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REAL ESTATE

No Forced Possession in Delayed Projects: REAT Jaipur Clarifies Scope of Refund Rights

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Introduction

The Real Estate Appellate Tribunal, Jaipur ("REAT"), in *Satish Sharma v. VVA Developers Pvt. Ltd.*[1], has delivered a significant ruling clarifying the scope of an allottee's right to refund under the Real Estate (Regulation and Development) Act, 2016 ("RERA Act"). The decision of REAT Jaipur reiterates that project delay, non-execution of the Agreement for Sale, and arbitrary substitution of units decisively tilt the balance in favour of the allottee, even where partial completion certificates have been obtained by the promoter. This judgment is particularly relevant for homebuyers caught in long-delayed projects and for promoters seeking to rely on partial completion or alternative possession offers to defeat refund claims.

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Factual Matrix

The appellant–allottee booked a residential unit in the respondent promoter's project on 7 June 2013. Pursuant thereto, a provisional allotment letter dated 15 April 2014 was issued in favour of the appellant for Unit No. A2-0905, for a total sale consideration of ?28,45,250. Against the said consideration, the appellant paid an amount of ?6,47,212, representing more than ten per cent of the total cost of the unit.

Despite receipt of the aforesaid amount, no Agreement for Sale was executed or registered between the parties. The project did not progress as scheduled, and possession was not offered within the stipulated or reasonable period. Aggrieved by the prolonged delay, the appellant approached the Rajasthan Real Estate Regulatory Authority in 2019 seeking refund of the amount deposited along **with interest**.

By order dated 27 April 2023, the Regulatory Authority disposed of the complaint by directing the promoter to offer possession upon adjustment of interest and further permitting the promoter, in the event the allottee declined possession, to deduct administrative charges at the rate of 10% from the deposited amount while refunding the balance.

The appellant challenged the said order before REAT Jaipur, contending inter alia that the project remained delayed, that the promoter had issued multiple demand notices referring to an incorrect and unallotted unit, and that possession was subsequently offered of **entirely different units** after issuance of a partial completion certificate dated **20 March 2022** for certain towers of the project. The appellant asserted that he could not be compelled to accept possession of a unit never originally allotted to him, particularly in the absence of an executed Agreement for Sale.

Issues for Determination

The Tribunal framed two substantial questions of law:

1. Whether the promoter had unilaterally changed the originally allotted unit, and
2. Whether the allottee was entitled to a full refund despite partial completion of the project, particularly in light of a similar refund order passed against the same promoter.

Findings on Change of Unit

While examining the first issue, the Tribunal categorically held that the mere reference to an incorrect unit number in demand notices cannot be construed as a lawful or binding change of allotment. The Tribunal noted that the provisional allotment letter unequivocally identified Unit No. A2-0905, and at no stage was the allottee's written consent obtained for substitution of the allotted unit. In the absence of such consent, the contention that the original allotment stood validly altered was rejected.

REAT Jaipur thus reaffirmed the settled position that any unilateral substitution of a unit by the promoter, without the express and informed consent of the allottee, is devoid of legal effect and unsustainable under the RERA framework.

Core Legal Analysis: Right to Refund under RERA

At the heart of the dispute lay the scope and enforceability of an allottee's right to refund under the Real Estate (Regulation and Development) Act, 2016. The Tribunal undertook a detailed examination of the statutory scheme of RERA and reaffirmed that the legislation imposes strict and non-derogable obligations upon promoters, breach of which directly triggers refund liability.

Section 13 – Mandatory Execution of Agreement for Sale

The Tribunal placed strong reliance on **Sections 13(1) and 13(2)** of the RERA Act, which categorically prohibit promoters from accepting more than 10% of the consideration without executing and registering an Agreement for Sale. The Tribunal clarified that the obligation to execute the Agreement lies solely on the promoter, and failure to do so cannot prejudice the allottee's statutory rights.

Non-execution of the Agreement for Sale was treated as a serious statutory breach, undermining the promoter's ability to impose contractual deductions such as administrative charges.

Section 18 – Unqualified Right to Refund

Applying **Section 18(1)** of the RERA Act, REAT Jaipur reiterated that where a promoter fails to deliver possession within the stipulated or deemed timeline, the allottee acquires an unconditional right to seek refund with interest.

The Tribunal relied on the Supreme Court's authoritative pronouncements in:

- *Fortune Infrastructure v. Trevor D'Lima*[2]
- *Newtech Promoters and Developers v. State of Uttar Pradesh* (2021)

Particularly, the Tribunal emphasized that the allottee's refund rights are not diluted by partial completion of the project or by subsequent offers of possession of an altogether different unit.

Partial Completion Certificates: Limited Legal Effect

Although the promoter had obtained a partial completion certificate for certain towers, REAT Jaipur held that this fact cannot defeat an allottee's refund rights when:

- possession was offered belatedly,
- the offered unit was not the originally allotted unit, and
- the project suffered inordinate delay.

The Tribunal categorically held that an allottee cannot be compelled to accept possession of an unallotted or substituted unit.

Illegality of Administrative Charge Deduction

The Tribunal struck down the deduction of 10% administrative charges ordered by the Regulatory Authority, holding that:

- There was **no privity of contract**,
- No Agreement for Sale existed, and
- Such deductions are impermissible in the absence of contractual or statutory backing.

This aspect of the ruling sends a clear message that promoters cannot impose unilateral financial penalties when they themselves are in breach of statutory duties.

Final Directions

In view of the foregoing analysis and findings, REAT Jaipur allowed the appeal and partly modified the order dated 27 April 2023 passed by the Regulatory Authority. The Tribunal set aside the direction permitting deduction of administrative charges and held the same to be unsustainable in law.

Accordingly, the respondent–promoter was directed to refund the entire amount of ?6,47,212 deposited by the appellant, along with interest at the applicable rate from 1 February 2021, after excluding the period of moratorium as notified by the Regulatory Authority. The refund was ordered to be made without any deduction whatsoever, within a period of 45 days from the date of receipt of a certified copy of the Tribunal's order.

All pending applications were disposed of, and no order as to costs was passed.

Key Takeaways

- **Execution of the Agreement for Sale is mandatory under Section 13 of RERA.** Once a promoter receives more than ten per cent of the total consideration, failure to execute and register the Agreement for Sale constitutes a substantive statutory breach and cannot be used to defeat the allottee's rights.
- **Delay in delivery of possession confers an unqualified right to refund.** Under Section 18 of the RERA Act, an allottee is entitled to seek refund with interest where possession is not delivered within the agreed or statutorily deemed timeline, irrespective of subsequent developments.
- **Partial completion does not dilute refund rights.** The issuance of partial completion certificates or belated offers of possession cannot extinguish an allottee's statutory right to exit a delayed project and claim refund.
- **Allottees cannot be compelled to accept substituted or alternative units.** Any unilateral change in the allotted unit without the allottee's express consent is legally unsustainable under the RERA framework.
- **Administrative or penalty deductions require contractual and statutory basis.** In the absence of an executed Agreement for Sale or express statutory sanction, promoters cannot deduct administrative charges while refunding amounts to allottees.
- **RERA continues to be interpreted as a consumer-protective legislation.** The Tribunal's ruling reinforces the allottee-centric intent of the Act and underscores strict judicial scrutiny of promoter non-compliance.

Conclusion

The decision of the Real Estate Appellate Tribunal, Jaipur in *Satish Sharma v. VVA Developers Pvt. Ltd.* reaffirms the central objective of the RERA regime to protect allottees from prolonged uncertainty arising out of promoter non-compliance. The Tribunal has made it unequivocally clear that statutory obligations relating to timely possession and execution of the Agreement for Sale are not mere formalities but enforceable duties, breach of which attracts refund liability.

By holding that partial completion, belated possession offers, or unilateral substitution of units cannot defeat an allottee's right to exit a delayed project, the Tribunal has strengthened the jurisprudence around Section 18 of the RERA Act. The ruling is a clear reminder that promoters cannot rely on technicalities or post-facto compliance to cure foundational statutory violations, and that the right to refund under RERA remains a substantive and unqualified remedy in cases of inordinate delay.

For more details, write to us at: contact@indialaw.in

1. APPEAL No.76/2023 IN COMPLAINT No.RAJ-RERA-C-2019-3105 ??
2. (2018) 5 SCC 442 ??

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