, and any refund allowed at this stage may adversely affect the rights of allottees at large. Hence, the respondent prayed that the reply be taken on record and present complaint be dismissed.

4. The counsel for complainant argued that the para 14 of the agreement for sale clearly stated that the due date for handing over possession of said unit was 27.02.2017 but, the respondent promoter has failed to complete the project till date. That, the grace period of 6 months mentioned in the para 14 is handwritten and the legal validity of such period is disputable before the Authority. That, more than 90% of the sale consideration has been



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paid till date in accordance to the **Annexure 1** i.e. *Construction Linked Payment Plan* but, respondent promoter has failed to fulfill his contractual obligations. That, no valid certificates such as Fire NOC, CGWA, Pollution Certificate, etc. has been obtained for said project till date. That, the partial completion certificate dated 21.06.2023 is false and disputed as it mentions in point 'C' that a valid offer for possession cannot be made without obtaining fire safety certificate. The counsel for complainant relied upon the judgment in case of **Dharmendra Sharma vs. Agra Development Authority (Civil Appeal Nos. 2809-2810 of 2024)**, wherein it was held that any offer for possession made without obtaining valid completion certificate shall be treated as unjustified and illegal. Hence, the prayer of complainant seeking refund of deposited amount along with interest shall be allowed by the Authority.

5. The counsel for respondent argued that the Authority had granted extensions to the respondent promoter for completion of said project until 31.03.2024. That, as stated in the reply respondent has already offered the possession in 5 of its towers including Tower – I (Hever) consisting of said unit of the complainant. That, a valid completion certificate dated 21.06.2023 has been issued by the



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competent authority for said project and thereafter, a valid offer for possession was made to the allottees for said unit on 24.06.2023 after payment of balance consideration of Rs. 2,55,239/-. That, any refund allowed at this stage may hinder the project completion and may adversely affect the rights of allottees at large. Thus, the complainant must be directed to take possession of said unit after payment of balance consideration. The respondent is ready to pay interest till offer of possession was made to the complainant but the interest accrued during the moratorium period i.e. 13.05.2020 to 31.03.2021 and force majeure extension period i.e. 01.04.2021 to 31.03.2022 shall be excluded in the interest of justice. However, if the Authority allows refund to be granted to the complainant then the moratorium period must be excluded from interest calculation.

6. Heard and perused the record.

7. The status of said project on the official website of the Authority is verified by the Law Officer. The project is currently marked under the "**LAPSED**" category. Total five extensions were sought by the respondent, and the current extension expired on dated 30-03-2024. The force majeure extension period for said project was until 31.03.2022, including COVID-19 moratorium period granted by the



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Authority. Quarterly Progress Reports (QPRs) are filed up to the quarter of January to March, 2025 in which percentage completion of construction work (as per Project Engineer's Certificate, R-2) showing the value of 86% work completed. Annual Progress Reports (APRs) have been filed up to year 2023-24 on the portal for said project. The said project status on the official website of the Authority is taken in judicial notice by the Authority.

8. From the facts and having heard arguments of both the counsels it is noted that out of 13 towers proposed to be constructed, 5 towers including the tower in which complainant's flat is there, almost completed. On the other hand, the complainant had paid more than 90% amount of total sale consideration and due date of possession was in the year 2017 and even after taking extensions from the Authority, the project is still not complete. The status of the project shown on the portal of the Authority is "LAPSED".

9. The respondent claimed that the tower in which complainant unit is located is shown to be completed on the portal of the Authority and an offer of possession was made on 24.06.2023 to the complainant, but complainant has not come forward for taking possession. As per section 19(10) of the RERA Act, 2016 allottee can be bound to



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take possession only after occupancy certificate is obtained by the respondent-promoter. The respondent in this case himself has admitted that partial completion certificate has been obtained. But partial completion certificate is not a certificate for occupancy of the promised unit in the project and an offer of possession is also not a valid offer of possession.

10. In view of the above facts and observations, the respondent-promoter is directed to give fresh valid offer of possession to the complainant after obtaining occupancy certificate from the competent authority. The respondent is also directed to pay interest @ 11.10% i.e. highest SBI MCLR rate 9.10% + 2.00% from 28.02.2017 to till the fresh valid offer of possession is made, excluding the moratorium period from 01.04.2021 to 31.03.2022.

11. The accrued interest for delayed possession as allowed in his favour at para 10 above will be adjusted against the balance sale consideration. Thereafter the complainant is directed to make payment of balance sale consideration, if any, to the respondent before taking over the possession of the allotted unit. Surplus component of accrued interest, if any, will also be paid by the respondent to the complainant.



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12. This complaint stands disposed of with the abovementioned directions.
13. Compliance of the order shall be made within 45 days of the uploading of this order on the official webpage of the Authority.
14. The order will be uploaded on the webpage of the Authority and also a copy of order will be sent to concerned parties and place a copy of order in the file.




(**Sudhir Kumar Sharma**)
Member