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REAL ESTATE

Delay, Default and Cancellation: Rajasthan REAT Upholds Homebuyer's Right to Possession and Interest

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Introduction

The Rajasthan Real Estate Appellate Tribunal ("REAT"), by its order dated 21 July 2026 in AKG Affordable Housing Pvt. Ltd. v. Hunny Yadav and Ors., has reaffirmed a homebuyer's entitlement to possession and delay compensation under the Real Estate (Regulation and Development) Act, 2016 ("RERA Act"), notwithstanding a promoter's attempt to resist liability on grounds of non-registration of the sale agreement, force majeure, and alleged shared default. The decision is a useful reminder to developers of the limited scope for evading statutory obligations once possession has been unreasonably delayed.

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Factual Background

The dispute arose out of the booking of a Low-Income Group unit bearing No. C-416, Block-C, in the promoter's project "Pari Residency", for a total sale consideration of Rs. 10,02,700, against which the complainants had paid Rs. 4,01,080. An Agreement for Sale dated 26 July 2017 obligated the promoter to hand over possession within thirty-six months of map approval, that is, by 27 September 2020. Possession was never delivered by this date, and the complainants approached the Rajasthan Real Estate Regulatory Authority, Jaipur ("Regulatory Authority").

By order dated 13 October 2025, the Regulatory Authority allowed the complaint and directed the promoter to hand over possession together with delay interest, calculated at 10.85 per cent per annum (being the State Bank of India's highest Marginal Cost of Funds based Lending Rate of 8.85 per cent plus 2 per cent), running from the expected date of possession until receipt of the completion certificate, excluding any applicable moratorium period. Aggrieved, the promoter carried the matter in appeal under Section 44 of the RERA Act, seeking either possession or a full refund with interest, along with costs.

Issues Before the Tribunal

The appeal principally required the Tribunal to consider whether the unregistered Agreement for Sale rendered the complaint non-maintainable under Section 13 of the RERA Act; whether the delay in possession was attributable solely to the promoter or constituted a case of shared default in light of the COVID-19 pandemic and funding difficulties under the SWAMIH scheme; whether the interest rate awarded was equitable; and whether the promoter's purported cancellation of the allotment was legally sustainable.

Contentions of the Promoter

Appearing for the appellant-promoter, it was argued that the Agreement for Sale was void ab initio, since Section 13 of the RERA Act bars a promoter from accepting more than ten per cent of the sale consideration without first executing a registered agreement, and the complainants had admittedly paid a sum exceeding this threshold. It was further contended that the Regulatory Authority had disregarded force majeure considerations, including pandemic-related extensions granted up to March 2024 and delays attributable to SWAMIH funding, and that the awarded interest rate was disproportionate given the promoter's own infusion of funds into the stalled project. Reliance was placed on Section 18(1) of the RERA Act to argue that interest is payable only where delay is solely attributable to the promoter, which, it was submitted, was not the case here.

Contentions of the Complainants

The respondent-complainants resisted the appeal on the footing that no demand for payment had been raised by the promoter for several years, and it was only in 2023, upon their own inquiry, that the promoter solicited further payment, resulting in a remittance of Rs. 3,01,080 on 3 July 2023. It was submitted that the promoter remained in continuous and admitted default since 2020, that no demand notice or opportunity to cure any alleged default had ever been issued, and that the cancellation letter dated 1 July 2023, received on 6 July 2023, was arbitrary and mala fide, having been issued immediately after the promoter had accepted a substantial payment. It was argued that mere receipt of SWAMIH funding could not absolve the promoter of its statutory obligations under Section 18.

Findings and Reasoning of the Tribunal

The Bench comprising Justice Madan Gopal Vyas, Chairperson, and Mr. Yudhisthir Sharma, Judicial Member, found it undisputed that possession had not been delivered by the contractual date of 27 September 2020, and that although construction had resumed following SWAMIH funding, completion certificates had been obtained only for Tower-D and Tower-F on 22 December 2023, while Tower-C, in which the subject unit was located, remained incomplete with no completion certificate placed on record.

On the question of cancellation, the Tribunal attached particular significance to the admitted sequence of events, namely that the promoter had accepted a payment of Rs. 3,01,080 on 3 July 2023, mere days before issuing the cancellation letter on 1 July 2023, which was received by the complainants on 6 July 2023. This chronology, in the Tribunal's view, demonstrated that the allotment continued to subsist and undermined the legitimacy of the cancellation. The Tribunal accordingly held that the Regulatory Authority had rightly declined to accept the cancellation and had correctly directed possession with delay interest in terms of the RERA Rules, 2017, finding no infirmity warranting interference.

Decision

The Tribunal dismissed the appeal in its entirety and affirmed the impugned order dated 13 October 2025, with no order as to costs. This decision underscores the Tribunal's unwillingness to permit promoters to shield themselves from statutory consequences of delayed possession through technical objections regarding registration, or through retrospective assertions of shared default unsupported by contemporaneous documentation. The ruling also serves as a cautionary note that acceptance of payment shortly before a purported cancellation may itself operate to negate the validity of that cancellation. The order reaffirms the robustness of the remedies available under Sections 18 and 44 of the RERA Act.

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