



*[Handwritten signature]*

## GOA REAL ESTATE REGULATORY AUTHORITY

101, 1<sup>st</sup> 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:4/RERA/Adj. Matters (141)/2026/ 943

Date: 23/06/2026

### BEFORE THE ADJUDICATING OFFICER

**Mr. Hemant Madkaikar,**

Resident of C-303, Roshan Apartment, 0

Papdi, Vasai(W), Palghar

Maharashtra-401207

.....Applicant

V/S

**1. M/S Kuteer Realtors,**

Partnership firm,

6/7, Sagar Park Co-op Housing Society,

Sagarseth, Vasai(W) Palghar,

Maharashtra, 401201

**2. Mr. Prajwal Hareshjwar Patil**

Partner of M/s Kuteer Realtors,

Aged 44 years, Business, Married, Indian National,

Resident of Sharmadeep, Behind Ramedi Datta Mandir,

Remedi, Mandalai, Vasai, Palghar, Maharashtra 401201

**3. Mr. Sanjay Narendra Raut,**

Partner of M/s Kuteer Realtors,  
Aged 53 years, business, Married, Indian National,  
Resident of Suyog, Tiswadi, Karkhanis Lane,  
Oppos Vasai, Palghar, Maharashtra, 401210

**4. Mr. Kunal Constance Fernandes**

Alias Kunal Karu Fernandes,  
Son of late Karu John Fernandes alias Constancy Fernandes  
Resident of Mayalay Bungalow,  
Near St. Joseph College, Nandakhal,  
Virar(W), Vasai, Palghar, Maharastra 401301

**5. Mrs. Reshmi Kunal Fernandes,**

Wife of Mr. Kunal Karu Fernandes,  
Both resident of Mayalay Bungalow,  
Near St. Joseph College, Nandakhal,  
Virar(W), Vasai, Palghar, Maharastra 401301

**...Respondent(s)**

Ld. Advocate Shri Nitin Sawant representing the applicant.

Respondent absent, proceeding ex-parte

**ORDER**

**(Delivered on this the 23rd day of the month of June, 2026)**

The applicant filed the present application in Form 'B' for non-delivery of Flat NO. 102 (hereinafter referred to as the Said Flat) having super built up area of 47.30 square metres located on the First Floor of the building "Kuteer Kunj",

Respondent No.1 registered with Goa RERA vide number PGO12190866 in terms of Agreement for Sale dated 28/06/2023 duly registered in the office of Sub Registrar of Bardez at Mapusa, Goa under Reg. No. BRZ-1-2915- 2022 dated 28/06/2022 by the Respondent No.1. The Respondent No. 2 and 3 are the partners of the Respondent No.1 and the Respondents No 4 and 5 are the Owners of the property.

2. The Applicant addressed a Notice dated 31/07/2023 to the Respondents to handover the possession of the Said Flat and settle the dispute amicably. The Respondent No.1 replied to the said Notice dated 31/07/2023 vide its unsigned Reply dated 06/09/2023 stating that they have not received the Notarized Copy of Agreement for Sale because of which they could not take any action i.e. to deliver the possession of the Said Flat.

3. In view of non-resolution of dispute, the Complaint is filed against the Respondents for non-delivery of Said Flat to the Applicant by the Respondents before the RERA for compensation, interest, to handover the possession of Said Flat and to execute the Deed of Sale of the Said Flat in favour of Applicant on the basis of Agreement for Sale dated 28/06/2023 which is as under:-

- a) Agreement for Sale dated 28/06/2023 is executed between the Applicant and the Respondents for sale of the Said Flat for total sale consideration of Rs.17,98,000/- (Rupees Seventeen Lakhs Ninety- Eight Thousand Only) (Clause No.3 at page 13 of Agreement for Sale).
- b) The total Sale consideration of Rs.17,98,000/- (Rupees Seventeen Lakhs Ninety-Eight Thousand Only) is paid by the Applicant to the Respondent No.1 prior to execution of Agreement of Sale which is admitted and

Read

- acknowledge in the said Agreement. (Clause No.4 at page 14 of Agreement for Sale).
- c) That the Said Flat is agreed to be purchased by the Applicant based upon representations and assurances made by the Respondent No.1 that the construction of Said Flat is already completed and the possession of the same shall be handover to the Complainant upon receipt of Occupancy Certificate. (Clause No. 7 at page 14 of Agreement for Sale).
- d) That, upon receipt of Occupancy Certificate, the Respondent shall intimate in writing to the Applicant to take possession of Said flat and the same shall be taken within 15 (fifteen) days from the date of intimation. (Clause No. 8 at page 14 of Agreement for Sale).
- e) That upon obtaining Occupancy Certificate, the Respondent No.1 shall execute Deed of Sale in favour of the Applicant. (Clause No. 30 at page 22 of Agreement for Sale). Further that, the Occupancy Certificate is issued on 12/10/2020 despite of which the Respondent No.1 suppressed the issuance of Occupancy Certificate.
- f) That if any dispute arises between the parties, the issues shall be settled amicably and if not settled amicably then the same shall be referred to RERA. (Clause No. 37 at page 25 of Agreement for Sale).
4. That the complaint was filed because the Respondent No.1 failed to deliver the Said Flat to the Applicant and also failed to comply the terms and conditions mentioned in the said Agreement for Sale.
5. Upon receipt of Notice in earlier proceedings before RERA Authority, the Respondent No.1 filed its Reply dated 27/12/2023 with supporting affidavit. The

defense set up in its reply was that the Respondent No 4 and 5 has vacated and shifted their tenant to another flat and has offered the peaceful possession of the Said Flat to the Respondent No.1 and 2. The Respondent No.1 and 2 has communicated the aforesaid facts to the Applicant to take possession of Said Flat after paying balance dues along with interest. That the Respondent No.1 in violation of the said Agreement has given the said flat on rent to third party without consent of the Applicant and the defence set up by the Respondent is contrary to the Agreement for Sale dated 28/06/2022.

6. That the Applicant has paid total amount of Rs.18,85,000/- (Rupees Eighteen Lakhs Eighty-Five Thousand Only) including the Sale consideration of Rs.17,98,000/- before execution of Agreement.

7. The Applicant states further that the Respondent No.1 has not given the possession of the Said Flat since the execution of Agreement for Sale dated 28/06/2022. Further that the Respondent No.1 withholds the possession of the Said flat without any valid reasons despite of receipt of entire sale consideration and also illegally rented the Said Flat to third party and that the Respondents suppressed the Applicant that they have obtained Occupancy Certificate prior to execution of Agreement for Sale.

8. That the aforesaid complaint was allowed vide Order dated 07/11/2025 whereby the Respondents were directed to comply the operative part of the said Order which reads as:-

- a) The Respondents are directed to refund amount of Rs.50,560/- to the Complainants within a period 60 days.
- b) The Respondents are directed to pay interest to the Complainants on an amount of Rs.18,85,000/- for the period from 15.08.2022 till the date of this order in


Read

view of Section 18 and 19 (10) of the RERA and Award interest and compensation for delay in handing over possession of the Said Flat, in accordance with Section 18(1) (a) read with Section 71 of the Act. Since directions have already been given vide Order dated 07/11/2025 in F.NO.3/RERA/Complaint (377)/2023/1491 before Goa RERA at page 32 Directions ii, to pay the interest . As per Section 18 of The RERA Act, he would not be entitled to the compensation but would be entitled only to the interest. The adjudicating Officer cannot award any compensation as interest is already awarded as per the provision of law.

18. I place reliance in the case of ***Brahmanand Kadam Vs. G.T. Developers Appeal No. AT00500000052390 in Complaint No. CC00500000011089, decided on 20.08.2021***, where The Maharashtra Real Estate Appellate Tribunal has held that as the allottee is staying in the project, in such cases, no compensation is envisaged under Section 18 of the Act. Hence, the relief for compensation cannot be granted and is therefore rejected, also considering the fact that the Applicant has already been granted the interest.

19. The applicant has also sought to rectify the defects occurred on the walls of the Said Flat in view of Section 14 (3) of the RERA and Respondent No.1 to provide electricity connection/metre to the Said Flat to use the Said Flat in view of Section 14 (3) of the RERA and Direct the Respondents to handover the copy of the title documents, Occupancy Certificate and statutory compliances in terms of Section 19(3) of the Act;

20. In the case of “***M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors.*** dated 11.11.2021” ***in civil appeal no.(s) 6745-6749 of 2021***, the Apex court has clarified that if the adjudicating officer on enquiry is satisfied that the promoter has failed to comply with the provisions of any of the Section 12,14,



18 and 19, he may direct to pay such compensation or interest as the case may be, as he thinks fit in accordance with the provisions of any of those Sections. The broad factors to be considered while adjudging compensation have been provided under Section 72 which reads as under:-

*“72. While adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following factors, namely:-*

- (a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) The amount of loss caused as a result of the default;*
- (c) The repetitive nature of the default;*
- (d) Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.”*


21. It is pertinent to note that the Respondents have failed to put in their appearance. They have not filed any reply nor produced any documents on record to counter what the Applicant has produced. In compliance of the Order dated 07/11/2025 passed in Case No.3/RERA/Complaint (377)/2023, it was mentioned in the order that without providing electricity and rectifying the dampness on the wall of the Said Flat, the possession of the Said Flat is handed over to the Applicant by the Respondent No.1 on 29/01/2026. The Applicant has produced photographs to show dampness on the wall of the Said Flat. The Respondent is therefore entitled for compensation towards non-providing of electricity and non-rectification of the defects and dampness in the walls.

22. The Applicant has sought to be awarded damages for the period during which the Said Flat was illegally rented to third parties, thereby depriving the



Complainant of rental income and possession, under Section 12 of the Act and has sought for compensation for mental agony, harassment and financial loss suffered by the Applicant due to false representations, contradictory stands and prolonged non- delivery of possession, under Section 71 of the Act and to award costs of the present proceedings, including legal expense.

23. It is an admitted position that the said flat was rented by Respondent No.1 and 2 to Respondent No 4 and 5 who have vacated and shifted their tenant to another flat and offered the peaceful possession of the Said Flat to the Respondent No.1 and 2. It is submitted that the Respondent No.1 and 2 has communicated the aforesaid facts to the Applicant to take possession of Said Flat after paying balance dues along with interest. This shows that the Respondent No.1 in violation of the said Agreement has given the said flat on rent to third party without consent of the Applicant. As such, the Applicant is entitled for compensation as there is an amount of disproportionate gain and unfair advantage, made as a result of the default which has caused loss as a result of the default. The acts of the Respondents 1,2 and 3 in renting out the said flat of the applicant without his consent and thereby depriving the Complainant of rental income and possession has certainly caused him mental agony, harassment and financial loss suffered due to non delivery of possession of the said flat and hence he is entitled to compensation on this count . It is true that the Applicant has not produced any documentary evidence to show he suffered mental agony. But the acts of the Respondents , more particularly Respondents 1,2 and 3 in renting out the said flat of the Applicant and delaying handing him the possession of the said flat does cause mental agony. Further also, the Applicant had to approach this Authority to get his grievances against the Respondents addressed, he has paid the registration fees of ₹5,000/(Rs Five Thousand Only) to the Authority on 17/10/202, had to



engage an Advocate who filed his Wakalatnama and also conducted the mater, Therefore, the Applicant is also entitled to be compensated for the costs of the litigation from Respondents 1,2 and 3 . Hence I pass the following:

**ORDER**

The Respondents 1,2 & 3 are directed to pay the Applicant compensation of ₹7,20,000/ (Rupees Seven Laths Twenty Thousand) only for renting the flat of the Applicant without his consent to third parties ie (Respondent 4 & 5) till the day its possession was handed over to the Applicant , for violation under Section 18 read with Sections 71 and 72 of the Real Estate (Regulation and Development ) Act 2016 within 30 days from the date of this Order. Further, in default to pay the said amount, the Respondent shall be further liable to pay the Applicant interest @8.80% p.a. (which is applicable on this day) on the said amount of ₹7,20,000/ (Rupees Seven Laths Twenty Thousand) till date of payment/realization.

Furthermore, the Respondents 1,2 & 3 are directed to pay the Applicant compensation of ₹50,000/ (Rupees fifty thousand ) for mental agony, harassment and financial loss suffered by the Applicant due to false representations, contradictory stands and prolonged non- delivery of possession, within 30 days from the date of this Order. Further, in default to pay the said amount, the Respondent shall be further liable to pay the Applicant interest @8.80% p.a. (which is applicable on this day) on the said amount of ₹50,000/ (Rupees fifty thousand) till date of payment/realization.

Furthermore, the Respondents 1, 2 & 3 are directed to pay the Applicant costs of the litigation by way of compensation of ₹50,000/ (Rupees fifty thousand) within 30 days from the date of this Order. In default to pay the said amount, the Respondent shall be further liable to pay the Applicant interest @8.80% p.a.

(which is applicable on this day) on the said amount of ₹50,000/ (Rupees fifty thousand) till date of payment/realization.

*Done*  
*23/06/2026*

**Sayonara Telles-Laad**  
**Adjudicating Officer, Goa RERA**