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BEFORE THE RAJASTHAN REAL ESTATE APPELLATE TRIBUNAL, JAIPUR

Appeal No.26/2025

In : Complaint No. RAJ-RERA-C-2023-6711

Rakesh Kumar Sharma S/o late Shri Rameshwar Dayal Sharma, R/o 301, E Block,
Tower Railway Colony, Near Jagatpura Railway Station Jaipur- 3020175.

....Complainant-Appellant

Versus

1. Union of India, through its Chairman Railway Board & Chief Executive Officer, 256-A, Rail Bhawan, Raisina Road, New Delhi- 110001.
2. Indian Railway Welfare Organization, through its Managing Director, having its office situated at 2687, 2688, 2689, Jagatpura, Sirola, Sanganer, Jaipur-303905, Rajasthan.
3. Rajasthan Real Estate Regulatory Authority, through its Registrar, having its office situated at 2nd and 3rd Floor, RSIC Building, Udyog Bhavan, Tilak Marg, C-Scheme, Jaipur- 302005, Rajasthan.

....Respondents

CORAM:

Mr. Justice Madan Gopal Vyas, Hon'ble Chairperson

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

PRESENT:

For Complainant-Appellant : Ms. Unnati Vijay, Advocate

For Respondents : Mr. Mitesh Rathore, Advocate

ORDER

Reserved on 02nd July, 2026:

Pronounced on 14th July, 2026:

Per: Justice Madan Gopal Vyas, Hon'ble Chairperson

The complainant-appellant has filed the present appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA Act, 2016") against the impugned-order dated 19/02/2025

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passed by the learned Real Estate Regulatory Authority, Jaipur (hereinafter be referred to as the "Regulatory Authority") whereby, the complaint filed by the complainant-appellant seeking refund was disallowed and granted delay interest only.

2) The facts giving rise to the filing of this appeal in brief are that the complainant-appellant applied for one Type-III Dwelling unit in the project of the respondents namely "Rail Vihar Jaipur 3", being a member of Indian Railway Welfare Organisation. The total cost of the type-III Dwelling Unit was Rs.43,00,038/- exclusive of taxes out of which, the complainant-appellant paid a sum of Rs.46,85,778/- As per the registration application of the project, the said project initially had six blocks A,B,C,D,E,F in which A,B and C block were of type-III dwelling units. This scheme was changed and it was decided by Respondent No.2-Indian Railway Welfare Organization (in short "IRWO") that only 2 blocks i.e. A and D shall be constructed. The complainant at the time of payment was under the impression that he will be allotted a flat in C block but lateron, he was allotted unit In A block. Respondent No.2-IRWO issued letter to complainant to opt for floor preference in A-block only .The complainant prayed for refund with interest, which was disallowed by the learned Regulatory Authority by the impugned-order dated 19/02/2025 in the manner, as under:-

"9. Since, the project stands completed, the complainant is directed to take possession of the allotted unit and make balance payment, if any. Since there has been inordinate delay in offering possession, the respondent is directed to pay delay interest at the prescribed rate of 9.10% highest MCLR of SBI + 2%, i.e., 11.10% from the expected date of possession, i.e., 30.06.2021 till the partial completion certificate was obtained, i.e., 21.12.2022".

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3) Hence, this appeal with the following prayer:-

“1. To quash and set aside the impugned Order dated 19.02.2025 passed by the Ld. Authority in the matter of Rakesh Kumar Sharma v. Union of India and Indian Railway Welfare Organization, bearing complaint No.RAJ-RERA-C-N-2023-6711”.

4) Ms. Unnati Vijay, learned counsel appearing for the complainant has argued that the respondent has lured the complainant by way of false statements and misrepresentations in the Brochure that the project was to be developed in 6 Blocks, developing 261 units containing Type-II, Type-III and Type-IV Dwelling Units and complainant opted for Block-C having a Garden View. Learned counsel argued that the complainant did not accept the illegal and arbitrary allotment given by the IRWO, therefore, the question of dues does not arise. As the IRWO made A Block, therefore, the complainant asked for preference for floors only and not for the blocks. The IRWO pressurised the complainant to give his preference in Block A only and lateron, the complainant came to know that he was allotted Block A-602 asking complainant to pay the remaining amount. Complainant further contended that Rule 20.4 of the IRWO General Rules provided that refund can be given to the allottees even if waitlist does not exist. The learned Regulatory Authority has erred in law while declining refund with interest in contravention of provisions of Sections 2(za), 12, 13, 14 and 18 of the RERA Act, 2016. The appellant is entitled to receive refund with interest from the date of each deposit in terms of Section 12 of the RERA Act, 2016. In support of her arguments, learned counsel for the appellant has placed reliance upon the judgment of Hon'ble Apex Court in the matter of **Experion Developers Pvt.Ltd. Vs. Sushma Ashok Shiroor** : **MANU/SC/0433/2022**, judgment of Hon'ble Delhi High Court in **Indian Railway**

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Welfare Organisation Vs. D.M. Gautam & Anr. : W.P.(C) No.8219 of 2009 dated 03/05/2010, judgment of Hon'ble High Court of Madras in ***Army Welfare Housing Organisation and Ors. Vs. Nagarajan Vasudeva Rao and Ors. : MANU/TN/2245/2025***, order dated 24/09/2024 passed by this Tribunal in ***Appeal No.70/2023 : Renu Singhal Vs. Indian Railway Welfare Organisation***, order dated 18/12/2025 passed by this Tribunal in ***Appeal No.90/2025 : Subhash Yadav Vs. Anurag Enterprises & Anr.*** and the order dated 31/10/2023 passed by the Maharashtra REAT, Mumbai in ***Sanjeevani Vyapaar LLP Vs. Mrs. Snehalata Devram Deokar passed in Appeal No.AT006000000052914***.

5) Mr. Mitesh Rathore, learned counsel appearing for the Respondent No.2-IRWO argued that the group housing schemes promoted by the IRWO are self-financing schemes and out of total sale consideration, the complainant paid only a sum of Rs.46,85,778/- inclusive of taxes and an amount of Rs.4,22,227/- is still outstanding. IRWO informed the complainant vide letter dated 27/01/2020 that due to very less bookings, IRWO has decided to complete only 2 Blocks i.e. A and D. The IRWO contended that it cannot refund the amount to any allottee. Learned counsel further argued that the respondent has constructed the said Dwelling Units on self-financing basis and it is very difficult for the respondent to generate the funds to refund the allottee as there is no waiting list available in the project. The Partial Completion Certificate has been obtained for two Blocks A and D on 21/12/2022 and also the Partial Occupancy Certificate, therefore, the refund may not be allowed in the completed projects. Learned counsel argued that the Scheme

is “No Profit No Loss” scheme and the complainant was never given any preference regarding the dwelling units in Block-B or Block-C as allotment was under the respondent’s own General Rules being made strictly by computerised draw of lots, subject to preferences being merely “taken into consideration” and never guaranteed. The very category of dwelling unit applied for by the appellant, namely Type-III, stands constructed and completed in Block-A, with Completion Certificate dated 21/12/2021 and Occupancy Certificate dated 25/12/2021, well within the extended validity of the project’s registration upto 30/06/2022 and has been allotted and repeatedly offered to appellant vide Dwelling Unit No.A-602. The appellant has till date, not cleared the 9th and final instalment of the sale consideration, amounting to Rs.4,22,227/- and is thus himself in continuing breach of his own payment obligations. The appellant approached the learned Regulatory Authority only on 26/09/2023 i.e. nearly 21 months after the completion and occupancy certificates being obtained and possession was first tendered to him. In view of this, therefore, the learned Regulatory Authority has correctly held under the impugned-order dated 19/02/2025 that the appellant is not entitled to rescind a substantially performed contract and claim refund of the entire consideration but is liable to take possession of the allotted unit and clear his outstanding dues. The present IRWO General Rules are in force since 01/10/2007, which governs membership, eligibility, booking, allotment, withdrawal and the consequences of a scheme being declared “Unpopular” and the appellant at the time of applying for and accepting booking of his dwelling unit, undertook to be bound by these very Rules. The appellant submitted his application for booking of a dwelling unit in the respondent’s

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“Rail Vihar Phase-III” Scheme, Jaipur on 22/03/2015 along with a booking amount of Rs.2,00,000/- for a Type-III dwelling unit. The appellant thereafter executed an Acceptance-cum-Undertaking dated 10/06/2015, whereby he unconditionally undertook to abide by all laws, bye-laws, rules and regulations framed by the concerned Development Authority, Central or State Government Authorities, the Civil Bodies and IRWO, “as amended from time to time”. An Allotment Letter bearing No.IRWO/DS/JPR/III was issued in favour of the appellant indicating a tentative cost for the Type-III dwelling unit of Rs.43.38 lacs plus applicable service tax. The entire transaction – offer, acceptance and the fixing of a nine-instalment payment schedule, was concluded one year before promulgation of the RERA Act, 2016 and stands on an entirely different footing from a fresh booking accepted after the Act and the Rules came into force. Vide letter dated 04/07/2018, the respondent invited options from allottees, including the appellant, in respect of floor preference in Blocks A, B and C, upon payment of an additional 2% enhancement. It is reiterated that this communication related only to floor preference and no preferred-location or block-guarantee charges were ever levied upon or collected from the appellant. Clauses 15.4 and 15.5 of the General Rules were undertaken by the appellant and he was bound by the said clauses of the General Rules. The appellant’s submission of a floor preference for units in Block-C on 25/07/2018 was, at the highest, an indication of preference “to be taken into consideration” and never matured into a concluded, binding allotment of any unit in Block-B or Block-C. No allotment letter was ever issued to the appellant in respect of any unit in either block. An application for curtailment of Blocks, B, C, E and F was moved

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before the Authority on 04/05/2023, which was duly approved by the Authority on 23/06/2023 vide Application No.RAJ-RERA-APP-MR-2023-236. The Authority in its own Suo Moto proceedings against the respondent (File No.F.5(2828)/RJ/RERA/C/2022, order dated 24/07/2023) expressly recorded and accepted this position, holding that Block-A and Block-D of the project stood declared complete and that the curtailment application in respect of Blocks, B, C, E and F “is approved by the Authority on 23/06/2023, therefore, allotment of dwelling unit by the respondent to the appellant cannot be held to be illegal, unilateral or an act of cheating. Since the appellant as demonstrated above, held no concluded allotment on Block-B or Block-C but only an unconfirmed preference, he does not fall within the category of “allottee”, whose 2-3rd written consent is contemplated under Section 14(2)(ii) of the RERA Act, 2016 as a precondition to alteration of sanctioned plans. The appellant’s substantive entitled to a Type-III dwelling unit was never taken away because it was fulfilled in Block-A. Learned counsel argued that the Central Government has approved only for 2 Blocks. Learned counsel argued that the appellant has annexed with this appeal certain documents, which were not the part of the complaint hence, new documents cannot be considered in this appeal.

6) Ms. Unnati Vijay, learned counsel for the appellant has re-joined and argued that the appellant is only asking for the Floors and not for the Blocks. The complainant is entitled to receive refund with interest. In support of this argument,

learned counsel has placed reliance upon the judgment of the Hon'ble Apex Court rendered in ***Experion Developers Pvt.Ltd. (supra)***.

7) We have heard learned counsel for the parties and perused the material available on record as also the case law cited on the subject.

8) It is admitted factual position between the parties as per record that respondent No.2-IRWO, which is a 'no profit no loss' organisation, launched a Scheme in September, 2014, namely; Rail Vihar, Jaipur (Phase-III), offering 261 dwelling units across 6 blocks comprising Type-II, III and IV units, out of which, 99 dwelling nits (DUs) were categorised as Type-III and proposed to be constructed in 3 blocks namely; Block-A, Block-B and Block-C. As per structural positioning, Block-A was situated in front of Block-D but Blocks-B & C were park facing. The total cost of Type-III dwelling unit was fixed at Rs.43,38,000/- exclusive of taxes and also had paid approximately 98% of the total sale consideration upto 02/08/2019 amounting to Rs.46,85,778/-. It is all prior to the enactment of the RERA Act, 2016 and admittedly, parties are governed by IRWO General Rules, 2013. The appellant thereafter executed an Acceptance-cum-Undertaking dated 10/06/2015, whereby he unconditionally undertook to abide by all laws, bye-laws, rules and regulations framed by the concerned Development Authority, Central or State Government Authorities, the Civil Bodies and IRWO, "as amended from time to time".

8.1 After enactment of the RERA Act, 2016, the respondent-organisation applied for registration of the project before the Authority on 11/08/2017 and the

same was granted on 29/11/2017 for all 6 Blocks and registration was extended by the Authority upto 30/06/2022 for all 6 Blocks. The respondent-organisation vide its letter dated 04/07/2018 sought only floor preferences and also mentioned that Block-A and Block-D have been proposed to be completed first. The appellant vide communication dated 25/07/2018 submitted 1st Floor preference in Block-C only, mentioning some dwelling unit numbers in Block-C but later on due to technical reasons and poor response in the scheme, it was decided to construct only 2 blocks – Block A and Block-D and curtailment application was duly accepted by the Authority and same was communicated to the appellant vide communication dated 27/01/2020. The respondent-organization vide letters dated 27/01/2020, 07/09/2021 and 24/09/2021 communicated the appellant for submission of his floor preference only for Block-A, which was only being constructed for Type-III dwelling units. It is true that the appellant-allottee vide letters dated 05/09/2020, 10/02/2020, 26/02/2020 and 15/09/2021 expressed his wish to avail the opportunity of allotment in other blocks i.e. Block-B or Block-C and may not be confined his allotment to Block-A alone. The appellant-allottee lastly communicated vide letter dated 03/10/2021 that if the respondent was unable to provide the dwelling unit in other blocks i.e. Block-B or Block-C then, refund the entire deposited amount with interest. Ultimately, the IRWO after taking Draw of Lots, allotted Dwelling Unit No.A-602 in Block-A and allotment letter was communicated vide communication dated 08/12/2021. Thereafter, the appellant preferred one complaint under Section 31 of the RERA Act, 2016 before the Regulatory Authority, which was decided by the impugned order and relief sought for refund was rejected.

8.2 It is evident from the above factual position that the appellant was not willing to take possession of Dwelling Unit No.A-602 in Block-A, and wishes for allotment in either of the two blocks viz. Block-B or Block-C, which were 'park facing'. The complainant at the time of payments was under notion that he will be allotted the dwelling unit in Block-C as desired and communicated the respondent-organization but at the same time, IRWO never accepted proposal of appellant regarding allotment in Block-C and ultimately allotted Dwelling Unit No.A-602 in Block-A after Draw of Lots. In such circumstances, the only question remain to be decided by this Tribunal is, as under:-

Question A:-

“As to whether the appellant is entitled for total deposited amount along with delay interest from each date of deposit?”

9) Finding on Question A:-

It is crystal clear from the communications that in response to one letter of the respondent-organization regarding floor preference only, the appellant communicated his choice regarding allotment at 1st Floor in Block-C only but this proposal was also never accepted by the respondent-organization. The application was also only for allotment of Type-III dwelling unit as per terms & conditions of applicable rules and admittedly, prior to coming into force the RERA Act, 2016, the parties were governed by the IRWO General Rules, 2013 and one Undertaking was also executed by the appellant in this regard. In such circumstances, it is immaterial as to what type of rule was annexed by the respondent at the time of registration. The respondent-organization applied for curtailment of other blocks

and after examination of record, Regulatory Authority approved curtailment vide order dated 23/06/2023. Since the proposal for allotment in Block-C was not accepted by the respondent-organization and it is also not revealed from the record that prior to curtailment, the respondent-organization allotted dwelling units in Block-B and Block-C or in any other blocks, therefore, the curtailment was approved by the Regulatory Authority in its jurisdiction. It is relevant to reproduce relevant clause 15.4 & 15.5 of IRWO General Rules, 2013 regarding 'Allotment Rules' to ascertain right of appellant to get dwelling unit as per his choice, as under:-

"15.4 The allotment of dwelling unit shall be made by a computerized draw of lots No request for allotment of specific unit or a floor shall be entertained subject to provisions of Para 15.5.

*15.5 IRWO may ask Members for preference of corner units, park facing units, units having extra land, terraces or other such facilities for which additional charges will be leviable as decided by IRWO from time to time. The preferences indicated by Members will be taken into consideration during the draw for allotment of dwelling units. However, **if the desired preference is not available or if no preference is indicated by any Member, any dwelling unit of the type applied for shall be allotted and will have to be accepted by Members**".*

9.1 It is clear from the above text that no request for allotment of any specific dwelling unit or a floor shall be entertained and allotment of dwelling units shall be made by computerized draw of lots; meaning thereby, the particular unit in a particular block cannot be claimed by any allottee as a right.

9.2 It is noted that the RERA Act, 2016 not mandated about any choice of Apartment or Unit. It will depend on agreed terms & conditions between the parties.

9.3 Learned counsel for the appellant has referred some pronouncements of Hon'ble Apex Court in the matter of ***M/s.Newtech Promoters and Developers Vs. State of Uttar Pradesh & Ors. : (2022) 1 SCC 510*** and ***Experion Developers Pvt.Ltd. (supra)*** and claimed for refund as refund is an unqualified right of an allottee in certain conditions as per Section 18 of the RERA Act, 2016 but the claim is only sustainable when promoter fails to provide possession of the unit as per agreed terms & conditions but in the present matter, after repeated offer of possession for allotment, the appellant did not take possession of allotted dwelling unit for wants of allotment in either Block-B or in Block-C, which were duly curtailed by the Regulatory Authority in its jurisdiction. It is also revealed from the record that the respondent not only obtained the completion certificate for the same from empanelled architect on 21/12/2021 but also obtained the occupancy certificate on 25/12/2021 well within the extended registration validity of 30/06/2022.

9.4 It is also argued that the respondent-organization did not execute agreement for sale after taking 98% of the total sale consideration as per mandate of Section 13 of the RERA Act, 2016. It is noted that 6 instalments were deposited by the appellant prior to registration but after registration, 2 instalments were also accepted by respondent No.2 but no agreement for sale was executed in terms of registration and in compliance of Section 13, the respondent-organization was expected to comply with the provisions of law but at the same time, non-compliance of Section 13 automatically cannot create right for refund of entire deposited

amount in favour of appellant. The violation of Section 13 only attracts some penal provisions and the learned Regulatory Authority may exercise its power in appropriate cases.

10) Resultantly, the appellant is not entitled for refund of entire deposited amount and the delay interest is already granted by the learned Regulatory Authority by the impugned order, as per rules. Therefore, no interference in the impugned-order is required but as per Clause 20.4 of the IRWO General Rules, 2013, the appellant may withdraw from the project even after allotment as per Clause 20.4 of the General Rules, 2013. For the sake of brevity, Clause 20.4 may be reproduced, as under:-

"20.4 After Allotment (where wait-list does not exist)

In case of withdrawal after allotment but before possession of the dwelling unit, full Booking Money plus 7.5% of the instalment due (whether paid or not) up to the date of receipt of withdrawal letter plus interest on delayed payment will be deducted and the balance amount paid without interest. This will however be on submission of Undertaking as per Annexure H-2.

In case the withdrawal is because of the death of the Member before possession of the dwelling unit, if the spouse or the children (if the spouse is not alive) so desire full payment made by the member will be refunded without interest to the legal heir after deducting only administrative charges of Rs.2500/- subject to legal formalities".

10.1 Therefore, the appellant is at liberty to withdraw from the project, if so desired.

10.2 Question A is decided accordingly.

11) In the light of above observation, the appeal fails and is hereby dismissed and the impugned-order dated 19/02/2025 passed by the learned Regulatory Authority in Complaint No.RAJ-RERA-C-2023-6711 is affirmed.

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However, the appellant is at liberty to withdraw from the project in terms of clause 20.4 of the IRWO General Rules, 2013.

12) Pending Interim application(s), if any, shall stand(s) closed.

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

File be consigned to record.

**Yudhishtir Sharma,
Member (Judicial)**

**Justice Madan Gopal Vyas,
Chairperson**