

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY JAIPUR

1. **RAJ-RERA-C-N-2025-7847**
MEENU PUROHIT
335, Shrigopal Nagar,
Gopalpura Bypass, Jaipur
Rajasthan, 302019
COMPLAINANT
(In all Complaints)
 2. **RAJ-RERA-C-N-2025-7848**
 3. **RAJ-RERA-C-N-2025-7849**
 4. **RAJ-RERA-C-N-2025-7850**
 5. **RAJ-RERA-C-N-2025-7852**
 6. **RAJ-RERA-C-N-2025-7863**
 7. **RAJ-RERA-C-N-2025-7864**
 8. **RAJ-RERA-C-N-2025-7865**
 9. **RAJ-RERA-C-N-2025-7866**
 10. **RAJ-RERA-C-N-2025-7867**
 11. **RAJ-RERA-C-N-2025-7868**
 12. **RAJ-RERA-C-N-2025-7869**
 13. **RAJ-RERA-C-N-2025-7870**
 14. **RAJ-RERA-C-N-2025-7871**
 15. **RAJ-RERA-C-N-2025-7872**
 16. **RAJ-RERA-C-N-2025-7941**
 17. **RAJ-RERA-C-N-2025-7942**
 18. **RAJ-RERA-C-N-2025-7943**
 19. **RAJ-RERA-C-N-2025-7944**
 20. **RAJ-RERA-C-N-2025-7950**
- Versus
- GOVIND KRIPRA INFRATECH PVT. LTD.**
NO.1
205-206, Prakashdeep Complex,
Near Mayank Trade Centre,
Station Road, Jaipur
RESPONDENT
(In all complaints)
- MR. SUBHASH AGARWAL**
M/s Govind Kripa Infratech
Pvt. Ltd. Gh-4, Ajmer Road,
Omaxe City, Sarangpura,
Thikariya, Jaipur, Rajasthan 302026
RESPONDENT NO.2
(In all complaints)
- MS. SUREKHA AGARWAL**
M/s Govind Kripa Infratech
Pvt. Ltd. Gh-4, Ajmer Road,
Omaxe City, Sarangpura,
Thikariya, Jaipur, Rajasthan 302026
RESPONDENT NO.3
(In all complaints)

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HON'BLE MEMBER: SUDHIR KUMAR SHARMA

PRESENT

1. Adv Aditya Bohra, Adv Gunjan Pathak & Adv Kunal Agarwal, on behalf of the complainant (s)
2. Adv Parshant Daga & Adv Yashwant Suwalka on behalf of the respondents

ORDER

20.08.2026

1. All above these 20 complaints have been instituted by Meenu Purohit (hereinafter referred to as "complainant"), under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') with regard to the project, "GKB's GRACE", registered with the Authority bearing registration no. RAJ/P/2017/298 for seeking common relief of quashing cancellation letter dated 29.08.2024 and to direct the respondent(s) to execute sale deeds in respect of all allotted units in favour of the complainant.
2. These complaints are having similar facts and question of law with respect to a single project, hence, are being disposed of by this common order.
3. The complainant, an Non-Resident Indian (NRI), submitted that the respondent-promoter-builder approached the complainant with a proposal to acquire shareholding in the respondent company. Pursuant to a shareholders agreement dated 28.09.2015, the complainant acquired a 10% equity stake in the respondent-promoter company. After the lapse of 4 years, as the development work of the said project was not

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completed, the complainant along with members of Group I requested exit from the project by entering into a memorandum of understanding dated 20.02.2019 including the shareholding and directorship of the company by way of selling the stakes in favour of Mr. Subhash Agarwal and Ms. Surekha Agarwal, who are respondent no. 2 & 3.

In view of the total investment of Rs. 3,18,60,000/- including interest as on the date of execution of MOU dated 20.02.2019 invested by the complainant, respondent-promoters offered the complainant to buy flats in the said project for the equivalent amount in capacity of individual as a buyer, as the respondent company did not possess sufficient funds to repay the amount. Further, in lieu of the amount which was to be refunded against funds already invested by the complainant, he as an individual buyer, was allotted a total of 20 flats in the project and separate agreements to sale were executed for each flat. The details like basic sale consideration, amount paid and expected date of possession are as under:

Sr No.	Compliant No.	Flat No.	Area (In Sq. ft.)	Date of Agreement to sale	Basic Sale consideration in Rs.	Amount Paid in Rs. (till date of execution of ATS)	Expected date of Possession (As promised in Clause 4 of the Indemnity cum Undertaking dated 31.07.2021)
1.	2025-7847	A-702	886	23.05.2019	Rs. 24,61,545/-	Rs.23,59,910/-	30.06.2022
2.	2025-7848	A-703	1194	23.05.2019	Rs.33.06.638/-	Rs.33,14,470/-	30.06.2022

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3.	2025-7849	A-704	961	23.05.2019	Rs.26,59,334/-	Rs.25,59,677/-	30.06.2022
4.	2025-7850	A-705	768	23.05.2019	Rs.21,50,358/-	Rs.20,45,612/-	30.06.2022
5.	2025-7852	B-1004	768	23.05.2019	Rs.21,50,358/-	Rs.20,45,612/-	30.06.2022
6.	2025-7863	B-1005	1328	23.05.2019	Rs.36,60,900/-	Rs.36,86,445/-	30.06.2022
7.	2025-7864	C-405	1162	01.03.2019	Rs.32,22,038/-	Rs.31,50,000/-	30.06.2022
8.	2025-7865	C-502	961	23.05.2019	Rs.26,59,334/-	Rs.25,59,677/-	30.06.2022
9.	2025-7866	C-503	886	23.05.2019	Rs.24,61,545/-	Rs.23,59,910/-	30.06.2022
10.	2025-7867	C-504	886	23.05.2019	Rs.24,61,545/-	Rs.23,59,910/-	30.06.2022
11.	2025-7868	C-1105	1162	01.03.2019	Rs.32,22,038/-	Rs.31,50,000/-	30.06.2022
12.	2025-7869	D-608	536	23.05.2019	Rs.18,35,689/-	Rs.17,53,046/-	30.06.2022
13.	2025-7870	D-609	531	23.05.2019	Rs.16,97,163/-	Rs.16,13,135/-	30.06.2022
14.	2025-7871	D-610	541	23.05.2019	Rs.17,25,286/-	Rs.16,41,539/-	30.06.2022
15.	2025-7872	D-611	541	23.05.2019	Rs.17,25,286/-	Rs.16,41,539/-	30.06.2022
16.	2025-7941	D-706	541	23.05.2019	Rs.16,21,909/-	Rs.15,37,128/-	30.06.2022
17.	2025-7942	D-710	541	23.05.2019	Rs.16,21,909/-	Rs.15,37,128/-	30.06.2022
18.	2025-7943	D-711	541	23.05.2019	Rs.16,21,909/-	Rs.15,37,128/-	30.06.2022
19.	2025-7944	D-910	541	23.05.2019	Rs.16,21,909/-	Rs.15,37,128/-	30.06.2022
20.	2025-7950	D-707	541	23.05.2019	Rs.16,21,909/-	Rs.15,37,128/-	30.06.2022

As per agreed terms of MoU dated 20.02.2019, the complainant was restricted to sell the above mentioned flats in market or to any other person up to 31.03.2020. Thereafter, the complainant was free to sale or book maximum 33% of the total allotted area by 31.03.2021. Moreover, the intention of the complainant was to have accommodation of his entire large family which conditions of not selling it up to 31.03.2020 was also accepted, then further what is important is that the non-selling of the flats till dates also complies such valuable right. Thereafter, the complainant and the respondent

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company entered into agreements to sale for 20 flats in the said project as mentioned above.

The respondent company also furnished an indemnity cum undertaking dated 31.07.2021 in favour of the complainant wherein the Clause 10, 11 & 12 clearly specified that the complainant was indemnified to the extent that the carpet areas of the flats allotted to the complainant shall not be reduced even upon change in floor size of the building, the location of the flat and floor allotted to the complainant shall not be changed/alterd and the complainant shall not be liable to pay any additional charges, on account of changes, if any.

Moreover, the respondent-promoter issued a reminder letter dated 01.02.2024 titled as "Reminder 4" for the payment of balance sale consideration. The respondent-promoter cancelled the booking of all 20 flats through notice dated 29.08.2024 stating that the complainant has failed to meet the payment obligation, whereas, the complainant had already paid the entire sale consideration of all the flats in the said project.

Accordingly, the complainant is seeking that cancellation letter dated 29.08.2024 be quashed and set aside. Further, the complainant is seeking directions for the respondent-

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promoter to execute the sale deed in favour of the complainant upon payment of balance charges as per the terms of agreement to sell executed between the parties. If the builder is not willing the registration of the flat in the name of the complainant, the respondent-promoter may be directed to refund the entire sale consideration paid by the complainant, along with the interest as per the provisions of the Act of 2016.

4. The respondent-promoter, in its reply averred that the complainant by own showing, was an active constituent of the promoter group of the very project in question, and is not an allottee and wants to settle commercial dispute. Further, the records of the registrar of companies, the shareholders agreement dated 28.09.2015 and the MoU dated 20.02.2019 unequivocally reveal that the complainant held shares in the respondent company, participated in its board decisions and derived benefit from the project's development. Further, it is submitted that one who has acted as a promoter cannot change character to sue themselves as an allottee and the cause of action pleaded is contractual and corporate arising out of MoU and share-purchase agreement executed inter se promoters.

During the pandemic period, the project timelines were lawfully extended under section 6 of the Act for the years 2021-22 and 2022-23 by this Authority. The project was

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completed within the extended period lawfully granted for year 2021-22 and 2022-23 were approved by this authority and completion certificate as well as occupancy certificate have been obtained for the said project.

The possession to the complainant was duly offered in the year 2023 upon receipt of completion certificate. The project was completed using the SWAMIH investment fund. On 01.07.2023 the respondent issued an offer of possession and request the payment of due amount which became outstanding. The respondent issued demand/reminders letters dated 01.09.2023, 01.11.2023, 01.01.2024 and 01.02.2024. Subsequently, having exhausted all opportunities, the respondent issued the cancellation notice dated 29.08.2024 in exercise of rights in agreement to sale.

Accordingly, the respondent-promoter prayed for the dismissal of the present complaint as not maintainable in law and devoid of jurisdiction. Further, the respondent has prayed for affirming the validity of the cancellation letter dated 29.08.2024 as a lawful exercise of the respondent's rights and in alternative direct the complainant to pay the outstanding amount.

5. The complainant on 05.05.2026 filed a rejoinder to reply stating that the complainant has a locus to file the complaint(s)

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under the act of 2016 in pursuance to the registered agreement to sale(s) which were executed by and between the complainant and the respondents with respect to unit(s) in the project, which makes complainant an allottee as per section 2(d) of the Act of 2016.

The complainant was never a promoter in the said project and additionally he ceased to be the shareholder and director on 20.02.2019 i.e. the date on which memorandum of understanding between the complainant and the respondent company was entered. This exit was prior to the execution of agreements to sale. The respondent in its reply itself treated the complainant as an independent buyer, executed registered agreement to sale and has accepted the consideration against the flats, and subsequently, illegally cancelled the allotment of the flats.

Regarding the reminders dated 01.09.2023, 01.11.2023, 01.01.2024 and 01.02.2024 the complainant submitted that there is no proof of service which has been placed on record by the complainant. Further, the respondent company also furnished an indemnity cum undertaking dated 31.07.2021 in favour of the complainant wherein the complainant was indemnified to the extent that the carpet area of the flats allotted to the complainant shall not be reduced even upon

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change in floor size of the building and that the complainant shall not be liable to pay any additional payments/charges/dues in case of any increase in the carpet area or built-up area or saleable super built-up area or change of amenities or common areas facilities in respect of the flats booked by the complainant.

The respondents have already admitted that the entire sale consideration was already paid by the complainant and the demand letter which were issued by the respondent nothing but a document prepared at the instance of the respondents and the same cannot be accepted.

Further, the completion certificate and the occupancy certificate does not discharge the promoter from its duties and obligations under the Act of 2016, including the executing the registered sale deed in favour of the complainant and delivery of the possession thereafter. However, the respondents neither offered the possession nor executed the sale deed.

Moreover, the offer of possession dated 01.07.2023 was conditional, incomplete and illegal as it was issued without occupancy certificate and as the entire sale consideration was already paid by the complainant there is no outstanding sale consideration to be paid. As per the terms of agreement to

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sale, the only payment that is outstanding is to be made at the time of taking of possession.

6. During final arguments, the learned counsel for the complainant submitted that the complainant is appearing as an allottee before this authority, Further, there are total 20 registered agreement to sale for 20 units and the complainant is seeking relief for all the agreement to sale and the complainant has paid 100% sale consideration for all 20 units. As per shareholder's agreement executed between them, the complainant was having 10% of shareholding in the said project.

It was agreed in between both the parties that since there were no funds to give by the respondents to the complainant at the time of their exit, it was agreed that instead of money, the flats in the said project will be allotted to the complainants. As communicated by the builder an outstanding amount of Rs. 24,00,000/- has been paid by the complainant to the respondent, and by November 2020 entire sale consideration was paid by the complainant to the respondent.

It is prayed that the cancellation letter dated 29.08.2024 may be quashed and set aside and the sale deed for all the 20 units may be executed. It is also argued that no document on record has been placed by the respondents for participation of

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the complainant being involved in RERA registration and also, the respondents has not placed any proof regarding the service of all the reminders claimed to be sent for demanding balance sale consideration. Hence, his prayer be allowed.

7. The learned counsel for the respondent submitted that in the year 2017, map of the said project was approved and the same was uploaded on RERA portal. The complainant is a promoter in the said project from the very beginning. The flats which are allotted to the complainant are against his investment of Rs. 20,80,00,000/- in the said project and in the agreement to sale it is mentioned that if the payment is not made till 30.06.2020 then the agreement will stand null and void. The complainant has failed to pay the amount till 30.06.2020. The complainant is not an allottee, rather he is an investor.

The respondent is ready to give refund to the complainant after deducting 10% amount without interest. Further, the respondent is seeking a total amount of Rs. 2,34,00,188/- from the complainant and ready to give possession in return.

8. Heard and perused the record.

9. The status of said project on the official website of the Authority is verified by the Law Researcher. The project is currently marked under the "COMPLETED" category.

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10. Observations and conclusion:

The Authority, upon consideration of the pleadings, documents available on record and submissions made by both the parties observes that, there was a shareholding agreement executed on 28.09.2015 for the project development.

On the other hand, the project was registered on 06.10.2017 with the Authority and at that time the names of promoters/ directors (only four) were disclosed as under:-

- i) Shri Shubhash Agarwal
- ii) Smt. Surekha Agarwal
- iii) Smt. Saloni Agarwal
- iv) Shri Shubham Agarwal

Subsequently, the complainant, entered into a memorandum of understanding dated 20.02.2019 with the respondent-company with the intention of exiting from the project, including relinquishment of their shareholding and directorship. It was mutually agreed that flats/ space/ area in the project would be allotted to the complainant in exchange of their total investment. Accordingly, the complainant was allotted 20 flats in his individual capacity as a buyer. Thereafter, agreements to sell were executed between March 2019 and May 2019 in respect of each of the 20 flats, thereby recording the complainant as the purchaser/allottee of the respective units.

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The issue raised and our conclusion on each issue is as under:-

i) **Complainant as an 'allottee'**

The respondent has disputed the agreements to sale saying that the complainant is not an 'allottee' and these agreements to sale were sheer 'commercial capital exit/share-exit or transfer settlement arrangements" between the parties. The respondent has also claimed that these transactions for allotment of units were not a consumer-side purchase.

The Authority concludes that the transactions emanating from the exit arrangement constitute legal consideration for the purchase of units in the project, through the instruments of agreements to sale, executed between the parties.

The factum of purchase of 20 units solely by the complainant does not categorize him as an "investor", and he still remains an allottee within the definition of Section 2(d) of the Act.

In view of the aforesaid findings, the Authority concludes that although the complainant was initially associated with the respondent-company as a shareholder and director, the subsequent MoU dated 20.02.2019, agreements to sale executed during March 2019 to May 2019 for the allotment of 20 flats in complainant's individual capacity and indemnity

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cum undertaking dated 31.07.2021 given by the respondent demonstrate a subsequent undisputed legal allottee-builder/promoter relationship between the complainant and respondent. Therefore, for adjudication of the present dispute arising out of the said agreements to sell, the complainant is definitely is an allottee within the definition of section 2(d) of the Act and he is not a promoter or investor.

ii) **Cancellation of allotment of all 20 units of the complainant:**

The project was subsequently completed, and the date of completion reflected on the RERA Portal is 28.06.2023. The respondent-company claimed that an offer of possession dated 01.07.2023 was given and subsequently reminders dated 01.09.2023, 01.11.2023, 01.01.2024 and 01.02.2024 were also issued to the complainant regarding the alleged outstanding amount. Finally, the respondent-company issued the cancellation notice dated 29.08.2024, cancelling the allotment of all 20 flats on the ground of non-payment. The respondent has requested to affirm the cancellation done by him.

The complainant, on the other hand, has disputed the alleged outstanding amount and has claimed that the sale consideration had already been paid.

On this issue, the Authority observes that, out of the 20 agreements to sell, the amount paid is less than the basic sale

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consideration in 18 cases, with the payment ranging from 94.77% to 97.76%. In two cases, namely flat no. A-703 and B-1005, the amount paid is 100.24% and 100.70%, respectively, which exceeds the basic sale consideration. The demand letters dated 01.09.2023, 01.11.2023, 01.01.2024 and 01.02.2024 regarding the alleged outstanding amount though placed by the respondent-promoter on record, the respondent-promoter has failed to attach any proof of receipt for the same. Thus, meagre amount ranging from 2% to 5% of balance sale consideration remaining dues is not a justified ground of cancellation of all units.

The Authority further observes that the respondent at para 20 of his reply has stated that:

*“the above flats allotment is done to provide exit way to the Group – A from the Project, therefore, the parties hitherto are also agreed that Group A will **not be having right to cancel** the flats and **cannot demand refund thereof.**” (Emphasis supplied)*

This means that it is by his own admission of the respondent-promoter that the right of the complainant to seek refund/cancellation of the unit was specifically barred. This stand of the respondent itself explains that the complainant was only left with the option to execute sale deed in his favour.

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If respondent prayer of affirmation of cancellation is accepted, then as per agreement to sell the complainant is neither left with option of refund nor possession. Then in that scenario, the respondent will keep all the money with him. Thus, the respondent has curated a “win-win” situation for himself, which is impermissible under the law, wherein he is evading his both statutory obligations to give either possession or refund under the Act.

The Authority concludes that the cancellation done by the respondent is not legal and is required to be quashed.

iii) **Additional charges payable by the complainant:**

The respondent is also claiming to charge additional payment / charges / dues on account of increase in the carpet area/ built-up area. On this issue, the Authority observes that, on 31.07.2021, the respondent-company gave an indemnity-cum-undertaking in favour of the complainant, wherein as per clause 10, 11 & 12, the respondent assured that the carpet area of the allotted flats would not be reduced and that the complainant would not be liable for additional charges on account of changes in area or project specifications. Also, the clause 14 clearly specify that the complainant shall not be liable to make any increased payments to the respondent company other than the total sale consideration as mentioned in the agreements to sale executed between the parties.

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Thus, the Authority concludes that no additional amount is payable by the complainant on account of change in area, if any, as mentioned above.

iv) Delay in handing over of possession of all 20 units:

The Authority concludes that the due date of handing over possession as per the registration certificate was 30.06.2021 and the extension sought on force majeure reasons was from 30.06.2021 to 30.06.2022. The respondent has obtained completion certificate on 28.06.2023 and occupancy certificate was obtained on 11.06.2024. Thus, there has been an inordinate delay in completion of the project for the period from 01.07.2022 to 11.06.2024 and the complainant, being an allottee, has an unqualified right to seek interest for delayed possession for said period on the entire deposited amount, as his statutory rights are duly protected under Section 18 of the Act.

11. In view of the foregoing observations, following directions are issued:

- i) The cancellation letters dated 29.08.2024 of all 20 units stand quashed and are set aside.
- ii) The respondent-promoter is directed to execute sale deeds towards the allotted units in favour of the complainant upon payment of balance charges and will also be liable to pay

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interest charges for the delay period from 01.07.2022 till the date of obtaining occupancy certificate i.e. 11.06.2024 on the entire deposited amount at the prescribed rate of interest 10.80% per annum (SBI Highest MCLR 8.80% + 2.00%).

iii) Accrued interest amounts as directed above at para 11(ii) shall be adjusted against the balance sale consideration of all the 20 units at the time of execution of sale deeds, and remaining interest amounts, if any, shall be payable to the complainant.

iv) The respondent shall not demand any additional payment/charges/dues on account of increase in the carpet area or built up area or saleable super built up area or change of amenities or common area facilities in respect of the units of the complainant.

12. There shall be no order as to costs.

13. Compliance of the order shall be made within 45 days of the uploading of this order on the official webpage of the Authority.

14. The order will be uploaded on the webpage of the Authority and also a copy of order will be sent to concerned parties and place a copy of order in the file.

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15. These complaints stand disposed of with the abovementioned directions and are now removed from the cause list of the Authority. The complaint files be consigned to records, after due compliance.

Sd/-
(Sudhir Kumar Sharma)
Member

“All the corrections, if any, have been made and the uploaded order is correct version of the original”