



## GOA REAL ESTATE REGULATORY AUTHORITY

101, 1<sup>st</sup> Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 Goa

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F.No:3/RERA/Complaint( 355)/2023 / 989

Date: 05/10/2023

**1. Mrs. Smriti Rai,**

Wife of Nishant Rai,

34 years of age, married,

Indian National,

R/o Flat no. 510, 5<sup>th</sup> Floor,

"Las Terrazos" Cunchelim,

Mapusa, Bardez, Goa.

**2. Mr. Nishant Rai,**

33 years of age, married,

Indian National,

R/o Flat No. 510, 5<sup>th</sup> Floor,

"Las Terrazos" Cunchelim,

Mapusa, Bardez, Goa.

Represented herein by

Power of Attorney Holder

Mr. Prakhar Rai,

\_\_\_ years of age, married,

Indian National,

R/o Nivas Villas, Villa No. 2,

41/1 Novo Portugal, Moira, Goa.

.....Complainants

*Versus*

**1. Sheraton Constructions,**

Having its registered office at,

Hari Bhuvan, 202, 2<sup>nd</sup> floor,

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Plot No. 634, P.D. Hinduja Marg,  
Khar (W), Mumbai 400052.  
Having its site office at  
“Las Terrazos” Cunchelim,  
Mapusa, Bardez, Goa.

**2. Miss Simran Suresh Tekchandani,**  
27 years of age, Indian National,  
C/o Sheraton Constructions  
Having its site office at  
“Las Terrazos” Cunchelim,  
Mapusa, Bardez, Goa.

**3.Mr. Suresh Tekchandani,**  
Major of age, Indian National,  
C/o Sheraton Constructions  
Having its site office at  
“Las Terrazos” Cunchelim,  
Mapusa, Bardez, Goa.

**4.Mr. Rahim Somani,**  
Major of age, Indian National,  
C/o Sheraton Constructions  
Having its site office at  
“Las Terrazos” Cunchelim,  
Mapusa, Bardez, Goa.

.....Respondents

**ORDER**  
**(Dated 05.10.2023)**

This order disposes of the online complaint filed under Section 7, 18 and 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as ‘the RERA Act’) wherein the complainants have prayed this Authority to direct the respondents to hand over flat no. 510 or refund the

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amount paid with interest and also the offline complaint wherein the complainants have prayed this Authority to direct the respondents to execute sale deed in respect of flat no. 510 and to refund ₹26,00,000/- (Rupees Twenty Six Lakhs only) along with interest @ 18% per annum “from the date of receipt of payment till actual refund for the loan that was taken in lieu of handing over possession”.

2. It is the case of the complainant that the respondent no. 1 is engaged in the business of real estate development and respondents no. 3 and 4 represented to the complainant that they are the partners of respondent no. 1; that the respondent no. 2 is the daughter of respondent no. 3 and also a partner/ land owner of the land where the project “LAS TERRAZOS” is being constructed at Cunchelim, Mapusa, Goa .
3. According to the complainants, they visited the site in February 2021 which was being operated by respondent no. 4 as representative of respondent no. 1 and Mrs. Ridhima who was the sales executive showed various flats out of which the complainants were interested in purchasing flat bearing no. 510, which flat as stated by respondent no. 4 was already booked by the respondent no. 1 to one Rosita and they were told that the said flat no. 510 is mortgaged to a bank for bank loan, which loan has to be cleared first in order to cancel sale agreement in favour of Rosita and make fresh agreement for sale in the name of the complainants. The complainants have submitted that the respondent no. 4





further informed them that the power of attorney of Rosita was with the respondent no. 1 and Rosita was abroad but willing to sell the flat no. 510 using the said power of attorney.

4. According to the complainants, the respondent no. 4 told the complainants to transfer the “token amount” not in account of the respondent no. 1 but in the personal account of respondent no. 4 and accordingly on 14.02.2021, the complainants transferred ₹3,50,000/- (Rupees Three Lakhs Fifty Thousand only) to account “Big Wheels” as per the instructions of respondent no. 4.
5. The complainants have further submitted that the respondent no. 4 suggested to them to make payments towards another flat bearing no. 503 on the same floor of the building as the said flat no. 503 was not connected to any loan or hindrance and accordingly the complainants paid the full amount of ₹49,50,000/- (Rupees Forty Nine Lakhs Fifty Thousand only) towards the flat bearing no. 503.
6. According to the complainants, they were assured by the respondent no. 1 and respondent no. 4 that the said respondents would soon collect the funds and close the loan of flat no. 510 after which they would cancel the agreement for sale dated 26.02.2021 executed in favour of the complainants with respect to flat no. 503 and make a fresh agreement with the complainants for flat no. 510.



7. According to the complainants, they were informed by the respondents that the respondents would have enough funds to close loan in respect of flat no. 510 and a sale agreement would be executed with the complainants after closing the loan account. It is stated that the cancellation of agreement for sale in respect of flat no. 503 was executed by the power of attorney of the complainant no. 1 on 19.10.2021.
8. According to the complainants, in November 2021, the complainant no. 2 inquired with the respondent no. 4 for execution of agreement for sale of flat no. 510 to which the respondent no. 4 stated that the funds were used elsewhere and they were in short of funds to clear the loan but respondent no. 4 assured that the loan would be clear at the earliest. It is further stated that the complainants returned to India in March 2022 and complainant no. 2 continuously took up the matter with the respondents to execute the agreement for sale in respect of flat no. 510, however the respondents only handed over the possession of flat no. 510 to the complainants and the complainants started living in the said flat no. 510 after house warming ceremony on 04.04.2022.
9. According to the complainants, in a meeting between the complainant no. 2 and the respondents no. 3 and 4, the respondent no. 3 informed that the money for closing the loan in respect of flat no. 510 could not be arranged by the respondent no. 1 and in case the complainants wanted sale agreement to be executed then they would have to give loan amount of ₹22,00,000/- (Rupees



Twenty Two Lakhs only) to the respondents which would be returned after execution of the sale agreement in respect of flat no. 510 in the favour of the complainants and thereafter, under pressure, ₹22,00,000/- were transferred as per the instructions of respondents no. 3 and 4, by the complainants in the account of one Bhulai S. K. who is a contractor working for respondent no. 1 in the said project.

10. According to the complainants, the respondent no. 4 informed the complainants that the loan has been closed in respect of flat no. 510 and the sale deed in respect of the said flat no. 510 would be executed on coming back of respondent no. 3 from abroad. It is stated that the respondent no. 1 issued a letter dated 06.06.2022 to the complainant no. 1 stating the said facts and also issued a letter of allotment dated 15.02.2021 and assured by letter dated 06.06.2022 that agreement and other documentation would be done after returning back of respondent no. 3 from USA on 15.07.2022. The complainants have stated that they were forced to pay electricity and maintenance charges every month in the name of flat possession. It is further stated that the complainants kept on requesting the respondents to complete the documentation in respect of the flat no. 510 but the respondents delayed it for some reason or the other and therefore the complainants sent an email dated 23.01.2023 to the respondents calling upon immediate execution of the sale deed and also for return of the amount of ₹26,00,000/- (Rupees Twenty Six Lakhs only) to which an email





was received from respondent no. 3 stating that they are refunding only ₹49,50,000/- (Rupees Forty Nine Lakhs Fifty Thousand only) and that the respondents had no knowledge as to the remaining payments and also the respondents refused to execute the sale deed in respect of the said flat and called upon the complainants to vacate the flat no. 510 at the earliest. According to the complainants an amount of ₹75,50,000/- had been paid by the complainants to the respondent.

11. In the supplementary complaint filed offline, the complainants prayed to this Authority that since the complainants have paid “almost the entire sale consideration for the flat no. 510” the respondents be directed to execute the sale deed in respect of the said flat in favour of the complainants; to direct the respondents to refund the amount of ₹26,00,000/- along with interest at the rate of 18% per annum from the date of receipt of payment till actual refund for the loan that was taken in lieu of handing over of possession and execution of the sale deed in respect of flat no. 510. It is also stated in the supplementary complaint that the complainants have filed same complaint in the District Consumer Redressal Forum at Porvorim “to seeking aid with same narrative in February 2023”.
12. Ld. Advocate Pawan Shetye and Ld. Advocate S. Mhambre appeared for the complainants. After perusing the entire records of the case the matter was kept for arguments on maintainability of the instant complaint before this Authority.



Arguments on maintainability of this complaint were heard from Ld. Advocate S. Mhambre for the complainants.

13. After going through the entire records of the case, the point which comes for my determination along with the reasons and finding thereon is as follows:-

Point for determination	Finding
Whether the instant complaint is legally maintainable before this Authority under the RERA Act?	In the negative.

### REASONS

14. The records of the case show that there is no concluded contract between the complainants and the respondents in respect of flat no. 510 regarding which the complainants are praying this Authority to direct the respondents to execute the sale deed. No agreement for sale is executed and registered between the complainants and the respondents in respect of flat no. 510. Even the allotment letter dated 15.02.2021 regarding flat no. 510 cannot be termed as any contract/ agreement between the complainants and the respondents because **firstly**, it is signed only by respondent no. 1 and by no other respondent or complainants, **secondly** there is specific term and condition therein in para 1 to the effect that “upon issuance of this letter of allotment, the allottee and/ or joint allottee shall be liable to pay the aforesaid consideration value and the society and other charges **as specified in agreement to sale**”(emphasis supplied) and in para 3

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thereof to the effect that in the event of the allottee fails to make “payment of all due amounts as per schedule of payments **stated in agreement to sale** the allottee and/ or joint allottee shall be deemed to be in default” (emphasis supplied) but as stated above, there is no agreement for sale between the parties for the sale of flat no. 510 and **thirdly** the said allotment letter though speaks of consideration amount, various amounts to be paid by the complainants and mode of payment but there is nothing on record to show that consideration amount and various other charges were paid by the complainants in respect of flat no. 510.

15. The payment receipt dated 04.03.2021 placed on record by the complainants is in respect of flat no. 503 and not in respect of flat no. 510. As stated above, the subject matter of the instant complaint is flat no. 510 and not flat no. 503. Even in the complaint dated 04.08.2023 filed by the complainants before this Authority, it is mentioned in para 10 thereof as follows:-

“10. The complainants states that opposite party no. 4 suggested to make payments in name of another flat no. 503 on the same floor. Flat no. 503 was with opposite party no. 1 and not connected to any loan or hindrance. The complainants accepted the offer and paid full amount of Rs. 49,50,000/- (Rupees Forty Nine Lakhs Fifty Thousand only) towards the

flat”  


Hence, it is clear that according to the complainants, consideration amount of ₹49,50,000/- was paid by the complainants towards flat no. 503 which is not the subject matter of the instant complaint and thus the said payment is not towards flat no. 510, which is the subject matter of the instant complaint.

16. The complainants have mentioned in the complaint dated 04.08.2023 that upon persuasion of respondent no. 4, the complainants transferred on 14.02.2021 an amount of ₹3,50,000/- (Rupees Three Lakhs Fifty Thousand only) “**to account Big Wheels** on the instruction of opposite party no. 4 who was representing the opposite party no. 1” (emphasis supplied).
17. In para 19 of the said complaint, the complainants have mentioned that the respondent no. 3 told the complainants to pay loan amount of ₹22,00,000/- (Rupees Twenty Two Lakhs only) to the respondents in case the complainants want to execute sale agreement in respect of flat no. 510, which is the subject matter of the instant complaint. In para 20 of the said complaint, the complainants inter alia stated as follows:-

“20. The complainant states that after a lot of instant pressure from opposite parties, Rs. 22,00,000/- (Rupees Twenty Two Lakhs only) were transferred in the account of Bhulai S. K. who is contractor working for opposite party no.1 in “Las Terrazos” on the instruction of opposite parties no. 3 and 4”



18. From the aforesaid it is clear that the amount of ₹3,50,000/- (Rupees Three Lakhs Fifty Thousand only), according to the complainants, was transferred to the account "Big Wheels" and not in the account of the builder and the amount of ₹22,00,000/- (Rupees Twenty Two Lakhs only) was paid by the complainants as a loan in the account of one Bhulai S. K. who is not a party in the instant complaint.
19. Thus, there is nothing on record to show that the complainants paid sale consideration amount towards flat no. 510 to the builder. It is worth mentioning that in the e-mail dated 23.01.2023 by respondent no. 1 to the complainants, the respondent no. 1 refused to accept that any payments were made by the complainants on behalf of respondent no. 1 to any third party. In the said e-mail dated 23.01.2023, it is clearly mentioned by respondent no. 1 inter alia as follows:-

"At the outset we refuse any such payments made on our behalf to any third party reasons uncalled and unknown.

You are definitely trying for something funny as which we as Sheraton Constructions refuse to take any liability and responsibility of any payments made by you to any third party to which we have no clue upon.





As to the flat no. 510 we are not sure if we have any clarity to sell the same to you any hence the company has decided to refund your money in due course of time.”

20. From the aforesaid email dated 23.01.2023 from the respondent no. 1 to the complainants it is clear that the respondent no. 1 is denying that any payment made by the complainants to any third party was actually the payment made to the respondent no. 1. As stated earlier, the documents show that and as admitted by the complainants, the payment towards the sale consideration was made by the complainants to the respondent no. 1 only in respect of flat no. 503 which is not the subject matter of the instant complaint. The complainants have produced on record the agreement for construction and sale dated 26.02.2021, however the said agreement pertains to flat no. 503 and not in respect of flat no. 510. In fact, even the said agreement for sale dated 26.02.2021 in respect of flat no. 503 was cancelled on 19.10.2021, as admitted by the complainants in para 14 of the complaint.
21. The complainants have submitted that they are in possession of flat no. 510 and hence are entitled to have the sale deed executed in respect of the said flat, however there is no document showing valid and legal transfer of flat no. 510 in favour of the complainants. As stated above, there is no registered agreement for sale in favour of the complainants in respect of flat no. 510 as mandated by



the provisions of **Section 13(2)** of the RERA Act. Moreover, the complainants have mentioned in the complaint itself that the respondent no. 1 has called upon the complainants to vacate the flat no. 510 at the earliest. As pointed out above, the respondent no. 1 in e-mail dated 23.01.2023 has shown its intention not to sell flat no. 510 to the complainants.

22. The Ld. Advocate for the complainants emphasized on the letters dated 06.06.2022 and 10.05.2022 issued by the respondent no. 1 to the complainant no.1, however both the said letters do not help the case of the complainant since the letter dated 06.06.2022 clearly mentions that the respondent no. 1 shall execute “the sale agreement by 20<sup>th</sup> July 2022” in respect of flat no. 510 and the letter dated 10.05.2022 though refers to the amount of ₹49,50,000/-, however it is clearly mentioned therein that the said amount paid by the complainants was towards the consideration amount of flat no. 503 and not towards flat no. 510 and further the said letter dated 10.05.2022 also shows that the sale agreement in respect of flat no. 510 has not been executed and registered.

23. **In view of the above discussion, it is clear that there is no concluded contract/ agreement for sale in respect of flat no. 510 in favour of the complainants and consequently in respect of the said flat no. 510 there is no relationship between the complainants and the respondents as allottees and promoter within the purview of the RERA Act.**




24. Moreover, the complainants have stated in para 30 of the complaint dated 04.08.2023 as follows:-

“30. The complainant has **filed same complaint** in the District Consumer Redressal Forum at Porvorim, seeking aid **with same narrative** in February 2023. The opposite parties have not filed any reply till this date on the subject matter and have not reflected any change in their intentions” (emphasis supplied).

25. From the aforesaid plea of the complainants, it is clear that the complainants have already filed “same complaint”, “with same narrative” before the District Consumer Redressal Forum at Porvorim in February 2023. It is worth mentioning that the instant complaint before this Authority was filed by the complainants and received by this Authority on 14.05.2023. **Thus, before filing the instant complaint before this Authority, same complaint was already filed, according to the complainants before the District Consumer Redressal Forum at Porvorim. On this ground also, the instant complaint is not legally maintainable before this Authority.**

26. Section 79 of the RERA Act bars the jurisdiction only of Civil Courts in respect of matters which an Authority constituted under the RERA Act is empowered to adjudicate on. Section 88 of the RERA Act is akin to Section 3 of the Consumer Protection Act and provides that the provisions of the RERA Act shall apply in addition to and not in derogation of other applicable laws.





27. In the case of **"IREO Grace Realtech Pvt. Ltd. vs. Abhishek Khanna"** 2021 **ALLSCR 506**, the Hon'ble Supreme Court held as follows:-

"An allottee may elect or opt for one out of the remedies provided by law for redressal of its injury or grievance. An election of remedies arises when two concurrent remedies are available, **and the aggrieved party chooses to exercise one, in which event he loses the right to simultaneously exercise the other for the same cause of action.**" (emphasis supplied)

28. The aforesaid doctrine of election, as held in the case of **"P. R. Deshpande vs. Maruti Balaram Haibatti"** (1998) 6 SCC 507 is based on the rule of estoppel. In the case of **"National Insurance Company Ltd. vs. Mastan and others"** (2006) 2 SCC 641, the Hon'ble Supreme Court held as follows:-

"The doctrine of election is a branch of "rule of estoppel", in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. **The doctrine of election postulates that when two remedies are available for the same reliefs, the aggrieved party has the option to elect either of them but not both. Although there are certain**

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exceptions to the same rule but the same has no application in the instant case.....The principle where either of the two alternative Tribunals are open to a litigant, each having jurisdiction over the matters in dispute, and he resorts for his remedy to one of such Tribunals in preference to the other, he is precluded, as against his opponent, from any subsequent recourse to the latter” (emphasis supplied)

29. In the case of “**M/s Imperia Structures Ltd. vs. Anil Patni and another**” (2020) 10 SCC 783, the Hon’ble Supreme Court held as follows:-

“31. Proviso to Section 71(1) of the RERA Act entitles a complainant who had initiated proceedings under the CP Act before the RERA Act came into force, to withdraw the proceedings under the CP Act with the permission of the Forum or commission and file an appropriate application before the adjudicating officer under the RERA Act. The proviso thus gives a right or an option to complainant concerned but does not statutorily force him to withdraw such complaint nor do the provisions of the RERA Act create any mechanism for transfer of such



pending proceedings to authorities under the RERA Act.

As against that the mandate in section 12(4) of the CP

Act to the contrary is quite significant.

30. Again, in so far as cases where such proceedings under the CP Act are initiated after the provisions of the RERA Act came into force, there is nothing in the RERA Act which bars such initiation. The absence of bar under Section 79 to the initiation of proceedings before a fora which cannot be called a civil court and express saving under Section 88 of the RERA Act, make the position quite clear. Further, Section 18 itself specifies that the remedy under the said Section is “without prejudice to any other remedy available”. **Thus, the parliamentary intent is clear that a choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the CP Act or file an application under the RERA Act**” (emphasis supplied)

31. From the aforesaid, it is clear that the complainants have the choice to initiate appropriate proceedings either under the Consumer Protection Act or under the RERA Act, as to alternative remedies are provided under the aforesaid Acts but once the complainants resort to the remedy under the Consumer Protection Act, the complainants are precluded from taking any subsequent recourse to the RERA Act for the same reliefs on the same facts and the same cause of action. Even National Consumer Disputes Redressal Commission (NCDRC) in New Delhi has recently on September 20, 2023 while using the concept of “estoppel





**by election of remedy”** which applies when multiple remedies are available for an issue and where the remedies might run in contradiction to each other held that **“to avoid multiplicity of proceedings and contradictory judgments on the same issue between the same parties”** a complainant cannot approach both the Real Estate Regulatory Authority (RERA) and the Consumer Court over the same complaint. The NCDRC held that “an election of remedy arises when two concurrent remedies are available and the aggrieved party chooses to exercise one, in which event he loses his right to simultaneously exercise the other for the same cause of action.

32. In the complaint dated 04.08.2023, the complainants have also prayed for the refund of “loan” of ₹26,00,000/- (Rupees Twenty Six Lakhs only) along with interest @18% per annum from the date of receipt of payment “till actual refund for the loan that was taken in lieu handing over possession”, however the said prayer cannot be granted by this Authority since this Authority has no jurisdiction to direct the respondents to refund any “loan” amount. There is no provision in RERA Act under which this Authority can direct the respondents to pay back the loan amount to the complainants.
33. In the premises aforesaid, it is clear that the instant complaint is not legally tenable before this Authority not only because there is no concluded contract/ agreement for sale in respect of flat no. 510 in favour of the complainants and accordingly there is no relationship between the complainants and the



respondents as allottees and the promoter within the purview of the RERA Act in respect of flat no. 510 but also because the complainants have, prior to the instant complaint, already initiated appropriate proceedings by filing “same complaint” under the Consumer Protection Act before the District Consumer Redressal Forum at Porvorim on the same facts and same cause of action and hence are precluded to file instant subsequent complaint before this Authority.

34. In view of the aforesaid, the instant complaint is dismissed as legally not tenable before this Authority.

*Vijeta* 5/10/2023  
(Vijaya D. Pol)  
Member, Goa RERA