



## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (377)/2023/ 1491

Date 07/11/2025

**Mr. Hemant Madkaikar,**  
C-303, Roshan Apartment,  
Papdi, Vasai (W), Palghar  
Maharashtra-401207.

.....Complainants

V/s

1. **M/s Kuteer Realtors,**  
6/7, Sagar Park Co-op Housing Society,  
Opposite Bharat Petroleum,  
Sagarseth, Vasai (W) Palghar,  
Maharashtra, 401201
2. **Mr. Prajwal Hareshjwar Patil**  
Son of Mr. Hareshwar 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,**  
Son of Mr. Narendra Raut,  
Partner of M/s Kutter Realtors,  
Aged 53 years, business, Married, Indian National,  
Resident of Suyog, Tiwaliwadi, Karkhanis Lane,  
Oppos Vasai Gaon, St. Depot,  
Vasai, Palghar, Maharashtra, 401210

*Sanjay*  
07/11/25

**4. Mr. Kunal Constance Fernandes**

alias Kunal Karu Fernandes

Son of late Karu John Fernandes alias Constancy Fernandes

Aged 41 years, business, Indian National,

Resident of Mayalay Bungalow,

Near St. Joseph College, Nandakhal,

Virar(W), Vasai, Palghar, Maharashtra 401301

**5. Mrs. Reshmi Kunal Fernandes**

Wife of Mr. Kunal Karu Fernandes

Aged 35 years, Housewife, Indian National,

Both resident of Mayalay Bungalow,

Near St. Joseph College, Nandakhal,

Virar (W), Vasai, Palghar,

Maharashtra 401301

.....Respondents

**(Ex parte Order against Respondents No.4 and 5)**

**ORDER**

**( 07/11/2025)**

1) This order disposes of the online complaint No. 3/RERA/Complaint (377)/2023 filed by Complainants Mr. Hemant Madkaikar before the Goa Real Estate Regulatory Authority (Goa RERA) against Respondents M/s Kuteer Realtors and four others under Section 31 of Real Estate (Regulation and Development) Act, 2016 (herein after referred to as 'the Act'), (Complaint 63/C) alleging that Respondents has failed to handover the vacant and physical possession of the Flat No. 102 situated on first floor, Block C of building project "Kuteer Kunj" registered with Goa RERA vide number PRGO12190866 (herein after referred to as 'the subject property'), purchased by the Complainants herein



vide an Agreement for Sale dated 28/06/2022 (herein after referred to as 'the said Agreement'), which is duly registered in the Sub Registrar of Bardez.

2) The Complainants has submitted that he had paid the entire sale consideration of Rs.17,98,000/- ( Rupees Seventeen Lakhs Ninety Eight Thousand Only ) to M/s Kuteer Realtors prior to execution of Agreement for Sale dated 28/06/2022 (herein after referred to as the said Agreement); which has been admitted, acknowledged and confirmed by the Promoter Respondents at Clause No.4 of the said Agreement. it was further submitted that though the Respondents had represented and declared to the Complainants that the said construction of the said Flat No.102 is almost complete and Occupancy Certificate will be issued within 30 days and the possession of the said Flat will be handed over to the Complainants on or before 15th August 2022, but till date the Complainants has not received either any Notice of handing over of possession or possession of the Said Flat from the Respondents that too inspite of continuously visiting the Respondent's office/site/resident to take possession of the said flat and also paying entire sale consideration which is in violation of assurances, representation and declaration made in the Agreement for Sale dated 28.06.2022. It was also stated by the Complainants that it addressed a Notice dated 31/07/2023 to the Respondents to handover the possession of the said flat. Respondents M/s Kuteer Realtors, however, vide a reply to the said notice stated that the Complainants has not handed over the copy of registered agreement, which was denied by the Complainants and also informed the Respondents that it had also learnt that the said flat was given on rent to third party by them.

3) The Complainants has thus prayed for passing of necessary order to handover the vacant and physical possession of the Said Flat along with monthly interest on sale consideration of Rs.17,98,000/- (Rupees Seventeen Lakhs Ninety



Eight Thousand Only) in terms of Section 18 of The Real Estate (Regulation and Development) Act, 2016 and compensation.

4) Consequent upon filing of hard copies of notarized complaint and other supporting documents by the Complainants, a notice was issued to the Respondents for appearance and reply on 28/11/2023 and further proceedings were continued on various dates. Though the Respondents No.1,2 and 3 (herein after referred to as 'the Respondents') were duly served and participated in the proceedings, Respondents No.4 and 5 despite issuance of repeated notices sent through registered AD and delivered to the Respondents; did not participate in the proceedings. For instance, initial notice to Respondents No.4&5 issued on 28.11.2023 and further dispatched to Respondents through registered letters on 29.11.2023 from South Goa Collectorate S O; were delivered to the addressee on 01.12.2023. Upon request of Ld. Counsel for Respondents 1,2& 3 another notice issued on 19.02.2024 and dispatched to the Respondents vide registered letters; was delivered on 11.03.2024. One more notice issued to the Respondents on 12.04.2024 and dispatched on 18.04.2024 through registered letters; was delivered on 22.04.2024. Pertinently, each of the notice clearly mentioned that in case of default to put in appearance and file reply the noticee would be proceeded ex-parte. As despite the above, Respondents. No.4 & 5 neither put in appearance nor filed any reply/submissions; the matter has been proceeded ex-parte against the Respondents. No.4 & 5.

5) Per Contra, the Respondents No.1,2 and 3 submitted that M/S Kuteer Realtors entered into joint development agreement with the owners of the land Mr Kunal Constance Fernandes Mrs Reshmi Kunal Fernandes duly registered before sub registrar of Bardez, vide which they were allotted 40% of the flats of the Project, clearly demarcated. It was further submitted that the Complainants Mr

Hemant Madkaikar along with Mr Girish Narayan Kulkarni, Mr Akhil Arun Valhal and Mr Deepak Vishwanath Desai approached M/S Kuteer realtors and offered to invest in the project in lieu of flats. After negotiations, a memorandum of understanding was entered into by above named persons with M/S Kuteer Realtors on 16/3/13 where in the flats no 103,104, 202 and 204 in Block A were booked for total consideration of Rs 1,02,60,000/- (Rs. One Crore Two Lakhs Sixty Thousand only) with construction linked payment terms. Further stated that the cheques issued by the group were partly realised and the initial amount of Rs. 25 Lakhs was never fully realized despite of reminding for the payment during all the stages and finally, the Respondents asked the group to take back the initial money given during the signing of the MOU. Pursuant thereto, Mr Akhil Arun Valhal accepted the offer to take back his investment without interest and the same was duly paid and Mr Girish Narayan Kulkarni's cheque was kept on hold and was never encashed. Also stated that the Respondents also offered to pay Mr Hemant Madkaikar Rs.6,25,000/- without interest, it was, however, finally decided that Mr Hemant Madkaikar will be allotted a flat in the project and will pay the balance consideration at the time of registration.

6) The Complainants, however, later informed that he has a limited budget and he cannot afford a flat out of the unsold flats which were owned by their group earlier. Further, a flat allocated to land owner of carpet area 28.58 sq mtr situated at block C bearing flat No. 102 was available within his budget, the details of which were apprised to the Complainants that the said flat belonged to the landowner Mr Kunal Constance Fernandes and Mrs Reshmi Kunal Fernandes and that they have kept their tenant in the said flat. Further, on assurance by the land owner Mr Kunal Constance Fernandes that he has already provided the tenant with a flat to shift and after completion of some minor formalities the tenant will vacate





the said flat, an Agreement for Sale dated 28/06/2022 in respect of the said registered between the Complainants and the land owners Mr Kunal Constance as well as the Respondents No.1,2 and 3 as "Confirming Party" since the payment was received by M/S Kuteer realtors. However, despite repeated requests, the land owner kept delaying the shifting of the tenant from the said flat and finally assured the Respondents No.1, 2 and 3 that the tenant will be shifted by 15th January 2024 anyhow. It was also stated that the Respondents did not make any financial gain in the said transaction since the Respondents had already paid off the land owner Mr Kunal Constance Fernandes for the said flat which is clearly mentioned in agreement for sale.

7) The Respondents also stated that the Complainants was supposed pay Full consideration along with all other charges applicable i.e. consideration of the said flat Rs 17,98,000/- (Rs. Seventeen Lakhs Ninety Eight Thousand only) and other charges i.e. water charges, electric meter, transformer charges, infrastructure tax and stamp duty amounting to a total sum of Rs 179260/-. However, the Complainants has paid only Rs 17,50,000/-towards flat consideration which is short by Rs 48000 and 1,35,000 towards stamp duty and other charges which is short by Rs 44260 and thus, total shortfall is Rs 92260/-.

8) The Respondents stated that the Complainants has not approached this court with clean hands by suppressing material facts and also that the Respondents is merely confirming party to the transaction and does not stand to gain anything financially. Further, the tenant occupying flat No. 102 is not paying any rent to the Respondents as claimed by the Complainants and the Complainants were fully aware of the tenant occupying the flat No. 102 which the land owners had kept in the said apartment and prayed that landowner be asked to immediately vacate a shift the tenant and the Respondents be absolved from any costs or compensation



since they are merely the confirming party. It was also prayed to direct the Complainants to pay balance amount along with applicable interest.

9) The Respondents vide its further say dated 14.02.2024 submitted that the Land owner have vacated the flat No. 102 a has shifted his tenant to another flat and has offered a peaceful possession the said flat to the Respondents No. 1 and 2 which in turn was communicated to the Complainants asking him to occupy the said flat after paying balance dues along with interest. Besides, the Respondents also informed the Complainants that the owners meter must be surrendered and a new meter in Complainant's name must be applied and the charges for the same and payment of Electricity bills will be paid by customer and also that the property tax will be done in name of customer subject to charges incurred by customer. However, the Complainants asked for compensation as part of "Compromise" and the matter did not proceed further.

(i) Responding to the averments that some amount was still due towards the Complainants on account of the consideration of the said flat and other applicable charges, the Complainants submitted that the Respondents have admitted, acknowledge and confirmed that the entire sale consideration of Rs.17,98,000/- (Rupees Seventeen Lakhs Ninety Eight Thousand Only) is paid by him to the Respondents which is specifically mentioned at Clause No. 4 page 14 of the said Agreement for Sale dated 28.06.2022 and the same has further been admitted by the Respondents No.1 to 3 in their Reply. It was also stated that it had already paid the stamp duty of Rs.52,500/- (Rupees Fifty Two Thousand Five Hundred Only) and Registration fees of Rs.53,940/- (Rupees Fifty Three Thousand Nine Hundred Forty Only) at the time of registration of Agreement for Sale dated 28.06.2022 for sale of residential flat as required under the law and the balance stamp duty of Rs.1,440/- (Rupees One Thousand Four Hundred Forty Only) is required to be paid at the time of



execution of Deed of Sale of the residential flat. The Complainants also submitted that he has already paid the total amount of Rs.18,85,000/- ( Rupees Eighteen Lakhs Eighty Five Thousand Only) to the Respondents No.1 by Online and Cheques from the Account maintained in ICICI Bank Limited, Papdy, Vasai, Maharashtra and Bassein Catholic Co-operative Bank Limited, Papdy, Vasai, Maharashtra which includes sale consideration of Rs. 17,98,000/- (Rupees Seventeen Lakhs Ninety Eight Thousand Only) and other charge.

(ii) With regard to the subject property having been given on rent, the Complainants submitted that though the Respondents No. 1 to 3 were supposed to deliver the residential flat within fifteen days from the date of issuance of Occupancy Certificate to the said Flat by the concerned authority but the Respondents instead gave the flat to third party on rental basis which fact is admitted in the reply of the Respondents.

(iii) During the proceedings, the Complainants filed rejoinder to the reply filed by the Respondents, followed by a sur-rejoinder thereto filed by the Respondents. Both parties also filed affidavit in evidence as well as additional affidavits/ submissions pursuant to the directions providing further details as sought.

(iv) The arguments made by both parties were heard and the Complainants as well as Respondents also placed written arguments on record.

#### **10. Issues raised**

After going through the entire records of the case, the points which arise for my consideration and findings thereon for the reasons to follow are as under:-





Sr. No.	Points for determination	Findings
A	Whether the Complainants has made the complete payment of all the amounts due under the said Agreement dated 28.06.2022 including the sale consideration/ price of the subject property i.e. Rs.17,98,000/-and other charges not included in sale consideration and whether the Respondents is justified in demanding further payment of Rs. 92,260/- or the Complainants is entitled to a refund of Rs. 87,000/- on account of having made excess payment ?	In Affirmative and as per para 11(xiii &xiv) of the order
B	Whether the Promoter/Respondents has failed to handover the vacant and physical possession of the Said Flat booked by the allottee as per the assurance made by the Promoter and in accordance with the terms of the Agreement for Sale registered on 28.06.2022?	In affirmative
C	Whether the prior unregistered documents executed between the Respondents and Complainants &	In negative and as per Para 13 of the order



	others qua certain flats other than the subject property; have any bearing upon the issues under consideration in the instant matter?	
D	Whether the stand of the Respondents No.1, 2 &3 that the subject property was part of the share allotted to the Respondents No.4&5 (land owners) under JDA who had further rented it to the tenant and there has been no financial gain to the Respondents No.1,2&3 to whom the subject property was later transferred in lieu of providing financial assistance to Respondents No.4&5 as well as Respondent No.1,2&3 being confirming party to the said Agreement dated 28.06.2022 are therefore not liable to pay any compensation etc; is tenable in the facts and circumstances of the case?	In negative
E	Whether the Respondents is liable to pay interest on the amount received by the Promoter in respect of the Subject Property as per the	In affirmative





	provisions of Section 18 of The Real Estate (Regulation and Development) Act, 2016 as well as to handover the possession of Said Flat and execute the deed of sale of the Said Flat in favour of Complainants?	
F	Whether the Complainants are entitled to claim compensation under the Act?	As per para 16 of the order

#### 11. Point No. A

- (i) The Respondents have submitted that whereas the Complainants was required to pay a total amount of Rs. 19,77,260/- which included Rs 17,98,000/- as consideration of the said flat as well as the other charges of Rs 1,79,260/- i.e. Water charges Rs 25000- Electric meter Rs 10000, Transformer charges Rs 35000, Infrastructure tax Rs 56760 and Stamp Duty of Rs 52500; the Complainants have so far paid a total amount of Rs. 18,85,000 including Rs.17,50,000/- towards the Flat Consideration besides an amount of Rs. 1,35,000/- towards the stamp duty for registration and other charges and thus the balance amount of Rs. 92,260/- (Rs. 19,77,260 - 18,85,000 ) is still due towards the Complainants. Per Contra, the Complainants have also claimed to have paid a total amount of Rs.18,85,000/- to the Respondents but the said amount includes the entire sale consideration of Rs.17,98,000/- of the subject property to Respondents No.1 (M/s Kuteer Realtors) and the same(sale consideration) has also been admitted, acknowledged and



confirmed at Clause No.4 in the said Agreement dated 28.06.2022 as well as in its Reply dated 27.12.2023 to the Complainant's Application. Also during the proceedings held on 16.09.2025, both parties confirmed the same and it was recorded as follows:

“The Ld. Counsel for the Complainants claimed that a total amount of Rs.18,85,000/- (Rupees Eighteen Lakhs Eighty Five Thousand only) has been paid by the Complainants to the Respondents which was agreed to by the Ld. Counsel for the Respondents.”

- (ii) Responding to the claim of the Respondents that Complainants is liable to balance amount including Stamp duty and registration fees on the Agreement for Sale dated 28.06.2022; it was stated that the copy of Agreement for Sale dated 28.06.2022 is on record whereby it is clear that the Complainants had already paid the stamp duty of Rs.52,500/- ( Rupees Fifty Two Thousand Five Hundred Only) and Registration fees of Rs.53,940/- (Rupees Fifty Three Thousand Nine Hundred Forty Only) at the time of registration of Agreement for Sale dated 28.06.2022 for sale of residential flat as required under the law and the balance stamp duty of Rs.1440/- (Rupees One Thousand Four Hundred Forty Only) would be paid at the time of execution of Deed of Sale of the subject property. At a later stage of the proceedings, the Respondents also submitted that while perusing its bank statements, it was revealed that the amount of stamp duty and registration fee was paid by the Respondents and produced the copy of the bank statement to support its claim. Along with the bank statement the Respondents also submitted the copy of the e-receipts issued for the purpose which bears the name and address of the Complainants i.e. ‘Hemant-Papdi, Thane’ against the heading name and address of the party. It is noted that while the bank statement entry relied upon by the Respondents does not reveal as to which transaction it could pertain to, the e-



receipt furnished by the Respondents itself negates his claim. In reply, the Complainants claimed that it had paid an amount of Rs.1,10,000/- in cash to the Respondents for the purpose and also produced his bank statement on record indicating withdrawal of Rs.1,00,000/- and remainder Rs.10,000/- was paid out of cash in hand.

(iii) It needs to be noted that while clause 39 of the said Agreement dated 28.06.2022 clearly records that the stamp duty of Rs.52,500/- was borne and paid by the Allottee/Purchaser the Complainants. Pertinently, clause 35 of the said agreement puts a clear onus upon Allottee/Purchaser to pay the stamp duty, registration charges and other incidental and legal expenses. Further by way of Affidavit in rejoinder dated 04.10.2024, the Complainants have claimed to have paid registration fee of Rs.53,940/- in addition to stamp duty of Rs.52,500/- at the time of registration of Agreement for sale dated 28.06.2022 and also undertook to pay the balance stamp duty of Rs.1440/- at the time of execution of the sale deed of the residential flat. The Affidavit cum undertaking of the Respondents did not contradict the above statement of the Complainants and just noted as follows:-

“I say that the Complainants had filed an Affidavit in rejoinder wherein in para 3&4 Complainants had shown an amount of balance amount of stamp duty had shown willingness to pay stamp duty at the time of execution of sale deed.”

(iv) Further, during the proceedings held on 16.09.2025 it was observed as follows:

“With regards to stamp duty and registration fee, both the counsels agreed that the stamp duty and registration fee paid at the time of registration of agreement for sale is adjusted against the total stamp duty and registration fee leviable at the time of registration of sale deed and therefore only balance amount is required to be paid at the time of registration sale deed.”



- (v) In view of what has been noted herein above, it can be safely inferred that while the Complainants has already paid registration fee of Rs.53,940/- in addition to stamp duty of Rs.52,500/- at the time of registration of Agreement for sale dated 28.06.2022, payment of only the remaining balance of stamp duty amounting to Rs1440/- is to be paid by him at the time of execution of the sale deed of the residential flat.
- (vi) As far as other charges pertaining to water, Electric meter, Transformer, infrastructure tax and Stamp duty are concerned, it is noted that the matter pertaining to the payment of stamp duty and registration fee, etc has already been dealt with herein above and the applicability of remaining other charges is contested by the Complainants. It is further observed that the said agreement dated 28.06.2022 nowhere specifically refers to the remaining other charges i.e. water, Electric meter, Transformer and infrastructure tax being demanded by the Respondents from the Complainants though Clause 36 of the said agreement broadly refers to other charges and taxes as GST and all levies, duties and cesses and/or any other indirect taxes which may be levied in connection with construction of and carrying out the project and such other charges and taxes would be borne by the Allottee/Purchaser.
- (vii) It is relevant to note here that despite grant of opportunists to both parties vide roznama dated 23.01.2025 to submit their say on the points of liability to pay these other charges with a separate para with regard to the liability to pay infrastructure tax, both the parties failed to provide the requisite information on the point of liability to pay these charges except that Respondents did file an affidavit reiterating its demand and clarifying the demand of Rs.35,000/- as transformer charges.
- (viii) It is pertinent to note at this stage that Section 19(6) of the Act is the relevant provision for the purpose which provides that the allottee i.e. the Complainants



shall be responsible to make timely payments as per the agreement of sale *and also pay the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges if any.*

- (ix) Also, it is well known that the real estate agreements are normally drafted at the end of the promoter and at times with a view to protect its interests, these documents could be so tweaked by the promoter so as to adversely impact the legitimate expectations and rights of the flat purchasers. While developers may argue that the agreements were mutually accepted, the reality is that flat purchasers often have no choice but to sign on the dotted line. The courts have recognized this imbalance and taking note of these aspects, have often stepped in with a balanced and equitable interpretation of such agreement and related provisions of law; prioritizing the protection of consumer interests over the sanctity of one-sided contractual terms. As such the scope of the other charges as mentioned in Clause 36 of the Agreement dated 28.06.2022 would have to be read in terms of the provisions of the Section 19(6) of the Act.
- (x) It would be clear from above that out of various other charges demanded by the Promoter, only water charges and electric meter charges appear to be covered by the provisions of the Section 19(6) of the Act. Further, water charges and electric meter charges in the absence of any submission by the Complainants on this point and being part of the services being rendered by other agencies could be allowed as fair demand on the part of the promoter/Respondents.
- (xi) With regard to the demand of the promoter for payment of infrastructure tax and transformer charges, it is noted that subject of Agreement dated 28.06.2022 was sale of the built up space for human habitation upon grant of occupancy certificate; which cannot be contemplated without installation of a basic necessity/facility like transformer. Similarly, the payment of infrastructure tax should be the liability of the developer as he was required to obtain completion and occupancy certificate of

the project. Further, as per the provisions of The Goa Tax on Infrastructure Act, 2022, such tax has to be levied and paid on any construction to be undertaken by any person and such tax would be payable in two installments 50% at the time of issue of Technical Clearance/ Development Permission and 50% at the time of issue of Completion Certificate/Order.

(xii) Keeping in view what has been noted herein above, and also in terms of the provisions of Section 19(6) of the Act the Allottee is only liable to pay water charges and Electric Meter charges that to in the absence of any response on the issue of the liability of the charges upon specific directions of the Authority. The water charges and electric meter charges as demanded by the promoter add to an amount of Rs.35,000/- further both the parties have agreed that the total payment of Rs.18,85,000/- has been made by the Complainants to the Respondents. Though the Respondents have claimed to have received Rs.17,50,000/- as against the total consideration of the flat of Rs.17,98,000/-, this assertion of the Respondents does not survive particularly in view of the specific recital at clause 4 of the Agreement whereby the promoter/ developer has acknowledged having received the total consideration of the subject property of Rs.17,98,000/- and also in view of the provisions of Section 50 of the Registration Act which provides that a duly registered document takes effect as against every unregistered document relating to the same property.

(xiii) In view of the above, it is clear that the Complainants herein had paid the entire consideration of Rs.17,98,000/- in respect of the subject property prior to the execution of the Agreement dated 28.06.2022. Further, both the parties have agreed that the total payment of Rs.18,85,000/- has been made by the Complainants to the Respondents which implies that an amount of Rs.87000/- in addition to the entire consideration of Rs.17,98,000/- in respect of the subject property; has been paid by the Complainants to the Respondents which is now




claimed as refund by the Complainants and treated as payment towards other charges by the Respondents.

- (xiv) In view of what has been noted/discussed herein above, the Complainants is liable to pay at this stage the total amount of Rs.35,000/- only for other charges i.e water and electric meter charges besides balance of stamp duty amounting to Rs.1,440/- and therefore is entitled to a refund of Rs.50,560/- being excess of the payment due to be paid by the Complainants as per the agreement dated 28.06.2022. In above vie of the matter, the demand of further payment of Rs.92,000/- by the Respondents from the Complainants is also without any basis and hence unjustified. Thus it is clear that the Complainants has not only made the complete payment of all the amounts due under the said Agreement dated 28.06.2022 including the sale consideration/ price of the subject property i.e. Rs.17,98,000/-and other charges not included in sale consideration but is also entitled to a refund of Rs.50,560/- on account of having made excess payment.

The **point 'A'** is thus answered in affirmatives and in above terms.

## **12.Point No. B**

- (i) The Complainants in its submission has alleged that the Respondents had represented and assured to him that the construction of the subject property was almost complete and as such the Occupancy Certificate was expected to be granted within 30 days and accordingly the possession of the said flat will be handed over to the Complainants on or before 15.08.2022 followed by execution of deed of sale in favour of the Complainants and also referred to Clause 7,8 and 30 of the said Agreement dated 28.06.2022 in this regard. It was further submitted that he has neither received any notice of handing over of the possession or the possession of the subject property from the Respondents that too inspite of continuously visiting



the Respondent's office/site/resident to take possession of the said flat and also after paying entire sale consideration; which is in violation of assurances, representation and declaration made in the Agreement for Sale dated 28.06.2022. Attention was also drawn to Clause No. 38 of the said Agreement dated 28.06.2022 which records that the possession of the Said Flat was not handed over to the Complainants by the Respondent No.1 at the time of execution of the said Agreement though clause 4 of the said agreement noted that full consideration of the subject property had already been paid by the Complainants.

- (ii) The Complainants has further alleged that the Respondents instead of handing over of the possession of the subject property to him and further executing the sale deed in his favour; rented the subject property to a third party and the Respondents have admitted the same in their reply filed during the proceedings. The Complainants further stated that, in order to settle the dispute of non delivery, it addressed a Notice dated 31/07/2023 to the Respondents to handover the possession of Said Flat and settle the dispute if any amicably which was responded to by the Respondents No.1 stating that since they are yet to receive the Notarized Copy of Agreement for Sale, they could not proceed to deliver the possession of the Said Flat. It was further stated that the Respondents was immediately informed that Notarized copy of the said Agreement was already furnished to the Respondents No.1.
- (iii) Per contra, the Respondents initially sought to justify the delay in handing over of the possession and execution of the sale deed on the ground of non submission of notarized copy of the agreement for sale dated 28.06.2022 by the Complainants and later during the proceedings, the Respondents also took the plea of delay in vacation of the flat rented to third party as well as on account of pending balance amount towards the Complainants not deposited so far.





- (iv) The contention of the Respondents pleading inability to handover the possession of the subject property due to alleged non submission of notarized copy of the Agreement dated 28.06.2022 by the Complainants; appears totally irrelevant and misleading as the Respondents being party to the said agreement could be reasonably expected to have a copy of the said document in the record and in any case they were aware of the details of the matter since it did into controvert the assertion of the Complainants made vide the notice dated 31.07.2023 that the Respondents had assured him that the Occupancy Certificate was expected to be granted within 30 days of the execution of the said agreement and accordingly the possession of the said flat was to be handed over to the Complainants on or before 15.08.2022. Pertinently, the Complainants has claimed that a duly notarized copy of the said Agreement had already been provided by him to the Respondents. It is further noted that in its reply dated 06.09.2023 made in response to the said notice, the Respondents did not raise the issue of any balance payment yet to be made by the Complainants or that it was not able to handover the possession of the subject property to the Complainants pending vacation of the property rented out to third party. The issue regarding the balance payment had already been discussed under point 'A' whereby it was held that the Complainants has made not only the complete payment of all the amounts due under the said agreement dated 28.06.2022 including the sale consideration/ price of the subject property i.e. Rs.17,98,000/-and other charges not included in sale consideration and the Complainants was also entitled to a refund of Rs.50,560/- on account of having made excess payment.
- (v) As far as the other explanation of the Respondents for delay in handing over possession of the subject property that the same being rented out by the landowner of the project and not getting vacated; is also of no help to him or has any relevance in the present context. There is no merit in the aforesaid argument since



it is held by the Apex court in the case of **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors.** in civil appeal no. (s) 6745-6749 and 6750-6757 of 2021, the Hon'ble Supreme Court has clarified that "if the promoter fails to give possession of the apartments, 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 aforesaid ground for delay in delivering of possession, as given by the Respondents, will not come to the rescue of the Respondents from legal liabilities under the said Act and corresponding legal rights accrued to the Complainants under the said Act.

- (vi) With regard to the date of completion of the project and handing over of the possession of the subject property to the allottee/purchaser as per the Agreement for Sale dated 28.06.2022, clause 7 of the said agreement dated 28.06.2022 notes that the promoter/ developer has already completed the construction of the subject property and after obtaining the occupancy certificate from the competent Authority, the possession of the same shall be handed over to the allottee/Complainants. It further needs to be noted that as per the submission of the promoter developer/ Respondents herein made vide application dated 10.04.2025 for production of additional documents, the occupancy certificate for Block C in which the subject property is claimed to be situated; was received in the year 2020. Further, the Complainants has stated that the Respondents had represented to him that the construction of the subject property was almost complete and as such the Occupancy Certificate was expected to be granted within 30 days and accordingly possession of the said flat will be handed over to the Complainants on or before 15.08.2022 and this averment of the Complainants has not been controverted by the Respondents. Pertinently, the Complainants had made the total payment of

Rs.18,85,000/- by 20.06.2025. Therefore, it can be safely inferred that the possession of the subject property was promised and required to be handed over to the Complainants on/by 15.08.2022. As revealed from the submissions made by both parties during the proceedings, the Promoter/Respondents has not handed over the possession of the subject property to the Complainants so far. It is relevant to add here that the Respondents while informing about the vacation of subject property vide its further say dated 14.02.2024, itself admitted the delay.

- (vii) It is evident from the above that the Promoter/Respondents has failed to handover the vacant and physical possession of the Said Flat booked by the allottee in accordance with the assurances made by the promoter to the Complainants read with terms of the Agreement for Sale registered on 28.06.2022. Though the Respondents vide its further say dated 14.02.2024 has referred to some interaction with regard to amicable settlement of the issue by both parties after the vacation of the subject property by the tenants, the submission of the Respondents, however, also reveals that the same could not proceed further on the insistence of the Respondents for payment of pending dues and denial to pay any compensation as asked for by the Complainants despite delay of approximately 22 months at that point of time. It is relevant to note here that the date of possession of subject property as per the assurances made by the Respondents Promoter read with the terms of agreement for sale dated 28.06.2022 has been held to be 15.08.2022 herein above.

The **Point no. 'B'** is thus answered in affirmative.

### **13. Point No. C**

- (i) During the proceedings held on 16.09.2025, it was noted that the Ld. Advocate for the Respondents had annexed with their say/reply to the Complaint dated 27.12.2023, a





copy of MOU dated 16.03.2013 which was in Marathi though the say has been submitted in English inter alia making reference to said MOU. The Respondents also later filed an application dated 10.04.2025 wherein 03 MOUs dated 16.03.2013, MOU dated 17.05.2018 and 30.11.2019 were referred to by the Respondents; but the copies of the said 03 MOUs could not be annexed to the said application inadvertently. Further the Respondents vide the said application dated 10.04.2025, while referring to these prior agreements/ sought to submit that the allotment of the subject property has been only possible as the promoter Respondents settled the matter by refunding the amount under these agreements to respective parties and accommodated the Complainants as per the availability of the finances with him. Despite the fact, the Complainants have made short payment and is also insisting on the compensation which is farfetched and injustice to them. Ld Counsel for the Respondents further undertook to submit certified translation copies of these 03 documents in English which were subsequently received in the registry.

- (ii) The perusal of the said documents revealed that while the documents executed as memorandum of understanding on 16.03.2013 is neither notarized nor registered, the other 2 documents titled as agreement and Relinquishment deed were duly notarized on 28.07.2021. It is further noted that the said memorandum of understanding executed between 4 persons including the present complaint and M/s Kuteer Realtors represented by its Partners, pertained to flat No. 101,103,104,202 And 204 for a total consideration of Rs.1,02,60,000/-. Though the other 2 documents were between the Complainants herein and Mr. Akhil Arun Velhal but pertained to different properties other than the subject property.
- (iii) It is pertinent to observe that the said agreement dated 28.06.2022 which is duly registered before Jurisdictional Sub Registrar, nowhere makes any mention of these prior documents. Even the recitals at Clause 4 of the said agreement which records the factum of payment of total consideration by the Complainants to the Respondents



prior to the execution of the said agreement; does not make a remoter reference to these prior documents. It is obvious that the said unregistered documents having been executed prior in time and having no apparent relation to the subject property would have no bearing or relevance in the present matter which pertains to flat No.102 in the project Kuteer Kunj. Respondents in its various pleading submitted during the course of the proceedings, have not been able to clarify the relevance of these prior unregistered documents to the present matter. Even if it is assumed there might be some possible implications qua the various parties including the Complainants and Respondents herein, the matter would have to be agitated before the appropriate forum by the aggrieved persons. It is also relevant to note that the provisions of Section 50 of the Registration Act provides that a duly registered document takes effect as against every unregistered document relating to the same property.

- (iv) In view what has been observed and discussed herein above it is evident that the prior agreements being referred to by the Respondents are of no relevance to the instant matter and any plea by the Respondents based on these documents is totally devoid of merit and needs no further consideration.
- (v) Accordingly, the **point No. 'C'** is answered in negative and in above terms.

#### **14.Point No. D**

- (i) Admittedly, the project Kuteer Kunj is a case of Joint Development and for the purpose an agreement for Joint development dated 16.01.2013 was executed between the Respondents No. 1,2,3 (Promoter developer)herein and Respondents No.4&5 (Promoter Land owner) which was further duly registered in the office of sub registrar Bardez on 29.01.2013. The details available in the application made for registration of the project also confirm the same. In view of the definition of the promoter as available in Section 2(zk) of the Act, both the Developer and the landowners shall be



deemed to be the promoters of the project and shall be jointly liable as such for the functions and responsibilities specified under this Act all the rules and regulations made thereunder.

- (ii) **Hon'ble High Court of Bombay in the matter of Wadhwa Group Housing Pvt. Ltd. Vs Mr Vijay Choksey and others** while dealing with similar situation, has held as follows:

“Explanation to Section 2(zk) makes all persons who construct or convert building into apartments or develop a plot for sale, as well as a person who sells apartments or plots to be promoters making them jointly liable as such for the functions and responsibilities specified under the Act, or the Rules and Regulations made thereunder. Thus, a person who does not actually construct or causes to be constructed a building but merely takes part in the joint venture and sells flats, becomes a promoter. Appellant admits that it is entitled to a share in the joint venture in the constructed area, which it is entitled to sell. Thus, the Appellant is entitled to sell flats in the project and accept consideration for such sale. there is therefore no doubt to the position that, both Appellant as well as the second Respondents are Promoters and are jointly liable in respect of the responsibilities under the RERA and Rules and Regulations made thereunder.

18. In view therefore, mere falling of flat in the share of the second Respondents under the Joint Development Agreement, would not excuse the Appellant from the responsibilities and liabilities under the RERA, Rules and Regulations, made thereunder qua the flat. RERA does not demarcate or restrict liabilities of different promoters in different areas. The liability is joint for all purposes under the Act, Rules and Regulations.





20. Thus, the Circular dated 4 December 2017 also makes it abundantly clear that even the entities who are entitled to share in the revenue generated from sale of flats are jointly responsible/liable for functions and responsibilities specified under the Act as if they are Promoters themselves.”

23. Thus under section 18(1)(b), the liability to return the amount received from the flat purchaser is on the Promoter. Since the Appellant is covered by definition of the term ‘Promoter’, it is also jointly liable to refund the amount alongwith the other promoter, being the second Respondents. Section 18 cannot be narrowly interpreted as sought to be suggested by Mr. Engineer, to include only that promoter who actually received the amount. The objective behind enactment of RERA must be borne in mind. If such narrow interpretation of Section 18 is accepted, it would give a license to developers to deliberately accept payments in the accounts of one of the promoters and then escape the liability to refund or to pay interest by taking a specious plea that the other promoters are not liable in respect of those payments.

24. The Appellant’s contention about absence of privity of contract between it and the Complainants is totally misplaced. Definition of the term ‘promoter’ under Section (zk) of the RERA would indicate that even persons/entities with whom a flat purchaser does not enter into contract are also covered by definition of the term ‘promoter’. Therefore, it is not necessary that there has to be an agreement between every Promoter and the flat purchaser. As observed above, it is a matter of indoor management between the Promoters and the flat purchaser who is not supposed to know the intricacies of the arrangements made between several promoters amongst themselves. When a claim is raised in respect of a real estate project by a flat purchaser, all promoters become jointly liable qua the flat purchasers, irrespective of whether there is privity of contract with each of the promoter or not. This is the



scheme of RERA absence of privity on contract with a particular promoter does not relieve such promoter in respect of the liabilities under RERA”.

The above cited judgment is squarely applicable in the facts and circumstances of the case particularly when all the promoters applied together for registration of the project and are also party to the agreement dated 28.06.2022 relating to the subject property. In view of the observation of Hon'ble High court of Bombay as noted herein above, the contention of the Respondents No. 1,2&3 that the subject property was part of the share allotted to the Respondents No.4&5 (land owners) under JDA who had further rented it to the tenant and there has been no financial gain to the Respondents No.1,2&3 to whom the subject property was later transferred in lieu of providing financial assistance to Respondents No.4&5 as well as Respondent No.1,2&3 being confirming party to the said Agreement dated 28.06.2022 are therefore not liable to pay any compensation etc; is of no help to the Respondents herein as all the promoters are jointly liable to discharge the liability under Section 18 of the Act.

The **Point No. 'D'** is accordingly answered in negative.

#### **15. Point No. E**

- (i) It has already been concluded under Point No. 'B' that the promoter has failed to complete the project and handover the possession of the duly completed subject property to the Allottee/Complainants within the agreed timeline in terms of assurances made by the promoter read with the terms the said Agreement dated 28.06.2022. On perusal of Section 18(1) of the Act read with the proviso appended to it, it is clear that if Promoter fails to complete the project or is unable to deliver possession of the duly completed apartment, plot or building in accordance with the terms of the Agreement for sale to the allottee and the allottee does not intend



to withdraw from the project then, Promoter shall pay interest for every month of delay till the handing over of the possession, to Allottee at such rate as may be prescribed. Thus, the issue in question falls squarely under the provisions of sec 18(1) of the Act.

- (ii) The Hon'ble Supreme Court in the case of **"Imperia Structures Ltd. Vs. Anil Patni and Another"** 2020(10) SCC 783 at Para 25 of its order has with respect to provisions of Section 18 of the Act, observed as follows:-

"25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment, if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."

- (iii) Further, the observations made by the Hon'ble Supreme Court at Para Nos. 25 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, (supra) dated 11<sup>th</sup> November 2021** are extracted herein below for ready reference.

"25. 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.”

(iv) In view of above, it is clear that the rights of Allottees under Section 18 of the Act are unconditional and absolute, regardless of unforeseen events including stay orders of the Court/Tribunal, any other reasons or even factors beyond control of the Promoter. Further, the contention of the Promoter that the delay was on account of non submission of notarized copy of the agreement for sale dated 28.06.2022 by the Complainants or on account of delay in vacation of the flat rented by the land owners to third party; are of no help to the Promoter to negotiate with the rigors of the consequences spelt out under section 18(1) of the Act in case where Promoter fails to complete or handover possession of the subject property by the agreed timeline. The other plea of of the Promoter in this regard pertained to pending balance amount towards the Complainants not deposited so far; was also not found tenable.

(v) Section 17 of the RERA Act states as follows:-

“17. **Transfer of title.**-(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, **and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees** and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the

other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

- (vi) It has already been held at Point No. 'A' above that Complainants has already made a total payment of ₹18,85,000/- to the Respondents and it can be safely inferred that the Complainants had made all the payments including the other charges as due under the said agreement dated 28.06.2022 and also that the Complainants in fact was entitled to a refund of Rs.50,560/- on account of having made excess payment.
- (vii) In view of the above, it is clear that the Complainants has already paid total amount including other charges as due under the provisions of the said agreement dated 28.06.2022 and instead of payment of additional balance amount demanded by the Promoter/ Respondents; it was held that the Complainants was entitled to a refund of Rs.50,560/- on account of having made excess payment.. Thus the Respondents is liable not only to hand over possession of the subject property and execute sale deed of the subject property in favour of the Complainants in terms of section 17 of the act but also to pay monthly interest on the amount paid, for the period of delay in handing over of possession under the provisions of Section 18(1) of the Act. Since in the present case, the Complainants has opted to continue in the project, he is entitled to the interest with effect from the date of possession which after taking note of the assurances made by the promoter to the Complainants read with terms of the Agreement for Sale registered on 28.06.2022, has been held to be on/by 15.08.2022. The record reveals that the Complainants had made the total payment of Rs.18,85,000/- by 20.06.2022 i.e prior to the execution of the said agreement for sale





dated 28.06.2022 and also the date of possession. As such the Respondents shall be liable to pay interest at the rate of MCLR+2% at the total amount of Rs.18,85,000/- from 15.08.2022 till the date of handing over of possession to the allottee.

- (viii) Rules 18 of the Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosure on websites) Rules, 2017 prescribes the rate of interest payable by the promoter as follows:-

Rule 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 (MCLR) plus two percent.”

Since the highest SBI MCLR as applicable on date happens to be 8.85 (revised since 15.07.2025) and as such, the interest on the amount to be refunded would be leviable at the rate of 10.85%.

- (ix) In view of what has been discussed herein above, it is evident that the interest payable by promoter to Allottees/Complainants on the total amount of Rs.18,85,000/- in the instant case, would be @ rate of 10.85% for the period from 15.08.2022 till the date of this order in lump sum and thereafter monthly till the handing over of the possession of the subject property to the Complainants/allottee.
- (x) It is noted that the occupancy certificate for the project “Kuteer Kunj” was already granted in the year 2020. Accordingly, the Promoter is required to handover the possession of the subject property to the Complainants and to execute sale deed of the subject property in favour of the Complainants in terms of section 17 of the act



within 60 days from the issue of this order without asking for any additional payment.

The **point no. 'E'** is thus answered in affirmative.

**16.Point No. F**

- (i) Section 18 of the Act stipulates that Complainants are entitled to refund including compensation without prejudice to any other remedy available. Section 71 of the Act stipulate specific procedures for adjudication of compensations. Section 72 of the Act further specifies the factors to be taken into account by Adjudicating Officer, while adjudging the quantum of compensations or interest as the case may be under Section 71 which are listed here below:
- 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.
- (ii) In the instant case, Complainants has filed single complaint before the Authority seeking refund, interest and compensation etc. Upon determination by the Authority, the instant complaint is to be further transferred to Adjudicating Officer for determination of compensation as per provisions under Section 71 of the Real Estate (Regulation and Development) Act, 2016.



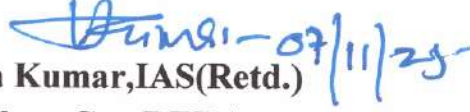


17. In view of the findings arrived at in respect of various points of determination listed from para 11 to 16, it will be just to issue the following directions in the matter.

**Directions**

- i. The Respondents are directed to pay refund amount of Rs. 50,560/- to the Complainants within a period of 60 days.
- ii. The Respondents are directed to pay interest @ 10.85% 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 lump sum within 60 days from the date of issue of this order and thereafter monthly till the handing over of the possession of the subject property to the Complainants/allottee. However, the total amount bearing interest @ 10.85% would be reduced to Rs. 18,34,440/- after the payment of the refund amount by the Respondents. As held herein above particularly under para 'D', all the respondents No.1,2,3 as well as Respondents No.4&5 who are proceeded ex-parte; shall be jointly liable for the purpose.
- iii. The Respondents in terms of Section 17 of the RERA Act, is also directed to handover possession of the subject property to the Complainants and also to execute a sale deed in favour of the Complainants in respect of the flat No.102 admeasuring 28.58 sq. mts. of carpet area, located at 1<sup>st</sup> floor of Block C of the building known as **KUTEER KUNJ (subject property)** as per the Agreement for sale dated 28.06.2022, within 60 days from the date of issue of this order without asking for any additional payment.
- iv. The Respondents are directed to file compliance report of this order in the form of an affidavit within sixty five days of this order, failing which further legal action will be initiated by the Authority under the RERA Act for execution of the order.

- v. In view of the observations made at Point No. 'F' above, the instant complaint is further transferred to Adjudicating Officer for determination of compensation as per provisions of Section 71 of the Real Estate (Regulation and Development) Act, 2016.

  
**Virendra Kumar, IAS(Retd.)**  
**Member, Goa RERA**