

**RAJASTHAN REAL ESTATE REGULATORY AUTHORITY
JAIPUR**

COMPLAINT NO. RAJ-RERA-C-N-2024-7698

KISHKINDA DEVI

Bhairwa Mohalla, Bhagwat Garh,
Sawai Madhopur - 322701

COMPLAINANT

Vs

SKG B3B LLP

6, Rajiv Vihar, Gopalpura Bypass,
Jaipur - 302018

RESPONDENT

HON'BLE MEMBER: SUDHIR KUMAR SHARMA

PRESENT

1. Adv Sandeep Singh Jadoun on behalf of the complainants
2. Adv Yogesh Sharma on behalf of the respondent

ORDER

10.06.2025

1. The complainant has lodged complaint on 18.11.2024 under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') with regard to the project "**SAAVYAS**" registered with the Authority bearing registration number **RAJ/P/2017/186**.

2. The brief facts of the case is that the complainant have paid a sum of Rs. 1,60,000/- on 24.07.2017 as booking amount for allotment of a unit in said project. Agreement for sale has not been executed between the parties and no unit has been allotted to the complainant. The respondent



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gave a fake commitment that possession of said unit will be handed over within three years. The complainant aggrieved by respondent promoter's mala fide actions for 7 years sent a legal notice for refund of deposited amount on 26.06.2024. Hence, even after receiving booking amount, the respondent has failed to allot a unit or execute agreement for sale within stipulated timeline and thereby, complainant seek prayer for refund along with interest from each date of deposit.

3. The respondent has filed reply in the present complaint on 16.04.2025 and has not disputed the facts mentioned in the complaint. No unit has been allotted to the complainant and complainant has only shown an expression of interest towards purchasing a unit in said project. The total sale consideration for said unit was Rs. 18,62,447/- and the complainant has only paid an amount lesser than 10% booking amount. Therefore, in the absence of complainant's intent to make further payments, no agreement to sell was executed in their favor by the respondent. Hence, the respondent prayed that present complaint deserves to be dismissed and the Authority shall declare the forfeiture of expression of interest as valid.

4. During hearing, the counsel for the complainant argued the same facts as stated in his present complaint. That, the



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respondent promoter has wrongly misused the name of the state (CMJY Scheme) being associated with the said project at the time of booking and also mentioned this on the payment receipts issued to the complainants. That, the respondent concealed the total sale consideration of said unit at the time of booking and misguided complainant in making payment of Rs. 1,60,000/- only which is lesser than the 10% of the sale consideration. That, even after lapse of 7 years without executing sale deed/allotment of unit, respondent promoter has ignored legal notice dated 26.06.2024 sent by complainant demanding repayment of deposited amount dated 26.06.2024. Hence, the complainant prayed the Authority to direct respondent to refund the deposited amount along with interest from each date of deposit.

5. During hearing, the counsel for the respondent argued the same facts as stated in his reply to the present complaint. That, no unit was allotted or no sale deed was executed by the complainant as she failed to make payment of at least 10% of the total sale consideration. That, no communication has taken place between the parties from year 2017 to 2024. That, the complainant cannot be considered as an allottee under the meaning of Section - 2(d) of the Act and thus, shall not be entitled to any relief prescribed under the Section 18 of the Act of 2016. That,



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the respondent has obtained valid completion certificates for the Block - A and Block - B of said project dated 29.09.2023 and 29.09.2024 respectively. The counsel for respondent relied upon the order of the Authority in the matter of **Manish Khurana vs. Trehan Apna Ghar (Complaint No. RAJ-RERA-C-N-2022-4894)**, wherein it was held that if there is no fault of the promoter then, promoter is authorized to forfeit the deposited amount against the booking, if the amount is less than 10%. Hence, the respondent prayed the present complaint be dismissed and urged the Authority to declare the forfeiture of expression of interest as valid.

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 four extensions were sought by the respondent, and the current extension expired on dated 28-09-2024. Quarterly Progress Reports (QPRs) are filed up to the quarter of April to June, 2024 in which percentage completion of construction work (as per Project Engineer's Certificate, R-2) showing the value of 87% work completed. The said project status on the official website of the Authority is taken in judicial notice by the Authority.



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8. The fact of payment of Rs. 1,60,000/- towards the advance booking of the flat in the project 'Saavyas' in the year 2017 is admitted by the respondent. The arguments of the respondent that since no allotment was made to the complainant and no agreement for sale was executed, the complainant cannot be termed as "**allottee**" and thus she cannot claim refund, is not acceptable. Section 31 of the RERA Act, 2016 gives right to any aggrieved person for filing complaint. Further section 12 & 13 of the RERA Act, 2016 speaks about "person" and not about "allottee". The person is defined in Section 2 (zg) of the Act and an individual without any doubt is a person. Thus, the complainant can very well approach the Authority for its grievances in the matter.

Further, as per Section 13 of the RERA Act 2016, the responsibility of getting the Agreement to Sell executed after receiving 10% of the cost of the booked unit/flat lies with the promoter. Section 13 of the RERA Act only provides that if advance booking amount is more than 10% then agreement for sale must be required to be executed by the promoter. The section nowhere provides that if amount is less than 10% then this will be forfeited by the promoter. Thus, the arguments of respondent that since the amount of advance booking is below 10% of the sale consideration and as such he is entitled to forfeit the amount, is not



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acceptable. In the instant matter, while taking advance from the complainant, the respondent did not disclose the exact basic sale consideration nor informed the complainant that her booking amount will be forfeited in case of non-payment of balance amount (i.e. up to 10% of sale consideration).

The respondent has admitted receipt of advance of Rs. 1.60 lacs from the complainant and receipt dated 24.07.2017 was issued by the respondent in favour of complainant. This receipt is a proof that booking amount was received by mentioning the project "*Affordable Housing for All*" under the valuable Prime Minister and Chief Ministers affordable policies. These welfare policies have their great concern towards EWS/LIG/MIG persons and the subsidies extended to them shall be a important contribution and financial help to them by the Government.

The Section 12 of RERA Act, 2016 provides for refund of investment along with interest to the person making advance or a deposit, in case any of the statement/information in the advertisement or prospectus is found to be false/ incorrect. The respondent in the receipt issued to the complainant claimed that he is coming with affordable housing scheme situated at Jagatpura, Jaipur under Prime Minister and Chief Minister valuable policies. That, no document was provided at this point of time to the complainant under which category the complainant falls and



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nature of what subsidy or subsidy amount she is entitled under the scheme mentioned in the receipt. While taking booking amount the respondent also not disclosed the project details, exact location, plot size/ flat area, total sale consideration etc. to the complainant.

There is also no record was produced by the respondent that during 2017 to 2024 he even tried to contact the complainant for paying balance amount for execution of agreement for sale.

Thus, the respondent-promoter made the false promise to the complainant for giving her affordable housing under the programs/ policies named after constitutional designation 'Prime Minister' & 'Chief Minister' and also false promise of subsidy without disclosing the names of programs / policies, details and entitlement of subsidy, projects, plots size/ flats, total sale consideration.

So far as claim of forfeiture of advance made by the complainant is concerned, he is not entitled to forfeit this amount as observed above.

The argument of the respondent that the complainant never approached him with details as mentioned in the receipt issued by him is also not acceptable. If someone forgets their money with you and does not come to claim it's refund, you do not become the owner of that money



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merely by it's possession. In such a case, you are only the custodian of that money. When a custodian wishes to legally retain such money, you must always notify the person whose money is in your custody before forfeiting.

If a business group, having complete management system and employees working under them, intends to forfeit the money of a poor and vulnerable women or party, they must issue a notice before now. This is the principal of natural justice. The respondent-promoter cannot get the benefit of forfeiture of deposit if complainant did not approach him. The respondent cannot be allowed unjust enrichment in this case. In the instant matter, the elderly lady is entitled to the protection of her right and legal right to reclaim the money along with interest.

9. In view of the above observations and in exercise of the powers conferred on the Authority, the respondent-promoter is directed to refund the entire amount of Rs. 1,60,000/- deposited by the complainant towards his booking, without any deduction, along with interest @ 11.10% p.a. (i.e. Highest MCLR of SBI i.e. 9.10% + 2%) from the date of deposit to till the refund is made.


10. This complaint stands disposed of with the abovementioned directions.

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11. Compliance of the order shall be made within 45 days of the uploading of this order on the official webpage of the Authority.

12. 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

