



GOA REAL ESTATE REGULATORY AUTHORITY

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 (417)/2024/115

Date: 24/01/2025

1. **Dr. Nikhil N Sontakke and**

2. **Dr. Tripti Bansal,**

H. No. 503, Building 2, Kamat Royal Apartment,
Caranzalem, Panaji, Goa-403002.

.....Complainants

Versus

1. **M/s. Prestige Estates Projects Limited,**

Office at 'Prestige Falcon Tower'
No. 19, Brunton Road Bangalore,
Karnataka-560025.

2. **M/s. Mathias Constructions Private limited,**

Having office at H.No. C-13/156 Mathias House,
Near Luis Gomes Garden,
Campal Panaji-Goa, 403001.

.....Respondents

Ld. Advocate Mithun L. Govekar for the complainants.

Ld. Advocate Shri Siddharth V. Naik for the Respondent no.1 along with Advocate
Ms Madhavi Amonkar.

Ld. Advocate Shri Donn Jose D'Souza Ticlo for the respondent no.2.

ORDER

(Delivered on this 24th day of the month of January, 2025)

This order shall dispose of complaint filed under Sections 14, 18, 19 of The
Real Estate (Regulation and Development) Act, 2016.

2. Briefly stated, the case of the complainants is as follows:-

That the respondent no. 1 is a builder having its registered office at Bangalore and its branch office at Patto Plaza, Panaji. The complainants and the respondents have signed an Agreement for sale dated 27.06.2022 for the purchase of apartment no. 1033 along with super built area of 246.377 sq. mts. along with two car parks in the project 'Prestige Ocean Crest' at Dona Paula for a total consideration of ₹2,61,94,000/- which has been fully paid by the complainants. The apartment has to be constructed in accordance with specifications provided in the said agreement and as per the terms of the agreement for sale, the respondents have to deliver the possession of the said flat on or before 31.01.2023.

3. On 27.09.2023, when the complainants went for the inspection of the said apartment before official handing over, they were shocked and surprised to see the pathetic condition of the apartment where the tiles of the living room and the master bedroom were broken at multiple places and there were gaps in the main entrance door which was not fitting as per the frame. The complainants were unhappy with the unfinished work of the apartment. There is also delay in handing over the possession of the flat which were brought to the notice of the person in charge of the respondent no. 1.

4. Prior to 27.09.2023, the complainants were not allowed to visit/inspect the said apartment during the time when finishing work was going on and when

requested with the project head, the reply was that there is no procedure of visit during the time of construction as its company's policy. There was a delay in handing over of possession of the said apartment for more than thirteen months as in terms of clause 1(i) of the agreement, the possession was supposed to be delivered on 31.01.2023.

5. The complainants contacted the office of the respondent and requested to replace the said tiles as they had paid the entire consideration, however the project head of the respondent no. 1 denied to replace the same and gave vague explanation that the tiles are broken due to climatic condition of Goa and that the complainants do not have any other option but to take possession 'as is where is basis'. The complainants were shocked with such a reply as instead of accepting the liability and to rectify the defect, the respondent no.1 has taken a very casual approach towards the complainants. The respondents have not stood by its promise and guarantee when it comes to defective work. The complainants have purchased the said apartment by availing loan from State Bank of India and even after paying such a huge amount, the apartment is full of defective material, low standard and faulty as seen from the photos.

6. The complainants finally addressed a legal notice dated 18.01.2024 as the respondents failed to attend to their grievances pointing out the defects and requested the respondent no. 1 to replace the said tiles with new one and to

compensate the complainants. The legal notice was duly received by the respondent, however in the reply, the respondent stated that there is no any defect in the tiles. The complainants are utterly disappointed with the casual attitude of the respondents as they failed to replace the said defective tiles with the new one. The complainants are therefore entitled for reliefs prayed.

7. The respondent no. 1 filed a reply inter-alia contending that the complaint is frivolous and bad-in-law and has approached the Authority belatedly with intention to extort money from the respondent. The complainants did not make timely payments as per the agreement and as such, the complainants cannot raise issue of handover of possession of the apartment. The completion date of the project was extended and the same was conveyed to the complainants on account of Covid pandemic in the year 2020-21 and the timeline was extended till 28.08.2023.

8. The apartment has marble flooring and not tiles as stated by the complainants. The complainants visited and inspected the apartment on 27.09.2023 and requested for handover, however payments were pending. The complainants again visited the office of the respondent on 02.11.2023 and requested for handover on 10.11.2023 being Dantheras, an auspicious day for Pooja. The respondent no. 1 once again requested the complainants to clear the payment which they cleared on 09.11.2023 when they visited the office. The complainants completed handover procedure and signed handover documents and then completed Pooja at the apartment after which

the complainant mentioned about some snags in the apartment like gap in the main door, bathroom fittings, floorings etc.

9. The team of respondent from head office and the vendor providing marble visited the apartment but they did not find any issue with the marble and the vendor has issued a certificate regarding the same. The snags pointed out by the complainants have been diligently addressed by the respondent to the satisfaction of the complainants. There was no delay in handing over possession of the apartment to the complainants. The occupancy certificate was received on 23.08.2023 and the complainants were informed that the apartment was ready for handover subject to settlement of accounts. The complainants have not fully met their obligations as more than 80% of the total apartments in the project have already been handed over to the customers and sale deeds have been executed where same marbles were installed in all apartments including lifts. The marble being a natural stone, variations in colours and veins are its natural characteristics which are unavoidable and considered as the actual aesthetic appeal to use natural material. The respondent is not liable to pay any compensation as the complainants have failed to substantiate their claim for compensation with any documentary proof and therefore, the application be dismissed.

10. The respondent no. 2 also filed a reply/written statement inter-alia contending that there was an agreement dated 27.06.2022 between the

complainants and respondent no.2 who is the owner/vendor in the said agreement. The respondent no. 1 developed a parcel of the said property admeasuring 8316 sq. mts by constructing a residential-cum-commercial building after securing approvals. The complainants were aware of the respective rights and obligations stipulated in the agreement and that any grievance about the quality of construction has to be addressed by respondent no. 1 and not respondent no. 2 as per the agreement. The developer alone is responsible to construct the apartments in terms of compliance of the plan described in the agreement. There is no grievance made by the complainants as to the title of the property, for which the respondent no. 2 would be responsible. The complainants are not entitled for any reliefs as against respondent no. 2.

11. Argument heard. Notes of written arguments came to be placed on record by the parties.

12. The points for my determination along with the reasons and findings thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the Complainants prove that there were structural defects in the marbles/tiles used in the apartment and that they are entitled for rectification of defects as stated in the complaint?	In the affirmative.

2.	Whether the complainants are entitled for payment of interest for delayed possession of the apartment in terms of the agreement?	In the affirmative
3.	Whether the respondent no. 1 proves that the complaint fails on the sole ground that there was no handing over of possession of the said apartment as required under Section 14(3) of the Act?	In the negative.
4.	What order? What reliefs?	As per final order.

REASONS

Point no. 3

13. The Point No. 3 is taken up for discussion before other issues as it revolves around the maintainability of the proceedings.

14. Section 14(3) reads as under:-**14. Adherence to sanctioned plans and project specifications by the promoter.**-(1)...

(2)...

(3) *In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.*

15. Ld. Advocate for the respondent no. 1, Shri S. Naik has submitted that the complainants have signed the agreement for sale dated 22.06.2022 for the purchase of apartment no. 1033 along with two car parks and have denied in Para 8 of the rejoinder filed by the complainants that the respondent no. 1 have delivered the possession of the apartment to them and therefore, once the complainants have stated that the possession of the apartment have not been handed over to them, the provision of Section 14(3) would not apply and therefore, on this ground alone, the application under consideration cannot be granted. He further submitted that there is no transfer of title by way of sale deed in terms of section 17 of the Act and therefore on the above count also, the application cannot be allowed

16. On the converse, Ld. Advocate Shri M. Govekar for the complainants has submitted that it is throughout the case of the complainants that there is a delay in handing over possession of the apartment by more than thirteen months which itself show that the possession was handed over to the complainant. He further submitted that the said possession was handed over in a pathetic condition with unfinished work including broken tiles in the living room and bedroom at multiple places, which is also reflected in the documents produced on record including the Undertaking dated 10.11.2023 and therefore, the complaint is maintainable under Section 14(3) of the Act.

17. No doubt, it is the case of the respondent no. 1 throughout in the written statement that the possession was handed over to the complainant. In Para 2 of the written statement, it is claimed that the complainants visited and inspected the apartment on 27.09.2023 and requested for handover, however as the payments were pending the respondent no. 1 requested to clear the pending payment so that the respondent no. 1 can initiate the sale deed and do the handover possession. It is also stated that the complainants again visited the office of the respondent on 02.11.2023 and requested for handover on 10.11.2023 being Dantheras which is an auspicious day for Pooja however, the complainant were requested to clear the payment and handover the possession. It is also stated that on 09.11.2023, the complainants visited the office of the respondent and cleared the pending payment and again visited the office of the respondent no. 1 for handover on 10.11.2023 and performed Dantheras Pooja and that the complainants completed handover procedure, signed handover documents and then performed Pooja at the apartment, after which the complainants mentioned about some snags in the apartment.

18. The respondent No. 1 therefore has clearly admitted about handing over of the possession on 10.11.2023 when the complainants performed Dantheras Pooja as seen from the photographs produced by the respondent no. 1, itself. Moreover, the letter dated 10.11.2023 titled as 'Indemnity letter along with the undertaking' at Para 3 clearly states that possession has been taken by the complainants of the said

apartment and therefore, the submission of Ld. Advocate Shri S. Naik that since the possession of the said apartment has not been taken over by the complainants, the provision of Section 14(3) would not apply will be preposterous, which is also not borne from the records.

19. Dr. Nikhil Sontakke in Para 8 of the rejoinder dated 17.05.2024 has stated with reference to Para 4 of the written statement that "possession was due on 31.01.2023, however the complainants till today have not delivered the handover of the apartment". The said reference will not assist the respondent no. 1 in any way as it is the case of the respondent no. 1 itself that possession was handed over on 10.11.2023 on the auspicious day of Dantheras, which is also reflected in the letter dated 10.11.2023 along with the Undertaking. The possession which was handed over on 10.11.2023 was not complete possession which was replete with snags, which has been referred by the complainants in various emails sent to respondent no. 1 and therefore, at the most, it could be said that whatever the complainants have stated in the rejoinder is with reference to "complete possession", which cannot be said that "no possession" was handed over to the complainants, which is contrary to the documents produced on record by the complainants as well as respondent and therefore, the above submissions of Ld. Advocate of S. Naik will not enure to their benefit. It is therefore the proceedings

are maintainable under Section 14 of the Act. Hence, the above point is answered in the negative.

Point No. 1

20. The complainants are seeking the reliefs which have been stated in Para 21 of the complaint, which read as follows:

- (a) This Honourable Court be pleased to issue order for the replacement of broken tiles in the living room as well as bedrooms in the Apartment no. 1033 in the project "PRESTIGE OCEAN CREST", at Dona Paula- Goa.
- (b) That the Honourable Court may also pleased to direct the respondent to pay liquidated damages of Rs. 25,00,000/- (Rupees Twenty-Five-Lakhs only) along with the interest @18% p.a. for supplying a defective tiles and delay in handing over possession of the said apartment.
- (c) For a direction and order to the opposite parties to pay to the complainant an amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) as compensation for tension and mental agony.
- (d) For a direction and order to the respondents to pay to the complainants an amount of Rs. 1,00,000/- (Rupees One Lakh only) towards the cost of the proceedings.
- (e) Any other reliefs, which are deemed fit and appropriate in the facts and circumstances, also be granted.

21. Ld. Advocate Shri M. Govekar for the complainants has submitted that the case of the complainants is for deficiency of service for providing defective/broken tiles/marble and inspite of making payments, there was a delay in handing over of possession of the said apartment. The representative of the respondent no. 1 accepted the cracks present in the flooring of master bedroom and living room and as mentioned in the email dated 22.12.2023 claimed that the same has been corrected but has not replaced. The respondent no. 1 has declared that the tiles are broken due to climatic condition of Goa. Ms. Komal Karla also accepted that the cracks were present in the flooring of master bedroom and living room, which clearly shows that the flooring was defective. The major issues of broken tiles and delay in possession raised by the complainants were not taken into consideration as seen in the whatsapp chats and repeated emails of the complainants and therefore, the complainants are entitled for the relief claimed.

22. Ld. Advocate S. Naik for the respondent no. 1 has submitted that what the complainants claimed are not tiles but marbles, which are a natural stone and it is time and again clarified that marble being a natural stone, variations in colour and veins are its natural characteristics, which are unavoidable. He further submitted that upon the request of the complainants, the team from the head office and the vendor providing marbles visited the apartment and both the parties did not find any issue with the marbles and that the vendor has issued a certificate that

variations in colour and veins in the marbles are its natural characteristics. The complainants also agreed in terms of clause 20(a) of the agreement that the owner/vendor shall not be responsible for colour, size, and variations in painting, flooring, tiles, and any natural stone like marble, granite or any sanitary fittings. He further submitted that the complainants in the Undertaking at Para 3 admitted “that they have taken possession of the said apartment in good, complete in all respects and as per the specifications mentioned in the agreement and that they are fully satisfied with the quality of construction, measurement of the said apartment”. It is therefore the complainants cannot raise any grievances with respect to the alleged defects in the apartment.

23. There is no dispute that the parties have entered into agreement for sale dated 22.06.2022. Para 20(a) of the said agreement refers to “defect liability period” which states as follows:-

“a) In the event of any structural defects, are being informed by the PURCHASER in writing within the period of five years from the date of the Occupancy Certificate having been issued, the DEVELOPER will attend to the same within 30 days of such notice or such other time period as may be reasonably required to rectify the defect at its cost. Similarly, the Owner/ Vendor and the Developer shall not be responsible for colour/size variations in painting, flooring tiles, any natural stones like marble, granite or any sanitary fittings etc.”

24. Annexure-III of the above agreement (Specifications of the said apartment/shop) refers to specifications which are as follows:

Apartment Flooring: Foyer, Living, Dining, Corridors and Master Bedroom: *Imported Marble.*

Other Bedrooms: Vitrified Tiles

Balconies: Ceramic tiles

25. Discernibly, the major issue in the present case is with respect to flooring tiles/marbles which according to the complainants were broken and that the said broken tiles/marbles be replaced. Admittedly, they are not 'tiles' but 'marbles' as seen from the documents and the marbles have to be "imported" as per the agreement. There is no dispute that entire consideration amount as per the agreement has been cleared to the respondent no. 1. There is also no dispute that the complainant had mentioned various snags in the apartment to be taken care of including gap in the main door; bathroom fittings etc. as well as cracks in the tiles/marbles. The respondent no. 1 has admitted about occasional imperfections and variation in colours and veins of marbles, which according to them is unavoidable and that they are natural part of the stone not considered as flaws or defects because mother nature made it and are considered as an actual aesthetic appeal.

26. It is also claimed that the team from head office had visited the apartment and both the parties did not find any issue with the marbles and the vendor had issued a certificate regarding the same. The respondent no. 1 has produced a letter from Tarun Agrawal, senior manager of NITCO Limited. He has stated that he visited the site on 03.01.2024 and observed that the marbles supplied, grey ceil is of highest quality and adhering to international standard of 2 cm and that they did not find any defect in the marbles and that the points highlighted by the team are of natural stone and unavoidable and the veins seen on the slab laid are natural character and not cracks and since it is a natural stone, variation in colour and veins are an inherent part of it.

27. The respondent no. 1 has filed an affidavit of one Umesh Naik, Senior Area Manager of NITCO Limited, who claims that NITCO Limited supplied flooring materials to Prestige Ocean Crest and that it is of good quality with occasional imperfections and flaws, variations in colour and veins and that Mr. Tarun Agrawal, Senior Manager visited the site and found that the flooring was of good quality without any crack or broken. No such affidavit has been filed by Mr. Tarun Agrawal. There is however nothing on record that NITCO Limited had supplied the marbles as per the agreement to the respondent no. 1. Be that as it may, as per the Annexure III of the agreement, the flooring in the living and the master bedroom ought to have been with 'imported marbles' and other bedrooms with

vitrified tiles. There is no whisper in the letter by NITCO Limited that the tiles supplied by the company were 'imported' by them. Merely stating that they were of highest quality and of international standard is not sufficient in the absence of any document.

28. The complainants have come with a case that the flooring in the living room as well as in the master bedroom in the apartment have broken tiles/marbles which they have noticed at the time of the inspection on 10.11.2023. The complainant had issued a legal notice dated 18.01.2024 pointing out the defects and requesting the respondent no. 1 to replace the said tiles/marble with new one and to compensate the complainant which was received by the respondent, however they have denied of any defects. In the said legal notice, the complainant has mentioned in Para 7 (I) regarding cracks in the flooring of living room and master bedroom. The respondent no. 1 has not attended to the complaint and failed to replace the said tiles/marble flooring with the new one in terms of Para 20(a) of the agreement within 30 days of the notice. The complainant had pointed out the said defects in terms of section 14(3) of the Act. The respondent no. 1 has admitted that after the apartment was handed over and Pooja was performed, the complainants had mentioned about snags in which they have pointed out defects in the tiles/marble flooring. The respondent no. 1 has also admitted that the product was not perfect and that there were occasional imperfections.

29. The project head of the respondent Ms. Komal Kalra has denied that there were any defects in the marble and admitted that they were informed in writing with a notice about the defects in the marble requesting to rectify the defects however, gave a vague explanation that the tiles/marbles are broken due to climatic conditions of Goa and that complainant do not have any other option but to take possession 'as is where is basis'. The email dated 21.12.2023 sent by Komal Kalra clearly shows that the flooring in the apartment is of marble and that marble is very porous and is natural for a crack to appear due to climatic condition and that their team has corrected the same with corrective measures. In the first place, the project head, Ms. Komal Kalra has admitted that there were cracks. The averments that it was corrected with corrective measures have not been supported nor there is such a report in that regard.

30. The complainants have produced on record the affidavit of Dr. Nikhil N. Sontakke and the documents namely the photographs, legal notice, emails, agreement for sale, etc. The agreement for sale at Annexure III (Page 80) clearly stipulates 'imported marbles' in the foyer, living, dining, corridors and master bedrooms. There is no evidence that the respondent no. 1 used imported marbles as per Annexure III of agreement for Sale. The complainants have filed the complaint with respect to structural defects immediately after they noticed the defects in the tiles/marbles. The responsibility and the obligations of the respondent no. 1 was to

rectify the defects within thirty days of such a notice, which they failed to do, although they have admitted of such defects in the apartment. The complainants have paid the entire amount and in such a situation, no allottee would accept defects in the apartment or deficiency in service. The photographs produced on record and other documents clearly show that there were cracks in the marbles laid in the living room and in the master bedroom. The submissions of respondent that complainants in the Agreement and Undertaking admitted "that they are fully satisfied with the quality of construction and the measurement of the said apartment, cannot be accepted as it is one-sided and the allottees in reality have no choice but to sign on the dotted lines due to imbalance in bargaining power. The complainants therefore have sufficiently proved that there were structural defects in the 'marbles' in terms of Section 14(3) of the Act and therefore, the above point can be safely answered in the affirmative.

Point No. 2

31. Admittedly, the parties have entered into agreement for sale dated 22.06.2022 with respect to said apartment. Under the said agreement, the possession date for the said apartment is mentioned as 31.01.2023 and for such extended time as provided in clause 8(c). The respondent no. 1 obtained 'occupancy certificate' on 23.08.2023. The complainants have paid entire amount on 09.11.2023 as the respondent no. 1 ensured that all the work in the project

would be completed and ready for possession. The complainants have also not signed the check list and the feedback form as there were defects in the flooring where marbles were broken at multiple places and other defects and hence, the apartment was not complete in all respect on the date of taking possession. Even, if it is considered that the possession of the apartment was delivered on 10.11.2023, there was a delay of nine months, ten days in handing over the possession, although not complete possession. There is however a RERA certificate in which the completion of the project was extended from 01.03.2023 to 28.08.2023. Nonetheless, there is nothing on record that the respondent no. 1 informed the complainants regarding the extension of project, although stated so by the respondent and denied by the complainants.

32. The Hon'ble Bombay High Court in their landmark judgment in the matter of *Neelkamal Realtors Suburban Pvt. Ltd. and Anr. Vs. Union of India* has categorically laid down in Para 256 as under in the context of extension of project registration date:

“Section 4(2) (I) (C) enables the Promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(I)(C) enables the Promoter to give fresh timeline independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. *In other words, by giving opportunity*

to the Promoter to prescribe fresh timeline under section 4(2) (I) (C), he is not absolved of the liability under the agreement for sale.”

33. The Hon’ble Apex Court in Para nos. 25 and 78 of its judgment dated November 11, 2021, in the case of ***M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of Uttar Pradesh & Ors, dated 11th November 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 & absolute, regardless of unforeseen events or stay orders of the Court/ Tribunal.”

34. The Hon’ble Apex Court has observed in Para 25 as under:

“The unqualified right of the allottee to seek refund referred to under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the Allottee, if the Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement *regardless of unforeseen events or stay orders of the Court/ Tribunal*, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the

allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

35. It is also well settled in the case of “*Bharati Knitting Company vs. DHL Worldwide Express Courier Division of Airfreight Ltd.*”, II (1996) CPJ 25 (SC) that the parties are bound by the terms and conditions of the agreement entered into between them.

36. There is nothing on record that the respondent informed the complainants about the extension of the project nor the extension is attributable to the complainants. The respondent no. 1 cannot be absolved of its contractual obligations as stipulated under the agreement of sale and under the provision of the Act without requisite prior mutual consent and the terms of contract cannot be rewritten without prior consent of the parties as held by aforesaid judgments. There was a delay of nine months, ten days in handing over the possession, although not complete possession. The respondent is therefore under an obligation to pay interest for the delayed period at the rate prescribed by the State Government. It would therefore be unfair not to grant interest to the complainants for delay of nine months, ten days in delivering the possession. The violation by the respondent attracts proviso to Section 18(1) of the Act. The complainants are therefore entitled

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for the interest on delayed possession as well as costs. In such circumstances, the above point is answered in the affirmative.

Point no. 4

37. There is neither grievance made by the complainants as to the title of the property or the defective works nor any reliefs sought as against the Respondent no.2 and therefore as rightly submitted by Ld. Adv. Shri D'Souza Ticlo, the complainants are not entitled for any reliefs as against respondent no. 2. The complainants have however proved that there were structural defects with respect to marbles installed in master bedroom and living room of the apartment and that they are entitled for rectification of defects namely replacement of the marbles as stated in the complaint as well as they are entitled for payment of interest for delayed possession of the apartment in terms of the agreement as well as costs.

38. Under Section 61 of the Act, if the promoter contravenes any other provisions of this 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 up to five per cent of the estimated cost of the real estate project as determined by the Authority. The respondent no. 1 has not complied with the legal notice issued by the complainants with respect to broken marbles laid on the flooring and has committed default in not carrying out the obligation contained in Section 14(3) of the Act. The respondent no. 1 has also failed in its duty and

obligation to deliver the apartment as per the agreement of sale and therefore, has committed default in terms of the Act. In such circumstances, the above point is answered accordingly.


39. The complainants have prayed to direct the respondent to pay liquidated damages of ₹25,00,000/- (Rupees Twenty-Five-Lakhs only) along with the interest @18% p.a. for supplying defective tiles/marbles and for a direction and order to the opposite parties to pay to the complainant an amount of ₹10,00,000/- (Rupees Ten Lakhs only) as compensation for tension and mental agony. Under Section 71 of the RERA Act, compensation under Sections 12, 14, 18 and 19 of the RERA Act has to be adjudged only by the Adjudicating Officer. Accordingly, the above prayers for compensation have to be dealt with by the Adjudicating Officer for adjudging the compensation, if any. The complainants may prefer an application before the Adjudication Officer for compensation, if so desires. Hence, the above point is answered accordingly.

40. Pursuant to above discussion, I pass the following:-

ORDER

- a) The respondent no. 1 is directed to replace the broken marbles in the living room as well as master bedroom in the apartment no. 1033 in the project “Prestige Ocean Crest”, at Dona Paula, Goa within 30 days of this order.

- b) The respondent no. 1 is directed to pay interest as well as costs of ₹5,00,000 (Rupees Five Lakhs only) within 30 days of the order, failing which it will carry interest in terms of 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 till payment.
- c) The respondent no. 1 is directed to pay ₹5,00,000/- (Rupees Five Lakhs only) as penalty under Section 61 of the Act for violation of Section 14(3) of the Act. The amount shall be deposited before the Authority within 30 days, failing which necessary proceedings will be initiated against the respondent no. 1.
- d) The respondent no. 1 is directed to file compliance report of this order in the form of an affidavit within 60 days of this order, failing which further legal action will be initiated by the Authority under the RERA Act for execution of the order.


(Vincent D'Silva)
Member, Goa RERA

Panaji, Goa.
Date: 24.01.2025