



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(363)/2023/60

Date: 10/01/2024

1. Dr. Yogin Ramesh Nande

2. Dr. Pooja Yogin Nande

Both residing at D-1/703, Lunkad zodiac,
Near HDFC Bank, Viman Nagar,
Pune Maharashtra-411014

.....Complainants

Versus

1. M/s Expat Projects & Development Private Limited

A Private Limited Company incorporated under
The provisions of the companies Act, 1956
and having its registered Office at
Carlton Towers, A-wing, 3rd Floor,
No. 1, Airport Road, Bengaluru-560008.
And Office also at
Expat Vida Uptown Commercial,
Office No. A2-213, Second Floor,
Near Hotel Ronald, Panclim,
Kadamba Plateau, Goa-403402.

Through its Directors:-

a. Mr. Nenumal Bhatia

b. Mr. Santosh Balakrishna Shetty

c. Mr. Sachhidanand Ramappa Kanchan

d. Mr. Lansel Victor D' Souza

Having Office at Car Carlton Towers, A-wing, 3rd Floor,
No. 1, Airport Road, Bengaluru-560008.

.....Respondent

ORDER
(Dated 10.01.2024)

This order disposes of the complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') wherein the complainants have prayed this Authority to direct the respondents, its directors, authorized representatives and/ or any other person in charge of respondent to refund an amount of Rs. 16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only) to the complainants, which the complainants paid to the respondents towards the total consideration of the apartment in the year 2017; to pay interest thereon at the rate of 18% per annum from 04.05.2017 till its actual realization; to pay to the complainants an amount of Rs. 50,00,000/- (Rupees Fifty Lakhs only) with effect from 04.05.2017 by way of compensation and to direct the respondents to pay to the complainants Rs.1,00,000/- (Rupees One Lakh only) towards the legal fees and Rs. 5,000/- (Rupees Five Thousand only) as Government fees for the present complaint.

2. It is the case of the complainants that they came across an advertisement of a project named as "Expat Vida Uptown Goa" which was developed and promoted by respondents over the land bearing survey no. 13/1-C in Village Panelim, Tiswadi North Goa and accordingly they made inquiry about the said project by visiting the site in the year 2017. According to them, at that time one Mr. Nikhil

accordingly relying on the said promises and assurances, the complainants paid the total consideration amount of Rs. 16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only) to the respondent.

5. The complainants submitted that they were in constant touch with the representatives of the respondent and requested them to register the agreement to sell the said apartment in favour of the complainants however the said representatives used to give vague, unsatisfactory and irrelevant reasons for delay in registration of the agreement to sell. According to them, after various follow-ups and requests for nearly about two years, the respondent got executed and registered an agreement to sell in respect of the said apartment to and in favour of the complainants. It is stated that the said agreement to sell dated 22.05.2019 was registered before the Sub-Registrar on 29.05.2019.
6. According to the complainants, as per the said agreement to sell dated 22.05.2019, the respondent was to hand over the possession of the said apartment to the complainants on or before 31.08.2020, however the possession of the said apartment has not been handed over to the complainants till date, inspite of the continuous following up by the complainants with respondent. The complainants also referred to the legal notice dated 17.06.2023 issued to the respondent whereby the complainants informed the respondent that they want to withdraw from the said project and are entitled to the refund of Rs. 16,50,000/- (Rupees Sixteen Lakhs



kulkarni gave some attractive presentations and assurances to the complainants and relying upon the same, the complainants showed interest in purchasing a residential unit in the said project.

3. The complainants submitted that after due discussions, the respondent agreed to sell and the complainants agreed to purchase an apartment bearing no. 413 situated on the fourth Floor in building no. B 3 in the said project along with a car parking space for a total consideration of Rs. 16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only).
4. According to the complainants, at the time of booking of the said apartment, the respondent through its representative requested and insisted the complainants to make the full amount of the said total consideration in advance so that the respondent could complete the said project on time and also offered the complainants that if the complainants would make the entire consideration amount in advance, then the charges towards the maintenance, club house and other amenities would be waived off and the complainants would have facility to avail the same for free for lifetime. The complainants submitted that initially they were hesitant to pay the total consideration amount without any registered document in their favour, however the representatives of the respondent promised and assured the complainants that they would get the document registered at the earliest as soon as the complainants make the full payment of the total consideration amount and



Fifty Thousand only) along with interest and compensation thereon to which no reply was given by the respondent. Hence, the prayer of the complainants as stated above.

7. Reply has been filed by the respondent wherein it is stated that the complainants approached the respondent as investors and made one time payment in the said project as they wanted to reap profits later on. It is stated that there was clear understanding between the parties that the role of the complainants would be of an investor in the said project and accordingly the complainants made full payment as an investor and not as an allottee. According to the respondent, the purpose of registration of the agreement to sell was not to have any claim on the said apartment but it was only to secure the investment of the complainants for the time being. It is further stated in the reply that "it was mutually agreed at no point in time no claim as allottee and plea for possession for hand over would be made under the RERA Act against the respondent". It is further stated in the reply that M/s Naiknavare Construction Pvt. Ltd. is a necessary party to the instant proceedings in the case of withdrawal from the project as some amount is parted to M/s Naiknavare Construction Pvt. Ltd. It is further stated that the project got delayed due to covid situation which prevailed in the year 2020-2022 and also because some of the allottees were not in position to make timely payments. Rest of the allegations are denied by the respondent.



8. Documents and affidavits were filed by the parties. Written submissions were filed by Ld. Advocate S. Bangera for the complainants. Oral arguments were heard from Ld. Advocate S. Bangera for the complainants, however inspite of opportunities given no arguments were advanced on behalf of respondent and hence the replies and affidavit and other documents of the respondent are taken into consideration.
9. After going through the entire records of the case, 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 complainants are entitled for the refund of Rs. 16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only) from the respondents along with interest thereon?	In the affirmative.
2.	Whether the complainants are entitled for the compensation and other charges from the respondents as prayed in the complaint?	To be decided by the Adjudicating Officer under Section 71 of the RERA Act.

REASONS



Point No. 1

10. The first preliminary objection raised by the Ld. Advocate for the respondent is that the complainants are not the allottees as per the RERA Act but they are mere investors in the said apartment and hence no relief can be granted to the complainants. The Ld. Advocate for the respondent pointed out that since the complainants paid the entire sale consideration amount prior to the execution and registration of the Agreement for Sale in contravention of Section 13 of the RERA Act, it is evident that the said amount paid is merely for investment purpose and there was no intention between the parties to create the relationship of the promoter and the allottees. Under **Section 13 of the RERA Act**, onus/ responsibility is imposed on the promoter not to 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 person and register the said agreement for sale, under any law for the time being in force. The promoter herein cannot take the advantage of its own wrong of taking the entire sale consideration amount prior to the execution and registration of the Agreement for Sale and deprive the allottees of their right of statutory interest which has accrued from the date of payment of the sale consideration.



11. In this context, it is significant to note that the term “investment” or “investor” is not defined under RERA Act and only under Section 12 of the RERA Act, the term “investment” is used. **Section 12** of the RERA Act states as follows:-

“12. Obligations of promoter regarding veracity of the advertisement or prospectus.- Where any person makes an advance or a deposit on the basis of the 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 this Act.”

Thus, promoter is liable to return the amount (investment) paid by allottee along with interest and compensation, if allottee has chosen to withdraw from project on



account of incorrect and false statement contained in advertisement, prospectus, notice or model apartment. Hence, under the RERA Act, as per Section 12 therein, the only interpretation of “investment” is the amount paid/ deposit made by allottee to/ in favour of the promoter for purchase of flat etc.

12. It is settled law that the nature of the transaction is determined by the contents of the document and not by any oral submission of any party contrary to the contents of the document. In the instant case, the parties have executed an agreement for sale of the said apartment on 22.05.2019 and the same was duly registered before the Sub-Registrar on 29.05.2019. In the said agreement for sale, it is clearly mentioned that the complainants/ “the allottee” has already paid an amount of Rs. 16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only). Para 6 of the said agreement for sale is reproduced hereunder for ready reference:-

“6. The Developer shall give possession of the Apartment to the Allottee on or before 31st day of August 2020. If the Developer fails or neglects to give possession of the Apartment to the Allottee on account of reasons beyond his control and of his agents by the aforesaid date then the Developer shall be liable on demand to refund to the Allottee the amounts already received by him in respect of the Apartment with interest at the same rate as may mentioned in the



clause 4.1 hereinabove from the date the Developer received the sum till the date the amounts and interest thereon is repaid.”

13. From the said agreement for sale dated 22.05.2019, it is clear that the relation between the complainants and the respondent is that of the promoter and the allottees as per the provisions of the RERA Act.
14. The next preliminary objection of the respondent is that the complainants have not joined M/s Naiknavare Construction Pvt. Ltd. as party in the instant proceedings and hence according to the Ld. Advocate for the respondent, the instant proceedings are bad for non-joinder of the said necessary party. There is no merit in the aforesaid contention raised by the Ld. Advocate for the respondent since M/s Expat Projects & Development Pvt. Ltd. is the promoter and M/s Naiknavare Construction Pvt. Ltd. is the owner as per the aforesaid agreement for sale. As per RERA Act, the complainants have legal remedy against the promoter and hence M/s Naiknavare Construction Pvt. Ltd. is not necessary party in the instant proceedings even if some amount is parted by M/s Expat Projects & Development Pvt. Ltd. to said M/s Naiknavare Construction Pvt. Ltd. Thus, there is no merit in the aforesaid preliminary objection raised by the Ld. Advocate for the respondent.



15. As stated above, the respondent had to give possession of the said apartment to the complainants on or before 31.08.2020 but till date possession is not given. In this regard, it is important to reproduce hereunder Section 18 of the RERA Act:-

“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.”

Thus, if promoter fails to complete the project or is unable to deliver possession of apartment, plot or building by agreed time and allottees intend to withdraw from the project, then the promoter shall refund the paid amount together with interest to allottees at such rate as may be prescribed.

16. In the instant case the rulings 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).

The Hon’ble Supreme Court further held therein 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). The relevant abstract is reproduced below for ready reference:-

“25. The unqualified right of the Allottee to seek refund referred to under Section 18(1) (a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the Allottee, if the Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms

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of the agreement **regardless of unforeseen events or stay orders of the Court/Tribunal**, which is in either way not attributable to the Allottee/home buyer, the Promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the Allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

17. Thus, the grounds as stated by the respondent / 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.

18. 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.”

19. Thus, invoking Section 18 and Rule 18 of the said Act the benefit of the aforesaid statutory interest goes to the complainants who have entered into an agreement for sale with the promoter. As a consequence thereof Section 18 and Rule 18 of RERA are squarely attracted in the instant complaint and the respondent is legally bound to refund to the complainants the entire amount paid by the complainants along with interest thereon.
20. The Ld. Advocate for the complainants has produced on record the **judgment dated 14.06.2023 passed by Maharashtra Real Estate Appellate Tribunal in appeal no. AT006000000133980 in the case of “Kunal Kumbhat and Sonal Kumbhat Vs. Krishna Developers Pvt. Ltd.”** wherein the Appellate Tribunal inter alia considered the point of time when delay interest has to be paid by the promoter to the allottee and held that as per the explanation (ii) of Section 2 (za) of the RERA Act, the interest payable for refund by the promoter to the allottees has to be from the date on which the amounts have been received from allottees till the date the total amount has been refunded.
21. In this regard it is relevant to reproduce hereunder Section 2(za) of the RERA Act along with the explanation:-



“2(za) “Interest” means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.- For the purpose of this clause-

(i)....

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;”

22. The aforesaid Appellate Tribunal referred to the following observations of the Hon’ble Supreme Court in the case of “ **Experian Developers Pvt. Ltd. vs. Sushma Ashok Shiroor**” (2022) SCC Online SC 416”:-

“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*

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purchaser deserves to be partly allowed. The interests shall be payable from the dates of such deposits.”

23. The said Appellate Tribunal held that it is settled position of law that the payment of such interest is not a penalty and in this regard referred to the following observations of the Hon’ble Bombay High Court in the case of **“Neel Kamal Realtors Suburban Pvt. Ltd. and another Vs. Union of India and others”** (2017) SCC Online BOM 9302:-

“257.....

The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment is handed over to him is not unreasonable. The interest is merely compensation for use of money.

258 *In paragraph -9 of Alok Shankar Pandey Vs. Union of India (2007) 3 SCC 545, the Apex Court has held that “there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital... ..”*



“.....The object of Section 18 is to recompense an allottee for depriving him of the use of the funds paid by him. The promoter who has received money from the allottee but has failed to adhere to his contractual or statutory obligations, cannot claim that he is entitled to utilise the monies without paying any interest with respect thereto to the allottee”

24. From the aforesaid discussion, it is clear that it will be just and fair to refund the paid amount along with interest to the complainants from the date of receipt of such amount by the respondent as per **Section 2 (za) (ii) of the RERA Act** and not from any other date.
25. The complainants have paid to the promoter/ respondent an amount of ₹ 16,00,000/- (Rupees Sixteen Lakhs only) vide cheque dated 28.04.2017 and ₹50,000/- (Rupees Fifty Thousand only) vide cheque dated 12.06.2017 and in this regard have produced on record the receipt dated 03.05.2017 and 02.07.2018 given by the respondent no.1. Hence, the prescribed interest as per the aforesaid Rule 18 starts running from the said cheques dates on the respective consideration amounts. 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 8.85% per annum. Adding two percent to the said interest as per Rule 18 comes to



10.85% per annum. Hence, the promoter/ respondent is liable to pay to the complainant 10.85% per annum interest for every month of delay to the complainant on the total amount of ₹16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only) paid by the complainants from the cheques dates i.e. from 28.04.2017 on the amount of ₹16,00,000/- and from 12.06.2017 on the amount of ₹ 50,000/- till the actual return of the said amount to them.

Hence, the instant point is answered in the affirmative.

26. **Point No. 2**

Under **Section 71 of the RERA Act**, Compensation under sections 12, 14, 18 and 19 of the said 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.

27. Under Section 61 of the RERA Act, if any promoter contravenes any other provisions of the RERA Act, other than that provided under Section 3 or Section 4, or the Rules or Regulations made thereunder, he shall be liable to a penalty which may extend upto five per cent of the estimated cost of the real estate project as determined by the Authority. Hence, the respondent is also liable to pay penalty under Section 61 of the RERA Act.

In view of the aforesaid, I pass the following:-



ORDER

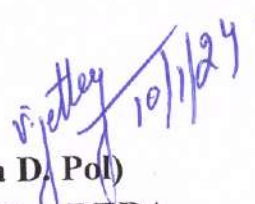
The Promoter/ respondent is directed to refund the amount of ₹16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only) to the complainants within two months from the date of this order.

Further the said promoter/ respondent is directed to pay 10.85 % per annum interest (present lending rate of interest by SBI which is 8.85 % per annum plus two percent) for every month of delay to the complainants on the aforesaid amount paid by them i.e. from 28.04.2017 on the amount of ₹16,00,000/- and from 12.06.2017 on the amount of ₹50,000/- till the date of actual payment of the aforesaid refund.

Under Section 61 of the RERA Act, the respondent is directed to pay a penalty of ₹1,00,000/- (Rupees One Lakhs only) within two months from the date of this order. The said penalty, if realized, be forfeited to the State Government.

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

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


(Vijaya D. Pol)
Member, Goa RERA