**RAJASTHAN REAL ESTATE REGULATORY AUTHORITY,JAIPUR**

Complaint No. RAJ-RERA-C-N-2021-4164

REKHA ATAL …Complainant

Vs.

ARG DEVELOPERS PVT. LTD. ...Respondent

**HON’BLE MEMBER SMT. RASHMI GUPTA**

**PRESENT :**

Advocate Divyansh Jain for complainant

Advocate Prashant Daga for respondent

...

**Date of Order : 11.06.2025**

**: ORDER :**

|  |  |
| --- | --- |
|  | A complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 with regard to the Group Housing project **“ARG ANANTA-II”,** bearing registration number **RAJ/P/2017/209**. |
|  | As per complaint there are joint allottees namely Mrs. Rekha Atal and Mrs. Kamli Devi. The complainants have been allotted unit No. 105, 1st floor, block A. The total sale consideration of the unit is Rs.24,50,000/- and the total payment made by the complainants is Rs.14,29,000/-. The respondents promised the complainant to deliver possession of unit within 36 months but there is no development in the project after January 2019 and the respondent has failed to complete the construction and to deliver the possession within the stipulated time. Agreement to sale has not been executed between the parties. The prayer of the complainant in form-N (dated 14.02.2021) is to “possession otherwise refund the given money” and in complaint letter (dated 25.01.2021), “प्रार्थीया द्वारा उक्त पेटे दिनांक 08.07.2016 से 21.09.2019 तक जमा कराई गई कुल राशि 14,29,000/- रूपये 24 प्रतिशत मय ब्याज एवं मानसिक परेशानी की राशि 2,00,000/- रूपये दिलवाने की कृपा करें।“ During the course of arguments counsel for complainant, asked for possession of the unit. |
|  | In view of taking over the possession by the lending agency respondent No.2 AU Small Finance Bank Ltd., was impleaded as party but subsequently, upon filing the reply by the said party an application was moved before the Authority for deletion of its name from the array of respondents. In view of No Dues Certificates and application furnished by the respondent No.2, its name was struck down from the proceedings. |
|  | Reply has been filed by the respondent contending that the construction work of the said project is in running stage and Original estimated finish date of said project is 31.12.2021 as per Registration Certificate and the Hon'ble RERA Authority further granted extension for the estimated finish date of said project till 31.12.2022 due to Covid- 19 pandemic and force majeure circumstances. The said booking by the complainant is before the date of coming into force of RERA Act, 2016 in the state of Rajasthan i.e. 01.05.2017, so the contractual terms between said allottee and Developer arising out of Booking Form and Allotment Letter will be applicable in this case. Primarily complainant is asking for “possession otherwise refund the given money” in her complaint. Counsel for respondent vehemently denied for possession as there is no ATS and prayer was for refund. The prayer of the respondent is that the complaint be dismissed. |
|  | The complainant in his written submission stated that the complainant had so far paid more than 50% of the total sale consideration. That the respondent has acted in contravention to the provision of the Act by raising demands of more than 10% without executing the Agreement to sale. On the request of complainant, the respondent vide letter dated 02.09.2017 asked the complainant to execute the agreement to sale but instead of execution the respondent again started raising vague demands. The respondent vide order dated 30.03.2022 was directed by the hon’ble authority to execute the agreement to sale. Further the respondent in order to execute the agreement to sale sent a letter dated 03.11.2022 through Manglam Build Developers Ltd. However, no consent was ever taken for substitution or change of partner for completion of the said project. |
|  | The Respondent in his written submission stated that execution of the agreement for sale is a bilateral obligation. The respondent has requested the complainant several times for the execution and registration of the agreement for sale and the complainant has not turned up for the same. The draft agreement for sale is already on the record in compliance with the directions of the hon’ble authority. The relief of possession is not maintainable as there is no contractual relationship between the parties. Respondent is ready to refund the amount without interest. |
|  | The counsel for the complainant reiterated the facts during the course of arguments and further stated that the complainant wants possession along with delayed interest. |
|  | The counsel for the respondent argued that the draft of agreement for sale was submitted to the complainant by the respondent but it was not signed by the complainant. Further as there is no agreement for sale only refund may be allowed. The respondent is ready to refund the amount deposited, without interest. |
|  | Having heard counsels of both the parties & perused the record of the case throughly, this Authority is of the view that:   |  |  | | --- | --- | |  | The status of said project on the official website of the Authority is verified. The project is currently marked under the "Inprogress" category. 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 60%. The said project status on the official website of the Authority is taken in notice by the Authority. As on date, no completion certificate is uploaded on the RERA portal. | |  | In the original complaint form-N (dated 14.02.2021) is to “possession otherwise refund the given money” and in complaint (dated 25.01.2021), “प्रार्थीया द्वारा उक्त पेटे दिनांक 08.07.2016 से 21.09.2019 तक जमा कराई गई कुल राशि 14,29,000/- रूपये 24 प्रतिशत मय ब्याज एवं मानसिक परेशानी की राशि 2,00,000/- रूपये दिलवाने की कृपा करें“. During the course of arguments counsel for complainant, asked for possession of the unit alongwith the delay interest. | |  | It was the moral responsibility of the respondent to get the Agreement to Sale executed when more than 10% of the sale consideration has been deposited by the complainant. | |  | During this period the amount was with the respondent promoter. His plea for refund without interest is not acceptable. | |  | Respondent has been failed to provide the possession in time. | |  | In view of the observations made hereinabove, the promoter is directed to refund entire amount deposited by the complainant along with interest at the rate prescribed in RERA ACT, 2016 @ 9.10% highest MCLR of SBI+2%, i.e., 11.10% per annum from the date of each deposit till the date the refund is made to the complainant including moratorium period. | |
|  | The respondent shall make the compliance of this order within 45 days from the date of this order and shall submit its compliance report to this Authority within 15 days thereafter. |
|  | With these directions, the present complaint stands disposed of. This case is now removed from the cause list of the Authority and consigned to record. The order be uploaded on the web portal of the Authority and be also sent to all the concerned parties with placing a copy of order in file. |

(Rashmi Gupta)

Member