



## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (70)/2022/424

Date: 19/05/2023

### BEFORE THE ADJUDICATING OFFICER

**Mr. Spancer Xavier Fernandes**

H.No. 482 Sonarbag, Usgao,  
Ponda Goa-403406.

..... Applicant/Complainant

V/s

**Expat Projects and Development Pvt. Ltd.**

Address 1: Carlton Towers No. 1, A wing,  
3<sup>rd</sup> Floor, Unit No. 301-314,  
No. 1 Old Airport Road, Bangalore Karnataka-403107

Address 2: Office no. A2-213, Expat Vida Uptown  
Panelim Village, Kadamba Plateau,  
Tiswadi, Goa-403402.

..... Respondent/Promoter

### ORDER

(Delivered on this 19<sup>th</sup> day of the month of May, 2023)

The present proceedings have arisen as a corollary to the complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') filed by the applicant/complainant against the respondent bearing complaint no. 3/RERA/Complaint(270)/2021.

2. The above said complaint was disposed off vide Order dated 28.09.2022 by the Goa Real Estate Regulatory Authority (for short 'Goa RERA'). The said Authority directed the respondent as hereunder:-

“The respondent is directed to refund the amount of ₹26,63,375/- (Rupees Twenty Six Lakhs Sixty Three Thousand Three Hundred and Seventy Five only) to the complainant within two months from the date of this order.

Further the respondent is directed to pay 10.00 % per annum interest (present lending rate of interest by SBI which is 8.00 % per annum plus two percent) for every month of delay to the complainant on the aforesaid amount paid by the complainant from 30th June 2021 till the date of actual payment of the aforesaid refund.

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 01.06.2018 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.

3. The applicant/complainant has filed his claim for compensation in Form ‘B’.
4. It is the case of the applicant/ complainant that the applicant/ complainant executed an Agreement to Sell with the respondent/ promoter registered on 01.06.2018 for the purchase of one unit of apartment bearing no. E 02-204 in the project Expat Vida Phase II at Bainguinnim, Tiswadi Taluka, North-Goa, for a total consideration of ₹41,05,000/- (Rupees Forty One Lakhs Five Thousand only). Of the total consideration agreed, the applicant/ complainant has paid the respondent/ promoter a total amount of ₹26,63,375/- (Rupees Twenty Six Lakhs Sixty Three Thousand Three Hundred and Seventy Five only).
5. The applicant/ complainant in his claim for compensation as well as in the rejoinder has alleged and set out in detail numerous acts of violations, fraud and cheating on the part of the respondent. It is the applicant’s/ complainant’s case that the Agreement to Sell registered on 01.06.2018 is a one sided draconian

agreement which is in violation of the provisions of the RERA Act. It is contended by the applicant/ complainant that the extensions for the project are illegal and liable to be revoked/ cancelled. The applicant/ complainant enumerated in detail the various unlawful activities of the respondent/promoter and has alleged that the various material documents of the respondent/promoter are false and fabricated. It is also alleged by the applicant/ complainant that no regular project report has been uploaded on the website of Goa RERA. The applicant/complainant in support of his case has placed reliance on various case laws in support of the relief claimed for compensation.

6. The applicant/ complainant in support of the applicant's/ complainant's case has placed reliance in the Consumer case no. 1619 of 2018 by the National Consumer Disputes Redressal Commission New Delhi in the case of Aashna Roy vs. Yogesh Deveshwar and anr. decided on 21.09.2021; in Complaint no. CC006000000000032 before the Maharashtra Real Estate Appellate Tribunal, Mumbai in the case of Avinash Saraf, Neha Duggar Sarah vs. Runwal Homes Pvt. Ltd. decided on 13.10.2017; in appeal no. AT006000000052322 in complaint CC006000000078849 before the Maharashtra Real Estate Appellate Tribunal, Mumbai in the case of Mrs. Monika Agarwal and Rajesh Agarwal vs. Forum Homes Pvt. Ltd.; in the case of Antitrust-Section 27 vs. DLF Gurgaon Home Developers decided on 12.05.2015 by Competition Commission of India; in the case of Psa Impex Private Ltd. Thru vs. Real Estate Appellate Tribunal decided on 09.03.2021 by the Hon'ble High Court of Allahabad.

- 7. The respondent/promoter filed reply to the claim for compensation in Form 'B'.
- 8. The respondent/ promoter in the reply has stated that the applicant/ complainant has cast aspersions and made serious defamatory allegations against the architects and structural consultants who are not parties to the present proceedings which only shows the conduct of the applicant/ complainant. The same has no bearing on the issue under consideration which allegations are false and uncalled for. The applicant/ complainant has approached the Hon'ble Court with unclean hands and therefore the claim filed is required to be dismissed. The applicant/ complainant is found making baseless allegations against the Goa RERA despite being heard on merits and based on which the Regulatory Officer has passed a reasoned order. The serious allegations of fraud to claim and quantify compensation cannot be decided by this Hon'ble Court as the same has to be determined and decided by the Civil Court which requires full-fledged trial as the applicant/ complainant needs to lead extensive evidence on the same.
- 9. The fact that extension was granted by the Goa RERA for completion of the project clearly shows that the Authority was satisfied about the reasons for delay in completion of the project inspite of adverse circumstances and defaulting customers. The respondent/ promoter has not stopped progressing with the construction activities which continue to be carried out with own funds of the respondent/ promoter. This shows the intention of the respondent/ promoter to

complete the project in the larger interest of the 300 plus customers who have still reposed faith in the respondent/ promoter and the project.

10. The act of seeking exorbitant compensation on flimsy and false grounds only shows the intentions of the applicant/ complainant who has not fallen short of making allegations on the Goa RERA itself. It is denied that there is a confession and admission by the representative of the respondent/ promoter. It is stated that the applicant/ complainant now has no right to agitate an issue of fabrication of records making baseless allegations on the documents submitted before this Authority as the applicant/ complainant has already withdrawn from the project and the Goa RERA has also allowed the applicant's/ complainant's petition for refund of the amount. The respondent/ promoter submits that all the necessary details regarding the said project are enumerated in the Agreement to Sell as well as on the RERA website as required under the RERA Act. The allegations of non-disclosure is unfounded and not true. It is denied that there is any contradictory disclosure or any intentions to mislead. The company is an independent entity. The estimation of net worth is incorrect and in any case of no consequence to the present proceedings. The delay in completion of the project were due to circumstances beyond the control of the respondent/ promoter. The project work has been put in fast track mode and shall be completed within the extended time. It is denied that the project is self-enriching project. No report from any expert to prove the allegations has been produced. It is stated that the applicant/ complainant was made aware about change in the

address of the office of the respondent/ promoter. The respondent/ promoter refutes the claim of fraud made on change in address of the respondent/ promoter. It is reiterated that the applicant's/ complainant's allegations are based on cooked up stories against the respondent/ promoter. The applicant/ complainant is only trying to tarnish the image of the respondent/ promoter and as such has falsely alleged fraud manipulations etc. which in fact is made without any basis. The allegations of fraudulent watershed on the declared area is denied by the respondent/ promoter. It is stated that what is agreed would be determined by the Agreement to Sell dated 01.06.2018 which is the contract for all purposes. The respondent/ promoter submits that there are neither any deliberate defaults nor any criminal intent of defrauding any of the customers. The respondent/ promoter has been continuing with the work on site inspite of defaults by the customers and shall complete the project within the completed timeline. Any adverse orders shall put all the customers in jeopardy as the complete project will get strangulated due to financial constraints. The respondent/ promoter submits that there is no issue about the title of the property. There is no bearing of the allegations made to the rights of the applicant/ complainant. As per the Goa RERA requirement, the respondent has given detailed inspection of all the documents to the applicant/ complainant before executing and registration of the Agreement to Sell. Banks have disbursed loan to the customers based on the authenticity of the project documents. The applicant/ complainant took detailed inspection of the title, plan

and project documents from time to time and after that executed the Agreement to Sell dated 01.06.2018 for the purchase of the apartment E 02-204. All the necessary documents are uploaded on the RERA website as issued by the concerned authorities. There is no order of restraint or stay on the project or sale nor any court declaration challenging the title of the property. In any case the same is of no consequence as far as the matter of seeking compensation is concerned.

11. It is further the case of the respondent/ promoter that in the Agreement to Sell dated 01.06.2018 under the heading "ALLOTTEES DECLARATION" clause 9 (a) to (d) it is mentioned that the Owner has made full and true disclosures to the allottee/s about the title and use of TDR. 9 (b) it is accepted and declared by the Allottees (the applicant herein) that the Owner/ Developer called upon the applicant to take details search about the Project. The respondent/ promoter states that the applicant/ complainant took a detailed inspection of all the documents before executing the Agreement to Sell and was fully aware of the project details. In any case neither the title nor the plans are an issue. The respondent/ promoter is in total compliance with the Act and the purchaser/ allottee are fully indemnified under clause 8 of the registered Agreement to Sell. All allegations made by the applicant/ complainant are baseless and misleading and are denied in totality. The respondent/ promoter states that by an Option Letter, the owner has made a purchase offer and granted an option to the allottee to purchase in the said proposed project after verifying the terms and conditions



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mentioned in the said Option Letter. The applicant/ complainant has accepted the offer by registering the Agreement to Sell.

12. With reference to schedule bank, certified architect, engineer and chartered accountant-RERA Act and other approval, the respondent/ promoter denies the allegations made by the applicant/ complainant being baseless and false. The format of the Agreement is uploaded on the RERA website and is very much in consonance with the RERA Act requirement. With reference to uncertified FAR revision, consent, RERA Act the respondent/ promoter submits that there are no violations and there are all required compliances. The respondent/ promoter denies having done any unfair trade practices, deceit or indulged in fraud. The claim of the applicant/ complainant that he has suffered mental anguish are imaginary and without any basis or proofs. The applicant/ complainant has avoided making reference to the respondent/ promoter to protect the purchaser which is evident in the Product Application Form duly signed by the applicant/ complainant. The respondent/ promoter has provided a 30 days window (clause 2.6.1) to the customer to evaluate the project and cancel with full refund. The respondent/ promoter has given a detailed report to the Hon'ble Goa RERA for the reasons for requesting the extension which the Hon'ble Goa RERA has granted. The respondent/ promoter submits that if the prayers as sought are allowed, it will only overburden the respondent/ promoter who is already cash strapped, putting the whole project in jeopardy. This will affect all the existing customers. The sums claimed under various heads are imaginary and fanciful.



The figures mentioned under table of claims are manufactured. There is no legal or factual basis for any of the claims made towards compensation. The estimated profit and loss are baseless and without an iota of evidence. It is denied that the respondent/ promoter has created an asset base for themselves through the funds of the applicant/ complainant. The applicant/ complainant having withdrawn from the project with refund and interest, is not entitled for compensation as claimed.

13. The applicant/ complainant filed rejoinder to the reply of the respondent/ promoter. The applicant/ complainant filed Affidavit in Evidence. The respondent/ promoter filed Affidavit in Evidence.
14. Written arguments were filed by the respective parties. The applicant/ complainant also filed written arguments in reply to the respondent's/ promoter's written arguments. Oral arguments were also heard.
15. The point for determination and my finding to the same is as under:-

<b>Point for determination</b>	<b>Finding</b>
<i>Whether the respondent/ promoter is liable to pay compensation to the applicant/ complainant as claimed?</i>	<i>Partly in the affirmative as per Order.</i>

### REASONS

16. The Agreement to Sell between the applicant/ complainant and the respondent/ promoter was duly registered on 01.06.2018. It is the applicant/ complainant

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contention that the said Agreement is one sided draconian agreement which is in violations of the provisions of the RERA Act. It is also contented that false information has been given by the respondent/ promoter in the said Agreement to Sell regarding ownership of land etc. The said Agreement to Sell has not been challenged by the applicant/ complainant before the Civil/ Criminal Court. This Forum has no jurisdiction to decide on ownership of land and/ or to declare the said Agreement to Sell as illegal and therefore null and void. The Applicant/ complainant cannot challenge the legality of the said Agreement to Sell before this Forum. Both the parties are therefore bound by the said Agreement to Sell duly registered before the Sub-Registrar on 01.06.2018.

17. In the case of **“M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors. dated 11.11.2021” in civil appeal no.(s) 6745-6749 of 2021**, the Apex Court has held:-

“When it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the Adjudicating Officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the Adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the Adjudication Officer as prayed that in our view, may intend to expand the ambit and scope of the powers



and functions of the Adjudicating Officer under Section 71 and that would be against the mandate of the Act, 2016.”

18. The applicant/ complainant has along with the application for compensation placed on record voluminous documents and materials and raised extraneous multiple issues which are beyond the scope of jurisdiction of this Forum and consequently cannot be looked into for the purpose of considering and deciding the claim for compensation under Section 12, 14, 18 and/ or 19 read with Section 71 of the RERA Act filed by the applicant/ complainant.
19. Ld. Advocate Shri A. Palekar for the respondent/ promoter submitted that the matter pertains to seeking compensation after the order of the refund has been made with interest to the applicant/ complainant. Shri A. Palekar submitted that the said order passed by the Goa RERA has been challenged by the applicant/ complainant before the Appellate Authority which fact has been with held by the Applicant/ complainant from the Authority. Shri A. Palekar therefore submitted that the said Order has not attained finality and as such the present matter is premature and no compensation can be granted unless the said matter is finalized quantifying the amounts in the said matter. Shri A. Palekar therefore submitted that the present matter is therefore required to be either kept in abeyance or dismissed in totality.
20. In the case of **“M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors. dated 11.11.2021”** in civil appeal no.(s) 6745-6749 of 2021, the

Apex Court has held that so far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that after the rules have been framed, the aggrieved person has to file complaint in a separate format. If there is a violation of the provisions of Sections 12,14,18 and 19, the person aggrieved has to file a complaint as per form (M) or for compensation under form (N) as referred to under Rules 33(1) and 34(1) of the Rules. The procedure for inquiry is different in both the set of adjudication and as observed, there is no room for any inconsistency and the power of adjudication being delineated, still if composite application is filed, can be segregated at the appropriate stage.

21. So far as submission in respect of the expeditious disposal of the application before the adjudicating officer, as referred to under sub-section (2) of Section 71 is concerned, it pre-supposes that the adjudicatory mechanism provided under Section 71(3) of the Act has to be disposed of within 60 days. It is expected by the regulatory authority to dispose of the application expeditiously and not to restrain the mandate of 60 days as referred to under-Section 71(3) of the Act.

22. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Section 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is

the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act.

23. In the light of the above observations it is evident that the complaint which was filed under Section 31 was required to be filed before the Goa RERA which has exclusive jurisdiction to entertain and decide such violation. Accordingly, the applicant/ complainant has filed a separate complaint which was entertained, considered and decided by the Goa RERA and disposed off vide Order dated 28.09.2022.
24. Even though the applicant/ complainant has challenged the said Order dated 28.09.2022 and as such the same has not attained finality, the present claim for compensation operates in a different sphere which is required to be decided exclusively by the Adjudicating Officer in accordance with Section 71(2) of the RERA Act. Therefore the objection raised by Ld. Advocate Shri A. Palekar for respondent/ promoter on this count cannot be sustained.
25. It is the contention of the respondent/ promoter that the project got delayed for circumstances beyond the control of the respondent. The respondent is trying to complete the said project within the extension date granted by the Hon'ble Authority. The project extension date is already mentioned on the RERA

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website. The respondent/ promoter has given a detailed report to the Hon'ble Authority for the reasons for requesting extension which the Hon'ble Authority has considered and granted. It is also contended that if the applicant/ complainant is granted compensation, the respondent will suffer financial constraints and it will adversely affect the completion of the project and also the other customers who are about 300 in numbers.

26. 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 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, 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:

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 said agreement for sale.

27. Even under Section 18 of the said Act (supra), the complainant is entitled to 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 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.

28. In this context, in the case of **“M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors. dated 11.11.2021”** in civil appeal no.(s) 6745-6749 of 2021, the Apex court has clarified that if the adjudicating officer on enquiry is satisfied that the promoter has failed to comply with the provisions of any of the Section 12,14, 18 and 19, he may direct to pay such compensation or interest as the case may be, as he thinks fit in accordance with the provisions of any of those Sections. Therefore the grounds for delay in delivering possession of the apartment to the applicant/ complainant as given by the respondent/ promoter, will not exonerate the respondent from legal liabilities under the said Act and corresponding legal rights accrued to the applicant/ complainant under the said Act.
29. Thus, there is no merit in this contention of the respondent. The extension granted by the Goa RERA does not bar the present case which pertains to compensation an account of default of handing over possession of the apartment under the said Agreement to Sell and also failure on the part of the respondent/ promoter to return the money advanced with applicable interest.



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30. Therefore, the aforesaid arguments of the Ld. Advocate for the respondent/ promoter cannot be accepted in the light of Section 18 of the RERA Act which gives rights to the applicant/ complainant to ask for return of the amount and **compensation** from the respondent/ promoter in case the applicant/ complainant wishes to withdraw from the project.
31. The broad factors to be considered while adjudging compensation have been provided under Section 72 which reads as under:-

**“72. While adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following 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.”

32. In the case of ONGC LTD. v. SAW PIPES LTD. **(2003) 5 Supreme Court Cases 705**. The Apex Court while dealing with Section 73 and 74 of the Contract Act has held that:

“(1) Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same.

(2) If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act.

(3) Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of a contract.

(4) In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is genuine pre-estimate by the parties as the measure of reasonable compensation.”

33. In the case of **Ghaziabad Development Authority versus Balbir Singh (2004)** **5 Supreme Court Cases 65** it was held that in cases where monies are being simply returned then the party is suffering a loss in as much as he had deposited the money in the hope of getting a flat/plot. He is being deprived of that flat/plot. He has been deprived of the benefit of escalation of the price of that flat/plot. Therefore the compensation in such cases should necessarily be higher.

34. It is the applicant's/ complainant's case that if he had been handed over possession of the said apartment he would have been able to give out the same on rent and would have earned rental income. In support of the applicant's/ complainant's case the applicant/ complainant has placed on record table of projected rental income loss in a 10 year life cycle cost for a similar 2BHK in Kadamba Plateau for a single unit amounting to ₹35,000/-. The applicant/ complainant has claimed a total sum of ₹15,00,92,040/- as shown in the table no. 3. There are no supporting documents placed on record by the applicant/ complainant to substantiate the claim as sought by the applicant/ complainant. The respondent has clearly denied the claim as made by the applicant/ complainant.
35. To my mind, no reliance can be placed on the said table no. 3 as placed on record which is not supported by any documentary evidence with respect to a similar apartment taken on lease at the Kadamba Plateau. In the circumstances, however, it is held that the fair rent the applicant/ complainant could have secured had the 2BHK apartment been given on rent would be ₹25,000/- (Rupees Twenty Five Thousand only) per month on conservatory basis.
36. In the light of the above rulings and provisions of the RERA Act and as a result of the default on part of the respondent of failing to handover possession of the said apartment to the applicant/ complainant as well as return the amount advanced with interest to the applicant/ complainant by the respondent for the apartment, the applicant/ complainant has suffered financial losses which he

would have been able to earn by way of monthly rent for which the apartment would have accrued if it was given on rent by the applicant/ complainant.

37. The cause of action for the same is the date agreed for handing over possession of the apartment i.e. 30.06.2021. The loss sustained on this count as projected in the table 3 for a ten year cycle as claimed by the applicant/ complainant is beyond the scope and parameters as laid down under Section 72 of the RERA Act and consequently cannot be granted.
38. Be that as it may, from 01.07.2021 till date, by way of compensatory cost @ ₹25,000/- (Rupees Twenty Five Thousand only) per month, the applicant/ complainant is entitled to ₹5,65,322.55/- (Rupees Five Lakhs Sixty Five Thousand Three Hundred Twenty Two and Fifty Five paisa only) on conservatory basis towards loss sustained having being deprived of giving the said apartment on rent by the applicant/ complainant.
39. In the claim for compensation, the applicant/ complainant has stated that he has suffered mental attrition, trauma resulting in stress affecting the applicant/ complainant co-morbidities and decline in health and general well being. The applicant/ complainant has claimed a sum of ₹5,00,00,000/-. No documentary evidence to substantiate the said claim has been produced.
40. The respondent/ promoter has caused sustained mental stress and anguish to the applicant/ complainant for having not handed over the possession of the said apartment and not having returned the money advanced by the applicant/ complainant which was returnable with interest as agreed. The applicant/

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complainant is therefore and entitled to be compensated for such mental stress and anguish caused due to the default by the respondent/ promoter for which the respondent/ promoter is liable to pay the applicant/ complainant compensation quantified at ₹1,00,000/- (Rupees One Lakh only).

41. The default on part of the respondent/ promoter has left the applicant/ complainant with no apartment even after approx. 22.5 months from the date agreed in the said Agreement to Sell till date. The respondent/ promoter has thus secured undue advantage whereby the money so advanced of and / or gain of completing the construction of other phases which in no manner is relevant to the handing over possession of the agreed apartment to the applicant/ complainant till date.
42. In order to secure an apartment of the same area in and around the same vicinity, the applicant/ complainant will have to invest a much higher amount per square meter on account of the escalation in cost of real estate from the time of his investment till date. The applicant/ complainant in table 4 has claimed an estimated asset loss value from 2020- 2030 at ₹14,49,92,040/- the said claim put forth by the applicant/ complainant is not supported by any documentary evidence and is way beyond the scope of Section 72 of the RERA Act. For the undue advantage to the respondent/ promoter corresponding to the disadvantage to the applicant/ complainant, the respondent/ promoter is liable to pay compensation which is quantified at ₹5,00,000/- (Rupees Five Lakhs only).

43. The respondent/ promoter failed to refund the money advanced with interest upon the withdrawal from the project by the applicant/ complainant. The applicant/ complainant was compelled to initiate litigations by way of the said complaint before the Goa RERA and the present application for compensation for which the applicant/ complainant had to bear the litigation fees of engaging legal counsel for the same due to the default of the respondent/ promoter. The applicant/ complainant has claimed litigation costs of ₹10,00,000/- (Rupees Ten Lakhs only) inclusive of international travel, boarding, lodging and local transport. No documentary evidence in support of this claim has been produced. In fact before this Forum, no lawyer was engaged and the applicant/ complainant appeared in person and was represented for arguments by the other similarly placed applicant Shri Arun Naidu. Hence, in the given circumstances, the respondent/ promoter shall be liable to pay compensation to the applicant/ complainant towards legal fees and costs which are quantified at ₹25,000/- (Rupees Twenty Five Thousand only).

44. The applicant/ complainant has claimed refund towards registration fees amounting to ₹1,44,145/- (Rupees One Lakh Forty Four Thousand One Hundred and Forty Five only) shown at table 2. In the registered Agreement to Sell dated 01.06.2018 the office of the Sub-Registrar of Ilhas/ Tiswadi, Government of Goa has acknowledged receipt of payment of ₹ 500/- towards registration fees, ₹580/- towards processing fees and ₹ 1,19,100/- towards stamp duty paid. Hence, the respondent/ promoter on account of its default is liable to reimburse/

compensate the said amount of ₹1,20,180/- (Rupees One Lakh Twenty Thousand One Hundred and Eighty only) to the applicant/ complainant.

45. The applicant/ complainant has contended that he has obtained a bank home loan in the amount of ₹25,00,000/- (Rupees Twenty Five Lakhs only) @8.4% for 10 years with EMI of ₹30,863/- (Rupees Thirty Thousand Eight Hundred and Sixty Three only) per month. According to the applicant/ complainant the amount paid at the end of the term is ₹37,03,544/- (Rupees Thirty Seven Lakhs Three Thousand Five Hundred and Forty Four only). The total interest paid is ₹12,03,544/- (Rupees Twelve Lakhs Three Thousand Five Hundred and Forty Four only).
46. In support of this claim, the applicant/ complainant has placed on record photocopy of statement of account for the period 01.04.2019 to 31.03.2020 of NRI Housing Loan Account No. 633676594 of HDFC Housing Development Finance Corporation Ltd. which indicates a loan amount of ₹35,70,000/- (Thirty Five Lakhs Seventy Thousand only) and disbursement till date ₹14,64,680/- (Rupees Fourteen Lakhs Sixty Four Thousand Six Hundred and Eighty only).
47. The said claim made by the applicant/ complainant is in variance with the said photocopy of statement of account which is only for the period of 01.04.2019 to 31.03.2020 with respect to the loan amount, rate of interest, EMI, amount disbursed, period of transaction. The applicant/ complainant has not produced an authenticated and updated statement of account from the said HDFC Housing Development Finance Corporation Limited in conformity with the said claim for

compensation nor even at the time of filing affidavit in evidence in order to substantiate the claim being made by the applicant/ complainant for the purpose of grant of compensation. No adequate evidence to substantiate the claim made by the applicant/ complainant has been placed on record in order to duly consider any compensation to be granted on this count. Therefore, the claim for compensation on this count is held inadmissible and consequently stands rejected.

48. The point for determination is accordingly answered partly in the affirmative in the amount of ₹13,10,502.55/- (Rupees Thirteen Lakhs Ten Thousand Five Hundred Two and Fifty Five Paisa only).
49. 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 is 8.70% per annum. Hence, the respondent/ promoter is liable to pay interest at the rate of 10.70% p.a. for every month of delay to the applicant/ complainant by way of compensation on the aforesaid total amount of ₹13,10,502.55/- (Rupees Thirteen Lakhs Ten Thousand Five Hundred Two and Fifty Five Paisa only).
50. Before parting with this order, it is necessary to mention that the applicant/ complainant filed his claim for compensation in Form 'B' on 22.11.2022. On




20.12.2022 Advocate for respondent filed vakalatnama and sought time to file reply which was filed on 12.01.2023. On 27.01.2023 applicant/ complainant filed rejoinder. On 14.02.2023 applicant/ complainant filed affidavit in evidence and written arguments. On 10.03.2023 affidavit in evidence was filed by the respondent. On 24.03.2023 applicant/ complainant filed additional written arguments in reply. On 25.04.2023 oral arguments were heard. Matter stands disposed off on 19.05.2023.

In the result, I pass the following:-

### **ORDER**

The respondent/ promoter is directed to pay the applicant/ complainant compensation of ₹13,10,502.55/- (Rupees Thirteen Lakhs Ten Thousand Five Hundred Two and Fifty Five Paisa only) for violation under Section 18 read with Section 71 and 72 of the Real Estate (Regulation and Development) Act, 2016 within 30 (thirty) days of this Order.

In default, the respondent/ promoter shall be further liable to pay the applicant/ complainant interest on the said amount of ₹13,10,502.55/- (Rupees Thirteen Lakhs Ten Thousand Five Hundred Two and Fifty Five Paisa only) @ 10.70% p.a. till the date of payment/ realization.

  
19/05/2023  
(Ashley L.C. Noronha)  
Adjudicating Officer,  
Goa RERA