



**GOA REAL ESTATE REGULATORY AUTHORITY
DEPARTMENT OF URBAN DEVELOPMENT
GOVERNMENT OF GOA**

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F.No.3/RERA/Complaint(153)/2020/981

Date: 20 /12/2022

Mr. Joseph Mendonsa and another,
3C 13 Kalpataru estate JVLR,
Opp. Majas Depot Andheri East Mumbai,
Mumbai City, Maharashtra-400093.

.....**Complainants**

Versus

Expat Projects and Development Pvt. Ltd.
Having registered office at 2nd floor,
Sobha Pearl, No. 1, Commissariat Road,
Bangalore, 560025.
C/o. Dolly Girish Patel,
Office no. A2-213, 2nd floor,
EXPAT UPTOWN COMMERCIAL,
Kadamba Plateau,
Tiswadi, Goa-403402.

.....**Respondent**

ORDER
(Dated 20.12.2022)

An online complaint was filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') wherein the complainant has sought for "adequate compensation and immediate possession". In the said online complaint, the facts are mentioned as below:-

“The row house property was registered in June 2017 and the entire payment was made before registration in December 16 and February 17 possession as per agreement in February 18 plus grace period of 6 months as per para j of serial no. 4 on page 9 of the agreement. Now it is 2021 and the row house is nowhere near completion and no employee or manager of the company is co-operating”

2. Before this Authority a written complaint was also filed under Section 31 of the RERA Act wherein the facts are given in detail and the complainants have prayed this Authority for an order (1) directing the respondent to pay compensation towards breach of agreement dated 23.06.2017 caused by the respondent by not adhering to the date of delivery of possession; (2) directing the respondent to pay interest on the total payment consideration incurred by the complainants, which period should be computed from February 2018 till actual delivery of possession; (3) to direct the respondent to handover the possession of the residential unit/row house bearing unit no. R-039; (4) to direct the respondent to pay a sum of ₹1,00,000/- (Rupees One Lakh only) towards litigation costs and (5) to impose adequate penalty upon the respondent for contravention of the provisions of the RERA Act.
3. It is the case of the complainants that the respondent is a developer and is engaged in developing the property owned by one Naiknavare Constructions



Pvt. Ltd. which bears survey no. 13/1 C of the Village Panelim, Tiswadi North Goa and that the respondent advertised, marketed and promoted its development scheme consisting of a housing complex named as "Expat Vida Uptown Goa" (Row Houses) in the said property and upon verification, the complainants desired and agreed to purchase for themselves a residential unit/Row House no. R-039 together with exclusive rights to use open space/garden space for a total consideration of ₹75,00,000/- (Rupees Seventy Five Lakhs Only). According to the complainants, they accordingly paid to the respondent the aforesaid entire sale consideration and also ₹2,17,490/- towards stamp duty and an amount of ₹1210/- towards registration fees and hence paid to the respondent total amount of ₹77,18,700/- (Rupees Seventy Seven Lakhs Eighteen Thousand Seven Hundred only).

4. According to the complainants, after paying the entire consideration amount, the respondent executed an agreement to sell with the complainants on 23.06.2017 and the same was registered on the same day before the concerned Sub Registrar. It is stated that in the said agreement, the respondent has admitted having received the payment of ₹75,00,000/- (Rupees Seventy Five Lakhs only) from the complainants as sale consideration towards purchase of the residential unit/row house bearing no. R-039. It is further submitted that it was agreed in the said agreement that the respondent would complete the construction of the said residential unit and deliver the possession of the same to the complainants

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in February 2018 plus a grace period of six months, which according to the complainants expired in the month of August 2018, however the respondent failed to give the possession of the said residential unit to the complainants till date.

5. The complainants have referred to various e-mails and phones to the respondent expressing their concern for the delay in completion of the project. It is stated that the complainants visited Goa and the site of construction on 09.06.2019 but were shocked to see that the project as well as the said residential unit was far from complete and there after they pursued the matter with the respondent but of no avail. The complainants also referred to their visit at the site on 14.08.2021 and the photographs clicked by them showing the incomplete construction at the abandoned site. According to the complainants they have been in constant contact with the respondent vide phones/ e-mails but the respondent kept on giving false promises and misrepresentations to the complainants. Hence the prayers of the complainants as stated above.
6. In the reply to the online complaint, the respondent has stated that the present dispute is prematurely filed as the RERA extension has been given for completion of the project; that the complainants are the investors in the said project; that the project got delayed due to covid 19 pandemic in Goa from March 2020 till April 2021; that the villa is 80% completed and that the



complainants are informed of the time limit granted by this Authority to complete the construction of the project.

7. In the reply to the written complaint, the respondent has raised preliminary objections to the effect that the complainants have also filed complaint before consumer forum and that the complainants cannot pursue two remedies for the same cause of action and hence the complaint before this Authority should be dismissed. It is stated that the complaint file before the Consumer Forum by the complainants is under the embargo of Section 71, 79 and 89 of the RERA Act and in such circumstances, "the said complaint needs to be withdrawn". It is stated that the present dispute is prematurely filed as RERA extension is till 31.12.2022 for delivery of the said row house.
8. On merits, the respondent has stated that the complainants are the investors in the said project and that the agreement of sale dated 23.06.2017 was entered with the complainants to secure the interest of the complainants and in the said agreement for sale tentative date of possession was given i.e. in February 2018 which date cannot be considered as it was mutually agreed between the parties that the date provided under RERA registration for completion would be governed. It is submitted that the project was registered on 06.06.2018 and the validity period is till 31.12.2022. It is submitted that substantial construction is done and now only flooring and fixtures remain to be done and that the respondent is willing to deliver the said unit as per the time line set by this

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Authority. The delay in possession is attributed by the respondent to the covid 19 pandemic in Goa. The respondent has referred to clause 4(k) of the said agreement to sell dated 23.06.2017 wherein it is stated that the period of delay caused in completion of the construction of the said unit on account of force majeure, civil commotion, war etc., or any other reasons beyond the control of the owner shall be excluded from computation of the period of completion of the said unit and delivery of possession thereof to the allottee and hence submits that the period for delay caused in completion of the unit due to force majeure or pandemic has to be excluded. It is also stated that the delay if any was also due to RERA registration/approval which came to be obtained only on 12.10.2018 and the same was not due to the fault of the respondent.

9. The respondent has further stated that the payment of ₹77,18,700/- has been utilized for the construction purpose only and that the respondent has not collected other fees such as electricity, club house, water connection, society formation etc., from the complainants which is also due from them. According to the respondent, the complainants have come before this Authority with unclean hands as they have suppressed from this Authority that they have also filed a similar complaint before Consumer Forum. Hence according to the respondent, the instant complaint be dismissed.
10. An application for rejection of complaint has also been filed by the respondent on the ground that after invoking the jurisdiction of this Authority, the

complainants have filed a similar complaint before the Consumer Forum on same cause of action and seeking same reliefs. No specific reply to the said application for rejection is filed by the complainants.

11. Documents and affidavits in evidence have been filed by the parties. Written submissions were filed by the Ld. Advocate for the respondent. Oral arguments were heard from Ld. Advocate Shri C. Fonseca for the complainants and Ld. Advocate Shri P. Shetty for the respondent. Ld. Advocate Shri P Shetty relied upon the ruling of the Hon'ble Supreme Court in the case of **"IREO Grace Realtech Pvt. Ltd. vs. Abhishek Khanna & Ors."** 2021 ALL SCR 506, whereas the Ld. Advocate Shri C. Fonseca relied upon **"Imperia Structures Limited vs. Anil Patni and another"** (2020) 10 SCC 783.

12. After going through the entire records of the case, the points which come for my determination along with the reasons and findings thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the instant complaint ought to be rejected in view of the subsequent filing of similar complaint by the complainants before the Consumer Forum?	In the negative.



2.	Whether the complainants are entitled for possession of the residential unit/row house bearing unit no. R-039?	In the affirmative.
3.	Whether the complainants are entitled for the interest on the delayed possession of the said residential unit?	In the affirmative.
4.	Whether the complainants are entitled for compensation?	To be decided by the Adjudicating Officer under Section 71 of the RERA Act.

REASONS

Point no. 1

13. According to the respondent, the complainants have filed a similar complaint with the same reliefs before the State Consumer Redressal Commission, Panaji and therefore the instant complaint should be rejected on the ground that the complainants cannot simultaneously ask for the same reliefs from different forums both having jurisdiction to entertain and try the said complaint. In this regard the respondent has also produced on record the certified copy of the complaint filed by the complainants before the State Consumer Redressal Commission bearing CC no. 02/2022.



14. 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.
15. 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)

16. 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 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)

17. 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.

32. 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**

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**proceedings under the CP Act or file an application
under the RERA Act” (emphasis supplied)**

18. From the aforesaid, it is clear that the complainant has the choice to initiate appropriate proceedings either under the Consumer Protection Act or under the RERA Act, as two alternative remedies are provided under the aforesaid Acts but once the complaint resorts to the remedy under the RERA Act, the complainant is precluded from taking any subsequent recourse to the Consumer Protection Act for the same reliefs. Thus, in the instant case though the remedy opted by the complainants to file complaint before this Authority under the RERA Act is legal and valid in the eyes of law, however the subsequent filing of the application before the State Consumer Redressal Commission for the same reliefs under the Consumer Protection Act can be challenged and the respondent is at liberty to agitate the said issue of maintainability of the application of the complainants under the Consumer Protection Act before the State Consumer Redressal Commission. However, the fact remains that the complainants had first opted to invoke the jurisdiction of this Authority under the RERA Act and the complaint before this Authority is legally maintainable and therefore ought not to be rejected. The instant point, is therefore, answered in the negative.

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Points no. 2 and 3

19. Both the points are taken up together as they are interconnected and the reasons for deciding the same over lap.

As per the agreement for sale executed and registered on 23.06.2017, as mentioned in para 4 (j) on page 9, "the developer shall complete the construction of this project comprising of the said unit as agreed to herein and shall deliver possession thereof, to the purchaser, on February 2018 plus grace period of 6 months, after the issuance of completion certificate by the architect of the project and/or from local authority".

20. Since, till date the possession of the said residential unit is not given to the complainants, Section 18 of the said Act is therefore, squarely applicable and is quoted below:-

"18. Return of amount and compensation.- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case



may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.” (emphasis supplied)

21. From the aforesaid section it is clear that the complainants have the choice of either withdrawing from the project and asking for refund of the consideration amount paid by the complainants to the respondent with interest including compensation **or not to withdraw from the project and ask from the respondent “interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”**. As stated above, Section 18

of the said Act clearly gives right to the complainant to ask for statutory interest on the consideration amount paid for every month of delay till the handing over of the possession. In this regard, the ruling of the Hon'ble Supreme Court in the case of **"Imperia Structures Ltd. Vs. Anil Patni and Another"** 2020(10) SCC 783 is squarely attracted and hence the relevant part of the same is reproduced herein below:-

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

The instant case of the complainants comes under the latter category. The RERA Act thus provides a remedy to an allottee who does not wish to withdraw from the project to claim interest on the delayed possession till the handing over of possession to the allottee.



22. In this context it is relevant to quote **Rule 18 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosures on websites) Rules, 2017:-**

“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 plus two percent: Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use it would be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

23. Thus, invoking Section 18 and Rule 18 of the said Act the benefit of the aforesaid statutory interest goes to the complainants, who have entered into agreement for sale with the respondent. As a consequence thereof Section 18 and Rule 18 of RERA are squarely attracted in the instant complaint.

24. Chapter III of the RERA Act gives details of the functions and duties of the promoter. Section 11 (4) (a) states as follows:-

“11(4) The Promoter shall-

- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder **or to the allottees as per the agreement for sale**, or to the association of allottees,

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as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”(emphasis supplied)

From the aforesaid Section 11(4) (a) it is clear that the promoter is responsible for all obligations, responsibilities and functions under the provisions of the said Act/Rules/ Regulations or **to the allottees as per the agreement for sale**. Thus, the promoter is bound by the terms, recitals and conditions as mentioned in the agreement for sale.

25. Even under Section 18 of the said Act (supra), the complainant is entitled for the return of amount and compensation only if the promoter fails to complete or is unable to give possession of an apartment, plot or building “in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified in the said agreement for sale.” Thus, if the promoter does not give possession of an apartment, plot or building, as per the terms of the

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agreement for sale or as per the date specified therein, the cause of action accrues in favour of the complainant for the return of amount and compensation.

26. **The cause of action accrued in favour of the complainants and against the respondents on 31st August 2018 (i.e. February 2018 plus six months grace period) on which date the respondent was liable to give possession of the residential unit to the complainants.** Thus the date from which the interest on the consideration amount paid by the complainants is to be calculated is the date when the cause of action accrued in favour of the complainants. Therefore the prescribed interest as per the aforesaid Rule 18 starts running from 31st August 2018 on the consideration amount paid by the complainants to the respondents.
27. According to the respondent, the covid pandemic in Goa was in full force from March 2020 till April 2021 which made construction impossible and the respondent referred to clause 4 (k) of the agreement to sell dated 23.06.2017, according to which, "the period of delay caused in completion of the construction of the said unit on account of force majeure, civil commotion, war, strike, prohibitory orders from any court, any notice, order, rule, notification of the Government and or public or competent authority or any other reasons beyond the control of the owner, shall be excluded from computation of the period of completion of the said unit and delivery of possession thereof to the allottee". It is further submitted that the agreement of sale gave only a tentative date of possession and that the timeline for delivery would be governed as per RERA norms. There is no merit in the aforesaid submission since it is held by the Apex court in the case of "**M/s Imperia Structures Ltd. (supra)**, that "non-availability of contractual labour, delay in notifying approvals cannot be construed to be force majeure events from any angle". In the case of **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors.**" in civil appeal no. (s) 6745-6749 and 6750-6757 of 2021, the Hon'ble Supreme

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Court has clarified that “if the promoter fails to give possession of the apartments, plot or building within the time stipulated under the terms of the agreement, then allottee’s right under the Act to seek refund/claim interest for delay is unconditional and absolute, regardless of unforeseen events or stay orders of the court/Tribunal.”(emphasis supplied). Thus, the aforesaid ground for delay in delivering of possession, as given by the respondent, will not come to the rescue of the respondent from legal liabilities under the said Act and corresponding legal rights accrued to the complainants under the said Act.

28. The complainants are also entitled for the possession of the said residential unit. **Section 19 (3)** lays down that “The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (c) of clause 1 of sub-section (2) of Section 4”. Moreover, **Section 37** of the said Act which gives power to this Authority to issue any direction to the party concerned is quoted below:-

“**37. Powers of Authority to issue directions.-** The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agent, as the case may be, as it may consider necessary and such direction shall be binding on all concerned”

Thus, this Authority has power to give direction to the respondent to complete the project and the legal formalities and to deliver possession of the premises to the complainants within the specific period. Such a direction is warranted since

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the interest on delayed possession runs till the actual delivery of possession of the premises to the complainants.

29. In the instant case the complainants have paid an amount of ₹77,18,700/- (Rupees Seventy Seven Lakhs Eighteen Thousand Seven Hundred only) to the respondent. Under Section 18(1) of the said Act the complainant is entitled and the respondent is liable to pay to the complainant interest for every month of delay till the handing over of the possession, at such rate as may be prescribed. As per **Rule 18 of "The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017**, the rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent. At present such Lending Rate of interest by SBI is 8.60% per annum. Adding two percent to the said interest as per Rule 18, it comes to 10.60% per annum. Hence, the respondent is liable to pay 10.60% per annum interest for every month of delay to complainant on the aforesaid amount paid by complainant from the date of delivery of possession i.e. 31.08.2018 as mentioned in the agreement for sale with the complainants, till the handing over of the possession to complainants.

Both the points are therefore answered in the affirmative.

Point No. 4

30. Under Section 71 of the said Act, compensation under Sections 12, 14, 18 and 19 of the Act has to be adjudged only by the Adjudicating Officer. Accordingly, the prayer for compensation has to be referred to the Adjudicating Officer for adjudging the compensation, if any.



In the premises aforesaid, I pass the following:-

ORDER

In the reply, the respondent has stated that the project is 80% complete. The extension for the construction work in the registration certificate is given till December, 2022. The respondent is therefore, directed to give possession of the residential unit/row house bearing unit no. R-039 to the complainants after obtaining occupancy certificate as per the terms of the Agreement for Sale executed and registered on 23.06.2017, within two months from the date of this order.

Further the respondent is directed to pay 10.60% per annum interest (present lending rate of interest by SBI which is 8.60% per annum plus two percent) for every month of delay to the complainants on the aforesaid amount of ₹77,18,700/- (Rupees Seventy Seven Lakhs Eighteen Thousand Seven Hundred only) paid by the complainants from 31st August 2018 till the date of delivery of possession to the complainants.

Under Section 61 of the said Act, if any promoter contravenes any other provisions of the said Act, other than that provided under Section 3 or Section 4, or the Rules or Regulations made thereunder, he shall be liable to a penalty which may extend upto five percent of the estimated cost of the real estate project as determined by the Authority. In the instant case, the promoter has not discharged his obligations, responsibilities and functions as per the agreement for sale registered on 23.06.2017 and hence is liable to penalty under Section 61 of the said Act. Taking into consideration the facts and circumstances of the case, penalty of ₹1,00,000/- (Rupees One Lakh only) will serve the ends of justice. Hence, the promoter/ the respondent is directed to pay the penalty of Rupees One Lakh within a period of two months from the date of this order.



The said penalty amount, if realized by this Authority, be forfeited to the State Government.

The respondent is directed to file compliance report of this order within two months failing which further legal action will be taken by this Authority under the said Act for execution of this order.

The instant complaint is now referred to the Adjudicating Officer to adjudge compensation, if any, as per Section 71 of the said Act.

Vijaya D. Pol
20/12/2022
(Vijaya D. Pol)
Member, Goa RERA