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BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

(1) Appeal No.36/2025

In : Complaint No.RAJ-RERA-C-N-2024-7032

Mradul Singhal S/o Shri Mahendra Kumar Singhal, aged about 53 years, R/o 33, Arya Nagar, Scheme No.1, Near Ambedkar Circle, Alwar-301001.

...Appellant/Complainant

Versus

M/s Kamalika Developers and Infrastructures Pvt. Ltd., Kamalika Developers & Infrastructures Private Limited, Commercial Plot No.3, Scheme No.3, Ambedkar Circle, Basant Vihar, Alwar-301001.

...Respondent/Non-complainant

(2) Appeal No.37/2025

In : Complaint No.RAJ-RERA-C-N-2024-7132

Shiv Dutt Gupta S/o Shri Heera Lal Gupta, aged about 49 years, R/o 1421 Vijay Nagar, Alwar-301001.

...Appellant/Complainant

Versus

M/s Kamalika Developers and Infrastructures Pvt. Ltd., Kamalika Developers & Infrastructures Private Limited, Commercial Plot No.3, Scheme No.3, Ambedkar Circle, Basant Vihar, Alwar-301001.

...Respondent/Non-complainant

(3) Appeal No.45/2025

In : Complaint No.RAJ-RERA-C-N-2024-7248

Ravi Kumar Khandelwal S/o Shri Inder Lal Khandelwal, aged about 36 years, House No.45, Scheme-10, Vivek Vihar, Alwar-301001.

...Appellant/Complainant

Versus

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M/s Kamalika Developers and Infrastructures Pvt. Ltd., Kamalika Developers & Infrastructures Private Limited, C/o Genesis Bazar, Commercial Plot No.3, Scheme No.3, Ambedkar Circle, Basant Vihar, Alwar-301001.

.....Respondent/Non-complainant

(4) Appeal No.49/2025

In : Complaint No.RAJ-RERA-C-N-2024-7250

1. Pooja Sharma W/o Priyank Sharma, House No.30, Shri Ram Nagar, NEB Tampu Road, Alwar-301001 (Raj.)
2. Priyank Sharma S/o Om Prakash Sharma, House No.30, Shri Ram Nagar, NEB Tampu Road, Alwar-301001 (Raj.)

...Appellants/Complainants

Versus

3. M/s Kamalika Developers and Infrastructures Pvt. Ltd., Kamalika Developers & Infrastructures Private Limited, C/o Genesis Bazar, Commercial Plot No.3, Scheme No.3, Ambedkar Circle, Basant Vihar, Alwar-301001.

...Respondent/Non-complainant

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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

PRESENT:

For Complainant-Appellant : Mr. Deependra Yadav, Advocate

For Promoter Respondent : None Present

ORDER

Reserved on 17th September, 2026

Pronounced on 29th September, 2026

Per : Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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The present four appeals have been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the “RERA Act, 2016”) against the impugned order dated 11/02/2025 passed by the Rajasthan Real Estate Regulatory Authority, Jaipur (hereinafter referred to as the “Regulatory Authority”) in Complaint Nos: RAJ-RERA-C-N-2024-7032, RAJ-RERA-C-N-2024-7132, RAJ-RERA-C-N-2024-7248 and RAJ-RERA-C-N-2024-7250.

2) The brief facts of the case are that the respondent-developer launched a commercial project namely “Genesis Bazaar”, registered under RERA vide Registration Certificate No. RAJ/P/2018/715. The appellants had booked different commercial shops in the said project and made substantial payments towards the sale consideration. Mradul Singhal booked four shops bearing Nos. UGF-01, UGF-02, UGF-25 and UGF-26 and paid the entire sale consideration of approximately Rs.90,00,000/-. Agreements to sell were executed on 20/02/2020 and registered in respect of the said shops. Shiv Dutt Gupta booked Shop No. UGF-03 and paid the entire sale consideration, whereafter an agreement to sell was executed on 17/02/2020 and subsequently registered. Ravi Kumar Khandelwal booked Shop No. UG-11 for a total sale consideration of Rs.37,00,000/- and paid Rs.20,72,000/- towards the same. A provisional allotment letter was also issued in his favour and an agreement to sell was executed on 30/10/2019 and registered. Similarly, Pooja Sharma and others booked Shop No.

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UG-12A for a total sale consideration of Rs.23,00,000/- and paid Rs.12,88,000/-.

A provisional allotment letter was issued and the agreement to sell was thereafter executed on 30/10/2019 and registered. As per the agreements, the project was required to be completed and possession of the respective shops was to be handed over by 28/03/2021. The respondent obtained extensions from the RERA Authority up to 28/03/2022 and thereafter up to 28/03/2023. Despite expiry of the extended period, possession was not handed over to the appellants. The project is stated to be reflected in the "lapsed" category on the RERA portal. The appellants, alleging failure on the part of the respondent to complete the project and hand over possession within the stipulated period, issued legal notices from time to time, including notices dated 09/12/2022, 29/12/2022 and 28/03/2024, calling upon the respondent to offer possession. The respondent, on the other hand, contended that the delay in completion of the project occurred due to circumstances beyond its reasonable control and asserted that it had nevertheless undertaken and completed the construction and development work of the project. In Complaint Nos: RAJ-RERA-C-N-2024-7032, RAJ-RERA-C-N-2024-7132, RAJ-RERA-C-N-2024-7248 and RAJ-RERA-C-N-2024-7250 were disposed of vide order dated 11/02/2025, the operative portion of which reads, as under: -

"11. In view of above discussions, we direct the respondent to refund the deposited amount to the complainants along with interest at prescribed rate of interest @9.10% (highest MCR of SBI) + 2% from the each date of deposit to till the refund is made. Compliance be made within 45 days of uploading this order on the web portal of this Authority".

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3) Hence, these appeals with the following prayer: -

“It is, therefore, most humbly prayed that Your Lordships may be pleased to accept and allow this appeal and further pleased to quash and set aside the impugned order dated 11/2/2025 passed by the learned Rajasthan Real Estate Regulatory Authority in Mradul Singhal and Anr. Vs Kamalika Developers & Infrastructures Pvt. Ltd. bearing its Complaint Nos. RAJ-RERA-C-N-2024-7032, RAJ-RERA-C-N-2024-7132, RAJ-RERA-C-N-2024-7248 and RAJ-RERA-C-N-2024-7250 to the extent of holding that possession as prayed by the appellants, is not possible in near future;

Further the complaints filed by the appellants may kindly be allowed and the respondent may kindly be directed to immediately handover the possession of the allotted shops to the appellants and further to pay interest on the deposited amount @ 18% p.a. from the date of payment till delivery of possession of the shops.

Any other order as your Lordships may deem just and proper in the facts and circumstances of the case may kindly be passed, in the interest of justice and equality”.

4) Mr. Deependra Yadav, learned counsel appearing for the appellants, argued that the appellants are entitled to possession of the shops in question, particularly when the respondent itself admitted in its reply that the construction and development work of the project had been completed. The appellants are also entitled to interest on the amount deposited by them for the period of delay in handing over possession. It was further argued that the RERA Authority erred in observing that, considering the stage of completion of the project, possession was not likely to be handed over in the near future and in directing refund of the deposited amount with interest at the prescribed rate of 9.10% + 2%. Learned counsel further argued that, as per Clause 7.1 of the agreement, possession of the shops, along with the completed common areas, specifications, amenities and facilities was to be handed over within 36 months from the date of registration of the project, i.e. 28/03/2021. The respondent having failed to complete the project and hand over possession within the stipulated period

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was in breach of Sections 12 and 18 of the RERA Act, 2016. It was also submitted that the RERA Authority failed to consider the registered instrument conferring ownership upon the appellants and therefore, ought to have directed the respondent to hand over possession of the shops. The failure to offer possession within the stipulated period amounts to a breach of Section 18(1)(a) of the Act and constitutes deficiency in service, as recognized by the Hon'ble Supreme Court in several decisions. Accordingly, the respondent was liable to hand over possession of the shops along with applicable interest for the period of delay.

5) It is pertinent that learned counsel for the respondents did not appear before this Tribunal during the course of arguments but filed written submissions and prayed for issuance of notice to the actual promoter Navin Kumar Atre and Sanjay Pillai but the prayer was already rejected vide order dated 28/07/2026.

6) We have heard learned counsel for the appellant and with his assistance, perused the entire material available on record.

7) It is appropriate to draw a table showing details of the matters in tabular form, as under:-

S N.	Name of Complainant	Shop No.	Total Consideration (In Rs.)	Total Amount Paid (In Rs.)	Date of Agreement to Sell	Due date for possession
1.	Mradul Singhal	<u>UGF-01</u>	<u>Rs.21,73,280/-</u>	Rs.85,00,000/-	20/02/2020	28/03/2021 as mentioned in Para H of the Agreement (Validity of the project)
		<u>UGF-02</u>	<u>Rs.20,20,055/-</u>			
		<u>UGF-25</u>	<u>Rs.30,00,470/-</u>			
		<u>UGF-26</u>	<u>Rs.13,06,195/-</u>			

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2.	Shiv Dutt Gupta	UGF-03	Rs.22,00,000/-	Rs.19,64,284/-	17/02/2020	28/03/2021 as mentioned in Clause 7.1
3.	Ravi Kumar Khandelwal	UG-11	Rs.37,00,000/-	Rs.20,72,000/-	30/10/2019	28/03/2021 as mentioned in Clause 7.1
4.	Pooja Sharma	UG-12A	Rs.23,00,000/-	Rs.12,88,000/-	30/10/2019	28/03/2021 as mentioned in Clause 7.1

8) It is evident from the record and admitted facts between the parties that the appellant-complainant Mradul Singhal, Shiv Dutt Gupta, Ravi Kumar Khandelwal and Pooja Sharma were allotted commercial shops for the total sale consideration as mentioned in the above table in para 7 and out of total sale consideration the substantial amount has been deposited by the complainant and agreement for sale was also executed on 20/02/2020, 17/02/2020, 30/10/2019 and 30/10/2019, respectively, It is noted that in all the four appeals, the agreed date of possession was 28/03/2021. It is also admitted by the respondent promoter before the learned Regulatory Authority that the project was delayed but due to bajri ban, demonization, GST Law and Sudden outbreak of Covid-19 pandemic. It is relevant to mention herein that as per Section 18(1) of the RERA Act, 2016 only natural disaster like earthquake etc.etc. are covered under the definition of *force majeure* and two extensions were granted to the promoter but only one extension was

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granted due to *force majeure* on 31/03/2021 and second extension was granted on the ground of other than *force majeure* factors. In such circumstances, the learned Regulatory Authority while passing the impugned order, rightly concluded that except Covid-19 Pandemic, other reasons for delay are not admissible. Further in the light of the Circular dated 13/05/2020 issued by the RERA. The respondent promoters are entitled for exclusion of 12 months moratorium period while computing the delay interest.

It is evident from the record that all the allottees complainants filed complaints under Section 31 of the RERA Act, 2016 and relief was claimed for possession with delay interest but due to current status of the project showing “lapsed” on web portal of RERA, the learned Regulatory Authority observed in para 10, as under:-

“10. Keeping in view the present completion stage of the project, there is apprehension that possession as prayed by the complainants during hearing is not possible in near future. This is further supported by the respondent’s reply wherein he has offered shifting of the allotted units to other blocks”.

The appellants-complainants preferred these appeals and sought the relief regarding possession of the unit despite the fact that the present status of the project is in “lapsed” category, we are of considered view that the complainants-allottees have unqualified right either to withdraw from the project and claim for refund with interest or if the complainants-allottees do not intend to withdraw from the project then, take possession of the unit with delay interest as per the mandate of Section 18(1) of the RERA Act 2016, which may be reproduced, as under:-

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Section 18 (1)(b) of RERA Act, 2016:-

“Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee **wishes to withdraw** from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee **does not intend to withdraw** from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”*

It is evident from a bare perusal of above text that for both the reliefs, Legislature mentioned the words “**wishes**” for “**refund with interest**” in Section 18(1)(a) and “**intend**” in the proviso of Section 18(1)(a) that if allottee does not intend to withdraw from the project. Meaning thereby, the words “**wishes**” and “**intend**” are deliberately used by the Legislature to protect the rights of allottee, who may choose either of the relief enumerated in Section 18(1)(a). In the present matter, the complainant due to surrounding circumstances of the project, wished to withdraw from the project subsequently by way of amendment application and the allottee is entitled to seek amendment, in certain circumstances; therefore, the application seeking amendment was rightly allowed by the learned Regulatory Authority.

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The Hon'ble Apex Court in the matter of **Newtech Promoters and Developers Pvt. Ltd. V/s State of UP (202 INSC 716)**, Hon'ble Apex Court held, as under:-

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1) (a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act."

9) In the light of the proviso to Section 18(1)(a)(b) of the RERA Act, 2016 and above pronouncement of the Hon'ble Apex Court in the matter of **M/s.Newtech Promoters and Developers Pvt.Ltd. supra**, it is the sweet will of the allottee-complainants either to withdraw from the project or to take possession of the unit. In the present matter, all the appellants-complainants do not intend to withdraw from the project as per the relief claimed in the complaints itself, therefore, the impugned order is not sustainable in the eyes of law.

10) In the result, the appeals are allowed and the impugned-order dated 11/02/2025 passed by the learned Regulatory Authority in Complaint Nos: RAJ-RERA-C-N-2024-7032, RAJ-RERA-C-N-2024-7132, RAJ-RERA-C-N-2024-7248 and RAJ-RERA-C-N-2024-7250 is quashed and set-aside. The respondent-promoter is directed to handover possession of the respective unit with delay interest @SBI Highest MCLR (8.70%)+2%, i.e., 10.70 per cent per annum to the respective appellants-complainants after getting Completion Certificate of the

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project from the agreed date of possession dated 28/03/2021 till valid offer of possession excluding 12 months moratorium period.

- 11) Pending Interim application(s), if any, shall stand(s) closed.
- 12) There is no order as to costs.
- 13) A copy of this order be transmitted to the learned counsel for the parties and Raj-RERA, Jaipur.

Files be consigned to record.

Yudhishtir Sharma,
Member (Judicial)

(Madan Gopal Vyas) , J.
Chairperson