



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (457)/2025/ 188

Date:-02/02/2026

1. Leena Shamba Karekar
W/O Shamba Gajanan Karekar
Resident of H.No.560,
Karekar House, Behind PWD,
Fatorda, Margao, Goa-403602.

2. Mr. Shamba Gajanan Karekar
S/O Gajanan Shamba Karekar
Resident of H.No.560,
Karekar House, Behind PWD,
Fatorda, Margao, Goa-403602.

.....Complainant

Versus

**Expat Projects and Development
Private Ltd,**
Private Limited Company
Registered Office at 2nd Floor
Sobha Pearl.No.1 Commissariat Road,
Bangalore, Karnataka
Represented by Authorized Signatory
Mrs. Nita Nogar
W/O Mr. Jose Nogar,
R/O H.No.86, Paitona,
Salvador Do Mundo, Bardez,
Goa-403101.

.....Respondent

Alternate Address:-
A2-213, 2nd Floor, Expat Vida,
Uptown Commercial, Kadamba Plateau,
Goa -403402.

O R D E R

02.02.2026

This order disposes of the online complaint dated 14/01/2025 filed by Leena Shamba Karekar and Shamba Gajanan Karekar (complainant) before the Goa Real Estate Regulatory Authority (Goa RERA) against the M/s Expat Projects and Development (Respondent) under Section 31 of Real Estate (Regulation and Development) Act, 2016, (hereinafter referred to as 'the Act of 2016') alleging that the Respondent has failed to construct and deliver the possession of the apartment bearing Flat No. B30-102 on the first floor of B30 block (later changed to Flat No. A19-102) together with one car parking (hereinafter referred to as the subject property) located in the building Known as "VIDA phase 2" registered vide No. PRGO04180244 with Goa RERA (hereinafter referred to as the said project) within the agreed time period; booked by the complainant for a total consideration of Rs. 21,90,000/- and thereby seeking refund of the total amount paid by the complainant to the respondent along with interest as due thereon.

2. The Complainants have submitted that the subject property was agreed to be purchased by them for a total consideration of Rs. 21,90,000/- and pursuant to the same, the Complainant paid to the Respondent an amount of Rs. 18,70,000/- towards booking of the subject property followed by issuance of a Letter of intent dated 24/06/2016 by the Respondent confirming the booking of the said unit in favour of the Complainants. It was further submitted that subsequent to the issue of Letter of Intent, the Complainant and the Respondent entered into an Agreement to Sell dated 21/12/2017 wherein the entire paid amount of Rs.18,70,000/- was acknowledged as paid by the complainant and received by the promoter on 24.06.2016 vide Clause 3 of the said agreement read with schedule V

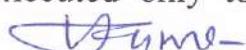


appended to the said Agreement. Further, vide per para 4(j) of the said Agreement, the Respondent promised to the complainants that the possession of the said Unit shall be delivered to the complainant on/or before June 2021, after the issuance of completion certificate by the architect of the project and/or local authority. The said clause also provided that in case of any delay in handing over the possession of the said unit on or before the June 2021, the respondent shall be liable to pay the penalty to the Complainant @SBI base lending rate plus 2% per annum from the date of default till the actual date of handover.

3. The complainant has further stated that despite the constant reminders and follow ups with the respondent since the year 2021 requesting handing over of possession of the duly completed subject property, the Respondent has failed to handover the possession of the said unit to the Respondent till date. The complainant has also submitted that when they visited the office of the Respondent, in 2023 they came to know that the Unit number allotted to them has been changed to a new unit no. A19-102 as per the changed plans for which they were never given any prior intimation or notice and that the same was done unilaterally by the respondent. The complainants immediately demanded execution of a Deed of Rectification to the Agreement to Sell dated 21/12/2017 (hereinafter referred to as the Agreement dated 21.12.2017), but of no avail. The complainant also made several efforts to resolve the issue and even communicated to the Respondent that they could be given a duly completed alternate unit if it was available in the other building but the Respondent was non cooperative.
4. The complainants further stated that though they have made the full payment 8 years back, there has been no progress on the project so far, even the construction of the block in which the Complainant has booked

their unit, has not commenced since the technical clearance certificate from the Town and Country Planning Department was awaited and there is thus no sign of handover date. As there has been no commitment from the Respondent despite numerous communications and also with no activity on the ground in respect of subject property which revealed that the respondent had all this while made misleading and false representations to the Complainant, the Complainant has decided to seek refund of money with interest till date from the date of payment being made to the Respondent towards the purchase of the said flat i.e. 18,70,000/- plus the sum of Rs. 88,700/- along with the interest of Rs.17,92,063/- as on 31/12/2024 besides to pay an amount of Rs. 2,40,000/- along with an interest @12% to the Complainant towards the expenses incurred for the rental of the apartment and also directions to the Respondents to pay a sum of Rs. 1,00,000/- to the Complainant as expenses incurred towards engaging lawyer and legal fees besides compensation of Rs 5,00,000/-.

5. Per Contra, the respondent while raising preliminary objections, submitted that the Complainant is not an “ Allottee” within the meaning of Section 2(d) of the Act of 2016 since the complainant has invested in the project in the year 2016 with the intention either to resell the unit or use it for rental income. The Respondent further stated that the nature and objective of such one time lump sum investment being contrary to RERA framework and purely commercial/ speculative, falls outside the scope of consumer protection envisaged under the Act of 2016 and also referred to letter dated 24.06.2016 & letter dated 16.01.2018 to plead that the present complaint is not maintainable under the provisions of the Real Estate (Regulation and Development) Act, 2016.
6. The Respondent further stated that the Agreement dated 21.12.2017 was executed only to record the investment arrangement and not for the



purpose of claiming allottee rights under the Act of 2016 as the transaction was not under the standard construction linked payment plan through escrow mechanism meant for genuine homebuyers, thus rendering the said agreement in contravention of the Act. It was further submitted that the clause 10(C) of the Agreement to Sell clearly stipulates that in the event of termination of the agreement, the complainant would be entitled only to a refund of the amount paid after deduction of 5% towards administrative charges. And thus the present complaint, which seeks reliefs contrary to the terms of contract, is not maintainable. Further, no prior notice of Cancellation/ Termination of the Agreement dated 21.12.2017 has been issued by the complainant before approaching this Authority. The Respondent also submitted that the present complaint relates to a cause of action which arose in 2017 and is thus barred by limitation under Section 31 of the Act of 2016 read with general principles of the limitation Act, 1963. The Respondent further submitted that Rs. 18,70,000/- out of the total Rs. 21,00,000/- was paid by the Complainants prior to the registration of the project with RERA, and before the statutory framework of the Act became applicable. Further, as per **Section 13(1) of the Act of 2016**, a promoter is prohibited from accepting more than 10% of the sale consideration without executing a registered agreement to Sell. The substantial investment made by the Complainants before such registration renders the transaction non-compliant and voidable, thereby disqualifying the Complainants from claiming the protections available to "allottees" under the Act of 2016. Further, the said Agreement to Sell dated 21-12-2017 was executed at the instance of the Complainants and merely sought to **secure the investment**, and was not in furtherance of a typical buyer promoter relationship.



7. Further replying on merits, the Respondent generally denied the contents, of the complaint and further stated that the complainants are not allottees as defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 (“RERA”), but investors who initially expressed their interest in the project as early as 24.06.2016, well before the Act of 2016 came into force in the state of Goa. The Complainants vide letter of intent dated 24.06.2016 and subsequently confirmed through their own letter dated 16.01.2018, clearly acknowledged that they were acting in the capacity of investment partners. The 16.01.2018 letter contains specific language suggesting the complainants opted for a one time payment under an investor offer to benefit from profits at the conclusion of the project, rather than seeking delivery of a defined residential unit. The Respondent further submitted that Rs. 18,70,000/- out of the total RS. 21,00,000/- was paid by the Complainants prior to the registration of the project with RERA, and before the statutory framework of the Act became applicable. It is emphasized that the Agreement dated 21.12.2017 was executed at the instance of the Complainants and merely sought to secure the investment, and was not in furtherance of a typical buyer-promoter relationship. While drawing attention to Section 13(1) of the Act, it was pointed out that the substantial investment made by the Complainants before such registration renders the transaction non-complaint and voidable in view of Section 13(1) of the Act thereby disqualifying the Complainants from claiming the protections available to “allottees” under the Act.
8. While denying that any payment was made on 09.06.2016 and the booking was done on 24.06.2016, it was pointed out that complainant vide letter dated 16.01.2018 clearly accepts to be investment partner. The complainant further had given this one-time investor offer payment so



that they would stay as partner in the project to rip in profits once the whole project is completed.

9. The respondent further denied that any time bound commitment was made by the Respondent for delivery of possession including the alleged timeline of December 2019. The Agreement dated 21.12.2017 was executed only to protect the investment interest and the intention of parties was never to act upon the said agreement and thus cannot be construed to imply a conversion of the relationship into that of allottee and promoter. At no point did the Respondent or the project marketing indicate or acknowledge the complainants as traditional allottees under RERA. Further, the pricing extended to them was concessional, reflective of their role as early stage contributors/investors, not end-user allottees. Also denied that the project is not completed as well as that complainants made constant reminders and follow ups with the Respondent and requested to hand over the complete possession of the said unit and no such correspondence is produced in support of such false plea. It was further denied that the Respondent misrepresented any facts about the construction timeline. It was further submitted that the project has been progressing in phases, and the unit corresponding to the Complainant is in a building for which the Town and Country Planning (TCP) clearance is still pending and also the allegations of deliberate delay or misinformation are baseless.
10. The Respondent has submitted that the Agreement to Sale dated 21.12.2017 executed between the parties was never intended to be acted upon as a conventional agreement for transfer of ownership, but was entered into solely to secure the investment made by the Complainants which is evident from the conduct of the Complainants and the complete absence of any effort to enforce timelines or seek possession over the years. The Respondent, further drew the attention of this Authority to the

complete lack of even a single communication from the Complainants seeking any update or asserting their alleged right to delivery of possession as the complainants have not produced on record any email, letter, or communication raising a grievance during or after the alleged due date for delivery clearly indicating that such timeline was never meant to be enforced.

11. Responding to the issue of the delay in completion of the project, it was stated that Covid 19 pandemic that was prevailing from March 2020 which continued till December 2021 that has impacted the whole construction industry therefore the timeline to achieve the completion of the project was not possible. The non payments of the other allottee and job loss further added to the problem. Also, the present petition is grossly delayed and barred by limitation as purported timeline for delivery allegedly expired in June 2021, and yet the Complainants chose not to approach this Hon'ble Authority until long thereafter for which no satisfactory explanation is offered by the Complainants. Respondent further reiterated that the complainant was, at all times considered an investor under a mutual understanding between the parties, having made a one- time investor payment with the intention to await completion of the project in its entirety, rather than demand early possession or invoke delivery timelines.
12. The Respondents further also submitted that a portion of the sale consideration is still pending from the complainants, who have willfully avoided making the balance payment. Instead, the Complainants are now attempting to unilaterally cancel the agreement, without issuing any formal termination notice or following the due process of law. Denying the assertion of complaint that more than 8 years have passed and that the Complainants have made full payment, it was stated that the total consideration for the said unit was fixed at ₹21,90,000/- (Rupees Twenty-

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One Lakhs Ninety Thousand Only), out of which only ₹18,70,000/- was paid. For the balance amount, the Complainant repeatedly sought time and avoided timely compliance, citing various personal constraints.

13. 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.

14. 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	<p>Preliminary Objections raised by the Respondent</p> <p>(i) The present complaint is not maintainable since the complainant is an investor not an allottee and the Agreement to Sell dated 21.12.2017 was executed as security to financial arrangement arrived at earlier and is further violative of section 13 of the Act.</p> <p>(ii) The present complaint is barred by law of limitation.</p>	In negative and as per Para 15
B	Whether the Promoter Respondent	

	failed to complete the projects and has not been able to give possession of the duly completed flat booked by the allottee by the date specified and in accordance with the terms of the Agreement dated 21.12.2017?	In affirmative.
C.	Whether the Respondent is liable to refund the entire amount i.e Rs.18,70,000/- paid on 24.06.2016 and Rs. 88,700/- paid on 15.01.2018; received by the respondent to the Complainant along with interest from the date of payment of respective amounts under section 18(1) the Act and whether clause 10(c) of the Agreement dated 21.12.2017 impacts the issue in any manner?	In affirmative and as per Para 17
D.	Whether the Respondent is liable to pay to the complainant the cost of filing of the present complaint and engaging a lawyer etc.?	In Affirmative as per Para 18
E.	Whether the Complainant are entitled to claim compensation for mental harassment, emotional torture, financial and other hardships including amount incurred for rental of the Apartment under the Act?	As per Para 19 of the Order



15. Point No. A

(i) The respondent has sought to argue that the instant complaint preferred by the complainant under Section 31 of the Act is not maintainable as complainant is an investor having made one-time lump sum payment for purchase of the subject property which was further clear from the contents of letter dated 24.06.2016 and letter dated 16.01.2018 whereby the complainants have confirmed that they were acting in the capacity of investor partners. Per Contra, the Complainants while denying the plea of the Respondent, submitted that the Complainant herein is an “allottee” and not an “investor” as claimed by the Respondent as the complainant has nowhere been termed as an investor in the Letter of Intent and the Agreement to Sell but has been referred to as an allottee and a purchaser. It was further submitted that the Complainants are well within the meaning of the term allottee as defined under the Act and there is no document or material on record to show it otherwise and thereby the Complainants have every right to approach this Authority.

(ii) In this regard it is noted that the agreement to Sell executed and duly registered on 21.12.2017 (when the Act of 2016 was already in force) pertains to the subject property which is part of the project “Vida Phase 2” registered with RERA vide No. PRGO04180244; clearly describes the Complainant herein as allottee. Pertinently, clause 19 of the said agreement dated 21.12.2017 reads as under:-

“19. Miscellaneous:

Except otherwise provided herein, or the context otherwise requires, this agreement shall always be subject to the provisions of the Real Estate (Regulation and Development) Act, 2016 and /or all concerned statute.”

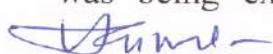
(iii) In view of the above, the term ‘allottee’ in the context of the present complaint could only be read and understood as an allottee as defined under Section 2(d) of the Act which reads as follows:-



“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;”

(iv) 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 been transferred a plot, apartment or building by the promoter even otherwise and further also includes the person who subsequently acquires the said allotment through sale, transfer or otherwise.

(v) The other plea raised by the Respondent regarding use of words ‘Investment’ or ‘Investment Partner’ in the communication dated 24.06.2016 & 16.01.2018 or that the Agreement dated 21.12.2017 was executed as security to the alleged financial arrangement arrived at vide these communications; also does not carry any weight as the said communication were unilaterally issued by the Promoter thanking the complainant for booking a property in their project and also when the mutually signed document i.e. Agreement to Sell and Letter of Intent nowhere term the complaint as Investor but clearly recognize him as an allottee. Further the contents of these two communications nowhere reveal that the transaction subject matter of these communications, was any kind of financial arrangement or the same did not relate to purchase of residential unit nor any clause of the agreement dated 21.12.2017 makes any reference to these prior communications or the said agreement was being executed as security to the said financial arrangements.

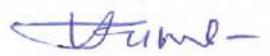


Further, the agreement for sale dated 21.12.2017 being a registered document would take effect against every unregistered document relating to the same property as per the provisions of section 50(1) of the Registration Act which reads as follows:

“Certain registered documents relating to land to take effect against unregistered documents-(1) Every documents of the kinds mentioned in clauses (a), (b), (c), and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall , if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order whether such unregistered document be of the same nature as the registered document or not.”

- (vi) In view of what has been noted herein above, the provisions of section 50 of the Registration Act and also the definition of the allottee under the Act of 2016 which covers all possible kind of arrangements qua the transfer of a plot, apartment or building; the contents of the said earlier communication dated 24.06.2016 & 16.01.2018 referred to hereinabove, in no way impact the status of the complainant as an allottee qua the subject property.
- (vii) 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:-

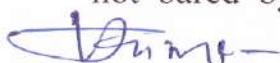
“For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called,



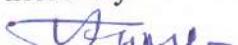
booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.”

(viii) The other contention of the respondent that the said agreement dated 21.12.2017 is violative of section 13 of the Act since more than 10% of the amount was received by the promoter **before execution of agreement to sell**; is apparently not in consonance with the facts of the case as the payment of Rs.18,70,000/- was initially received by the promoter on 24.06.2016 (prior to coming of section 13 of the Act into force) in the context of a separate prior transaction executed in respect of booking of a residential unit together with certain facilities and amenities in a proposed project at Old Goa. Pertinently, the Agreement dated 21.12.2017 makes no reference to such prior arrangement but acknowledges the receipt of the said payment of Rs.18,70,000/- in Schedule V afresh as payments made towards the total consideration of the subject property located in the Project ‘VIDA Phase 2’ **and at the time of execution of the said agreement**. In any case, any contravention of Section 13 would attract a penalty upon the promoter u/s 61 of the Act and there is no provision in the Act providing for cancellation of Agreement to Sell or any adverse consequences for the allottee in this regard. Hence, the said argument of the respondent being devoid of any merit, needs no further consideration. In above view of the matter, the contention of the Respondent noted at Point A(i) above i.e. the complainant is an investor not an allottee, the Agreement dated 21.12.2017 was executed as security to financial arrangement or is violative of section 13 of the Act; does not hold any water. Accordingly, the Point No. A(i) is answered in negative.

(ix) The respondent has further argued that the instant complaint was also barred by the limitation period prescribed under the Limitation Act. In response, the complainant has submitted that that the present complaint is not bared by limitation as the cause of action is still continuing and



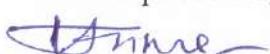
moreover, the limitation Act, 1963 does not apply to the Real Estate (Regulations and development) Act, 2016, which prioritizes the rights of allottees even if the transactions or agreements were made prior to enactment of RERA and the developers are held accountable without the procedural constraints of limitation period. The complainants have also submitted copies of a number of emails exchanged between promoter and the complainants revealing the repeated enquiries made by the complainant with regard to status of completion of the subject property and the vague assurances made by the promoter towards completion of the project. The response of the promoter to all the mails sent by the complainant, was either vague as it pertained to the progress made in respect to some other properties or referred to general reasons for delay. Further, the email dated 06.06.2024 reveals that the construction of the building where the subject property is located, was yet to start as a TCP approval for the same was yet awaited. The said email was responded to by the complainant vide email dated 26.08.2024 reiterating their request for early resolution of the matter. Thus, in view of the continuous follow up by complainant with respondent and vague and misleading response by the promoter keeping the complainant in limbo as to his further course of action and taking note of the fact that neither the Completion Certificate nor the Occupancy Certificate having been granted to the project, It was observed that, the cause of action was continuing at the time of filing of the complaint. In any case the project was registered with initial completion date of 30.06.2021 and given the fact that promoter has availed repeated extensions and also moratorium of 06 months, the filing of complaint on 14.01.2025 by the complainant cannot be treated as barred by limitation. In view of what has been discussed hereinabove, this plea of Respondent does not have a leg to stand on and is therefore rejected



16. Point No. B

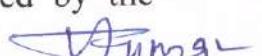
(i) It is observed at the outset that as per clause 4(J) (page 10 of the Agreement dated 21.12.2017), the completion of the project and handing over of the possession of the said flat duly completed was promised on or before June 2021. While the complainant has claimed that there has been no progress in construction of the subject property as the construction of the said Block where subject property is situated has not commenced so far owing to pendency of issuance of technical clearance, the Respondent has not specifically controverted this averment of the complainant and in fact has admitted the same. Pertinently, the report of inspection of the project site conducted on 15.11.2025 by Goa Engineering College to assess the status of progress/completion of the project, revealed that the building wherein the subject property was located, has been completed only upto plinth level. Further, the Respondent though has not disputed that the date of possession of the duly completed subject property as per the Agreement dated 21.12.2017 was on or before June 2021; but has sought to justify the delay in completion of the project and handing over of the possession of the property to the respondent on the grounds of the disruption caused due to prevalence of covid 19 pandemic during the period from March 2020 to December 2021. In this regard, **Maharashtra Real Estate Regulatory Authority in its order Dated 30th October 2024 in Complaint No. CC00500000096064 vide para No. 29 has observed:**

“ 29. Furthermore, it is pertinent to note that the Hon’ble Bombay High Court by considering the lockdown restriction issued by the Central as well as the State Government on account of the said Covid-19 pandemic has issued various orders in Suo Moto PIL No.1 of 2021 thereby extending the interim orders passed by it in various matters. Even, the Hon’ble Supreme Court of

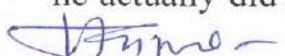


India by taking cognizance of the said epidemic has also passed various orders in Suo Moto Writ Petition (Civil) No.3 of 2020 and has extended the limitation period from 15.03.2020 till 28.02.2022, thereby the said period was excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all the judicial or quasi-judicial proceedings. No doubt the said pandemic affected all sectors of the society including the real estate sector. Keeping the same in mind, the MahaRERA has taken such a general decision by issuing said orders in the interest of all the projects registered with the MahaRERA. Hence, the promoter in this case, is also entitled to seek benefit of the said Covid-19 pandemic while making the payments towards the interest amount.”

- (ii) It is noted that as per the record, two extensions of 06 months each i.e. from 01.07.2021 to 30.12.2021 and 31.12.2021 to 30.06.2022 were granted to the promoter in respect of the project Vida Phase 2 on the ground of force majeure. However, this Authority vide Point No. 1&4 of the Order No. 3/RERA/Tech.Orders/2020/317 dated 29.05.2020, invoked a force majeure period of six months and also decided that the said period of 06 months will be treated as a “moratorium period” for the purpose of calculating interest under section 12, 18, 19(4) and 19(7) of the Act. Accordingly the promoter in this case would be entitled to the benefit of the said moratorium period of 06 months for the purposes of calculating the interest liability under Section 18(1) of the Act.
- (iii) The respondent has also sought to claim that the failure of the complainant/allottee in making of balance payment also caused delay in completion of the project and consequently handing over of the possession of the subject property to the complainant. As per the Agreement dated 21.12.2017 executed between the complainant and the respondent a total payment of Rs.18,70,000/- had been paid by the complainant and received by the



respondent on 24.06.2016 which has further been acknowledged in Schedule V (appended to the said agreement) to have been received against completion of various milestones/stages and a total of Rs.3,20,000/- was shown as pending against the total consideration of Rs.20,90,000/- payable by the complainant to the respondent in terms of the said agreement. The complainant has also enclosed with his complaint a receipt dated 15.01.2018 issued by the Respondent in respect of further payment of Rs.88,700/- made by the complainant, the receipt of the said payment of Rs.88,700/- has, however, neither been denied nor controverted in any manner by the respondent. Thus an amount of Rs.2,41,300/- was still payable by the complainant in terms of the agreement dated 21.12.2017 as against the total consideration. However, this payment cannot be related to the delay in completion of the project in any manner when the respondent has neither provided any details of extent of completion of the subject property nor even furnished any datewise details of completion of relevant milestone/stage and corresponding period of delay in making of these payments. The respondent has also not placed any documents i.e demand letter showing the amount due and period of delay as well as the interest leviable for such delay or any notice issued to the complainant on account of such default. It is relevant to note that the report of inspection of the project site conducted on 15.11.2025 by Goa Engineering College to assess the status of progress/completion of the project, reveals that the building wherein the subject property was located, has been completed only upto plinth level and as against the same, complainant had paid 95% of the total consideration, which as per Schedule V was payable at the stage of completion of flooring and water proofing of terrace. That being the case, the respondent neither had any case for seeking the balance payment, nor he actually did so. In view of what has been noted above in this para, this



plea of the Respondent being without any basis, needs no further consideration.

(iv) It needs no further elaboration to infer that the Respondent Promoter failed to complete the project in time. As neither the project could be completed by the promoter on or before June 2021 as agreed to vide the Agreement to Sell dated 21.12.2017 nor the possession of the duly completed subject property was delivered to the Allottee complainant within the agreed timeline; the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 are clearly attracted in the present case.

The point 'B' is thus answered in affirmative.

17. Point No.C

(i) It has already been held under point 'B' that the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 are clearly attracted in the present case. It is further evident from the proviso to section 18(1), that if Promoter fails to complete the project or is unable to deliver possession of apartment, plot or building by agreed time and allottee intends to withdraw from the project then, Promoter shall refund the paid amounts together with interest to Allottee at such rate as may be prescribed. The complainant in this regard has referred to the observations made by Hon'ble Apex Court in the case of "Imperia Structures Ltd. v/s Anil Patni and Another" 2020 (10) SCC 783 whereby it was observed as below:-

"Para 25. In terms of Section 18 of the Act of 2016, 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 the apartment, if the allottee wishes to withdraw from the project. Such right of the 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.”

(ii) The complainant in support of his contentions, further also referred to the observations of the Hon’ble Supreme Court made in the case of “Newtech Promoters & Developers Private Limited v/s State of Uttar Pradesh & others”, extracted as here under:-

“ 24. The unqualified right of the Allottee to seek refund referred under section 18(1) 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 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 the delay is unconditional and absolute, regardless of the unforeseen events or stay Orders of the Court/Tribunal”.

(iii) The complainant also referred to the observations of Hon’ble High Court of Bombay made in the judgment of case titled ‘Neelkamal Realtors Suburban Pvt. Ltd. & Anr. (Petitioners) V/s Union of India & others – Respondents & ors.’; to the above effect.

(iv) In this regard, the respondent has sought to argue that the relief sought by the complainant being contrary to the clause 10 (C) of the agreement to sell dated 21.12.2017; is not maintainable particularly in view of the fact that the said clause 10(C) clearly stipulates that in the event of termination of the agreement, the complainant would be entitled only to a refund of the amount paid after deduction of 5% towards administrative charges. Per contra, the complainant has pointed out that the said clause 10 (C) would not come in the way of the complainant seeking relief as the complainant has not

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themselves cancelled the agreement and the present complaint is preferred since the respondent has failed to complete the project/ handover the possession of the subject property on or before June 2021 in terms of Para 4 (J) of the agreement dated 21.12.2017.

(v) It is noted that while the completion of the project/ handing over of the possession of the subject property was promised on or before June 2021 the present complaint was filed on 14.01.2025 on account of failure on the part of the respondent promoter to complete the project and handover possession of the subject property to the complainant as per the agreement dated 21.12.2017. Further, the recent (as on 15.11.2025) status of construction of the building where the subject property is located, is reported to be upto plinth level. That being the case, the right to claim refund of the entire amount paid by the complainant allottee to the respondent along with interest as prescribed, accrues to the allottee in terms of statutory right vested in him under the provision of Section 18(1) of the Act, 2016. Further, the reliance placed by the respondent on clause 10(C) of the agreement dated 21.12.2017 is thoroughly misconceived as the same is apparently applicable in the case of termination of the agreement by the promoter in the event of purchaser allottee committing any default in payment of any amount payable by the allottees under the agreement dated 21.12.2017.

(vi) The point under determination here essentially relates to the relief sought by the complainant in terms of refund of the amount paid along with interest due thereon which would inter alia require quantification of interest liability based upon date of making of the payment, refund of which is sought by the complainant along with interest due and also the applicable rate of interest etc. For the purpose, it would be expedient to refer to the payment schedule (Schedule V) appended to the Agreement dated 21.12.2017 which reveals

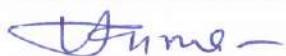
that a sum of Rs.18,70,000/- had been paid by the complainant to the respondent on 24.06.2016 vide cheque No.000026 HDFC Bank followed by another payment of Rs.88,700/- on 15.01.2018 and thus a total payment of Rs.19,58,700/- has been received so far by the respondent from the complainant. Since the entire payment of Rs.19,58,700/- claimed to have been made by the complainant to the respondent, was made on two distinct dates i.e Rs.18,70,000/- on 24.06.2016 & Rs. 88.700/- on 15.01.2018, it would thus be expedient to examine whether the interest to be paid u/s 18(1) on the amount paid by the complainant to the Respondents would be leviable from the date of making of the said payment or otherwise. In this regard, it would be helpful to refer to the explanation (ii) of Section 2(za) of the Act which expressly clarifies the period for which the interest needs to be paid by promoter to Allottees and vice versa and reads as hereunder.

Explanation (ii) of Section 2(za)

“The interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;”

(vii) In this regard, the Hon’ble Supreme Court in the case of **“Experian Developers Pvt.Ltd. vs Sushma Ashok Shiroor” (2022) SCC Online SC 416”** has held as follows:

“22.1 We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The commission in the order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. Following the decision in DLF Homes Panchkula Pvt. Ltd. vs DS Dhanda and in modification of the



direction issued by the commission, we direct that the interest on the refund shall be payable from the dates of deposits. Therefore, the appeal filed by the purchaser deserves to be partly allowed. The interest shall be payable from the dates of such deposits.”

(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 sale 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 8.8% (revised since 15.01.2026) and as such, the interest on the amount to be refunded would be leviable at the rate of 10.8 %.

(ix) In above view of the matter, the interest payable by the promoter to the allottee in the instant case shall be @10.8% from the date when the promoter received the respective payments till the date of payment of the said amount.

(x) Another relevant aspect to be considered in this regard is that whether the initial payment made by the complainant to the respondent i.e. Rs.18,70,000/- through HDFC Bank on 24.06.2016 (before the execution of Agreement to Sell dated 21.12.2017) could be considered as payments made under the RERA framework towards the consideration for purchase of subject property. The record reveals that the said payment amounting to Rs.18,70,000/- has been duly recorded in the Agreement dated 21.12.2017 as

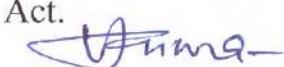


payments made towards consideration of subject property against completion of various stages/milestones of the same and have also been admitted and acknowledged by the respondent (seller/developer) from the respective date of making of the said payments. Pertinently, the agreement dated 21.12.2017 has been expressly made subject to the provisions of the Act of 2016 vide clause 19 of the said agreement. Further, the report submitted by the technical section reveals that application for registration of the said project was made in the category of 'ongoing projects' where by the instant case would attract the retroactive application of the provisions of the Act of 2016.

(xi) In this regard, the Apex Court in its judgment dated 11.11.2021 in the case of M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP has observed as follows:-

"It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the on going projects and to protect form its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate administer and supervise the unregulated real estate sector within the fold of real estate authority."

(xii) Keeping in view the factual matrix noted above and also the observations of Hon'ble Apex Court as to retroactive applicability of the Act, the said payments of Rs.18,70,000/- made by the complainant Allottee to the Respondent promoter would attract the applicability of section 18 of the Act.



(xiii) In view of what has been discussed herein above, it is evident that the interest payable by promoter to Allottees/Complainants on the amount of Rs.18,70,000/- paid by the complainant to Respondent would be @10.8% for the period from 24.06.2016 till the date of refund of the said amount and in respect of Rs.88,700/- @10.8% for the period from 15.01.2018 till the date of the refund of the said amount.

18. Point No. D

- (i) It is noted that the respondent has evidently failed in timely completion of the project despite committing to complete the project and handover the possession of the subject property to the allottee complainant on or before June 2021. Further, inspite of having received 95% of the consideration amount for purchase of the subject property by January 2018, it could as on 15.11.2025 complete the construction of the subject property to the extent of plinth level only. Despite this, the respondent opposed the option of withdrawal from the project by the complainant and to abide by the bounden duty of making refund of the entire amount received by him alongwith the interest at the prescribed rate to the complainant as per the provisions of section 18(1) of the Act which led to the complainant filing the instant complaint.
- (ii) The complainant has admittedly preferred the legal proceedings with regard to the instant complaint. Although, the complainant has not filed any receipt of payment made towards litigation fee of his counsel, it is evident from the record that the complainant is being represented by an advocate. He (complainant) is entitled to costs of litigation including the amount of Rs. 5000/- deposited for filing of the online complaint with Goa RERA. Accordingly, an amount of totaling Rs. 40,000/- which includes complaint filling fee and miscellaneous charges; would be payable by the Respondent to Complainant on this count.



19. Point E

(i) Section 18 of the Act stipulates that Complainants are entitled to refund including compensation without prejudice to any other remedy available. Further, Section 71 of the Act stipulate specific procedures for adjudication of compensations and. 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 and shall have due regard to the factors namely;

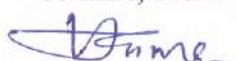
- a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.
- b) The amount of loss caused as a result of the default.
- c) The repetitive nature of the default.
- d) Such other factors which the adjudicating officer considers necessary to the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

(ii) In the instant case, Complainant has filed single complaint before the Authority seeking refund, interest and compensation. Upon determination by the Authority, the instant complaint is to be further transferred to Adjudicating Officer for determination of compensation qua the prayer of the complainant seeking compensation for mental harassment & emotional torture, Financial and other hardship including amount incurred for rental of the Apartment etc. as per provisions under Section 71 of the Real Estate (Regulation and Development) Act, 2016.

20. Case law cited/referred to by the Complainant and Respondent

(i) Case law cited/referred to by the Complainant

The complainant in support of his submissions cited the judgments of Hon'ble Supreme Court of India in Imperia Structures Limited v/s Anil Patni & anr., New Tech Promoters & Developers Private Limited v/s State of Uttar



Pradesh & others, and also in the case of Experion Developers Private Limited V/s Sushma Ashok Shiroor, besides the judgment of Hon'ble High Court of Bombay in Neelkamal Realtors Suburban Pvt. Ltd. & Anr. (Petitioners) V/s Union of India & others – Respondents & ors. An order of this Authority decided on 13.03.2025 in case title Co. Vijay Kumar v/s M/s Expat Projects and Development Private Limited was also referred to by the complainant in support of his contentions. Case law cited/referred to by the Complainant was noted and referred to in the order as applicable.

(ii) Case law cited/referred to by the Respondent

The Respondent in support of his submissions cited the judgments of Hon'ble Supreme Court of India in V. Lakshmanan v/s B.R. Mangalagiri, Satish Batra v/s Sudhir Rawal, Hanuman Cotton Mills v/s Tata Air Craft Limited besides the judgment of Hon'ble High Court of Bombay in Mahalaxmi Gas and Essence Mart v/s Nitin Mangaldas Ved & Anr., the judgment of Uttarpradesh REAT in Harmeet Arora v/s Maheshwari Infratech Pvt. Ltd. and the judgment of Maha RERA in Omprakash Kariwala v/s Raj Arcades & Enclaves Pvt. Ltd.

(iii) As far as the order of Maha RERA in case of Omprakash Kariwala v/s Raj Arcades & Enclaves Pvt. Ltd. is concerned the same relates to the case where an MOU clearly showing that there was a financial arrangement between the complainant and the respondent was shown to be existing. Further, the agreement to sell was observed to be in terms and conditions of the said MOU. The said order of Maha RERA is not relevant in the context of the instant case as the agreement to sell executed in the instant case does not refer to any prior document specifically. Further, the contents of the prior two communications referred to by the respondents to support its averments, nowhere reveal that the transaction subject matter of these communications, was any kind of financial arrangement or the same did not

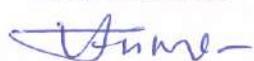


relate to purchase of residential unit. The other judgment in case of Mahalaxmi Gas and Essence Mart v/s Nitin Mangaldas Ved & Anr., decided by Hon'ble Bombay High Court is also not relevant to the facts of the case particularly when the respondent has not been able to show as to how the complainant has not come to the Authority with clean hands, by citing any specific details in this regard. The Respondent has also not been able to show any relevance of the other three judgments of Hon'ble Supreme Court of India in V. Lakshmanan v/s B.R. Mangalagiri, Satish Batra v/s Sudhir Rawal, Hanuman Cotton Mills v/s Tata Air Craft Limited cited by it in the context of the instant complaint particularly when the payment made is towards consideration of the purchase of the subject property and the refund of the amount paid alongwith interest due as sought by the complainant is on account of the failure of the promoter to complete the project and handover the possession of the subject property to the complainant in terms of the Agreement dated 21.12.2017. Pertinently, the said right of withdrawal is vested in the complainant under the provisions of the section 18(1) and has been held by the Hon'ble Apex Court to be 'unconditional and absolute'. Further, the plea of the respondent relating to Clause 10(C) of the agreement to sell dated 21.12.2017 was also not found tenable as noted at Para 17 (v) above.

(iv) As noted herein above, the case law cited by the Respondent was neither found relevant to the matter at hand nor the respondent could bring the specific relevance of the respective case law to the issues involved in the presence proceedings.

Directions

21. In view of the findings arrived at in respect of various points of determination listed above, it will be just to issue the following directions in the matter.



1. Respondent Promoter is directed to refund to the complainant the entire amount of Rs.19,58,700/- (Rupees Nineteen Lakhs Fifty Eight Thousand Seven Hundred only) paid by the complainant to the respondent; within 45 days of the date of receipt of this order together with interest at the rate of 10.8% from the date on which respective amounts were received from Allottee i.e. Rs.18,70,000/- on 24.06.2016 and Rs.88,700/- on 15.01.2018 till the date of refund.
2. In view of the observations made in respect of Point No. D at Para 18 above, the Respondent is directed to pay an amount of Rs. 40,000/- which includes complaint filling fee and miscellaneous charges; as cost to Complainant on this count within 45 days of the date of receipt of this order.
3. The respondents are directed to file compliance report of this order in the form of an affidavit within sixty days of the receipt of this order, failing which further legal action will be initiated by the Authority under the Act of 2016 for execution of the order.
4. In view of the observations made in respect of Point No. E at Para 19 above, the instant complaint is further transferred to Adjudicating Officer for determination of compensation qua the prayer of the complainant seeking compensation for mental harassment & emotional torture, Financial and other hardship including amount incurred for rental of the Apartment etc. as per provisions under Section 71 of the Real Estate (Regulation and Development) Act, 2016.

Signature -
02/02/2026
Virendra Kumar, IAS(Retd.)
Member, Goa RERA