



GOA REAL ESTATE REGULATORY AUTHORITY

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Tel: 0832-2437655; e-mail: goa-rera@gov.in

F.No:3/RERA/Complaint (499)/2025/ 17

Date:-07/01/2026

Anita Lazar

E 1101 Tulsi Heights, Plot No 25, Sector 22
Kamothe, Raigad Maharashtra 410209
Contact: 9920962729.

.....Complainant

Versus

1. Expat Projects and Development

Private Ltd,
Carlton Towers, A Wing, 3rd Floor,
Unit No. 301-314, No. 1 Old Airport Road,
Bengaluru, Karnataka 560008.

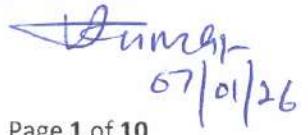
2. Naiknavare Constructions Private Limited

1204/4, Ghole Road Shivaji Nagar, Pune,
Maharashtra, India-411004.

.....Respondents

O R D E R
07.01.2026

This order shall dispose off the application on maintainability of petition and preliminary objections filed by the Applicant Respondent in the complaint case no. 3/RERA/Complaint (499)/2025/which was filed by the complainant herein alleging non completion of the project and failure to handover the possession of the unit


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booked i.e. one BHK in Expat Vida Uptown Goa Apartment Phase IV by the respondent Promoter despite inordinate delay beyond the committed deadline.

2. The Applicant/Respondent while raising objections to the maintainability of the said complaint, has submitted that the complainant at the outset is required to establish her status as an "allottee" and an "aggrieved person" under the Real Estate (Regulation and Development) Act, 2016 ("the Act") in relation to the alleged violation or contravention since the complainant is not a genuine allottee but an investor. The complainant has admitted to receiving interest from previous projects, indicating a pattern consistent with investment motives and not bona fide homeownership. Further, MOU dated 28.09.2010 a copy of which was annexed to the complaint, makes reference to investment of Rs. 15,00,000/- made to other project SUNDEW HAVEN located at Village Taluka Maharashtra i.e. made in the year 27.08.2010, 2011 and 2012.

3. It was also stated that there is no proper allotment letter issued nor proper cancellation agreement is produced before this Authority stating that MOU dated 28.09.2010 is cancelled. Further, there are no recitals of the payment of Rs. 26,04,000/- (Rupees twenty six lakhs four thousand only) to show that it is paid for the said project in Goa and Court cannot consider payments made for some other project and its interest for this project.

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4. Stating that dispute is purely of a civil nature and does not pertain to any contravention of the Real Estate (Regulation & Development) Act, 2016, the applicant respondent submitted that the complainant has approached this Hon'ble Authority with unclean hands, suppressing material facts and misrepresenting their role as an investor, thereby rendering the present complaint liable for dismissal at the threshold.

5. Referring to the provisions of Section 18(1)(b) of the Act, it was also submitted that the amount that could be refunded under Section 18 of the Act is the amount received by the promoter for that apartment and the complainant has not placed on record any document to show that the amount received by the respondent was for the property in question. The complainant needs to demonstrate payments were made for the project or for his apartment construction. Further, the swap deals involving Mrs. Anita Lazar who has invested in other projects such as Sundew Haven, does not pertain to the project under registration no. PRG010180587.

6. Per contra, the complainant while denying the contents of the present application filed by the respondent and objections raised on maintainability of the subject complaint, stated that the said application being incorrect, misconceived, frivolous, and filed with the sole intent to delay adjudication of the complaint; needs to be dismissed in limine.


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7. Stating that the respondent has deliberately attempted to mischaracterize the complainant as an “investor”, it was stated that Section 2(d) of the Act defines an “allottee” as a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter and the execution of the Agreement for Sale/ Swap Arrangement and acceptance of monies by the respondent clearly establishes a promoter-allottee relationship, irrespective of the nomenclature sought to be assigned by the respondent. Further, it is settled principle that substance prevails over form, and merely labeling the transaction as an “investment” does not divest the complainant of her statutory rights under RERA.

8. It was further submitted that the respondent has admitted receipt of Rs. 15,00,000/- from the complainant and has further acknowledge interest accrued thereon. The receipt of monies itself brings the transaction within the ambit of Sections 11, 12, 18 and 19 of the Act and the contention that the amount was not reflected in the escrow account is no defense available to the promoter, as compliance with escrow requirements is the statutory obligation of the respondent, and a promoter cannot take advantage of his own wrong. Also, it is well settled that non reflection of amounts in the RERA account cannot defeat the rights of an allottee: nor can it curtail the jurisdiction of this Authority. Further, the Hon’ble Courts and RERA authorities have consistently held that: *Once a promoter enters*

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S. A. M. A.

into an agreement relating to a real estate project and accepts consideration, the complainant is an allottee and not a mere investor.

9. It was also stated by the complainant that the Act does not carve out any exception excluding so called "investors" from its protection. The object of RERA is consumer protection under the real estate projects, and such narrow interpretation would defeat the legislative intent and also that Section 18(1) which mandates refund of the amount received with interest where the promoter fails to discharge obligations or where the allottee chooses to withdraw and the argument that refund can be ordered only if money is paid specifically for the registered project is legally untenable and contrary to the beneficial nature of the statute. Further, the promoter having accepted monies and failed to deliver possession or honour commitments, the complainant is squarely entitled to relief under Section 18.

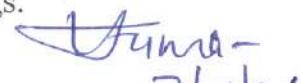
10. It was also submitted that the plea that the dispute is purely civil in nature is contrary to settled law. RERA has been constituted precisely to adjudicate disputes relating to refund, delays, misrepresentation, and non-compliance by promoter of the real estate projects. Therefore the Authority has exclusive jurisdiction under Section 79 of the Act, and the present complaint is fully maintainable. Also, the plea that the agreement is void for want of consideration is self contradictory, as

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the respondent has himself admitted receipt of monies having accepted consideration, the respondent is stopped from denying the enforceability.

11. As would be evident from the above, the application on maintainability and preliminary objections filed by the applicant respondent rests mainly on the argument that the complainant is neither an allottee nor an aggrieved person and there are no documents to show that the said amount of Rs. 26,04,000/- was paid for the unit booked in the said project as detailed in the complainant. It also emphasize that no proper allotment letter was issued nor proper cancellation agreement is produced before Authority stating that MOU dated 28.09.2010 is cancelled. Further the said letter dated 03.01.2018 clearly shows that complainant is an investor as it has been shown to have received interest on the said amount from the promoter. The complainant while denying this has submitted its contention as noted hereinabove.

12. The only question which needs to be looked into and decided at this stage is whether the complainant herein is an allottee and is an aggrieved person and the remaining issues raised which relate to delay in possession and completion etc. would require to be decided on merits during the proceedings.


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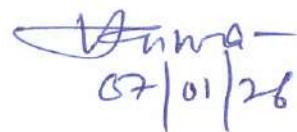
13. It is observed that the letter dated 03.01.2018 while providing details of prior booking, also records the understanding arrived at by the complainant and the respondent herein as follows:-

“As agreed, principle amount along with applicable compensation paid for inconvenience, post deduction of all applicable statutory, levies and taxes payable to you is Rs. 26,04,000/- The same will be refunded as per the agreed schedule.

As per our discussion and terms agreed between us, it was decided to adjust the said amount towards booking of a new unit in another project of the company for which we will issue a separate document.”

14. Hereinafter the said communication dated 03.01.2018 further provides the details of the booked property i.e. Vida Uptown Smart 1BHK and also that the cost of the unit was Rs. 26,04,000/- as against which the total amount paid was Rs. 26,04,000/- and thereby the balance payment payable by the complainant was shown as 0 (zero). It was further clarified that since the amount from the old booking is adjusted towards consideration, the complainant shall no longer have any right, title claim or interest in the property booked earlier.

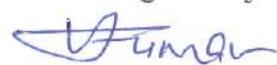
15. In this regard it would be relevant to refer to the definition of allottee as provided for under Section 2(d) of the Act which reads as follows:-


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“allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

16. The above definition reveals that the Act gives wider connotation to the term allottee as it includes not only the person to whom a plot, apartment or building has been allotted, by the promoter, be it freehold or lease hold but also any person who has even otherwise been transferred a plot, apartment or building by the promoter and further also includes the person who subsequently acquires the said allotment through sale, transfer or otherwise.

17. Evidently, the above referred definition of the allottee covers all possible kind of arrangements qua the transfer of a plot, apartment or building and the content of the letter dated 03.01.2018 as quoted hereinabove, clearly establish the status of the complainant as an allottee qua the unit booked i.e. one BHK in Expat Vida Uptown Goa Apartment Phase IV particularly when it also expressly states that the said amount of Rs. 26,04,000/- is being adjusted against the booking of the new property and also that since the amount from the old booking is adjusted

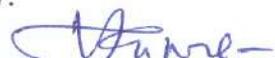

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towards consideration, the complainant shall no longer have any right, title, claim or interest in the property booked earlier.

18. The other point raised by the applicant that the complainant is an investor on account of having received interest from the earlier booked projects is also not in consonance with the facts of the case and the letter dated 03.01.2018 issued by the respondent himself, which clearly reveals that the earlier booking was cancelled by mutual agreement and the money paid in addition to the principle amount was as per applicable compensation paid for inconvenience.

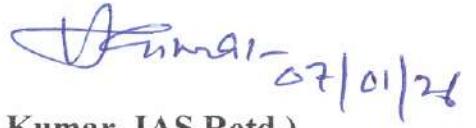
19. It is further relevant to note that while the Act does not provide for any definition of the term "Investor", it gives a wider connotation to the term allottee which further gets amplified in the Explanation given under Section 14 of the Real Estate (Regulation and Development) Act, 2016 which reads as follows:-

"For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only."


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20. In view of what has been discussed hereinabove and as observed that the complainant is an allottee, the complaint referred by the complainant herein clearly much maintainable under Section 31 of the Act particularly when the complainant has stated to be aggrieved on account of non completion of the project and failure to handover the possession of the unit booked by the respondent.

21. In view of the above, the application stands dismissed and the case is fixed for filing of reply by the respondent on 28.01.2026 at 11:30 am.


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