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(228)/2021/782 Date: 27/10/2022

Pascal Monis
K 1 301 Happy Home Complex,
Mira Road Thane,
Maharashtra-401107. **.....Complainant**

V/s

1.M/s Expat Projects & Development Pvt. Ltd.,
With its registered office at Carlton Towers, A wing,
3rd Floor, Unit No. 301-314,
No. 1 Old Airport Road, Bangalore Karnataka-560008

2. M/s Expat Projects and Development Private limited
VIDA Phase 2 located at Survey No. 20/1-L (PART),
Opp. Shiva Temple, Bainguinnim,
Tiswadi, North Goa-403107. .....
Respondents

ORDER
(Dated 27.10.2022)

This order disposes of the complaint filed under section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the

said Act'), wherein the complainant has prayed this Authority to issue directions to the respondents to refund to the complainant an amount of ₹55,80,000/- (Rupees Fifty Five Lakhs Eighty Thousand only) which was paid by the complainant to the respondents as consideration towards purchase of apartments in a housing project of the respondents in the name VIDA Phase II situated at Bainguinnim, Tiswadi, Goa. The complainant has also prayed for the interest on the said amount as well as for compensation, as the respondents have failed to complete the project by 30th June, 2021.

2. According to the complainant, though in the booking confirmation, the respondents referred to the three apartments as unit nos. 118, 119 and 120, the block and the apartment nos. have since been unilaterally changed by the respondents as apartments A11-202, 203 and 204. It is submitted that by an email dated 06.12.2017, the respondents sent to the complainant three sets of agreements to sell for the three apartments bearing nos. B32-202, 203 and 204 requesting the complainant to sign the agreements and retain the original document and return a copy for the record of the respondents and that the said three agreements were unsigned but referred to Ms. Vandana Upadhay as the authorized signatory for the respondents. It is further stated that the area of the three apartments as shown in schedule IV therein was put down as 44.48 sq. mtrs. And even though the full consideration was paid in advance, schedule V

stated that a further amount of ₹51,834/- and an amount of ₹98,000/- were payable on intimation of the unit handover.

3. According to the complainant, the registration of the project was valid till 30.06.2021, the date by which the respondents were required to handover possession of the completed apartment/project with occupancy certificate.

4. The complainant has stated that in breach of the provisions of section 13 of the said Act, which limits a receipt of only 10% of the total cost of the apartment by the promoter, the respondents took the entire consideration amount from the complainant.

5. The complainant has submitted that inspite of requests by the complainant, the respondents have not executed and registered agreements to sell the said apartments in terms of the draft agreements sent by the respondents to the complainant. Thus, according to the complainant, the respondents refused to register the agreement to sell the said three apartments.

6. The complainant has submitted that in clause 13 of the said draft agreements, the respondents arbitrarily added club house charges of ₹1,50,000/- and infrastructural charges of ₹1,50,000/-, which were never agreed upon by the complainant.

7. The complainant referred to various correspondence between the parties. According to the complainant, the respondents ought to have completed the Block wherein the three apartments of the complainant are situated by June 2020 or atleast by December 2020, the date mentioned in the Letter of Intent. It is stated that not even a quarter of the project has been completed and the construction at site is only till the plinth level of the complainant's apartment Block. It is further stated that the respondents have not complied with the provision of Rule 4 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. It is stated that the complainant has not received any information regarding the stage of the construction of the said three apartments or the project nor the same are updated on the registered RERA website.

8. It is further stated by the complainant that the respondents have yet to provide to the complainant a cost sheet for his apartments for GST, which should not be beyond one percent, the unit cost being less than ₹45,00,000/- qualifying each of the apartments to be "affordable housing", and the area of each unit being less than 60 sq. mtrs. carpet area. The complainant has also made grievance about the address of the respondents, which is not as per the address uploaded by the respondents at their RERA website.

9. The complainant has also referred to the letter sent by the respondents asking the consent of the complainant to transfer the project to a third party promoter on the ground that the respondents were unable to complete the project on their own, however, the respondents did not send the complainant the proposed contract between the respondents and the third party and hence the complainant declined to give such consent.

10. The complainant has submitted that he sent a legal notice dated 17.04.2021 to the respondents calling the respondents to register the agreement to sell within 15 days of the receipt of the notice and to inform the complainant the exact stage of construction of the entire project and also ask for compensation, to which the reply by email dated 03.05.2021 was given by the respondents and in the said reply all the allegations, averments and claims made by the complainants were disputed by the respondents. It is stated that the complainant was constrained to terminate the agreement. Hence the prayer for refund of the consideration amount, interest thereon and compensation.

11. In the reply the respondents have submitted that there were various circumstances beyond the control of the respondents like covid 19 pandemic, slump in the real estate market, delayed payments by the customers, which delayed the completion of the project and accordingly the respondents sought extensions from this Authority for completion of the project. It is further stated

that the respondents be allowed to complete the project within the time limit given by this Authority and that refund order from this Authority will only financially burden the respondents, putting the entire project in jeopardy.

12. According to the respondents, they have 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, which are about 370 in numbers. It is stated that the respondents have bonafide intentions to complete the project and therefore even after approaching this Authority, some customers have agreed for extension of 24 months to deliver the project, though the consent of the complainant/allottes to take development partner is necessary to complete the project.

13. According to the respondents, land was not owned by the respondents and the same was clearly mentioned in the Letter of Intentand that the three apartments were allotted and tentative unit numbers were mentioned in the Booking Confirmation Form but in the Letter of Intent no unit numbers were given. The respondents have statedthat the project being affordable cannot be construed as per government definition of "Affordable Housing Project" as such housing projects will not entail state of the art amenities and high quality of construction, which included a club house, swimming pool, landscape gardens etc. It is stated that the respondents made the said amenities available in the project and yet made the project affordable to benefit the customers. It is stated

that the project is not approved as Affordable Housing Project as per government definition under Affordable Housing.

14. It is stated by the respondents that the Letter of Intent dated 21.06.2016 did not demarcate the apartment that would be allotted to the complainant. According to the respondents it was disclosed to the intended allottees that Expat is in the process of acquiring additional land parcels for the Vida project and that the layout plan of Vida, location of the units etc. is subject to change based on approval prerequisites and design requirements of the competent authority and the same could be changed/modified.

15. It is stated that if the allottee opts to exit/cancel the allotment of the unit during the project tenure, the respondents shall deduct a sum of ₹50,000/- or five percent of the total amount paid whichever is the higher, towards cancellation/administration charges and the balance amount will be refunded to the intended allottee from 30th day to 45th day after the said unit is resold.

16. Regarding the registration of the agreement to sell, it is stated by the respondents that they approached the complainant with the agreements and also asked the complainant as to when he would be coming down for registration and further told him that if he could not come, the respondents could execute a power of attorney with a friend or family member to execute the agreement to

sell. It is stated that the respondents sent an agreement for sale for the review of the complainant. According to the respondents, they never refused to register the agreement for sale at any point of time.

17. According to the respondents, the progress of the work can be ascertained at the site and also on the RERA website.

18. Regarding the address of the respondents, it is stated that as the lease of the office had ended, the office was shut but the respondents informed about the same to their customers regarding change in address on their website as well as through email to the customers and a notice was put outside the previous office announcing shifting of office with the new address.

19. It is stated by the respondents that the development partner is required to infuse funds to complete the project and the same will not amount to any risk to the complainant.

20. The respondents have submitted that it is of paramount importance to the respondents that the project is completed in all aspects and delivered to the complainants and other customers.

21. Written submissions were filed by Ld. Advocate A. Shirodkar for the complainant and Ld. Advocate A. Palekar for the respondents. Oral arguments

were also heard.According to the Ld. Advocate for the complainant Section 18 of the said Act is attracted even though there is no written and registered agreement for sale in the instant case and the Ld. Advocate relied upon the oral judgement dated 12.04.2018 passed by Maharashtra Real Estate Appellate Tribunal in the case of "Manjit Singh Dhallwal and others vs. JVPD Properties Pvt. Ltd" in this regard. On the other hand Ld. Advocate A. Palekar for the respondents submitted that in the absence of any written agreement for sale Section 18 of the said Act is not applicable and in such situation this Authority has no jurisdiction to refund any amount to the complainant under Section 18 of the said Act and only a civil court has the jurisdiction in such circumstances.

22. After going through the entire records of the case, the points which come for my determination along with the reasons and findings thereon are as follows:-

Sr.No.	Points for determination	Findings
1.	Whether the complainant is entitled for refund of the consideration amount along with the interest thereon under Section 18 of the said Act?	In the negative.
2.	Whether the complainant is entitled for compensation as prayed in the complaint?	To be decided by the Adjudicating Officer under Section 71 of the said Act.

REASONS

Point No.1

23. It is material to note that a written and registered agreement for sale is the basis and the very foundation for all the rights and duties of an allottee under the said Act. In this regard it is necessary to reproduce hereunder some of the provisions of the said Act. Section 13 of the said Act reads as follows:-

> "**13. No deposit or advance to be taken by promoter without first entering into agreement for sale.**-(1)A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person **without first entering into a written agreement for sale with such personand register the said agreement for sale,** under any law for the time being in force.
>
> (2) **The agreement for sale referred to in sub section (1) shall be in such form as may be prescribed** and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external developments works, the dates and the manner by which payments towards the

cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed." (emphasis supplied)

24. From the aforesaid it is clear that since a written and registered agreement for sale is a mandatory statutory requirement, the parties not only have to enter into a written agreement for sale but also it is mandatory to register the said agreement for sale. **Rule 10** of the Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosures on Website) Rules, 2017 also states that the agreement for sale shall be in conformity with the law in force. The said Rule 10(2) states that "Any application, allotment letter or any other document signed by the allottee, in respect of the apartment, plot or building, **prior to the execution and registration of the agreement for sale** for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale or the Act or the rules or the regulations made thereunder". Thus, as per the said Rule 10, not only the agreement for sale should be in conformity with the law in force but also the

said registered agreement for sale prevails over any application, allotment letter or any other document signed by the allottee and such other documents signed by the allottee prior to the execution and registration of the agreement for sale do not limit the rights and interests of the allottee under the said registered agreement for sale.

25. Section 11(4) (a) of the said Act reads as follows:-

> "11(4) The Promoter shall-
>
> (a) be responsible for all obligation, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees**as per the agreement for sale**, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority as the case may be:
>
> Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub section (3) of Section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the

case may be, to the allottees are executed."

(Emphasis supplied)

From the aforesaid it is clear that all the obligations, responsibilities and functions of the promoter under the said Act/ rules/ regulations arise from the agreement for sale.

26. It is material to note that in the instant case the agreement to sell is not executed and registered between the complainant and the respondents. The booking of the apartments by the complainant started way back in the year 2015. The respondents sent to the complainant way back in December 2017 i.e. after the commencement of the said Act, as per letter dated 06.12.2017, an agreement to sell with the request to the complainant to sign on pages at the place marked 'x' thereon and to retain the original document and to return the copy of the same. The said agreement to sell till date remains a meredraft agreement to sell. Hence, there is no written and registered agreement to sell between the complainant and the respondents. Though in the legal notice sent by the complainant to the respondents it is stated that despite several demands from the complainant to register his agreement for sale right from November 2015 when the apartments were booked, the respondents failed to register the said agreement, even though the complainant showed his readiness and willingness to get the same registered, however, the fact remains that according to the complainant, he paid the entire consideration amount even before executing any

agreement for sale and that the respondents by letter dated 06.12.2017 sent draft agreement for sale to the complainant for his signature showing intention of the respondents to have a written and registered agreement for sale.

27. In this regard it is necessary to reproduce hereunder Section 18 of the said Act, which is invoked by the complainant:-

> **"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."

28. Thus, the remedy of the allottee under **Section 18 of the said Act** for the return of the amount paid by him to the promoter along with the interest and compensation if he intends to withdraw from the project or for the interest for every month of delay till handing over of possession if he does not intend to withdraw from the project provided the promoter fails to complete or is unable to give possession of an apartment, plot or building, "in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein" is available only if the agreement for sale is registered. **The "agreement for sale" referred to in Section 18 of the said Act means a registered agreement for sale as mentioned in Section 13 of the said Act.**

29. The Ld. Advocate for the respondents has submitted that Section 18 of the said Act is attracted in the instant case also even though there is no agreement for sale executed between the parties and in this regard highlights the words "as the case may be" in Section 18 of the said Act. The Ld. Advocate for the respondents argued that Section 18 of the said Act can be invoked even in the cases where there is no written agreement for sale since the words "as the case may be" encompasses the return of amount or compensation even in cases which are without any agreement for sale. **There is no merit in the aforesaid argument as the words "as the case may be" mentioned in Section 18 of the said Act precede and give meaning to the words "duly completed by the date specified therein" i.e. the date specified in the agreement for sale.** The

clear interpretation of Section 18 of the said Act is given in **Section 19 under Chapter IV** of the said Act which relates to the rights and duties of allottees. All the rights and duties of the allottees as per **Section 19 under Chapter IV** of the said Act arise only when there is a registered agreement for sale between the parties. **Section 19(4)** states that "The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, **in accordance with the terms of agreement for sale** or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder." (Emphasis supplied). The said terms of agreement for sale refer to a registered agreement for sale as mentioned in Section 13 of the said Act.

30. The Ld. Advocate for the complainant relied upon the oral judgement dated 12.04.2018 in the case of "Manjit Singh Dhallwal and Others vs. JVPD Properties Pvt. Ltd." (supra), wherein it is held that agreement for sale is not mandatory under the said Act and that the complaint of the allottees will not fall for want of agreement for sale, however the aforesaid judgement is not applicable in the instant case because **firstly** the said judgement has not dealt with section 13 of the said Act and **secondly** because in the above case, even in

the absence of the agreement for sale, the documents executed between the parties amount to a concluded contract since the documents contained all the terms and conditions of the contract and accordingly it was mentioned therein specifically as follows:-

> "In the instant case, nothing was left to be negotiated and settled for future. Terms were agreed and letter of allotment was read and understood. It was a certain and concluded bargain. A concluded contract therefore had come into existence."

Thirdly, the aforesaid judgement is no longer applicable in view of the exercise being done by the Hon'ble Supreme Court in **writ petition(s) (civil) no.(s) 1216/2020 in the case of "Ashwini Kumar Upadhyay vs. Union of India and ors."** to have a uniform model agreement for sale for all the states/union territories of India. The aforesaid batch of writ petitions were filed in public interest primarily seeking a direction to the Centre to frame a **'Model Builder Buyer Agreement' and 'Model Agent Buyer Agreement'** to infuse transparency, ensure fair play, reduce frauds and deliberate delays, restrain promoters and agents from indulging into arbitrary unfair and restrictive trade practices and to protect the rights and interests of customers, in spirit of aims and objects of the RERA Act. In the aforesaid writ petitions, which are still pending, the Hon'ble Supreme Court has passed the following order:-

"We have requested Ms. AishwaryaBhati, Additional Solicitor General and the *amicus curiae* to prepare a road map for the future after considering the responses which may be submitted by the states/ union territories so that, to the extent it is feasible, a **model agreement for sale** can be uniformly made applicable to the states/ UTs while leaving a certain degree of flexibility open based on the individual needs and exigencies as they emerge in the respective states/UTs. However, the core of the model agreement must be uniformly followed to protect the interests of home buyers." (Emphasis supplied)

Hence, there is no merit in the argument of the Ld. Advocate for the complainant that under the RERA Act, agreement for sale is not mandatory.

31. As stated above, in the instant case there is no agreement for sale executed and registered between the complainant and the respondents and no document executed to show a concluded contract between the complainants and respondents mentioning all the terms and conditions of the contract and therefore Section 18 of the said Act is not attracted and accordingly no order for refund of the consideration amount and interest thereon can be ordered under the said Section. The remedy, if any, for the refund of the consideration amount with interest thereon, therefore does not lie before the Real Estate Regulatory

Authority under the said Act, as it is a case of mere recovery of money outside the purview of the said Act.

32. Because of the reasons stated above, the complainant is not entitled to any of the reliefs as prayed before this Authority. The instant point is, therefore, answered in the negative.

Point No.2

The instant point has to be decided by the Adjudicating Officer under Section 71 of the said Act.

In the premises aforesaid, the prayers before this Authority in the instant complaint are dismissed by this Authority, however for deciding compensation, if any, the instant complaint is referred to the Adjudicating Officer under Section 71 of the said Act.

vijetty 27/10/2022

(Vijaya D. Pol)
Member, Goa RERA