



**GOA REAL ESTATE REGULATORY AUTHORITY
DEPARTMENT OF URBAN DEVELOPMENT**

GOVERNMENT OF GOA

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA

www.rera.goa.gov.in

Tel: 0832-2437655; e-mail: goa-rera@gov.in

F.No.3/RERA/Complaint(301)/2021/934

Date: 06/12/2022

Harshad Subhash Sawant,

A-01 Mahavisha Apartments,

Behind ESI Hospital, Calmorod,

Navelim, Goa-403707.

.....Complainant

Versus

M/s Expat Projects & Development Pvt. Ltd.,

Address 1: With its registered office at Carlton Towers, A wing,

3rd Floor, Unit No. 301-314,

No. 1 Old Airport Road, Bangalore Karnataka-560008

Address 2: VIDA Phase 2 located at Survey No. 20/1-L (PART),

Opp. Shiva Temple, Bainguinnim,

Tiswadi, North Goa-403107.

.....

Respondent

ORDER
(Dated 06.12.2022)

This order disposes of the complaint filed under section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') against the promoter/respondent in respect of the project Expat VIDA Uptown Goa Row House, situated in survey no. 13 at Panelim, Taluka Tiswadi, North-Goa. In the said complaint, the complainant has stated that the said project has been registered with this

Authority. It is submitted that an agreement for sale dated 22.03.2019 was executed between the complainant and respondent and the same was registered on 05.04.2019, whereby the complainant agreed to purchase from the respondent a row house bearing no. R-096 on the ground and first floor in the said project for the total consideration of ₹ 1,25,92,954/- (Rupees One Crore Twenty Five Lakhs Ninety Two Thousand Nine Hundred and Fifty Four only) and towards the said consideration, the complainant has paid to the respondent an amount of ₹57,20,300/- (Rupees Fifty Seven Lakhs Twenty Thousand Three Hundred only).

2. It is the case of the complainant that as per the said agreement, the respondent had to give possession of the said apartment on or before 31.12.2020, however the same has not been delivered till date, though time was agreed to be the essence of the said agreement.
3. According to the complainant, by email dated 20.01.2021, the respondent promised to hand over the possession of the said apartment by July, 2021 and by email dated 09.06.2021, the respondent promised to hand over the possession of the same by December, 2021. It is stated that by email dated 24.09.2021 of the respondent, the complainant came to know that the respondent has not even started the work of construction of the said villa and all the promises and representations made by the respondent were false and frivolous. According to the complainant, no reasonable efforts are being taken by the respondent to adhere to the time lines or comply with the obligations under the said agreement. Thus, according to the complainant vide email dated 02.11.2021, he informed the respondent that he was withdrawing from the said project and demanded refund of his money paid towards consideration amount.



4. The complainant referred to the legal notices sent by him and according to the complainant a legal notice dated 24.02.2022 was served on the respondent on 02.03.2022 but the respondent did not reply to the same. Hence, the prayers of the complainant (a) to revoke under Section 7 of the Act, the registration granted to the respondent by this Authority; (b) to refund to the complainant the principal amount of ₹57,20,300/- (Rupees Fifty Seven Lakhs Twenty Thousand Three Hundred only) along with interest thereon at the rate of ten percent per annum accrued from the date of payment made by the complainant till the date of actual refund; (c) to declare that the respondent has misrepresented and falsely promised the complainant regarding adherence to the time line for completing the construction work and wrongfully inducing the complainant to continue payment to the respondent; (d) Pending hearing and disposal of the complaint, to direct the respondent to deposit in this Authority an amount of ₹71,48,016/- and (e) to freeze all the accounts of the respondent till the respondent deposits the amount as mentioned in the aforesaid prayers.
5. In the reply, the respondent has submitted that the complaint ought to be dismissed due to non-joinder of necessary party as part payment has gone to M/s. Naiknavare Construction Pvt. Ltd. for the land and the other part has gone to the contractor for construction; that the complaint cannot be entertained as the commitment for delivery as per RERA registration is December, 2022; that the respondent reserves the right to claim ten percent deduction on total amount paid for refund due to abrupt cancellation done by the complainant and that the power of attorney cannot file the present petition since he does not come within the definition of allottee.



6. The respondent has submitted that the time limit mentioned in the agreement for sale could not be complied due to Covid pandemic and consequent nationwide lockdown, migration of labourers to their native places and break in supply chain of construction material and slow down in pace of construction.
7. According to the respondent, as per clause 4.2 of the agreement for sale, upon the termination of the said agreement, the developer shall refund to the allottee (subject to deduction against the adjustment and recovery of an amount of ₹1,00,000/- or 10% of the total amount received whichever is higher as liquidated damages) within a period of 60 days of the termination, the installments of sale consideration of the agreement which may till then have been paid by the allottee to the developer and the developer shall not be liable to pay the allottee any interest on the amount so refunded. Thus, according to the respondent, if the complainant unilaterally cancels the agreement abruptly then as per clause 4.2 of the said agreement, the respondent is entitled to deduct 10% on the total amount paid so far. It is stated that as per clause 4.1 of the agreement, an interest on the project is given to those who are still interested in staying invested in the project and that since the complainant is not interested in the project, then the amount has to be refunded after deducting ten percent from the total amount paid so far.
8. Regarding legal notice sent by the complainant, it is stated that the respondent has not received any such legal notice. According to the respondent, this Authority should permit the respondent to complete the project within the time period extended by this Authority for its completion and that any adverse order of refund will affect the project adversely. It is stated that the respondent has already carried out work of more than ₹16 crores, out of which payment of about ₹7 crores is yet to



be received from the defaulting customers. According to the respondent, to complete the project, it is necessary to infuse funds in the project and therefore the respondent should not be saddled with order of refund which will make the project to come to a standstill. According to the respondent, the complainant is entitled to refund after deduction of ten percent on total amount paid by the complainant i.e. ₹57,20,300/- (Rupees Fifty Seven Lakhs Twenty Thousand Three Hundred only) from which M/s Naiknavare Construction Pvt. Ltd. has to refund a part amount received by them to the complainant for which they are the necessary party to adjudicate the present case.

9. Documents and affidavits in support of their cases have been filed by both the parties. Written submissions have been filed by both the parties. Oral arguments were heard from Ld. Adv. Shri G. Nadkarni for the complainant and Ld. Adv. Shri P. Shetty for the respondent.
10. After going through the entire record of the case and after hearing the arguments, the following points come for my determination:-

Sr.No.	Points for determination	Findings
1.	Whether the complaint deserves to be dismissed on the ground of non-joinder of necessary party?	In the negative.
2.	Whether the complaint is legally maintainable in view of filing the same through power of attorney?	In the affirmative.
3.	Whether the complainant is entitled for the refund of ₹57,20,300/- (Rupees Fifty Seven Lakhs Twenty	In the affirmative.



	Thousand Three Hundred only) along with statutory interest thereon?	
4.	Whether the complainant is entitled under Section 7 of the RERA Act for revocation of the registration granted to the respondent by this Authority?	In the negative.

REASONS

Point no. 1

11. The respondent has raised the objection that one M/s. Naiknavare Construction Pvt. Ltd. has not been arrayed as party in the complaint and that the said party is a necessary party as part payment done by the complainant to the respondent was given to the aforesaid party. As rightly argued by the Ld. Advocate for the complainant, firstly M/s. Naiknavare Construction Pvt. Ltd. is a confirming party to the agreement for sale only as land owner and there is not a single clause in the agreement for sale which either stipulated payment made to the respondent to be handed over to M/s. Naiknavare Construction Pvt. Ltd or that the complainant is paying the consideration amount to M/s. Naiknavare Construction Pvt. Ltd., secondly, the promoter for the aforesaid project is the respondent herein and not M/s. Naiknavare Construction Pvt. Ltd., thirdly, the payments have been made by the complainant to the respondent herein i.e. the promoter and no payment at any time has been made in favour of M/s. Naiknavare Construction Pvt. Ltd. by the complainant, fourthly, that if the respondent has made any payment to M/s. Naiknavare Construction Pvt. Ltd., out the payments made by the complainant to the respondent,



then the same is a matter between the respondent and M/s. Naiknavare Construction Pvt. Ltd. and the complainant is not privy to such transactions and lastly, the respondent being the promoter registered under the RERA Act is duty bound under Section 18 to refund the money and interest thereon to the complainant and M/s. Naiknavare Construction Pvt. Ltd. is not in picture at all within the ambit of Section 18 of the RERA Act. Thus, there is no merit in the submission of the respondent that M/s. Naiknavare Construction Pvt. Ltd. is a necessary party in the instant complaint and that the non-joinder of the same makes the complaint liable to be dismissed. The rulings relied upon by the Ld. Advocate for the respondent are therefore, not applicable to the instant complaint. The instant point is therefore, answered in the negative.

Point No.2

12. The contention of the Ld. Advocate for the respondent that the instant complaint is not legally maintainable as the same is filed by power of attorney is without any basis or merit because in the present case the power of attorney has not filed the complaint in his personal capacity as wrongly averred by the respondent but it is the complainant by name Mr. Harshad Sawant who has filed the present complaint through his Power of Attorney and there is no bar in the RERA Act to do so. RERA Act does not prohibit the complainant to file the complaint through a Power of Attorney. The complainant is admittedly the allottee under the agreement for sale executed between the complainant and the respondent. Power of Attorney is placed on record which gives right to the Power of Attorney Holder to file the complaint. As rightly pointed out by the Ld. Advocate for the complainant, even otherwise there is no denial as regards any communication relied upon by the complainant, no denial as



regards the amount paid by the complainant to the respondent, no denial of not having handed over the possession within the stipulated time line, no denial of non refunding of money and therefore the aforesaid objection by the respondent is baseless. The instant point is therefore, answered in the affirmative.

Point No. 3

13. The agreement for sale between the complainant and the respondent was executed on 22.03.2019 and registered on 05.04.2019. Para 6 of the said agreement inter alia reads as follows:-

“The Developer shall give possession of the Apartment to the Allottee on or before 31st day of December, 2020. If the developer fails or neglects to give possession of the Apartment to the Allottee on account of reasons beyond his control and of his agents by the aforesaid date then the Developer shall be liable on demand to refund to the Allottee the amounts already received by him in respect of the Apartment with interest at the same rate as mentioned in the clause 4.1 herein above **from the date the Developer received the sum till the date the amounts and interest thereon is repaid.**” (emphasis supplied)

14. Thus, the date of possession of the said apartment as mentioned in the aforesaid agreement for sale is on or before 31.12.2020, failing which the respondent is liable to refund the amount received by him from the complainant along with interest thereon “from the date the developer received the sum till the date the amount and interest thereon is repaid”.



15. It is also material to note that any term/ recital/ condition mentioned in the said agreement for sale which is contrary to the provisions of the RERA Act and therefore not in consonance with the statute cannot be taken into consideration.
16. The respondent has failed to give possession of the said unit as per the due date of possession mentioned in the said agreement for sale. Therefore Section 18 of the said Act which is reproduced herein below is squarely attracted in the instant case:-

“18. Return of amount and compensation.- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:



Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

17. Thus the respondent is liable to return the amount received by the respondent from the complainant along with the interest as prescribed under Rule 18 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017 as the complainant wishes to withdraw from the said project. The aforesaid Rule 18 is reproduced hereunder:-

“18. Rate of interest payable by the promoter and the allottee.- The rate of interest payable by the



promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent:

Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use it would be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

18. In the reply the respondent has stated that the delay in the completion of the project was due to circumstances beyond the control of the respondent and that the respondent will complete the project before the extended period of registration granted by this Authority. It is also stated that in case the refund is given to the complainant, the respondent will suffer financial strain and it will have adverse effect on the project. There is no merit in the aforesaid argument of the respondent since Section 18 of the said Act gives right to the complainant to ask for return of the amount from the respondent in case the complainant wishes to withdraw from the project. In this regard the Hon'ble Supreme Court in the case of **“M/s Newtech Promoters and Developers Pvt Ltd. vs. State of UP and others”** in civil appeal no.(s) 6745-6749 and 6750-6757 of 2021 has clarified that **“if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement, then allottee’s right under the Act to seek refund/ claim interest for delay is unconditional and absolute, regardless of unforeseen events or stay orders of the Court/ Tribunal”** (emphasis supplied). Thus, the grounds for delay in delivering of possession, as given by the respondent, will not come to the rescue of



the respondent from legal liabilities under the said Act and corresponding legal rights accrued to the complainant under the said Act.

19. In the affidavit the complainant has given the chart mentioning the amount paid to the respondent, the date of payment and the mode of payment and the same is reproduced hereunder for ready reference:-

Sr. No.	Principle Amount	Date of receipt by you	Cheque No. issued by the My Client/RTGS/NEFT Transaction No.
1	Rs 11,20,000	1 st March, 2019	0000000000000026
2	Rs 1,34,400	1 st March, 2019	0000000000000028
3	Rs 3,49,900	15 th March, 2019	RTGS: ICICR12019031500230035
4	Rs 16,80,000	5 th April, 2019	0000000000000011
5	Rs 84,000	5 th April, 2019	0000000000000012
6	Rs 23,52,000	24 th August, 2020	NEFT/SBIN220237912225 /HARSHADSAVANT/ /ATTN/HLDISB

20. As stated above, the parties have agreed in the agreement for sale that the interest on the payment received by the respondent from the complainant will start "from the date the developer received the sum" therefore the prescribed interest as per the aforesaid Rule 18 starts running from the aforesaid dates of payments as mentioned in the aforesaid chart on the consideration amount paid by the complainant to the respondent. As stated above, as per the aforesaid Rule 18, the rate of interest payable by



the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent. At present such lending rate of interest by SBI is 8.35% per annum. Adding two percent to the said interest as per Rule 18 comes to 10.35% per annum. Hence, the respondent is liable to pay to the complainant 10.35% per annum interest for every month of delay to the complainant on the total amount of ₹57,20,300/- (Rupees Fifty Seven Lakhs Twenty Thousand Three Hundred only) paid by the complainant from the dates of payments as mentioned in the chart given above till the actual return of the said amount to the complainant.

21. The Ld. Advocate for the respondent has submitted that the refund of the amount under Section 18 of the RERA Act, has to be granted, if any, only after deducting ten percent from the consideration amount received from the complainant as per clause 4.2 of the said agreement for sale. The said agreement 4.2 is therefore reproduced below for ready reference:-

“Without prejudice to the right of Developer to charge interest in terms of sub clause 4.1 above, on the allottee committing default in payment on due date of any amount due and payable by the allottee to the developer under this agreement (including his/her proportionate share of taxes levied by concerned local authorities and other outgoings) and on the allottee committing three defaults of payment of installments, the Developer shall at his own option, may terminate this agreement: Provided that, Developer shall give notice of 15(Fifteen) days in writing to the Allottee, by Registered Post A.D. at the address provided by the Allottee and mail at the email address provided by the Allottee, of his intention to



terminate this agreement and of the specific breach or breaches of terms and conditions in respect of which it is intended to terminate the agreement. If the Allottee fails to rectify the breach or breaches mentioned by the Developer within the period of notice then at the end of such notice period, Developer shall be entitled to terminate this Agreement.

Provided further that upon termination of this agreement as aforesaid, the Developer shall refund to the Allottee (Subject to deduction against the adjustments and recovery of an amount of Rs. 1,00,000/- or 10 % of the amount received, whichever is higher, as the liquidated damages) within a period of 60 (Sixty) days of the termination, the installments of sale consideration of the Apartment which may till then have been paid by the Allottee to the Developer and the Developer shall not be liable to pay to the allottee any interest on the amount so refunded.”

22. From the mere perusal of the aforesaid clause 4.2 of the said agreement, it is clear that the said clause is applicable only if (1) the allottee has defaulted in making payments to the respondent on the due date stipulated in the said agreement, (2) that the allottee has defaulted three times in making such payments as per the schedule of payments mentioned in the said agreement and (3) the developer has terminated the said agreement. In the instant case, the aforesaid ingredients of clause 4.2 of the said agreement are missing. It is not the case of the respondent that the complainant has not made timely payments. Secondly, the respondent has not terminated the said agreement but the complainant has withdrawn



from the project and terminated the said agreement. Thus, no deduction can be made from the amount to be refunded by the respondent to the complainant under Section 18 of the RERA Act. Even otherwise, as stated above, any agreement contrary to the statute/Section 18 of RERA Act is deemed to be null and void. Section 18 of RERA Act gives unqualified right to the allottee to have the consideration amount paid to the promoter refunded along with interest thereon in case the allottee wishes to withdraw from the project if the possession is not given within the time stipulated in the agreement for sale. Moreover, though extension is granted by this Authority under Section 6 of RERA Act to the project of the respondent for its completion, however, the said extension, as stated above does not affect the right of the allottee under Section 18 of RERA Act. In this regard the Ld, Advocate for the complainant has rightly relied upon the case of **“Imperia Structures Ltd. versus Anil Patni and another” (2020) 10 SSC 783** wherein the Hon’ble Supreme Court has held that the period of delay/ expiry of period for completion of project has to be reckoned in terms of the builder-buyer agreement and not the registration of the project and hence date till which registration of project might be valid, is irrelevant to invocation of remedies under Section 18 or Section 18 proviso of the RERA Act.

Thus the instant point is answered in the affirmative.

Point No. 4

23. Various grounds have been given in detail by the complainant to revoke the registration of the project under Section 7 of the said Act. However, during the oral arguments, the Ld. Advocate for the complainant



submitted that he is not pressing for the instant relief. Therefore, the instant point is answered in the negative.

In the premises aforesaid, I pass the following:-

ORDER

The respondent is directed to refund the amount of ₹57,20,300/- (Rupees Fifty Seven Lakhs Twenty Thousand Three Hundred only) to the complainant within two months from the date of this order.

Further the respondent is directed to pay 10.35 % per annum interest (present lending rate of interest by SBI which is 8.35 % per annum plus two percent) for every month of delay to the complainant on the aforesaid amount paid by the complainant from the dates of payments as mentioned in the aforesaid chart in para 19 herein till the date of actual payment of the aforesaid refund.

Under Section 61 of the said Act, if any promoter contravenes any other provisions of the said Act, other than that provided under Section 3 or Section 4, or the Rules or Regulations made thereunder, he shall be liable to a penalty which may extend upto five percent of the estimated cost of the real estate project as determined by the Authority. In the instant case, the promoter has not discharged his obligations, responsibilities and functions as per the agreement for sale and hence is liable to pay penalty under Section 61 of the said Act. Taking into consideration the facts and circumstances of the case, penalty of ₹1,00,000/- (Rupees One Lakh only) will serve the ends of justice. Hence, the promoter/ the respondent is directed to pay the penalty of Rupees One Lakh within a period of two months from the date of this



order. The said penalty amount, if realized by this Authority, be forfeited to the State Government. The respondent is directed to file compliance report of this order within two months, failing which further legal action will be taken by this Authority under the said Act for execution of this order.

v. jethley 6/12/2022
(Vijaya D. Pol)
Member, Goa RERA