



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(186)/2021/(307)/2022/606

Date: 27/06/2023

Case no:3/RERA/Complaint(186)/2021

Mr. Deepak Khaitan,

All resident of C/F-2,

Milroc Ribandar Retreat,

Near Bal Bharti School, Ribandar,

North-Goa, 403006.

.....Complainant

Versus

M/s Expat Projects and Development Private Limited,

Having office at A2-213, 2nd floor,

Expat VIDA Uptown Commercial,

Kadamba Plateau Goa, 403402.

.....Respondent

Case no:3/RERA/Complaint(307)/2022

M/s Expat Projects and Development Private Limited,

Having office at A2-213, 2nd floor,

Expat VIDA Uptown Commercial,

Kadamba Plateau Goa, 403402.

.....Complainant

Versus

Mr. Deepak Khaitan and Ms. Sapna Khaitan,

All resident of C/F-2,

Milroc Ribandar Retreat,

Near Bal Bharti School, Ribandar,

North-Goa, 403006.

.....Respondents

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ORDER

(Dated 27.06.2023)

Complaint was filed by Mr. Deepak Khaitan under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'RERA Act') to which counter complaint was filed by M/s Expat Projects and Development Pvt. Ltd.

2. This common order disposes of both the aforesaid complaints wherein the parties, the facts and the project in question are the same. Both the complaints are taken up together in the instant order for the sake of brevity as the reasons for deciding the same overlap each other.
3. In the complaint filed by Mr. Deepak Khaitan it is stated that M/s Expat Projects and Development Pvt. Ltd. is the developer of the project by name "Expat Vida Uptown Goa" which was proposed to be constructed in the property bearing survey no. 13/1C known as "Anexio Do Outeiro" or "Gauchem Xir E Fuxal Gale" situated at Panelim, Tiswadi Taluka North Goa, which property belongs to respondent no. 2 and 3. According to the said complainant, he desired to purchase from the said developer residential unit row houses, three in number i.e. R-183-185 for a consideration of ₹2,90,01,454/- (Rupees Two Crores Ninety Lakhs One Thousand Four Hundred and Fifty Four only) and accordingly the complainant along with others, the said developer and



the owner entered into an Agreement for Sale dated 01.08.2017 and the same was registered on 02.08.2017.

4. According to the complainant, Mr. Deepak Khaitan, as per the said Agreement for Sale, the said row houses were to be delivered by the promoter/ developer on or before April, 2019 after issuance of completion certificate, however till date the said houses have not been delivered to the said complainant even though the said complainant has paid substantial amount to the said promoter i.e. ₹45,00,000/- (Rupees Forty Five Lakhs only) towards the consideration amount and ₹8,20,359/- (Rupees Eight Lakhs Twenty Thousand Three Hundred and Fifty Nine only) towards registration and stamp duty.
5. The complainant, Mr. Deepak Khaitan has stated that the said project is registered with this Authority and in the registration certificate the project completion date is mentioned as 30.06.2021, though according to the said complainant as per the said Agreement for Sale the possession date is mentioned as on or before 2019. Hence the prayer of the said complainant Mr. Deepak Khaitan either to direct the said promoter to hand over forthwith the said premises to the complainant or in the alternative direct the promoter to pay the complainant the total amount of ₹53,74,103/- (Rupees Fifty Three Lakhs Seventy Four Thousand One Hundred and Three only) i.e. an amount of ₹45,00,000/- plus registration and stamp duty of ₹8,20,359/- plus ₹53,744/- towards TDS along with interest thereon and also costs and penalty.



6. In the aforesaid complaint filed by Mr. Deepak Khaitan, the promoter filed the reply firstly taking the preliminary objections to the effect that the instant complaint is a dispute of civil nature and hence not maintainable under the RERA Act; that the complainant is an investor who has come to this Authority with unclean hands; that the complaint is bad and requires to be dismissed due to non-joinder of necessary party and that the complaint is prematurely filed since the construction is going on and that the said complainant has refused to co-operate by deliberately holding back the installment amount.
7. On merits the promoter has replied that in case of refund, M/s Naiknavare Construction is a necessary party as part amount is parted with them for land cost. It is further stated that the timeline to give possession of the said houses would be governed as per the RERA extension of completion date granted and not as per the time of possession mentioned in the Agreement for Sale.
8. It is the case of the promoter that it was incumbent on the said complainant to discharge his obligations to make payments as per schedule III which makes it incumbent on him to make payment of ₹27,50,364/- (Rupees Twenty Seven Lakhs Fifty Thousand Three Hundred and Sixty Four only) at the time of execution of the said Agreement for Sale, however the said payment is not done by the said complainant till date and therefore the said complainant is a defaulter. It is also stated that on 25.01.2019 an e-mail was sent to Mr. Deepak Khaitan about registration process being completed and therefore demand was



raised of ₹11,47,975/- (Rupees Eleven Lakhs Forty Seven Thousand Nine Hundred and Seventy Five only) on the taxes levied as per government charges but the same was refused to be paid by him as per mail dated 30.01.2019. It is also stated that the said Agreement for Sale was entered into before the RERA Act came into force. According to the promoter by e-mail dated 27.02.2020, Mr. Deepak Khaitan informed that he wanted to do construction at his own cost on the said plot, which proposal was accepted by the promoter by e-mail dated 27.02.2020.

9. The promoter has stated that the problem for construction arose because of covid pandemic, labour problem, delayed payments by the allottees, inflation of the price of raw material, restriction of material reaching the site on time, frivolous cases filed by the allottees inspite of their default. The promoter referred to clause 4(a) of the Agreement for Sale which states that “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 the computation of the period of completion of the said unit and delivery of possession thereof to the allottee”. Rest of the allegations of the complainant are all denied by the promoter.



10. The promoter M/s Expat Projects and Developers Pvt. Ltd. has filed a counter complaint against Mr. Deepak Khaitan for delay in making payments and committing breach of Agreement of Sale dated 01.08.2017. In the said complaint, the promoter has prayed that Mr. Deepak Khaitan be directed to pay ₹27,50,364/- (Rupees Twenty Seven Lakhs Fifty Thousand Three Hundred and Sixty Four only) and also amount of ₹11,47,975/- (Rupees Eleven Lakhs Forty Seven Thousand Nine Hundred and Seventy Five only) towards taxes along with interest thereon from 2017 till date and also compensation.
11. Reply has been filed by Mr. Deepak Khaitan to the said counter complaint and in the reply it is stated in the preliminary objections that the counter complaint filed by the promoter is not legally maintainable under the RERA Act, which is constituted for the purpose of protecting the interests of the buyers/ consumers in the real estate sector along with other regulatory and promotional aspects; that the provisions of RERA Act are subject to invocation only at the instance of the buyers/ allottees defined in the RERA Act; that the promoter has no locus standi to file the present complaint as the promoter is not an aggrieved person in terms of section 31(1) of the RERA Act and that the promoter has raised civil dispute which comes within the jurisdictional domain of the civil courts.
12. On merits Mr. Deepak Khaitan has replied that he was considering the purchase of three row houses for the purpose of personal residence and not for investment; that in terms of the Agreement for Sale dated 01.08.2017 it was



incumbent upon the promoter to abide by the terms of the obligations imposed on the promoter and to have commenced the construction of the housing project in terms of the time line specifically set out in the schedule of the said agreement; that because of the failure of the promoter to abide by the terms of the Agreement for Sale and to give possession of the villas on or before April 2019, Mr. Deepak Khaitan proposed to get the villas constructed by himself by his own funds on the plot designated for the said villas as this was the only option available to Mr. Deepak Khaitan. Hence Mr. Deepak Khaitan has prayed this Authority to dismiss the counter complaint filed by the promoter.

13. Notarized documents and affidavits were filed by the parties in both complaint and counter complaint. Written submissions were filed in both the complaints by Ld. Advocate Shri P. Shetty for M/s Expat Projects and Development Pvt. Ltd. and by Ld. Advocate Shri C. Angle for Mr. Deepak Khaitan. Oral arguments were also heard from the Ld. Advocate P. Shetty for the promoter and Ld. Advocate S. Sarmalkar for Mr. Deepak Khaitan.
14. After going through the entire records of the case, the points which come for my determination along with findings and reasons thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the complaint filed by the promoter	In the affirmative.



	herein, M/s Expat Projects and Development Pvt. Ltd. is legally maintainable?	
2.	Whether the complaint filed by the allottee, Mr. Deepak Khaitan is bad in law due to non-joinder of necessary party?	In the negative.
3.	Whether the complainant, Mr. Deepak Khaitan is entitled for the refund of the amount paid to the promoter?	In the affirmative.
4.	Whether the promoter is entitled from the respondent the payment of ₹27,50,364/- and also amount of ₹11,47,975/- along with interest thereon as prayed by the promoter?	In the negative.
5.	Whether the promoter is entitled for compensation of Rs.1,00,000/- (Rupees One Lakh only) for delay in payment by the allottee, Mr. Deepak Khaitan?	To be decided by the Adjudicating Officer as per Section 71 of the RERA Act.

REASONS

Point No.1

15. As per **section 31(1)** of the RERA Act, “any aggrieved person may file a complaint with the Authority or the Adjudicating Officer, as the case may be,



for any violation or contravention of the provisions of this Act or the rules or regulations made thereunder against any promoter, allottee or real estate agent, as the case may be”.

16. Thus, as per Section 31(1) of the RERA Act, any aggrieved person is given liberty to file complaint even against an allottee. The promoter in the instant case has filed complaint against the allottee in his capacity as an “aggrieved person” since the allottee has failed to pay the installment of the amount due to the promoter in respect of the construction of the said project. A specific obligation is cast on the allottee under **Section 19(6)** of the RERA Act, which is reproduced herein below:-

“19. Rights and duties of allottees.-

.....

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any.”

17. **Section 19(7)** states that “the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)”. Obviously, in case the allottee delays in



making payment towards any amount or charges to be paid to the promoter, **the promoter is entitled to have and the allottee is liable to pay interest at such rate as may be prescribed.** Thus **Section 19** which deals with the rights and duties of the allottee gives corresponding right to the promoter to enforce the duties and obligations of the allottee as mentioned in the said section by approaching the RERA Authority. If the interpretation of the Ld. Advocate for the allottee, Mr. Deepak Khaitan to the effect that no complaint can be filed by the promoter is taken into consideration, it means that the duties and obligations cast on the allottee cannot be enforced before the proper forum i.e. the Regulatory Authority and in that case the said duties and obligations of the allottee become meaningless and redundant, which is not the intention of the Legislature. Hence, the promoter is an aggrieved person to file a complaint against the allottee who has not paid the installment amount as per the Agreement for Sale. The instant point is therefore answered in the affirmative.

Point No. 2

18. According to the promoter, M/s Expat Projects and Development Pvt. Ltd., the complaint filed by the allottee, Mr. Deepak Khaitan is bad in law due to non-joinder of necessary party M/s Naiknavare Constructions Pvt. Ltd. No doubt in the Agreement for Sale dated 01.08.2017, said Naiknavara Construction Pvt. Ltd. is a party thereto i.e. THIRD PART as owner of the said property, however the rights and duties as per the said agreement are strictly between the promoter,



M/s Expat Projects and Development Pvt. Ltd. of the First Part and Mr. Deepak Khaitan and others as the “Purchaser” of the Second Part. The obligation is cast on the developer as per clause 4(j) to complete the construction of the project comprising of the said unit as agreed therein and to deliver possession to the purchaser on or before April 2019, after the issuance of completion certificate by the Architect of the project and/ or from local authority and in case of delay in giving possession, the developer shall be liable to pay the penalty to the purchaser as per SBI base lending rate plus two per cent per annum from the date of default till the date of actual hand over. Thus, the entire duty as per the said agreement is on the developer to complete the construction of the project and to deliver possession thereof to the purchaser on or before April 2019. Corresponding duties are also cast on the allottee in the said Agreement for Sale. As the duties and the rights as per the Agreement for Sale are strictly between the promoter/ developer and the allottee, the owner M/s Naiknavare Constructions Pvt. Ltd. is not a necessary party in the instant case and an effective order can be passed in the instant case without impleading the said company as party and hence the rulings relied upon by the Ld. Advocate for the promoter are not attracted in the instant case.

Points no. 3 and 4

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



From the Agreement for Sale dated 01.08.2017 and registered on 02.08.2017, it is clear that the respondent/ promoter was bound to give possession of the unit row houses bearing no. R 183-185 on or before April, 2019. In this regard the relevant portion of clause 4(j) of the said agreement is reproduced herein below:-

“(j) the Developer shall complete the construction of this project of comprising of the said unit as agreed to herein and shall deliver possession thereof to the purchaser, **on or before April 2019**, after the issuance of completion certificate by the architect of the project and/ or from local authority.....”(emphasis supplied).

20. It is an admitted fact that the developer/ the respondent has till date not given possession of the said row houses to the complainant, Mr. Deepak Khaitan. Hence an indefeasible and absolute right accrues in favour of the said complainant under Section 18 of the RERA Act, which is reproduced hereunder:-

“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. Thus, if the respondent/ the promoter has failed to complete or is unable to give possession of the said row houses in accordance with the terms of the Agreement for Sale i.e. duly completed on or before April 2019, statutory right accrues in favour of the allottee after April 2019 either to demand the refund of the money paid to the promoter along with interest or if the allottee does not wish to withdraw from the project, the allottee shall be paid by the promoter interest for every month of delay till handing over of the possession. In this case, 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." (emphasis supplied).

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 complainant, Mr. Deepak Khaitan who has entered into an agreement for sale with the promoter. As a consequence thereof Section 18 and Rule 18 of RERA are squarely attracted in the complaint filed by Mr. Deepak Khaitan.

24. According to the Ld. Advocate for the promoter, the complainant, Mr. Deepak Khaitan cannot demand for the refund of the amount paid to the promoter unless and until the Agreement for Sale dated 01.08.2017 is cancelled/ terminated. There is no merit in the aforesaid argument since Section 18 of the RERA Act is immediately attracted and the right of demanding refund immediately accrues in favour of the allottee in case the possession is not delivered by the promoter by



the date specified in the agreement for Sale. The right under Section 18 of the RERA Act is not conditional or subject to the cancellation of the Agreement. The Hon'ble Supreme Court in the case of **"Imperia Structures Ltd."** (supra), has clearly stated that the right given to the allottee under Section 18 of the RERA Act "is unqualified". Even in the case of **"M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others"** in civil appeal no. (s) 6745-6749 and 6750-6757 of 2021, the Hon'ble Supreme Court has stated that the allottee's right under Section 18 of the RERA Act "is unconditional and absolute". Hence there is no requirement in law that the respondent has to first take steps for cancellation of the agreement for sale before approaching the Regulatory Authority with the prayer for refund of the amount from the promoter under Section 18 of the RERA Act.

25. The Ld. Advocate for the promoter has submitted that the delay in completing the project was caused due to covid pandemic, labour problem, delayed payments by the allottees, inflation of the price of raw material, restriction of material reaching the site on time and frivolous cases filed by the allottees inspite of their default. The Ld. Advocate for the promoter pointed out during the arguments clause 4(k) of the Agreement for Sale which states that "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 or authority or any other reasons beyond the control of the developer



shall be excluded from computation of the period of completion of the said unit and delivery of possession thereof to the purchaser”. There is no merit in the aforesaid submissions since it is held by the Hon’ble Supreme Court in the case of **“M/s Imperia Structures Ltd. vs. Anil Patni and another” 2020 (10) SCC 783** that **“non-availability of contractual labour, delay in notifying approvals cannot be construed to be force majeure events from any angle”** (emphasis supplied). In the case of **“M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others” in civil appeal no. (s) 6745-6749 and 6750-6757 of 2021**, the Hon’ble Supreme 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 grounds as stated by the Ld. Advocate for the promoter for delay in delivering of possession, will not come to the rescue of the promoter from legal liabilities under the RERA Act and corresponding legal rights accrued to the allottee under the RERA Act.

26. The Ld. Advocate for the promoter has further argued that no refund of the amount may be ordered by this Authority to be given to the complainant, Mr. Deepak Khaitan because the said complainant himself volunteered to do the construction on the plot as per his e-mail dated 27.02.2020 and that the said proposal of the complainant was accepted by the promoter vide e-mail dated



27.02.2020. The promoter has produced on record the said e-mail dated 27.02.2020 of the promoter wherein it is stated that “as we had discussed your proposal to construct the villas on your own at your own cost, we wish to inform you that your proposal is acceptable to us” In this regard the complainant, Mr. Deepak Khaitan has stated that since no construction was going on at the site and since the project was not completed on or before April 2019 i.e. the due date of possession as per the Agreement for Sale, the said complainant out of desperation gave the said proposal to the promoter as stated above. However, legally the said proposal of construction given by the complainant, Mr. Deepak Khaitan and accepted by the promoter has no effect on the right accrued to the said complainant under Section 18 of the RERA Act immediately after the due date of possession as per the Agreement for Sale because the said proposal and acceptance was given on 27.02.2020 which was after the due date of possession i.e. on or before April 2019. Thus, the right of asking refund of amount from the promoter under Section 18 of the RERA Act accrued immediately in favour of the said complainant, Mr. Deepak Khaitan after April 2019 and any subsequent offer of construction of the said row houses by the said complainant and acceptance of the same by the promoter does not take away the right of refund of the said complainant under Section 18 of the RERA Act, which right is unconditional, unqualified and absolute as per the rulings of the Hon’ble Supreme Court.



27. The next argument of the Ld. Advocate for the Promoter is that the time line for delivery of possession of the said row houses was the time extended by this Regulatory Authority while granting the extension of the registration of the project and the complainant Mr. Deepak Khaitan was also aware that the due date of possession of the said row houses is not “on or before April 2019” as mentioned in the Agreement for Sale but the time line granted by this Regulatory Authority for completion of the project. There is no merit in the aforesaid arguments since it is well settled that the rights of the allottees are not affected by the period of extension of registration granted by this Authority. In the case of “**M/s Imperia Structures Ltd.**” (supra), the Hon’ble Supreme Court held as follows:-

“We may now consider the effect of the registration of the project under the RERA Act. In the present case, the apartments were booked by the complainants in 2011-2012 and the Builder Buyer Agreements were entered into in November 2013. As promised, the construction should have been completed in 42 months. The period had expired well before the project was registered under the provisions of the RERA Act. **Merely because the registration under the RERA Act is valid till 31.12.2020 does not mean that the entitlement of the concerned allottees to maintain an action stands deferred. It is relevant to note that even for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration.**”(emphasis supplied)

Thus in the instant case for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration/ extension of registration granted by this Authority.

28. Further argument of the Ld. Advocate of the Promoter is that since the allottee, Mr. Deepak Khaitan has defaulted in making payment, he has no right for refund of the amount as per Section 18 of the RERA Act. In this regard the judgment of the Hon'ble Supreme Court in the case of "**M/s Newtech Promoters and Developers Pvt. Ltd.**" (supra) is squarely attracted. In the aforesaid rulings same point was raised by the Ld. Counsel for the appellants therein to the effect that it is not possible to claim refund by the allottee if the allottee has defaulted the terms of the agreement, to which the Apex Court gave the following findings:-

"80.....The submission appears to be attractive but is not supported with legislative intent for the reason that if the allottee has made a default either in making installments or made any breach of the agreement, the promoter has a right to cancel the allotment in terms of Section 11(5) of the Act and the proviso to sub-section 5 of the Section 11 enables the allottee to approach the Regulatory Authority to question the termination or cancellation of the agreement by the promoter and thus, the interest of the promoter is equally safe guarded"

29. In the instant case, if the allottee has made breach of the Agreement for Sale and has defaulted in making any installment, the promoter had right to cancel



the allotment in terms of Section 11(5) of the RERA Act, however no such option/ statutory right was availed by the promoter. Hence, the statutory right of refund accrued in favour of Mr. Deepak Khaitan cannot be denied because of his default in making installment towards the consideration amount. It is also worth mentioning that before the due date of possession i.e. “on or before April 2019” or in other words before the right of refund under Section 18 of the RERA Act accrued in favour of Mr. Deepak Khaitan, the promoter did not approach this Regulatory Authority for the direction to Mr. Deepak Khaitan to pay the installment due towards the consideration amount. Thus no legal action was taken by the promoter against the complainant, Mr. Deepak Khaitan either for the payment of installment due from him or for cancellation of the allotment under Section 11(5) of the RERA Act before April 2019, after which indefeasible and absolute right of refund accrued in favour of Mr. Deepak Khaitan against the promoter. Thus, the rulings relied upon by the Ld. Advocate for the promoter are not attracted in the instant complaints.

30. Mr. Deepak Khaitan has paid to the promoter a sum of ₹45,00,000/- (Rupees Forty Five Lakhs only) and ₹8,20,359/- (Rupees Eight Lakhs Twenty Thousand Three Hundred and Fifty Nine only) as registration and stamp duty and hence the total amount paid is ₹53,20,359/- (Rupees Fifty Three Lakhs Twenty Thousand Three Hundred and Fifty Nine only) which amount he is entitled to get refunded along with interest, however the amount of ₹53,744/- (Rupees



Fifty Three Thousand Seven Hundred and Forty Four only) towards TDS as prayed cannot be taken into consideration.

31. The cause of action accrued in favour of the complainant Mr. Deepak Khaitan and as against the promoter on the completion of April 2019 i.e. on 30th April 2019 as the promoter was bound to give possession of the row houses on or before April 2019. Thus the date from which the interest on the consideration amount paid by Mr. Deepak Khaitan is to be calculated is the date when the cause of action accrued in favour of Mr. Deepak Khaitan. Therefore, the prescribed interest as per the aforesaid Rule 18 starts running from 30.04.2019 on the consideration amount of ₹53,20,359/- (Rupees Fifty Three Lakhs Twenty Thousand Three Hundred and Fifty Nine only) paid by Mr. Deepak Khaitan to the promoter. As stated above, as per the aforesaid Rule 18, 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 8.70% per annum. Adding two percent to the said interest as per Rule 18 comes to 10.70% per annum. Hence, the promoter is liable to pay to the complainant 10.70% per annum interest for every month of delay to the complainant on the total amount of ₹53,20,359/- (Rupees Fifty Three Lakhs Twenty Thousand Three Hundred and Fifty Nine only) paid by Mr. Deepak Khaitan from the date of delivery of possession i.e. from 30th April 2019 as mentioned in the Agreement for Sale till the actual return of the said amount to

him.



In view of the aforesaid observations and findings, Point No. 3 is answered in the affirmative and Point No. 4 is answered in the negative.

Point No. 5

32. 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

The complaint bearing no. 3/RERA/Complaint(307)/2022 filed by M/s Expat Projects and Development Pvt. Ltd. is dismissed.

The Promoter M/s Expat Projects and Development Pvt. Ltd. is directed to refund the amount of ₹53,20,359/- (Rupees Fifty Three Lakhs Twenty Thousand Three Hundred and Fifty Nine only) to the complainant Mr. Deepak Khaitan within two months from the date of this order.

Further the said promoter is directed to pay 10.70 % per annum interest (present lending rate of interest by SBI which is 8.70 % per annum plus two percent) for every month of delay to Mr. Deepak Khaitan on the aforesaid amount paid by him from 30th April 2019 till the date of actual payment of the aforesaid refund.



Taking into consideration the fact that the complainant Mr. Deepak Khaitan defaulted in making installment towards the consideration amount, no penalty is imposed on the said promoter under Section 61 of the RERA Act.

The promoter, M/s Expat Projects and Development Pvt. Ltd. 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 filed by the promoter bearing no. 3/RERA/Complaint(307)/ 2022 is now referred to the Adjudicating Officer to adjudge compensation, if any, as per Section 71 of the RERA Act.

Vijaya D. Pol
(Vijaya D. Pol)
Member, Goa RERA