

BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No: 9/2025
In
Complaint No.RAJ-RERA-C-N-2023-6880

1. Neelam Jain, R/o P.No. B21 Dakshinpuri, in front of Ashadeep Green Enclave, Jagatpura, Jaipur Sanganer- 302017
 2. Anand Kumar Jain, R/o P.No. B21 Dakshinpuri, in front of Ashadeep Green Enclave, Jagatpura, Jaipur Sanganer- 302017
-Appellant**

VERSUS

ARG CG Developers LLP, E-52, Chitranjan Marg, C-Scheme, Jaipur- 302001

.....Respondents

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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

PRESENT:

For appellant: Mr. Kapil Sharma, Advocate

For respondents: Mr. Prashant Daga, Advocate

ORDER

Reserved on 05th March, 2026:

Pronounced on, 10th March, 2026:

Per: Justice Madan Gopal Vyas, Hon'ble Chairperson

The above-captioned appeal has been filed by the Appellants under Section 44 of the Real Estate (Regulation and Development) Act, 2016,(herein after referred as Act of 2016) challenging the order dated 16.12.2024 passed by the Rajasthan Real Estate Regulatory Authority, Jaipur (herein after referred as Regulatory Authority) in Complaint No. RAJ-RERA-CN-2023-6880. The operative portion of the said order is reproduced hereunder for ready reference:-

“7. Heard the arguments and perused the record. During the arguments, the counsel for the complainants pressed only for the roof rights and presented an allotment letter dated 25.11.2022 wherein the respondent developer has allotted roof uses rights for the roof of flat No. 911 in Block-03 on payment of Rs. 3,25,000/-.

8. The respondent stated that the issue of roof rights is presently pending before the Addl. Civil Judge No. 17, Jaipur Metropolitan, Sanganer-I Since the project is already complete, the issue pertaining to roof rights and creation of temporary structures thereon does not fall under the ambit of the RERA Act.

9. Hence the complaint is dismissed on the ground of maintainability.”

2. Facts in brief of the case are that the respondent-promoter developed a housing project named “A.R.G. Ananta” located at Village Chak Gaitor, Jagatpura, Tehsil Sanganer, Jaipur. The appellant booked Flat No. 911, Block-03 in the project by paying Rs. 11,000/- on 09.06.2016, after which an allotment letter dated 05.08.2016 was issued. Later on, an agreement to sale was executed on 28.12.2017 and by a correction deed dated 12.04.2018, appellant no. 2 was added as a joint allottee. To finance the purchase, the appellants obtained a housing loan of Rs.20,31,000/- from State Bank of India through a sanction letter dated 29.03.2018. The bank disbursed the loan in stages to the respondent based on construction progress. The appellants paid a total sum of Rs.25,75,600/- towards the flat through various payments mode between 2016 to 2023. The flat was purchased for personal residential use and the respondent had assured that possession would be given within three years of booking.

3. Counsel for the appellant further submits that the respondent failed to complete the construction and deliver possession within the promised time. In November 2022, the respondent offered the appellant the roof rights of the flat. After receiving a demand letter, the appellant paid Rs.3,50,000/- on 30.11.2022 for the roof and the respondent handed

over physical possession of the rooftop. After receiving the rooftop possession, the appellant installed a solar plant including iron pillars, a shed, stairs and railings with the knowledge of the respondent's representatives. The work was completed by 16.12.2022. Nearly a year later, on 02.12.2023, the respondent's employees demanded that the iron shed be removed and threatened to demolish it if the appellant did not comply. In response, the appellant approached the Metropolitan Magistrate Court, Sanganer, seeking protection of roof rights. The court ordered status quo on 18.12.2023 regarding the rooftop structure. Despite having paid the entire consideration, the respondent neither handed over possession of the flat nor executed the sale deed. Consequently, the appellants filed a complaint before the Regulatory Authority seeking possession. However, by order dated 16.12.2024, the Authority dismissed the complaint, stating that possession had already been handed over, noting the pendency of the civil case in Sanganer. The appellants contend that this finding is factually incorrect, as the civil case only concerns of roof rights and demolition of the solar structure, not of possession of the flat. They argue that the respondent has itself denied handing over possession.

4. *Per Contra*, counsel for the respondent gives out that appellant's loan payments is a private matter between the appellant and the bank and have no relation with the respondent. As per the law laid down by the Supreme Court, a developer is not responsible for the allottee's loan obligations. The handover of possession is governed by the Agreement for Sale and the extensions granted by RERA due to *force majeure* events. The respondent asserts that construction was carried out diligently, even during the COVID-19 pandemic, and the Completion Certificate was obtained in December 2022. The project

timeline had been extended by RERA due to *force majeure* circumstances, and the respondent complied with the revised schedule. Possession was offered to the appellant after obtaining the Completion Certificate, but the appellant failed to make timely payments. Therefore, the delay in execution of the sale deed and delivery of possession is due to the appellant's default, while the respondent has always been ready and willing to fulfill its obligations.

5. The respondent denies allegations regarding unauthorized construction approval. It states that it repeatedly objected to the construction being carried out on the terrace and clearly informed the appellant through email dated 05-08-2023 that no permanent or temporary construction was permitted on the roof. The claim that the respondent remained silent or acquiesced to such construction is denied. The matter is already pending before a competent court. The respondent further denies that it ever approved the unauthorized construction and states that it consistently protested against such activities. Despite objections, the appellant continued construction while the respondent attempted to resolve the issue amicably. It asserts that it is a reputed and law-abiding developer and that all communications with the appellant were formal and professional, merely requesting her to stop unauthorized construction and remove the illegal structure in accordance with the agreement and applicable law. It is stated that the issue regarding roof rights is already pending before the trial court, making the present proceedings non-maintainable due to the principle of *res sub judice*. The respondent further submits that possession has already been delivered as recorded by the authority, and the appellant is suppressing material facts to seek relief. Parallel proceedings could lead to conflicting decisions. Additionally, the

unauthorized structure violates Clause 20 of the Agreement for Sale and the appellant is bound by the terms of that agreement. The structure also poses safety risks to the residents and may affect the structural integrity of the building. The respondent argues that raising the same dispute before multiple forums constitutes an abuse of the legal process. Therefore, it requests the Tribunal to dismiss the appeal with exemplary costs and leave the matter to be decided by the civil court.

6. We have learned counsel for both the parties and perused material available on record.

7. It is evident from the record that while passing the impugned order on 16.12.2024, during arguments, counsel for the complainants pressed only for roof rights and presented allotment letter dated 25.11.2022 wherein respondent-developer was allotted roof uses rights for the roof of flat No. 911 in block 3 on payment of Rs. 3,25,000/-. Counsel for the respondent raised primarily objection that except roof rights, the appellant is estopped to raise other issue at appellate stage. Counsel for the respondent relied upon one judgement of Hon'ble Calcutta High Court in the matter of **Taher Ali Khan vs Abdul Hakim & Ors. 2006 AIR CAL 124** in which Hon'ble Calcutta High Court in para No. 56, decided the legal question as under:-

"56. When a party does not press any issues before the trial Court, the party waives his right and he cannot turn around and before the first appellate Court make his submissions on the said non-presses issue decided by the first appellate Court. The trial Court in the instant case recorded its findings that issue Nos. 1 and 2 are not presses and neither of the parties raised objection nor it was a case before the appellate Court below that in spite of the submissions made before trial Court, it did not consider the issue and on the other hand denying or defying the submissions of the learned counsel recorded its finding that issue is not pressed. Here, it is a clear case of the non-pressing of the issue and the finding of the learned Munsif on those two non-pressed issues is clear, then the question of waiver comes in."

In the light of above principle laid down by Hon'ble High Court, the appellant is not entitled to raise any other issue except roof right; in such circumstances, the only issue is required to be considered by this Tribunal, whether any roof right exists in favour of appellant-complainant or not and appellants have every right to use roof on flat No. 911 including installation of a solar plant.

8. It is admitted factual position between the parties that not only allotted flat but uses of roof rights are also allotted to appellant-complainant and only dispute arises between the parties is regarding installation of solar plants, iron pillars, a shed stairs and railings. Respondent-builder have apprehension about structural integrity of the building and safety risks to the other residents of the project. It is also admitted between the parties that appellant-complainant not only preferred one Civil Suit against respondent-promoter but also filed one temporary injunction application, which is decided by Metropolitan Magistrate No. 17, Jaipur Metropolitan-I on 18.12.2023 and passed an order to maintain *status quo* and admittedly stay order remains in currency till today.

9. It is noted that point in issue regarding solar structure on allotted roof is directly and substantially involved in Civil Suit as well as in complaint. Whether appellant is entitled for construction on allotted roof, is related to his civil right and since the civil litigation is already pending before the competent Civil Court, therefore, learned Regulatory Authority rightly concluded that the matter does not fall under the RERA Act, 2016 and rightly dismissed the complaint. It is not appropriate to elaborate the arguments advance by the counsel for both the parties because the matter is subjudice before the competent Civil Court. Parties are at liberty to raise all objections before the Civil Court.

Appeal No: 9/2025
In
Complaint No.RAJ-RERA-C-N-2023-6880

10. In view of above observation the appeal preferred by appellant-complainant is liable to be dismissed. Hence, dismissed, impugned order of learned Regulatory Authority dated 16.12.2024 is hereby affirmed.

11. A copy of this order be transmitted to the learned counsel for the parties and Raj-RERA, Jaipur

12. There is no order as to costs.

File be consigned to records.

**Yudhishtir Sharma,
Member (Judicial)**

**Justice Madan Gopal Vyas,
Chairperson.**

Indrajeet/PA

RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR