

**RAJASTHAN REAL ESTATE REGULATORY AUTHORITY
JAIPUR**

COMPLAINT NO. RAJ-RERA-C-N-2024-7584

KULDEEP AGARWAL

COMPLAINANT

23 A.D.K. Nagar, Jhotwada,
Jaipur, Rajasthan - 302012

Vs

SKG B3B LLP

RESPONDENT

6, Rajiv Vihar, Gopalpura Bypass,
Jaipur - 302018

HON'BLE MEMBER: SUDHIR KUMAR SHARMA

PRESENT

1. Adv Rishi Raj Maheshwari 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 19.12.2024 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 complainant booked unit/flat no. 808 in Block - B in the said project. Agreement for sale was executed between the parties on 13.12.2022. The basic sale consideration of said unit was Rs. 13,70,000/-, out of which the complainant has paid Rs. 7,94,000/- towards sale



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consideration till date. The expected date for handing over possession of said unit was 29.09.2023. The project completion date mentioned on the official website of RERA was 30.09.2020 which was extended 4 times since then. The respondent has failed to deliver the said unit within stipulated timeline and hence the complainant seeks 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 is not disputing the facts of allotment of units, execution of Agreement for sale with the complainants, sale consideration and amount deposited. It is stated that said agreement for sale does not specify a date for giving possession of the unit to the complainant, and relying upon the view of Hon'ble Supreme Court in various cases the reasonable time for completion of a project is 3 years after execution of agreement for sale. Thus, in the instant matter the date of handing over possession can be deemed as 13.12.2025. That, a completion certificate for said project has already been obtained on 29.09.2024 for Block - B. That, the respondent cannot be held liable for any default in this regard. That, the respondent issued a demand letter dated 25.09.2024 for payment of balance consideration to the complainant but the complainant did not pay any heed to the same and did

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not deposit any further amount till date. It is further stated that respondent has sincerely worked towards fulfillment of its obligations and the tower-B in the project and keeping in view the fact that the respondent is in the process of completion of the whole project, refund should not be allowed to the complainants. The respondent prayed that refund along with interest will not be granted to the complainant, and present complaint deserves to be dismissed and set-aside. It is prayed that the complainant be directed to make timely payment of all remaining installments, take possession and also pay interest @ 12% on the outstanding amount.

4. During hearing, the counsel for the complainant argued the same facts as stated in his complaint. That, the Schedule - D, Clause 1 of the said agreement for sale clearly specifies the due date of possession as 29.09.2023 as this was the date of completion of the project, which is also mentioned in the registration certificate of said project on RERA portal. That, as per the '*Doctrine of Non-Bargaining of Power*', the respondent promoter cannot be allowed to take advantage of his wrong actions *i.e.* not mentioning the due date of handing over possession in original agreement for sale. That, the said completion certificate obtained from empanelled Architect dated 29.09.2024 for Tower - B in said project has not been acknowledged by the Authority or



uploaded on the Authority's portal till date. That, the complainant has adhered to the construction linked payment plan while making regular timely payments. That, no demand letters specifying percentage progress in construction of said project as claimed by the respondent were issued by the respondent between crucial period of year 2022 to 2024. Hence, currently the said project is still incomplete without valid completion certificate and is in "**LAPSED**" category thereby, complainant's prayer for refund be allowed with interest from each date of deposit.

5. The counsel for the respondent argued the same facts as stated in his reply to the complaints. That, the complainant has filed a premature complaint on 22.09.2024 and no cause of action arose when the expected date of project completion was 13.12.2025. That, in light of facts regarding not mentioning of possession date in agreement for sale, the counsel relied on the judgment of Hon'ble Supreme Court in the case of **Fortune Infrastructure vs. Trevor D'Lima & Ors. (2018) 5 SCC 442**, wherein it was held that possession shall be deemed to be construed as three years from the date of execution of the agreement. That, the respondent promoter has obtained completion certificate for Tower-B consisting of said unit on 29.09.2024. That, only 57% of the amount towards consideration has been paid till date and the complainant



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has not adhered to the clause 6.51 in the Schedule – G (Construction Linked Payment Plan) of ATS. That, the last payment by the complainant was made in 2022 and since then, he has ignored all demand letters issued for payment of balance consideration. That, as per clause 5.4 of said agreement for sale, the complainants should be held liable to pay interest charges over balance consideration due to default in making timely payments to him.

Hence, the respondent prayed that present complaint be dismissed and as several allottees are already residing in the said project and completion certificate for Tower-B has been obtained thereby, any relief sought for refund cannot be allowed to the complainant.

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. First, the fact which needs to be decided is which is the exact deemed date of possession. To ascertain this following clauses of Agreement for sale executed between the parties are relevant:

Schedule-5

- परियोजना का 27-09-2017 तारीख पर रियल स्टेट विनियामक प्राधिकरण के साथ पंजीकृत किया गया है और परियोजना पंजीकरण प्रमाण पत्र **RAJ/P/2017/186** हैं। साव्याश परियोजना को रियल स्टेट विनियामक प्राधिकरण के द्वारा विस्तारित नहीं किए जाने तक निर्माण कार्य पूर्ण करने हेतु 29-09-2023 तक समय दिया गया है। अतः यह उर्पयुक्त इकरारनामा प्राधिकरण द्वारा विस्तारित नहीं किए जाने तक 29-09-2023 तक मान्य है। प्रमोटर और परियोजना का विवरण प्राधिकरण के वेबसाइट (www.rera.rajasthan.gov.in) में भी उपलब्ध है।
- 18. कब्जा : यह कि प्रोजेक्ट खत्म होने, कब्जा प्रमाणपत्र प्राप्त होने के तुरन्त उपरान्त विक्रेता आवंटित को कब्जा लेने के लिए सूचित करेगा। यदि आवंटित सूचित करने के दो माह के भीतर कब्जा नहीं लेता है तो इस स्थिति में दो माह के उपरान्त यह माना जायेगा कि आवंटित का भौतिक कब्जा दे दिया गया है।
- 18.2 यह कि उपरोक्त के बावजूद, इस समझौते के अनुसार सहमति के अनुसार मूल बिक्री पर विचार कर, ब्याज और अन्य शुल्को का पुरा भुगतान करने से पहले आवेदक को विक्रेता से कब्जे की मांग करने का हकदार नहीं होगा। यदि खरीदार के निर्माण के लक्ष्य पर किशतो के भुगतान में चूक होता है तो खरीदार निर्माण के पूरा होने के समय सीमा को लागू करने के हकदार नहीं होंगे।
- 18.5. नुकसान की भरपाई : प्रमोटर किसी भी हानि के मामले में आवन्टी को क्षतिपूर्ति करेगा, जो कि आवन्टी को भूमि के दोषपूर्ण खिताब के कारण हुई थी, जिस पर परियोजना को विकसित किया गया है जैसा कि अधिनियम के तहत प्रदान किया गया है और ब्याज के लिए दावे और इस प्रावधान के तहत मुआवजे को किसी भी कानून के तहत प्रदान की गई सीमा से बाध्य नहीं किया जाएगा। अप्रत्याशित घटना को छोड़कर यदि प्रमोटर योजना पूर्ण करने में विफल रहता है या इस समझौते की शर्तों के अनुसार उक्त



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प्रत्याशित परिसर का अधिकार देने में असमर्थ है जो निर्धारित अवधि के भीतर पूरी तहत से पूरा होना है या निलंबन या निरसन या अधिनियम के प्रावधानों के तहत पंजीकरण की समाप्ति के कारण डेवलपर के रूप में अपने व्यवसाय के विच्छेदन के कारण या किसी अन्य कारण से आवंटित की मांग पर प्रमोटर जिम्मेदार होगा यदि कोई अन्य उपाय उपलब्ध न हो तो और अगर आवंटियों ने परियोजना से अपना आवंटन वापस लेने की इच्छा रखी है तो इस दशा में अपार्टमेंट प्लॉट के संबंध में उनके द्वारा प्राप्त कुल राशि को वापस करने के लिए जिसमें ब्याज सहित इस अधिनियम के तहत मुआवजा के रूप में प्रदान करने की जिम्मेदारी विक्रेता की होगी। यदि आवंटित अपने फ्लैट को रद्द कराने का इरादा नहीं रखता तो विक्रेता विलम्ब की स्थिति में आवंटित को प्रत्येक माह ब्याज के रूप में मुआवजा देगा। ब्याज की दर अधिनियम में तय की गई है।

9. Thus, in absence of any specific date for handing over possession, the above clauses makes it clear that possession was to be handed over after completion of the project on 29.09.2023 and if the possession is not handed over on account of completion of the project in time and if allottee is interested in withdrawal from the project, then amount deposited by him is required to be refunded to him, along with interest.

10. During arguments, the counsel for the respondent claimed that as per Hon'ble Supreme Court verdict 36 months is allowed for handing over of possession from the date of execution of agreement for sale and based on this principle the possession date comes to 13.12.2025. Since possession date scheduled is 13.12.2025 the claim of the complainant is pre-mature and liable to be dismissed.



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The above argument of the respondent is not acceptable and it has several contradictions of the facts on record. On the one hand the respondent has claimed that Block-A was completed on 29.09.2023 and Block-B in which the unit of complainant is situated has been completed on 29.09.2024. Contrary to this, the respondent is claiming completion date/possession date as 13.12.2025. The completion certificates placed on record were seen and these are partial completion certificate issued by Architect. These certificates are not available on the portal of the Authority. The complainant contended that these completion certificates were got issued by the Architect on 29.09.2024 after filing of his complaint on 22.09.2024. The respondent is claiming that he has sent demand letter to the complainant on 25.09.2024 citing completion of 90% work then how he could complete the project and got the partial completion certificate issued from Architect within 4 days i.e. on 29.09.2024.

All these facts makes it clear that the respondent is not sure when he intends to complete the project or when he intends to hand over the possession of the flat to the complainant. The facts and submissions made by the respondent are contradictory to each other.

Since the project has expired on 28.09.2024 and also there is very much uncertainty when the project is likely to



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be completed, the complainant cannot be asked to wait for a indefinite period for taking over possession and his prayer deserve to be considered


11. In view of facts and observations in above paras 7 to 10, the respondent-promoter is directed to refund the deposited amount to the complainant along with interest @ 11.10% i.e. highest SBI MCLR rate 9.10% + 2.00%, from each date of deposit to till the refund is made.

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