



GOA REAL ESTATE REGULATORY AUTHORITY

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FNo: 3/RERA/Complaint(407)/2023/1109

Date: 20/08/2025

Provident Housing Limited

130/1 Ulsoor Road,
Bangalore, Karnataka,
Bangalore Urban- 560042

....Complainant

V/s

Sam Diago Santimano

47/B, Pockvaddo, Betalbatim,
Salcete, South Goa-403713

.....Respondent



ORDER

(20/08/2025)

- 1) This order disposes of the online complaint dated 19/12/2023 filed by Provident Housing Limited (complainant) before the Goa Real Estate Regulatory Authority (Goa RERA) against Shri Sam Diago Santimano (Respondent) under Section 31 read with section 19 (6) of the real estate (regulation and development) act, 2016 (herein after referred to as 'the Act') stating that the Respondent Shri Sam Diago Santimano has entered into an Agreement for Sale on 14.06.2019 qua purchase of an apartment unit in the Project

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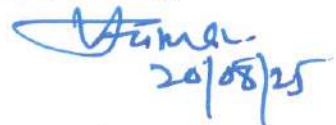
'Adora De Goa Phase 10' for a sale consideration of Rs. 46,49,000/-. Under the said Agreement Allottee/Respondent had an obligation to make timely payment of installments due towards sale consideration without any delay particularly when it clearly stipulated that the time is of the essence for the parties to the said Agreement. It was further stated that the Respondent in this matter has been derelict in their obligation as a purchaser/allottee and has neglected to make several payments towards demands raised in accordance with the construction linked payment plan agreed upon at the time of booking and execution of the Agreement. Though several opportunities were extended to the Respondent to make payments despite the inordinate delay, the Respondent has unilaterally refused to make the requisite payments and has been grossly negligent towards his obligations.

- 2) In the course of proceedings, the Respondent neither appeared ~~in~~  ~~person~~  nor responded to the notices or filed any reply despite service of notices & follow up emails. Accordingly, the matter was heard on 03.06.2025 on the limited issue of proceeding with the matter ex-parte against the respondent. While none remained present for Respondent, the Complainant representative argued


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that since the respondent has neither appeared nor filed a reply inspite of being duly served, the matter may be proceeded ex-parte. In view the submission made by the Complainant including the service report, it was decided to proceed with the matter ex-parte against the Respondent vide order dated 06.06.2025. The matter was further fixed for 24.06.2025 at 2.30 p.m. for final hearing of the main complaint and a copy of the said order dated 06.06.2025 along with a copy of the complaint as well as the written arguments filed by the complainant was directed to be forwarded to the Respondent for his information and necessary action inter-alia stipulating that in case the Respondent puts in appearance on 24.06.2025, he shall be heard on the main complaint and would also have the opportunity to file reply/written arguments. Inspite of having been given this further opportunity, neither the respondent nor any representative on his behalf appeared and also no reply or written arguments were filed on behalf of the respondent.

- 3) The complainant vide its written submissions and also during the course of arguments stated that it had earlier also preferred various complaints in 2021 against 77 respondents placed similarly,

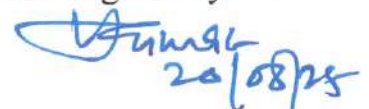

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alleging that the respondents have failed and neglected to make payments as per the Agreements for sale and further prayed this Authority to cancel the registered Agreements for sale executed between the complainants and the respondent in each of the case. This Authority while dismissing all the complaints vide a common order dated 07.02.2022, had observed as follows:

“4. Thus, it is for the promoter/ the complainant herein to terminate, if required, the Agreement for sale executed with the respective respondent herein as per the terms/ recitals of the said Agreement for sale and as per Section 11(5) of RERA Act.

5. Even the Hon’ble Supreme Court on this aspect in the Case of “M/s NewTech Promoters and Developers Pvt. Ltd. Vs. State of U.P and Ors etc. Civil Appeal No(s) 6745-6749 of 2021 (Arising out of SLP (Civil) No(s) 3711-3715 of 2021 states as follows:-

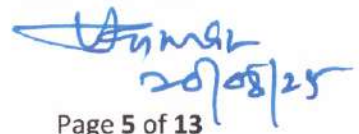
“..... that if the allottee has made a default either in making installments or made any breach of the agreement, the promoter has a right to cancel the allotment in terms of section 11(5) of the Act and proviso to sub- section 5 of Section 11 enables the allottee to approach the regulatory


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authority to question the termination or cancellation of agreement by the promoter and thus, the interest of the promoter is equally safeguarded” (emphasis supplied)

6. Thus, Section 11(5) of the RERA Act clearly gives right to the promoter to cancel the allotment in case the allottee has made a default in making installments or made any breach of the agreement. The agreements for sale entered into between the complainant and the respondents herein respectively for different units also empower the complainant to cancel/terminate the said Agreements in the aforesaid situation. Moreover, this Authority has no power under RERA Act to terminate the said Agreements for sale and as stated above, the Act gives power only to the promoter to do the same, in case the need arises.”

- 4) The submissions made by the complainant further reveal that as per terms and conditions of the Agreement for Sale dated 14.06.2019, notices were sent to the Respondent on 04.01.2023, 10.02.2023, 06.05.2023 and 12.07.2023 outlining the dues payable and requesting that those dues be duly remitted. However despite repeated reminders and follow ups, the Respondent has vehemently refused to acknowledge or respond to the notices. The


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record further reveals that vide communication dated 25.07.2023, the complainant informed the respondent that since section 11(5) of the Act and clause 9.2 & 9.3 of agreement for sale empower it to cancel and terminate the agreement for sale; the respondents are accordingly invoking their rights to terminate and accordingly terminate and cancel the said agreement dated 14.06.2019 in the facts and circumstances of the case, with immediate effect and thereby the agreement for sale dated 14.06.2019 stands terminated.

- 5) The complainant during the course of the argument further pleaded that in the given circumstances where the respondent has not been responding to the various demand letters and notices issued by the complainant/promoter and the complainant has already terminated and cancelled the said agreement dated 14.06.2019 executed by it with the respondent; the cancellation of the said agreement which is a registered document, would require a direction from Goa RERA to execute and register a Deed Cancellation of the Agreement of Sale in the jurisdictional Sub Registrar Office. It was further stated that Goa RERA vide its order dated 07.02.2022 has already held that Section 11(5) of the


RERA Act clearly gives right to the promoter to cancel the allotment in case the allottee has made a default in making installments or made any breach of the agreement. Accordingly, the complainant promoter in the instant case has prayed to Goa RERA to appoint a commissioner/representative on its behalf to execute and register cancellation deed in respect of the agreement for sale entered into by the complainant (promoter) with the respondent (allottee); and also to direct the jurisdictional sub-registrar to make an appropriate entry /note in the concerned register to the effect that the said agreement stands terminated and cancelled.

- 6) Referring to the provisions of section 19(6) & (7) as well as Section 38 of the Act, the complainant has sought to plead that Authority in the facts and circumstance of the case is duty bound to issue the direction to the allottee to come forward and execute the Cancellation Deed and in the event allottee fails to honour the direction of this Authority, the Authority can, as provided under section 35 (2) (ii) enforce the attendance of person. If all of this still fails to ensure that the allottee comes forward for cancellation in the interest of real estate project, the Authority is duty bound to


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appoint the representative or commission on behalf of the Authority to execute Deed of Cancellation as well as to direct the Jurisdictional Sub-Registrar to make an appropriate entry/note in the concerned register to the effect.

- 7) Referring to the provisions of Section 79 of the RERA Act, it was stated that there is a clear bar on the jurisdiction of Civil Court to entertain any suit or proceedings in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the RERA Act to determine and as such the issuance of the directions referred to in the preceding para is necessary and justified as the promoter of a real estate project has no other option for the purpose except to have recourse to the provisions of the RERA Act.
- 8) The complainant also argued that timely development of the Real Estate Project is directly linked to the timely inflow of payments and the expenses to meet for the development of the project can be drawn only from the RERA Designated account dedicated for this project, and if large section of customer after having executed the Agreement refuses to honour the terms of the agreement and fails to make timely payments, the project cash flow are severely


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affected and the same will adversely impact the progress of the project and the interest of other allottees who are not defaulters.

- 9) The complainant in support of his submissions also referred to directions issued by MahaRERA vide order dated 25.08.2023 stating that MahaRERA thereby asked Allottees /Respondents to present themselves to execute cancellation deed within 30 days of the order and in the event allottees fails to come forward to do so, then complainant shall file a non-execution application (non-compliance) against respondents. Further attention was also drawn to the order dated 07.03.2024, stating that thereby MahaRERA *must*

only issued a direction to Allottees (Respondents) to execute and sign the registered cancellation deed within 30 days of the order for cancellation of the registered Agreement for Sale but also observed that failing compliance of directions by the Allottee, appropriate penal action would be taken against the allottees under Section 67 of the Act.

- 10) The complainant also referred to the order dated 23.03.2023 of Karnataka RERA and the orders of Karnataka REAT stating that thereby Jurisdictional Sub registrar was directed to cancel the Registered Agreement to Sale and to make necessary entries in the

concerned books of records and that the same was held to be well within the purview of the Act.

- 11) The various contentions made by the complainant as noted hereinabove, are apparently devoid of merit and does not support his case qua the relief sought by the complainant. The perusal of Section 19(6) and 19(7) of the Act would reveal that while Section 19(6) casts a duty upon the allottee to make necessary payments in the manner and within the time as specified in the agreement for sale, the provisions of Section 19(7) spell out the consequences of failure to do so by stipulating 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 the said agreement. Pertinently, Section 11(5) of the Act which clearly gives right to the promoter to cancel the allotment in terms of the agreement for sale, does in no way refer to the provisions of Section 19(6) & 19(7) of the Act which in any case while stipulating the duty of the allottee simultaneously provide for the consequences of failure in performance of the said duty. Further the reference to the powers vested with the Authority under the provisions of Section 38(1) is also of no help to the complainant


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as the same are limited to imposition of penalty or interest in regard to any contravention of obligation cast upon the promoters, allottees and the real estate agents under the Act and rules made thereunder and can in no way be interpreted to subsume the powers to issue the direction as being sought and prayed for by the complainant in the present case. Pertinently, Section 19(7) itself provides for interest liability of the allottee in case of his failure to discharge his obligation in making of the payment due. In fact, the relief sought by the complainant in terms of the appointment of commissioner/representative by the Authority to execute and register cancellation deed in respect of the agreement for sale entered into by the complainant (promoter) with the respondent (allottee); and also to direct the jurisdictional sub-registrar to make an appropriate entry /note in the concerned register to the effect that the said agreement stands terminated and cancelled; is in direct contradiction of the proviso to Section 11(5) which inter-alia provides for allottees right to approach the Authority for relief in case the cancellation of agreement for sale is *unilateral*. Besides, the relief sought by the complainant also does not appear to be in consonance with the provisions of The Registration Act.


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The other argument made by the complainant that since in terms of Section 79 of the Act, there is a bar on the jurisdiction of Civil Court to entertain any suit or proceedings in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the RERA Act to determine and thus the issuance of the direction prayed for is necessary and justified in the absence of any alternate remedy to the promoter; also does not hold water as the provisions of the Act nowhere support or provide for such powers to the Authority for issuance of the direction prayed for by the complainant. In fact the preamble of the Act puts a distinct emphasis upon protection of interest of the consumers in real estate sector and read in that context, the usage of word '*unilateral*' as one of the grounds for challenging the cancellation of allotment or agreement for sale by the promoter under Section 11(5) of the Act, further supports the view expressed hereinabove.

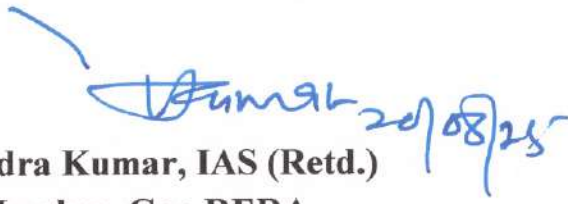
- 12) The complainant has also unsuccessfully tried to interpret the earlier order of this Authority 07.02.2022 ^{to its advantage} which merely spelt out that Section 11(5) of the Act clearly gives right to the promoter to cancel the allotment in terms of the agreement for sale

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and in no manner could be read to seek the directions as prayed for by the complainant in the present case. Also in view of above mentioned, the contention of the complainant that in the context of the order dated 07.02.2022, this Authority is duty bound to issue the directions prayed for; appears far-fetched and deserves no further consideration.

13) In view of what has been discussed hereinabove the reference made by the complainant to various orders and directions of Maha RERA and Karnataka RERA and Karnataka REAT is also of no help to the complainant.

14) In view of the above, the prayer for issuance of directions sought by the complainant cannot be acceded to and the online complaint dated 19/12/2023 filed by the complainant is hereby dismissed in above terms.


Virendra Kumar, IAS (Retd.)
Member, Goa RERA