



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (479)/2025/ **1296**

Date: **30/09/2025**

(BEFORE THE MEMBER SHRI VINCENT D'SILVA)

Mr. Gurudev Khosla,

R/o J-16, Salunke Vihar Colony,
Kondhwa, Pune city,
Maharashtra-411022.

.....Complainant

Versus

M/s Parmesh Construction Company Limited,

Through its Directors

1. Prem Bhutani
2. Ashish Bhutani
3. Inayat Bhutani,
4. Sonam Tyagi

Office at 7th Floor, Tower-C, Bhutani Alphathum,
Janpath Marg, Sector 90,
Noida, Uttar Pradesh-201301.

.....Respondent

Ld. Advocate Nitin Jaspal for the Complainant.

Ld. Advocate Gauravvardhan Nadkarni for the Respondent.

ORDER

(Delivered on this 30th day of the month of September, 2025)

This is a complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016.

2. Briefly stated, the case of the complainant is as follows:

That the complainant is a law abiding citizen who was induced to invest in a unit in the project "Acqua Eden" Goa being developed by the respondent based on representations and assurances of the respondent's authorized sales executive, Mr. Kunal Setia, who made a call in June 2024 and informed him about the project as well as visited his residence in Gurugram and offered a monthly assured return (AR) of ₹1,00,000/- till the date of possession of the studio apartment. He also represented that the project would be taken over by a reputed hotel chain like Taj/Marriott and the complainant would be able to lease his unit on platforms like Airbnb, thereby ensuring strong returns even post-possession.

3. The total unit cost was communicated as ₹1,03,00,000/- (One Crore Three Lakhs only), and the complainant was persuaded to pay 50% upfront ₹54,51,254/- with a guarantee that the monthly AR would start immediately upon payment of the said amount. The complainant made the payment of ₹54,51,254/- via online bank transfers in July 2024, to the respondent's designated HDFC RERA

Collection Account for the Acqua Eden project. The unit number L-10-22A/Customer id-AQE-00259 was allotted to the complainant admeasuring super area of 866 sq. mts.

4. Based on the representation that the project was approved by all major banks, the complainant approached HDFC Bank for the balance loan. Mr. Ashish Upadhyay, Manager (Home Loans), HDFC initially confirmed eligibility and gave verbal assurance of loan processing subject to property approval. The complainant in the month of October 2024, formally applied for the home loan, but over the next four months, the application could not be processed due to non submission of the required documents by the builder and finally in February 2025, the HDFC Bank issued a written communication stating that the loan had been declined due to technical and legal shortcomings of the project and that the property was not approved by the legal and technical teams.

5. It is further the case of the complainant that from August 2024 to February 2025, the complainant received six monthly AR payments, the last of which was ₹. 46,724/-, however from March 2025, the AR payments have been arbitrary and completely stopped

without any written intimation, despite no fault or breach on the part of the complainant.

6. The complainant in the month of February 2025 visited the office of the respondent and met one Mr. Sachin Sharma (VP-CRM) to seek refund as he could not proceed with the purchase due to loan rejection, however no response or refund had been issued and the respondent completely failed to co-operate or provide necessary documentation till date and that the respondent never responded to any of the emails sent by the complainant. It has been eight months since the payment was made and there is (a) no Builder Buyer Agreement executed before accepting the payment of 55 lakhs; (b) no loan has been approved due to non-compliance of necessary government approvals from builder side; and (c) the promised monthly AR has been discontinued. This constitutes breach of promise, misrepresentation, and is a clear violation of Section 13(1) of the RERA Act, which prohibits taking more than 10% of the unit cost without executing a written agreement.

7. The conduct of the respondent amounts to unfair trade practices under Section 2(1)(r) of the RERA Act, as the complainant was induced to invest based on promises of AR, assured hotel tie-ups,

and guaranteed bank loan, which turned out to be false. The complainant is entitled to seek refund with interest as there is failure of obligation by the respondent. The respondent has violated Section 11, Section 12, Section 13(1) and Section 18 of the RERA Act. The doctrine of frustration of contract and impossibility of performance is also attracted as the complainant cannot fulfill the purchase of the unit without a loan and the respondent has failed to facilitate or provide documents required by lending institution.

8. The complainant has prayed for following reliefs:

- (a) Direct the respondent to refund ₹54,51,254/- along with interest @18% p.a. from the date of each payment till actual refund.
- (b) Compensate the complainant for mental agony, financial loss, and breach of trust due to misrepresentation.
- (c) Impose penalty under relevant provisions of the RERA Act for breach of Section 13(1) and Section 12 (misleading advertisements/promises).
- (d) Issue directions to the respondent to disclose full status of the project, its approvals, and clarify whether any litigations or legal hurdles exists.

(e) Any other relief as this Hon'ble Authority may deem fit in the interest of justice.

9. The respondent filed a reply inter-alia contending that the respondent obtained approvals in accordance with the RERA Act and the project 'Acqua Eden' is one such developments of the respondent, who is a reputed and law-abiding real estate developer, engaged in the execution of high-quality residential and commercial projects across India. It is a part of the 'Bhutani Group', an organization widely recognised for its integrity, innovative developers, and timely project delivery.

10. The complainant after conducting his independent due diligence, voluntarily booked unit bearing No. L-10-22A in the Acqua Eden project on 9th July 2024 and chose the 50:50 payment plan of his own volition, having been made fully aware of its structure and consequences and pursuant to the booking, the complainant executed a Builder Buyer Agreement (BBA) on 30th July 2024, after having had ample time and opportunity to review and understand its terms. The Builder Buyer Agreement governs the entire transaction, including the payment terms, timelines, responsibilities of both parties, and the

consequences of default. The respondent has acted in strict adherence to Builder Buyer Agreement (BBA).

11. The parties have entered into an agreement in complete free will and volition, and even after execution of the agreement and for almost one year therefrom, there is no allegation by the complainant that he entered the contract on the basis of fraud, undue influence, misrepresentation or coercion. The complainant paid 50% of the unit cost amounting to ₹51,91,670/- and was contractually bound to pay the remaining 50% of the said amount on or before 09.01.2025 irrespective of the stage of construction or handover and the said installment remained unpaid till date, despite repeated reminders and follow-ups.

12. The respondent offered assured returns as a commercial incentive, conditional upon timely and complete fulfillment of the financial obligations of the complainant. The respondent was justified in withholding the assured return post February 2025 as the said installment remained unpaid. The complainant has failed to demonstrate the existence of any circumstance that would trigger a refund under Section 18 of the RERA Act as there has been no delay in possession, no defect in title and any abandonment or

discontinuance of the project. The complaint is purely an attempt to avoid payment, while still seeking unwarranted reliefs under the Act. The complaint is therefore not maintainable as the respondent acted in full compliance with its obligations under the Agreement and the Act.

13. There is no averment of any force, coercion or mistake on the part of the complainant with regards to the execution of the agreement. All communications were promotional in nature and do not override contractual obligations. The respondent in no manner can be said to be actually bound beyond the terms of the agreement. The respondent had not made any commitment regarding tie-ups with Taj, Marriott or leasing on Airbnb. The project has all valid approvals and any rejection of loan by HDFC is due to internal banking policies and does not reflect on the legality or feasibility of the project. The inability of the complaint to arrange finances does not entitle him to terminate the agreement or seek refund. The complainant never made a formal written demand for cancellation or refund under the agreement. There was no unfair trade practices and there was no failure on the part of the respondent to fulfill its contractual obligations and none of the conditions stipulated under the agreement

or the RERA Act for invoking refund have been triggered and therefore, the complaint be dismissed.

14. Argument heard. Notes of written arguments came to be placed on record by both the parties.

15. The points which come for my determination along with the findings and reasons thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the complainant is entitled for the refund of ₹54,51,254/- from the respondent along with interest thereon and other reliefs?	In the affirmative.
2.	What reliefs, what order?	As per final order

REASONS

Point (1) and (2)

16. Ld. Advocate Shri Nitin Jaspal for the complainant has submitted that the respondent took a substantial amount of ₹ 54,51,254/- without registering the Builder Buyer Agreement at the

time of taking advance in clear violation of Section 13(1) of the RERA Act and therefore, the respondent has violated the said provision of the Act as almost 50% of the total consideration has already been collected from the complainant prior to execution of the Builder Buyer Agreement, which is more than ten per cent of the sale consideration as advance or the application money and therefore, the respondent has committed default under Section 13(1) of the Act.

17. Per Contra, Ld. Advocate Shri Gauravvardhan Nadkarni for the respondent has submitted that the subject matter of the allegation as regards Section 13 of the RERA Act is no more res-integra as this Hon'ble Authority has already taken a view as regards to the subject matter and held that after an allottee voluntarily made payments exceeding ten per cent without an agreement or without any allegations or force or coercion, then it cannot take refuge under Section 13 or make any claim for compensation or any other relief under the RERA Act as this dicta has been consistent in more than one case rendered by the Authority. He relied upon a case between "*Sayed Imran Vs. Venkatesh Prabhu Moni, no. 3/RERA/Complaint (262)/2021/605*" and two other matters.

18. In order to dilate upon the above contention, it is apposite to quote Section 13(1) of the Act, which reads as follows:-

“(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such a person and register the said agreement for sale, under any law for the time being in force.”

19. The Hon’ble Kerala High Court in the case of *Unnikrishnan Chandran Pillai vs. Tata Reality Infrastructure Ltd; Relationship Manager, Tata Reality and Infrastructure Ltd. 2022 Lawsuit (ker) 697* has held that Section 13 prohibits the promoter to accept the sum of more than 10% of the cost of the apartment or building as advance payment without first entering into a written agreement for sale with such a person and registering the same with the concerned authorities and that the promoter is barred from accepting the payment of more than 10% of the consideration amount as advance or application fee in violation of Section 13 of the Act entitling the allottee from seeking necessary reliefs against the promoter.

20. The above provision of Section 13 of the RERA Act makes it manifestly clear that the promoter is prohibited from accepting a sum of more than ten per cent of the cost of the apartment as an advance payment or application fee, without first entering into a written agreement for sale and registering it and the promoter accepting amount surpassing the said limit, be it in lumpsum or in installments, prior to entering into agreement, constitute a clear violation of the above statutory provision, which is intended to protect the interest of the consumers, as the provisions of Section 13 are mandatory in nature and cannot be dispensed with or compromised, be it for any reason, entitling the party from seeking necessary reliefs against the promoter.

21. It is also well settled by the Hon'ble Apex Court in the case of *Pioneer Urban Land and Infrastructure vs. Govindan Raghavan [(2019)5 SCC 725]* that a court will not enforce an unreasonable, unfair contract or an unreasonable and unfair clause in a contract where contracting parties are not equal in bargaining power and where a man has no choice or rather a meaningful choice but to give his assent to a contract or to sign on the dotted line in a prescribed or

standard form as a part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rule may be.

22. The respondent has accepted an advance amount of ₹54,51,254/- as stated in the chart of payment from 09.07.2024 to 27.07.2024 and the Builder Buyer Agreement, which is not even registered was signed by the parties at Noida on 30.07.2024 which is almost 50% of the total consideration of ₹1,03,00,000/- (One Crore Three Lakhs only), collected from the complainant, although prohibited in terms of Section 13 of the Act as advance or application money, without first entering and executing a registered Buyer Builder Agreement, under the guise of Monthly Assured Returns(AR), which in any case is not provided in the Act or Model Form of Agreement as per the RERA Act. The submissions of the Ld. Advocate Shri Gauravvardhan Nadkarni for the respondent that in no manner can be said to be actually bound beyond the terms of the agreement as the parties have entered into the agreement in complete free will and volition, and that there is no allegation by the complainant that he entered the contract on the basis of fraud, undue influence, misrepresentation or coercion, cannot be accepted, having regard to the case of *Pioneer Urban Land and Infrastructure*, supra.

23. The contention of Ld. Advocate Shri Nadkarni for the respondent that this Authority has held that an allottee who accepts an advance of ten percent from home buyers is also an accomplice to the illegal act of the promoter of accepting more than ten per cent of the consideration amount, as it is not the case of the complainant that it was paid due to misrepresentation, undue influence or coercion, also cannot be accepted, in view of the provisions of Section 13 which are mandatory in nature and cannot be dispensed with or compromised, be it for any reason, entitling the party from seeking necessary reliefs against the promoter as the fact remains that the respondent took an advance amount of ₹54,51,254/ from the complainant, without entering and registering a valid agreement for sale, exceeding the permissible limit stipulated under Section 13(1) of the RERA Act 2016, which is contrary to the provision of Section 13 of the Act.

24. The respondent therefore cannot take advantage of the observations made by my predecessor in the above decided cases as the said observations were made in the facts and circumstances of the said cases, which in any case is not binding on this Authority as it is not based on any law laid down by the Appellate Authorities and therefore, the mandate of Section 13 of the Act cannot override the

observations made by my predecessor in the said cases and hence, above contention of Ld. Advocate Shri Gauravvardhan Nadkarni for the respondent cannot sustain in law as well as on facts

25. Ld. Advocate Shri Nitin Jaspal for the complainant has submitted that the respondent has failed to obtain statutory approvals including the environment clearance rendering the project unfit for completion and triggering refund under Section 18(1)(a) of the Act. He further submitted that the respondent has failed to obtain mandatory and statutory approvals as evident from the email dated 06.02.2025 produced on record. He further submitted that under Section 11(3) and Section 18(1)(a) of the RERA Act, 2016, the promoter is obligated to handover possession strictly in accordance with law and only after securing all requisite approvals. He further submitted that failure to obtain approvals squarely attracts Section 18 of the Act entitling refund of the amount paid by the complainant and in support thereof, he relied upon the case of *'Newtech Promoters v. State of U.P'. (2021) 10 SCC 263*.

26. As against that, Ld. Advocate Shri Gauravvardhan Nadkarni for the respondent has submitted that the respondent got some of the approvals from the concerned competent authorities to the plans,

specifications, elevations, sections and of the said building whenever applicable and shall obtain the balance approval from the various authorities from time to time, so as to obtain building completion certificate or occupancy certificate on the project land. The respondent has applied for environmental clearance which is being awaited and the complainant has not approached any forum with any grievance. He further submitted that some persons had filed two Public Interest Litigations before the Hon'ble High Court of Bombay at Goa as regards the subject matter of permission/clearance in favour of the respondent and the matter after final hearing has been reserved for judgment. In any event, the complainant has not shown any provision of law requiring for securing environmental clearance prior to RERA registration either under RERA Act or under Environmental Protection Act and therefore, the contention of the complainant be ignored by this Authority.

27. Admittedly, the Goa Bachao Abhiyan has filed a Writ Petition before the Hon'ble High Court of Bombay at Goa against the respondent and others. There is also no dispute that one Peter D'Souza and four others have also filed a Public Interest Litigation before the Hon'ble High of Bombay at Goa and the arguments were concluded

and the matter closed for judgment. The respondent has not produced on record materials including the petitions, reply etc. with respect to the above Writ Petitions, but only claimed that the matter was finally heard and reserved for judgment. The respondent had not disclosed about the pending litigations on the RERA website as required under the Act as well as in the reply filed to the complaint. Be that as it may, the respondent has admittedly not obtained all the approvals required from the competent authorities including the Environmental Clearance, as such the respondent was unable to proceed with the construction, although it is stated in the agreement that construction of the buildings on the project land has already commenced, in accordance with the approved plans.

28. Moreover, the respondent has failed to furnish statutory requirements under Section 4 and 11 of the RERA Act, namely Quarterly Progress Report (QPR) with respect to project details and the status of the project including any deviation or delay and the same has not been uploaded on the RERA website in terms of Section 11(1)(e) of the Act. The quarterly update of the list of approvals obtained and those still pending after the issuance of registration certificate by the Authority mandated under Section 11(1)(c) of the

Act is also not uploaded on the website. The quarterly update on the progress of the project including the stage wise completion status required under Section 11(1)(d)(e) of the Act is also not uploaded on the website. The respondent has also not uploaded the construction progress and photos, overall percentage of project completion, required under Section 11(1)(e) as well as not uploaded list of legal cases, mandated under Section 4(2)(1)(B) of the Act, thereby violating the above mandatory obligations by the promoter.

29. Ld. Advocate Shri Nitin Jaspal for the complainant has submitted that the HDFC Bank has rejected loan due to non-availability of approvals on the part of the respondent, which constitute frustration of contract, entitling refund. He further submitted that the HDFC Bank rejected the complainant's application for home loan on the ground of absence of requisite statutory approvals and such refusal demonstrate commercial frustration rendering the performance of agreement impossible, thereby entitling a refund under the law.

30. Per contra, Ld. Advocate Shri Gauravvardhan Nadkarni for the respondent has submitted that the above allegation runs contrary to Clause 3.3 of the Builder Buyer agreement, which states that the

allottee may avail loans from the financial institutions or banks to finance the apartment, however the promoter shall not be responsible in any manner, if a particular financial institution/bank refuses to finance the apartment to the allottee on any ground and the responsibility of getting the loan as per the payment plan and its repayment to the financial institution/bank will rest exclusively on the allottees and under no circumstances, the promoter shall be assumed for any responsibility or liability in respect thereof and therefore, the sole liability to secure a loan, if any, was on the complainant and no responsibility of whatsoever nature was attributable to the respondent.

31. The complainant admittedly applied for home loan as seen from the documents produced on record, including the whatsapp chats between complainant and Kunal Bhutani Setia and e-mails between the complainant and HDFC Bank. The whatsapp chats between the complainant and Shri Kunal Setia clearly show that the complainant had submitted all the papers required for bank loan and that the paper work was pending at respondent's end to be submitted to HDFC Home Loan for disbursement of his loan. The HDFC representative had also called upon the complainant to expedite the documents and

Shri Kunal on behalf of the respondent had claimed that he had already done it including signing of the documents.

32. The whatsapp chats also confirm Shri Kunal Setia asking the HDFC Bank whether they would disburse the loan and the HDFC answering in the negative and the complainant asserting that it was never told to him that the project is not covered and stating that it was a 36 degree turn and whether it was Bhutani's trap for the customers. The whatsapp chats further avow that the Bhutani group will resolve the matter and no customer will suffer for such things. The HDFC Bank has also declared that the said project is not approved with HDFC due to legal and technical clearance. The e-mails produced on record also clearly show that the project is not cleared for loan by the legal and technical department of HDFC Bank.

33. The documents produced on record by the complainant are indication of the fact that the bank loan was rejected by HDFC Bank due to non availability of requisite statutory approvals and such refusal clearly demonstrate commercial frustration rendering the performance of the agreement impossible. The submission of Ld. Advocate Shri Gauravvardhan Nadkarni for the respondent that it is the responsibility of the complainant of getting the loan sanctioned

and disbursed as per the payment plan from the financial institution/banks as reflected in the agreement cannot be accepted as the loan was not approved by the Bank due to non-availability of approvals on account of legal and technical clearance on the part of the respondent and therefore, the above submissions of Ld. Advocate Shri Gauravvardhan Nadkarni pales into insignificance.

34. Ld. Advocate Nitin Jaspal for the complainant has also submitted that the respondent has made false assurances of 'monthly assured returns' and tie-ups with hotel chains amounting to misrepresentations under Section 12 of the RERA Act. He further submitted that the respondent lured the complainant with promises of monthly assured returns and reputed hotel tie-ups however, the said assured returns were stopped midway constituting misrepresentation under Section 12 of the RERA Act and therefore, on the above ground also, the complainant is entitled for the reliefs prayed.

35. Per contra, Ld. Advocate Shri Gauravvardhan Nadkarni for the respondent has submitted that the complainant was permitted for availing of payment scheme and assured monthly returns upon adherence to the payment plan agreed by and between the parties, which was on 50:50 basis, as described in Clause 2.4 of the Builder

Buyer Agreement and the complainant was required to strictly comply with the payment plans by making payment on or before the two dates, and only upon confirming the same, would the assured monthly return become applicable. The complainant has not made his second round of payment, which was due and payable within six months and therefore, the complainant is not entitled for monthly returns as per the agreement. He further submitted that the party cannot take advantage of its own wrong as held in the case of "*Mrutunjay Pani and Anr vs. Narmada Bala Sasmal and anr, 1961 SCC online SC 41*" and therefore, the complainant is not entitled for monthly returns as per the agreement.

36. Section 12 of the Act provides that 'where any person makes an advance or a deposit on the basis of information contained in the notice, advertisement or prospectus or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act. Provided, that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may

be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under the Act.

37. The above provision of Section 12 is attracted when an allottee makes a deposit or advance payment based on information in the promoter's advertisement, prospectus or model and subsequently, suffers a loss or damage due to false or incorrect statement in that information. The promoter or the builder is then obliged to compensate the buyer for the loss or damage or refund the entire investment along with interest, if the buyer chooses to withdraw from the project. In short, if the promoter makes a false and incorrect representation, based on which, the allottee is lured to invest in the project, the allottee would be entitled to withdraw from the said project, if he makes the advance or deposit on the basis of the said misleading information, and seek refund of the entire investment with interest.

38. In the instant case, the respondent collected first installment from the complainant amounting to ₹54,51,254/- by luring the complainant of 'monthly assured returns', based on which he invested

in the project, which had been arbitrarily and completely stopped, without any written intimation nor any demand notice was issued regarding payment of the balance amount, which was in any case not achievable, due to non-availability of approvals on account of legal and technical clearance on the part of the respondent. The complainant was left without essential financial support that was promised as evident from the whatsapp chats and emails, which forced the complainant to withdraw from the said project as the respondent misrepresented that they have all the statutory approvals including environmental clearance and that the loan has been approved from the financial institutions, as stated above.

39. Discernibly, the booking was done on the basis of the assurances in the Builder Buyer Agreement, more particularly Clause G, Page 2, where it is stated that “the promoter has sole and exclusive right to sell the apartment in the said building to be constructed by the promoter on the project land and to enter into an agreement with the allottee of the apartment and to receive the sale consideration in respect thereof”, as well as, Clause L, Page 3, where it stated that “the promoter has commenced construction of the said building on the project land in accordance with the approved plan”, where, in fact as

per Quarterly Progress Report (QPR), no construction is in progress, except some excavations. Moreover, non disclosure of the pending litigation, and the objection by the public at large, amounts to misrepresentation, in terms of Section 12 of the Act, entitling refund of the amount, in favour of the complainant.

40. It is also well settled in the case of “*Kusheshwar Prasad Singh vs. State of Bihar and Ors. [Supreme Court] Civil Appeal No. 7351 of 2000*”, that a man cannot be permitted to take undue and unfair advantage of his own wrongs to gain favourable interpretation of law. It is sound principle that he, who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, “a wrongdoer ought not to be permitted to make a profit out of his own wrong.”

41. The Hon’ble Apex Court in the case of *S. P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1* has held that suppression of material facts amounts to fraud not only upon the opposite party but also upon the Courts. Similarly, in *Dilip Singh v. State of U.P., (2010) 2 SCC 114* and *Amar Singh v. Union of India, (2011) 7 SCC 69*, the Apex Court reiterated that concealment of vital information is fatal to the maintainability of a case and constitutes fraud.

42. The project has no clear and valid title for commencement of the construction for want of required approvals as well as the litigations and therefore, the complainant cannot be made to wait indefinitely for starting of the project or possession nor can he be expected to stay put with a hope of completion of the project, when he is absolutely not responsible for the litigations or the delay in construction and has lost interest in the project, more particularly when the responsibility of proceeding with the project solely lies on the shoulders of the respondent, who has failed to act in accordance with functions and duties enlisted under Section 11 of the Act and therefore, the complainant is entitled to seek refund, being affected by incorrect, false statement as well as non disclosure of the mandatory approvals under Section 4, Section 11 and Section 12 of the Act, and has accepted more than 50% of the consideration amount, based on false assurances and therefore, entitled for the refund, as prayed.

43. Discernibly, the complainant intends to withdraw from the project and such withdrawal is guided by the terms and conditions of the Builder Buyer Agreement dated 30.07.2024. The relevant clause for withdrawal is on page 9, at Para 2.14, which reads as follows:

“The Allottee shall have the right to cancel/withdraw his allotment in the project as provided in the Act. Provided that where the Allottee proposes to cancel/withdraw from the project without any fault of the Promoter:

(i) The Promoter shall be entitled to deduct and retain the Cancellation Charges along with Liquidated Damages from the amounts to be refunded to the Allottee.

(ii) Prior to the refund and release of any sums due to the Allottee hereunder, the Allottee shall inform and specify to the Promoter, each of the encumbrances claims, outstanding and dues from the Allottee to any party in relation to the Apartment and obtain clearance (from all such persons) in relation to the same to the satisfaction of the Promoter.

(iii) Where any loan facility is availed of (by the Allottee), the Allottee shall obtain and provide to the Promoter, written acknowledgment, and acceptance, by the Bank and/ or financial institution, that it is aware of the intention of the Allottee to terminate the Agreement, and undertaking an unconditional release to the promoter, that any such termination by the Allottee shall not result in any liability of the promoter towards any entity, including but not limited to the bank, in respect of any financial or other commitments of the Allottee.

(iv) Any such refund and release shall be subjected to the Allottee indemnifying the Promoter in relation to any undisclosed encumbrances, claims, outstanding and dues, and all other losses to the Promoter.”

44. The said Builder Buyer Agreement does not prohibit the complainant from withdrawal of the project, provided it is not the fault of the promoter. The complainant is merely seeking refund of the amount invested in the project of the respondent, with all the promises, allurements and assurances by the respondent, since the respondent has not obtained the necessary permissions, so also, there was public outcry regarding the said project as well as litigations pending before Hon'ble High Court, thereby violating the necessary obligations on the part of the promoter. The object of the RERA Act is to ensure creditability and timely completion of the project. The respondent obtained the registration from the Authority dated 22.03.2024, with a condition, that the promoter shall take all pending approvals from the competent authority. There is no progress of construction of the said project, as on date, as evident from the QPR nor a brick has been laid at the site, as the project is stuck in litigations, for want of statutory approvals and therefore, the complainant cannot be forced to continue with the project.

45. Ld. Advocate Shri Gauravvardhan Nadkarni for the respondent has submitted that Section 18 of the Act is not available as there is no delay in possession, no defect in title and no abandonment

or discontinues of the project, so also, the complaint does not make out any cause of action to file the present proceedings nor the complainant has terminated the Builder Buyer Agreement in any manner and therefore, there being no cause for seeking any alleged refund, the parties are bound by the Builder Buyer Agreement, which shall form the touchstone for adjudication of the subject matter, in terms of Clause 18, wherein it is clearly agreed that the entire agreement between the parties with respect to the subject matter supersedes any and all understandings to the agreement, allotment letter, correspondences, arrangement, whether written or oral between the parties, in regard to the apartment and therefore, the allegations in the complaint are contrary to the binding terms of the agreement and since the clauses of the agreement are valid and that it is not executed under duress, force or coercion, the said agreement stands and the complainant is bound by it.

46. Per contra, Ld. Advocate Shri Nitin Jaspal for the complainant has submitted and rightly so that the complaint is maintainable, so also there is subsisting cause of action against the respondent for violation of Sections 4, 11, 12, 13 and 18 of the Act, which entitle the complainant to claim for refund with interest as well

as compensation before the Adjudicating Officer, more particularly when, the respondent has not obtained mandatory statutory clearances at the time of collecting payment and executing the agreement at Noida, with respect to the property at Goa, so also, rejection of the loan by HDFC Bank due to the failure on the part of the respondent to furnish essential project documents and approvals required for processing.

47. The respondent in order to induce the prospective homebuyers into purchasing the units has resorted to deliberate misrepresentation about project timelines, assured returns, etc and also failed to upload relevant information on the website in violation of Section 4 as well as Section 11 of the Act, which is a clear breach of obligations on the part of the respondent, including failure to disclose and obtain necessary statutory approvals and based on false assurances collected 50% of the total consideration, prior to execution of Builder Buyer Agreement, which is a serious legal violation, in terms of the RERA Act, as discussed above. Discernibly, Section 18 of the Act creates an independent statutory right of refund not dependent on termination as well as the allottee has a absolute right to refund, in case of delay and cannot be compelled to wait or accept possession belatedly and

therefore, the above submissions of Ld. Advocate Shri Gauravvardhan Nadkarni for the respondent, cannot be accepted having any merits.

48. There are several lapses in construction progress and lack of transparency regarding regulatory compliance amounting to breach of contract and violations under the RERA Act, as well as failure to comply with contractual assurances and providing clarity about legality and financial constraints and therefore, has not fulfilled its obligations under the agreement as well as under the Act. The complainant therefore cannot be forced to continue investing in the project, tainted with illegality or lacking approvals, where the project was marketed and apartments sold before obtaining mandatory approvals, intrepidly claiming that the registration is valid upto 31.12.2028. The respondent has thus violated Section 4, Section 11, Section 12, Section 13 and Section 18 of the Act, thereby triggering the relief claimed by the complainant.

49. The Hon'ble Supreme Court in the case of "*Experian Developers Pvt. Ltd. vs. Sushma Ashok Shiroor*" (2022) SCC Online SC 416" has held as under:

"22.1 We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the

deposit of the amounts. The commission in the order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. Following the decision in *DLF Homes Panchkula Pvt. Ltd. vs. DS Dhanda* and in modification of the direction issued by the commission, we direct that the interest on the refund shall be payable from the dates of deposits. Therefore, the appeal filed by the purchaser deserves to be partly allowed. The interests shall be payable from the dates of such deposits.”

50. The Chart of payment reflecting the amount paid by the complainant to the respondent is as follows:-

S. N o.	Receipt Date	Instrument Date	Amount	CGST	SGST	Net Amount
1	09 Jul 2024	08 Jul 2024	95,238	2,381	2,381	1,00,000
2	09 Jul 2024	30 Jul 2024	47,620	1,190	1,190	50,000
3	13 Jul 2024	11 Jul 2024	4,76,190	11,905	11,905	5,00,000
4	24 Jul 2024	22 Jul 2024	4,76,190	11,905	11,905	5,00,000
5	25 Jul 2024	24 Jul 2024	9,52,380	23,810	23,810	10,00,000
6	26 Jul 2024	25 Jul 2024	23,80,952	59,524	59,524	25,00,000
7	27 Jul 2024	26 Jul 2024	7,63,100	19,077	19,077	8,01,254
		Cleared amount	51,91,670	129,792	1,29,792	54,51,254/-

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51. The Real Estate (Regulation and Development) Act, 2016 is a beneficial legislation enacted to address the plight of the homebuyers and being welfare legislation, its provisions must be construed liberally so as to advance its benevolent purpose. The respondent has acted in breach of its obligations as discussed above. The complainant is thus entitled for the refund of the booking amount of 54,51,254/- (Rupees Fifty Four Lakhs Fifty One Thousand Two Hundred and Fifty Four only) along with interest at lending rate of interest by SBI, which is 8.85% per annum, plus two per cent i.e. 10.85% per annum under 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 on the said amount of ₹54,51,254/- (Rupees Fifty Four Lakhs Fifty One Thousand Two Hundred and Fifty Four only) paid by the complainant to the respondent.

52. The complainant is also entitled for the costs of ₹2,00,000/- (Two lakhs only) from the respondent for investing his life savings into purchasing the unit belonging to the respondent with the legitimate expectation of a secure home and fair treatment under the

law, instead the complainant is now being driven from pillar to post, for no fault on the part of the complainant, in paying the second installment or withdrawing from the project nor the respondent showed indulgence in refunding the amount paid, when demanded so, by the complainant.

53. Discernibly, the respondent instead of refunding the said amount invested by the complainant in terms of the Builder Buyer Agreement has unfairly been using the said amount, since the payment on 08.07.2024 and thus obtained unfair advantage by not refunding the said amount, knowing fairly well that the public had objected to the said project as per the Newspaper clippings, so also, some NGOs have filed Writ Petitions before the Hon'ble High Court against the project for failure to obtain mandatory approvals, suppression of material facts and false assurances. The respondent shall also pay an amount of ₹10,00,000/- (Rupees Ten Lakhs only) as penalty under Section 61 of the Act for contravening the provisions of Section 4, Section 11, Section 12, Section 13 and Section 18 of the Act. The amount shall be deposited before the Authority within 60 days, failing which necessary proceedings will be initiated against the respondent. Hence, the above points are answered accordingly.

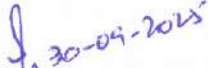
54. Pursuant to above discussion, I pass the following:

ORDER

- i. The respondent is directed to refund the amount of ₹54,51,254/- (Rupees Fifty Four Lakhs Fifty One Thousand Two Hundred and Fifty Four only) to the complainant, within a period of 30 days, from the date of this order.
- ii. The respondent is also directed to pay to the complainant interest @ 10.85 % p.a. on the sum of ₹54,51,254/- (Rupees Fifty Four Lakhs Fifty One Thousand Two Hundred and Fifty Four only) as per the dates of payment, mentioned in Para 50 above, till effective payment.
- iii. The respondent is directed to pay costs of ₹2,00,000 (Rupees Two Lakh only) to the complainant, within a period of thirty days of the order, failing which it will carry interest in terms of law, till payment.
- iv. The respondent is also directed to pay ₹10,00,000/- (Rupees Ten Lakhs only) as penalty under Section 61 of the Act for contravention of Section 4, Section 11, Section 12, Section 13 and Section 18 of the Act. The amount shall be deposited

before the Authority within 60 days, failing which necessary proceedings will be initiated against the respondent.

- v. The respondent is directed to file a compliance report of this order in the form of an affidavit, within sixty days of this order, failing which further legal action will be initiated by the Authority under the RERA Act for execution of the order.


(Vincent D'Silva)
Member, Goa RERA

Panaji, Goa.
Date: 30.09.2025