



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No: 3/RERA/Complaint(432)/2024/ 1528

Date: 12 /10/2026

Mr. Gaganpreet Singh Saini

H No- 36, Street no 3,
Malhotra Colony Ropar,
RupNagar, Punjab-140001

V/s

1. M/s. Sri Siddivinayak Ventures

A partnership firm registered under
The Indian Partnership Act, 1932,
With Office at 7-4-112/A, Madhuban Colony,
Kattedan, Hyderabad, Telangana-500077.
Represented by its Partners

2. Mr. Anand Kumar Agarwal,

Son of Mr. Ramesh Agarwal, aged 50 years,
R/o. Plot No. 852, Road No. 44, Jubilee Hills,
Cooperative House Building Society,
Hyderabad-500033.

3. Mr. Ankit Agarwal,

S/o. Mr. Rajender Agarwal, aged 37 years,
R/o. 8-2-293/82/A/852 road No. 44,
Jubilee Hills,
Cooperative House Building Society,
Hyderabad-500033.

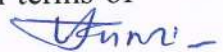
4. **Mr. Puneet Agarwal,**
S/o. Mr. Ravinder Agarwal, aged 38 years,
R/o. 8-2-293/82/NG/1 Plot No. 1,
Huda Layout Nandagiri Hills, Jubilee Hills,
Cooperative House Building Society,
Hyderabad-500033.
5. **Mr. Vikas Agarwal,**
S/o. Mr. Kedarnath Agarwal, aged 47 years,
R/o. 8-2-293/A/779 Road No. 39,
Jubilee Hills, Hyderabad-500033.
6. **Mr. Pratik Raichandani, aged 25 years,**
S/o. Mr. Anil Kumar Raichandani,
R/o. 1/11/227/1/4, Guru Murthy Lane,
Begumpeth, Hyderabad Telangana, 500016.7.
7. **Ankit Biscuits Private Limited,**
Company Incorporated under the Companies Act 1956,
Office at 1-4-112/A, Madhuban Colony Road, Kattedan,
Rangareddy District-500077 through its Director
8. **Mr. Pratik Raichandani, Aged 25 Years,**
S/o. Mr. Anil Kumar Raichandani,
R/o. 1/11/227/1/4, Guru Murthy Lane,
Begumpeth, Hyderabad Telangana, 500016.9.
9. **M/s Raichandani Pahal Developers LLP,**
Limited Liability Partnership Firm,
Office at 6-3-354, 3rd Floor, Flat No. 302, SB Towers,
Banjara Hills Road No. 1, Hyderabad 500034. Through
Authorized Representative.
10. **Mr. Pratik Raichandani, aged 25 years,**
S/o. Mr. Anil Kumar Raichandani,
R/o. 1/11/227/1/4, Guru Murthy Lane,
Begumpeth, Hyderabad Telangana, 500016.



ORDER
(09/10/2026)

This order disposes of the complaint File. No: 3/RERA/Complaint(432)/2024 filed by Mr. Gaganpreet Singh Saini (complainant) before the Goa Real Estate Regulatory Authority (Goa RERA) against M/s Shri Siddhivinayak Ventures & 9 others, under Section 31 of the real estate (regulation and development) act, 2016 (herein after referred to as 'the Act') alleging incomplete construction despite issuance of completion/occupancy certificates as well as delay in handing over possession of the 2BHK Flat booked by the complainant as per Agreement for Sale dated 05.10.2023 entered into by the complainant with the Respondents and further seeking relief as per para 5 of the amended complaint.

2. The submissions made by the Complainant in support of his case in succinct are as follows:
- (i) He purchased Flat No. 310 (a 2BHK unit) on the Third floor, Building A, in the project of the Respondent named as "Botanica" registered under Goa RERA bearing registration no. PRGO01221464, having a carpet area of 69.40 sq.mts, together with covered parking and proportionate rights in common areas (herein after referred to as 'the subject property') vide Agreement for Sale dated 5th October 2023 (herein after referred to as 'the Agreement for Sale') for a total consideration of ₹74,00,000. The said Agreement for Sale inter alia stipulated that the flat would be ready on or before November 2023 and in case of delay in handing over of possession the respondent was liable to pay 18% interest on the entire amount received for every month of delay in handing over possession in terms of



clause of the Agreement for Sale. It was further stated that although a Completion Order was issued on 3rd October 2023 and an Occupancy Certificate on 3rd November 2023, the flat and associated project works were not actually complete and that no possession letter or written notice in terms Clause 8 of the Agreement for sale declaring the flat ready for occupation, was ever issued. Several emails were also sent to Mr. Pratik Raichandani regarding the incomplete work without receiving a response.

- (ii) While disputing the Respondents' contention that possession of the subject property had already been given in November 2023, the complainant referred to clause 15 of the Deed of Sale which records that vacant physical possession was simultaneously handed over upon execution of the Deed. The Complainant has further stated that since the Deed of Sale was eventually executed on 24th April 2024, the respondent was liable to pay 18% interest on the entire amount received for every month of delay in handing over possession i.e. for delay of approximately five months after the agreed date of possession. While responding to the contention of the Respondents that the delay resulted from non-payment, the Complainant has asserted that the Respondents have failed to produce any demand notice, default notice, or other correspondence showing that the Complainant failed to make payments according to the agreed schedule and thus sought to attribute the delay in possession entirely to the Vendors/Developer. The Complainant has further claimed to have spent more than Rs.15,00,000 from personal funds to complete internal work even after the Deed was executed and which was not reimbursed by the Respondents despite his raising the issue vide email.
- (iii) Alleging violation of Section 13(1) of the Act, it was stated that the Respondents received an advance/token amount of ₹10,00,000 i.e.



Rs.50,000/- on 07.07.2023 and Rs.9,50,000/- on 20.07.2023 before execution and registration of the Agreement for Sale on 05.10.2023 and that the said amount received by the Respondents as against total sale consideration of ₹74,00,000, exceeded the statutory limit permitted without a registered agreement.

(iv) In view of the alleged delayed possession, failure to issue the contractual possession notice, incomplete construction despite issuance of completion/occupancy certificates etc., the Complainant prayed for relief under Section 18 of the Act i.e. interest for every month of delayed possession as well as exemplary costs, appropriate penal action, and any other relief considered proper by the Authority. The Complainant also contended that execution of the standard-form Agreement and subsequent Deed of Sale does not waive the purchaser's right to challenge irregularities or claim compensation.

3. Per Contra, the Respondents while denying the allegations and reliefs sought by the Complainant; termed the complaint as false, frivolous, vexatious and an attempt to obtain unjustified monetary benefits has submitted as follows:-

(i) Respondents has contended that grievance regarding delay, incomplete construction or possession were afterthought as the same was never raised before or at the time of execution of the Sale Deed on 19.03.2024, registered on 12.04.2024. It was also stated that once the Sale Deed was executed and registered, the earlier Agreement for Sale merged into the final transaction and ceased to have an independent existence relief based upon the earlier Agreement and thus no relief based upon the earlier Agreement can be sought by the Complainant at this stage.



- (ii) While drawing attention to Clause 7 of the Agreement for Sale dated 05.10.2023, the Respondents stated that as per the said Clause 7, Completion Order and Occupancy Certificate issued by the competent authorities constitute conclusive proof of completion and in this case, the same were issued on 03.10.2023 and 03.11.2023 respectively. It was further pleaded that while the Completion Order certified that construction conformed to the sanctioned plans, the Occupancy Certificate authorized occupation of the units. While the Respondents stressed that thus their project BOTANICA was completed and ready for occupation by November 2023 and the Complainant having accepted these contractual terms voluntarily, cannot subsequently take a contrary position. Attention was also drawn to Clause 8 to contend that possession was available/deemed to have been offered upon issuance of the Occupancy Certificate and fulfilment of the payment requirements and several other purchasers took possession in November 2023 without raising disputes. An affidavit from another allottee was also placed on record by the Respondents to support this position.
- (iii) Responding to delay in execution of Sale Deed, the Respondents submitted that the final tranche of ₹7,77,000 was paid by the Complainant only on 12.04.2024, whereas the project had been granted Occupation Certificate in November 2023 itself and hence delay if any in execution of Sale Deed; resulted from the Complainant's own conduct in making the final payment, rather than any delay in construction or possession particularly when possession under the Agreement was conditional upon completion of payment. The Respondents also denied the claim for interest under Clause 9 stating that there was no delay attributable to them.



- (iv) Responding to averment of the Complainant as to ₹15 lakh internal-work claim, the Respondents submitted that it needs to be noted that no invoices, bills, receipts or comparable documentary evidence have been produced to substantiate this expenditure. Moreover, photographs relied upon by the Complainant appear to depict interior decoration/customisation undertaken by the purchaser rather than incomplete construction attributable to the developer. Further, the photographs and email relied upon by the Complainant lack the certification required under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023, and therefore should not be admitted or relied upon. The Respondents denied receiving the several emails allegedly sent to Mr. Pratik Raichandani and also pointed out that the email relied upon was not sent by the Complainant himself.
- (v) With regard to violation of Section 13(1) of the RERA Act, the Respondents denied the claim stating that a registered Agreement for Sale existed and the payment schedule records the payments received. The claim under Section 18 was also opposed, arguing that the provision applies where a promoter fails to complete or give possession in accordance with the Agreement and in this case, the project was completed, statutory approvals were obtained and possession was available within the stipulated period. Further, no contemporaneous correspondence showing that the Complainant demanded possession in November/December 2023 and that the Respondents refused or delayed it; has been placed on record. While objecting to the attempt to challenge the validity of the Completion Order or Occupancy Certificate by the Complainant, the Respondents have contended that these are statutory documents carrying a presumption of correctness and any challenge to

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their legality or authenticity would only lie before the concerned competent Authority.

- (vi) It was also sought to be contended that Respondent Nos. 1 and 7 being landowners, were not responsible for development and construction which was under taken solely by Respondent No. 9 who carried out the contractual negotiations and undertook substantive obligations towards the purchaser and that no independent contractual liability can therefore be imposed upon Respondent Nos. 1 and 7.
4. During the proceedings, the Complainants filed rejoinder to the reply filed by the Respondents, followed by a sur-rejoinder thereto filed by the Respondents. Both parties also filed affidavit in evidence as well as additional affidavits/ submissions.
5. During the course of the Arguments, the complainant referred to the case law as observed by the Hon'ble High Court of Bombay in the case of Park Xpress Jv Through Its Authorized ...V/s Mr Sagar Hargovind Saboo and also in the case Cci Projects Pvt Ltd Mumbai V/s Sriram Krishnan and also tendered the copies of these judgments. Similarly the Respondents referred to the case law as observed by the Hon'ble High Court of Bombay in the case of BKS Galaxy Realtors LLP V/S Shah Properties as well as in terms of the observations of Hon'ble Apex Court in Rangammal v/s Kuppuswami & another and also tendered the copies of these judgments. Barring the case of Rangammal v/s Kuppuswami & another which was referred to primarily to elaborate the concept of burden of proof as available under the Indian Evidence Act, 1872, the other three cases have been referred to and dealt with at appropriate place in the order. The relevance of the judgment in the Rangammal's case to the facts and circumstances of the case has not been brought out clearly by the



Respondent. It is relevant to add in this context, Rule 6 of the Goa Rules of 2017 which provides for the manner of holding an enquiry by the Authority, also puts a distinct primacy upon relevance of the documents and the submissions made by the Complainant and the proceeding of Authority are basically of summary nature. The Hon'ble High Court of Bombay in the case Cci Projects Pvt Ltd Mumbai V/s Sriram Krishnan vide Para 46 of its order has also observed that the legislative intent was to invest the Regulatory Authority with the Jurisdiction to decide the Complaints under Section 18 by conducting summary nature of scrutiny of undisputed facts.

6. I have heard the arguments advanced by both sides complainant represented by Adv. V. Sirsat and Respondent represented by Adv. Joy Mathew as well as perused the records of the case. After going through the entire records of the case, the points which arise for my consideration and findings thereon for the reasons to follow are as under:-

Sr. No.	Points for determination	Findings
A.	Whether the respondent No.1 to 8 being land owner are jointly liable alongwith the promoter/developer who are listed as Respondent No.8, 9 & 10?	In affirmative and as per para 8 of the order
B.	Whether the contention of the promoters that upon execution of the Sale Deed, the Agreement for Sale ceases to operate independently and having accepted the property without protest, the	In negative

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	Complainant is estopped from reopening the Agreement for Sale to claim compensation for alleged delay; is it tenable in the facts and circumstances of the case?	
C.	Whether the complainant had made the complete payment in time to the promoter as due under the Agreement for Sale dated 05.10.2023 and whether the promoters failed to give possession of the subject property to the complainant in time and in accordance with the terms of the Agreement for Sale dated 05.10.2023 and thereby are liable under Section 18(1) of the Act to pay interest as prescribed, for every month of delay to the complainant till the date of handing over of the possession?	In affirmative, as per para 10 of the Order
D.	Whether the claim of the Complainant that the internal work in the flat and certain project works remained incomplete even when the Deed was executed and consequently, he needs to be	In Negative

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	reimbursed Rs. 15,00,000/- spent by him from personal funds to complete internal work; is tenable?	
E.	Whether the promoters are liable for violation of Section 13(1) of the Act?	In Negative

7. Point No. A

- i. The case of the Complainant is that in terms of the provisions of Section 2(zk) of the Act, the landowner and Developer are promoter and are thus jointly liable for the functions and responsibilities specified under the Act. Accordingly, the Complainant has made all of them party to the case as Respondent. The Respondent on the other hand stated that Respondent Nos. 1 and 7 being landowners, were not responsible for development and construction which was under taken solely by Respondent No. 9 who carried out the contractual negotiations and undertook substantive obligations towards the purchaser and that no independent contractual liability can therefore be imposed upon Respondent Nos.1 & 7.

Pertinently, the promoters had placed a copy of the 'MEMORANDUM of UNDERSTANDING & AGREEMENT FOR JOINT VENTURE DEVELOPMENT' dated 10.03.2021 between the landowners and the promoter developers providing for sharing of the built up units as 47% share going to the developer promoter and the remaining 53% share was to be shared amongst the land owners. It is further noted that, the application for registration of the project was also made for registration of the project to be developed by way of Joint Development as the promoter developer

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and promoter land owners were shown separately under the respective categories.

- ii. The stand of the respondent is not only at variance with the prior arrangement as agreed to vide Agreement for Joint Venture Development and what was stated in the Application made for registration of the projects but is also not supported by its subsequent conduct in as much as the Agreement for Sale dated 05.10.2023 has been executed by the respondent No.1 to 8 as 'OWNERS/VENDORS' (Promoter-Land owners) with the complainant herein called as the 'PURCHASERS' alongwith the promoters/developers called as the 'DEVELOPERS or BUILDERS'
- iii. At this stage it would be beneficial to refer to the judgment of Hon'ble High Court of Bombay in case titled Wadhwa Group v. Vijay Choksi wherein the Hon'ble Court while observing that the term 'Promoter' under the Act includes every person associated with the construction of the building, held that RERA does not demarcate or restrict liabilities of different promoters in different areas and the liability is joint for all purposes under the Act, Rules and Regulation.
- iv. Hon'ble Court vide Para 17 of its order further observed as follows:-
"Explanation to Section 2(zk) makes all persons who construct or convert building into apartments or develop a plot for sale, as well as a person who sells apartments or plots to be promoters making them jointly liable as such for the functions and responsibilities specified under the Act, or the Rules and Regulations made thereunder. Thus, a person who does not actually construct or causes to be constructed a building but merely takes part in the joint venture and sells flats, becomes a Promoter. Appellant admits that it is entitled to a share in the joint venture in the constructed area, Neeta Sawant 13/20 SA(St.)-21842-2023-FC 26 February 2024



which it is entitled to sell. Thus, the Appellant is entitled to sell flats in the project and accept consideration for such sale. There is therefore no doubt to the position that, both Appellant as well as the second Respondent are Promoters and are jointly liable in respect of the responsibilities under the RERA and Rules and Regulations made thereunder.”

- v. In view of what has been noted herein above, it is clear that the land owners (listed as Respondent No. 1 to 7) in the facts and circumstances of the case are clearly covered in the definition of the Promoter under section 2(zk) of the Act and all the Respondents in the instant case, thus are jointly liable in respect of the responsibilities and functions of the promoter as provided under various provisions of the Act and Rules and Regulations made thereunder.

Thus Point No. A is answered in affirmative.

8. Point No. B

- i. Another plea raised by the respondent is that after execution of the Sale Deed, the earlier Agreement for Sale ceased to operate independently and the parties' rights became governed by the registered conveyance. Accordingly, the complainant cannot subsequently reopen the concluded transaction and claim compensation under the earlier Agreement. In this regard, reliance was placed upon BKS Galaxy Realtors LLP V/S Shah Properties by the Respondent. It was argued that the principal of waiver and estoppel would apply to the case on account of the complainant's acceptance of the flat without protest.
- ii. At the outset, it is noted that the respondent have not been able to clearly establish the relevance of the case law relied upon, to the facts and circumstance of the present case which relates to the statutory liability of

Answer

the promoter to pay the interest for every month of delay till the handing over of the possession of the subject property to the allottee, and arises from the provisions of Section 18(1) of the Act and the relevance of the Agreement for Sale in this context is only for the purpose of assessing the delay in handing over of the possession. Section 18(1)(a) of the Act reads as follows:-

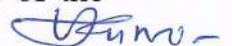
“18. Return of amount and compensation.- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,-
(a) In accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or”

Further, Maha REAT vide its order dated 14.06.2023 in Appeal No. AT006000000133980 has also observed that Section 18 of the Act specifically delineates the importance of Agreement for Sale for the purpose of assessing delay in handing over of the possession.

- iii. As far as the plea of the respondent as to the application of waiver and estoppel in the present case is concerned, it would be expedient to refer to the observation made by Maha REAT at para 25 of its order dated 14.03.2019 in Appeal No. 00600000010425 in case titled Ms. Rekha Sinha V/S Larson and Toubro Ltd. The same are extracted below:-

“25. I would like to point out that waiver is an intentional relinquishment of a known right which the party would have enjoyed if not waived. Waiver can also be a voluntary surrender of a right. Waiver signified nothing more than an intention not to insist upon the right.”

- iv. Pertinently, the Respondent in their reply or written submissions etc, have nowhere stated that as to how the complainant has relinquished or surrendered its right under section 18 of the Act, nor any clause of the



Deed of Sale has been referred to support their contention on the above ground.

- v. The Complainant while rebutting this contention of the respondent, during the course of the argument referred to case law as observed by Hon'ble Bombay High Court in its two judgements noted here below. It would be further expedient to refer to the said observations of Hon'ble High Court of Bombay in the overall conspectus of the case to reach at a decisive clarity on the issue in question.
- vi. The Hon'ble Court vide its order dated 22/03/2024 in case titled Park Xpress Jv Through Its Authorized ...V/s Mr Sagar Hargovind Saboo while observing that there was no reason to prevent the allottee to file the Complaint before Regulatory Authority after accepting the possession of the flat; held as follows

"It was therefore in the interest of allottee to first take possession of the flat before filing of the complaint under section 18 before the Regulatory Authority."

- vii. The Hon'ble Court further elaborated on this aspect in its order dated 18/06/2026, in the case Cci Projects Pvt Ltd Mumbai V/s Sriram Krishnan. Para 31 of the said order is extracted herein below for ready reference.

"31. Section 18 of RERA Act gives option to the allottees upon failure of the promoter to handover possession by the date specified in the agreement or as per the terms of the agreement either to withdraw from the project with refund of amount paid along with interest including compensation or to stay with the project and get interest for every month of delay. In the context of real estate project, where the performance of



promise of the promoter is to hand over possession by a specified date, the right given by Section 18 of RERA Act to continue with the project is nothing but permitting acceptance of delayed performance without foregoing the right to claim interest for every month of delay.”

- viii. It would further be beneficial to refer to the observations of the Hon’ble Apex Court in the case of **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors.” 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).

In view of what has been observed herein above, the contention made by the respondent apparently being without any basis, does not hold water and is hereby rejected.

Thus Point No. B is answered in negative.

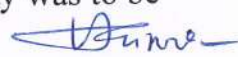
9. Point No.C

- i. The case of the Complainant is that although the Project ‘Botanica’ received Completion Order on 3 October 2023 and the Occupancy Certificate on 3 November 2023, the subject property and associated project works were actually not complete and thereby no possession letter or written notice in terms of the provisions of clause 8 of the Agreement for Sale declaring the flat ready for occupation, was ever issued. It was further stated that Clause 8 of the Agreement provides that the purchaser would be deemed to have taken possession within 15 days of the



Vendors/Developers giving written notice along with the Occupancy Certificate, informing the purchaser that the flat was ready for occupation.

- ii. Further, several emails sent to the Respondents regarding the incomplete work, were of no avail. The Complainant in support of his statement i.e. the subject property was not duly completed even till the date of execution of Sale Deed, placed some photographs on record, stated to be clicked post execution of Deed of sale.
- iii. Referring to Clause 15 of the Deed of Sale which records that vacant physical possession was handed over upon execution of the Deed; it was stated that since the Deed of Sale was eventually executed on 24 April 2024, there has been a clear delay of approximately five months in handing over the possession of the subject property to the Complainant since the agreed date of possession i.e. on or before November 2023. Attention was also brought to clause 29 of the Agreement for Sale which also stipulates to the same effect.
- iv. The Complainant further pleaded that since no such notice in terms of the provisions of clause 8 of the Agreement for Sale was ever received by the complainant purchaser, therefore possession cannot be treated to have been delivered before 24 April 2024.
- v. Attention was also drawn to Clause 9 of the Agreement for Sale whereby the Respondents were liable to pay 18% interest on the entire amount received, for every month of delay in handing over possession.
- vi. The Respondents on the other hand has contended that Clause 7 provides that the grant of Completion Order and Occupancy Certificate for the Project as per the Agreement, constitutes conclusive proof of completion which in the present case, were granted on 03.10.2023 & 03.11.2023 respectively and thereafter the possession of the subject property was to be



delivered to the Complainant upon payment of all outstanding amounts. The Respondents further sought to rely on Clause 8 to submit that possession was available/deemed to have been offered upon issuance of the Occupancy Certificate and fulfilment of the payment requirements and several other purchasers accordingly took possession in November 2023. An affidavit from another allottee was also placed on record to support this position. It was further stated that despite a part of consideration was outstanding, the Deed of Sale was executed on 19.03.2024 at the Complainant's request but the Registration was completed only on 12.04.2024, following the final payment of Rs. 7,77,000/- on 12.04.2024. The Respondent thus claimed that the delay in concluding the transaction is therefore attributable to the Complainant. It was further pointed out that, the Complainant has produced no documentary evidence establishing that he paid the entire consideration by November 2023 or requested possession or execution of the Sale Deed upon completion and thus no delay attributable to the Respondents has been established, and therefore requirements for compensation under Section 18 of the RERA Act are not satisfied.

- vii. It needs to be noted that while disputing the relief sought by the complainant under Section 18 of the Act, the respondent has argued that the said provision applies where a promoter fails to complete or give possession in accordance with the Agreement whereas in the present case, the project was completed, statutory approvals were obtained and possession was available within the stipulated period. Further, the complainant has not placed any contemporaneous correspondence showing that the complainant demanded possession in



November/December 2023 and that the Respondents refused or delayed it. It was further submitted that similarly the prayer for interest under Clause 9 is also not tenable as there was no delay attributable to Respondent which happened essentially on account of Complainant's delayed payment.

- viii. It needs to be noted that the plea of the respondent that the project was completed within the agreed period as is evident from the completion order dated 03.10.2023 and consequently obtained occupancy certificate dated 03.11.2023; is not only well supported in terms of the record submitted but is also not contested by the complainant. However, the other related plea of the Respondents that in terms of Clause 8 of the Agreement for Sale (AFS dated 05.10.2023), that the possession was available/deemed to have been offered upon issuance of the Occupancy Certificate and fulfilment of the payment requirements; completely overlooks the express language and also the intent of incorporation of the said Clause 8 in the Agreement for Sale. Pertinently, the respondent has neither denied nor controverted the plea of the complainant that no notice in terms of clause 8 of the Agreement was ever received by him and also has not furnished any document to show that any such notice was ever issued. The relevant portion of which is extracted here below:-

"8. The PURCHASER shall be deemed to have taken possession of the "SAID FLAT" within 15 days, on the VENDORS and DEVELOPERS/BUILDERS giving written notice along with the copy of the said Occupancy Certificate to the PRUCHASER intimating that the "SAID FLAT" is ready for occupation on payment of the entire amounts



paid hereunder. Subject to the PRUCHASER making the full payment of all the amounts due by them under this agreement.”

- ix. It is relevant to add that the remaining portion of the said Clause 8 relates to the contingencies relating to delay in certain cases and where the promoter shall not incur any liability for delay. Apparently, one of the intended purpose of insertion of Clause 8 in the Agreement was to give a prior intimation to the allottee that the subject property was ready for occupation upon payment of balance amount and also informing the amounts due towards him under the Agreement. A copy of the Occupancy Certificate was also to be enclosed with the said intimation. Alternatively, the said communication could also have been made to inform the allottees of any delay and the reasons thereof etc. Thus the essence of the said provision was to apprise the allottee as to the timely completion/delayed completion of the project.
- x. Pertinently, the said clause 8 also contains a deeming stipulation as to having taken over of the possession of the subject property by the allottee upon payment of balance amount due, within 15 days of giving of the written notice stating that the same was ready for occupation. In view of the requirement of issuance of written notice under clause 8 to the allottee along with a copy of the Occupancy Certificate for making the balance payment as due and taking over of the possession of the subject property and also deeming stipulation as to having taken over of the possession of the subject property upon payment of balance amount by the allottee within 15 days; the requirements laid down under clause 8 of the agreement were required to be strictly complied with as laid down and in the absence of issuance of any such notice by the promoter, the same



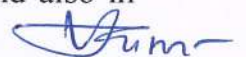
cannot be inferred to have been complied with on the basis of an imaginative interpretation of the provision contained in Clause 8. Thus, if no such notice was issued to the allottee, the delay in handing over of the possession of the duly completed subject property to the complainant /execution of Sale Deed cannot be defended by the respondent in terms of the provision of Clause 8 to escape the interest liability by the promoter. Another related plea of the respondent is about delay in making of complete payment/ consideration of the subject property as due under the Agreement, by the Complainant.

- xi. There is no dispute between the complainant and the promoters as to the total amount paid towards consideration of the subject property. It is noted that approximately 90% of the payment is made by the complainant as on 27.10.2023 i.e. before November, 2023 and the remaining 10% was paid on 12.04.2024 which is being claimed by the respondent as delayed payment leading to the delay in handing over of possession of the subject property as well as execution of the Sale Deed. Rejecting the suggestion, the complainant failed has pointed out that the Respondents have not produced any demand notice, default notice, or other correspondence showing that the complainant failed to make any payments according to the agreed schedule or in response to a demand including the balance payment paid in April, 2024. As such, the delay in possession is entirely attributable to the Vendors/Developer. It was further stated that clause 5 of the agreement for sale requires that Vendors/ developers /builders shall inform the purchaser sufficiently in advance, intimating the purchaser stage of completion of construction and payment due at that stage in terms of Schedule IV of the agreement for sale. Issuing letter/notice for making of payment due if any, intimating the status of completion of



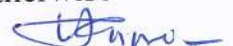
building/flat/apartment and handing over possession of unit was responsibility of the Respondents herein. Mere issuing of Occupancy Certificate by the authority to the developer/builder/seller does not prove delivery of the possession of the unit to the Complainant Allottee.

- xii. It would be relevant here to refer to the schedule of payment annexed as schedule IV to the Agreement of Sale dated 05.10.2023 which provides for payment of 5% of the total consideration at the stage of completion of lifts, water pumps, electrical fittings etc. and another 5% to be paid at the time of possession. This further needs to read with the provisions of clause 5 which requires the promoter to inform the purchaser the due payment at any stage sufficiently in advance informing him the stage of completion of construction and also the clause 8 of the agreement for sale which mandates the promoter to issue a prior notice to the allottee informing him of the amount of balance payments due and that the subject property was ready for occupation and also enclose a copy of the Occupancy Certificate pertaining to the same. It is trite to observe that the penultimate stage of payment scheduled at the completion of installation of lifts, water pumps etc. and the issuance of Occupancy Certificate as well as handing over the possession, could happen in a very short span of time and the 10% payment relating to these last two milestones is often gets merged together. The requirement of informing the balance payment due in the written notice to be issued in terms of clause 8 read with clause 5 of the agreement appears to have been laid down in this context as well as in respect of any other prior payments which remained unpaid till the issuance of the said notice.
- xiii. Taking note of the above and in the absence of having any specific notice issued by the promoter in terms of clause 8 of the agreement and also in



the absence of any specific delay/non payment pointed out by the Respondents, the case of the Respondents that the delay in handing over of the possession and execution of sale deed of the subject property is attributable to the complainant, is apparently devoid of any merit and thus needs to be rejected without any further consideration.

- xiv. Admittedly, the Respondent has failed to hand over the possession of the duly completed subject property to the Complainant in time and has thereby committed violation of the Agreement of Sale and obligations of a promoter as per the Act attracting liability under Section 18(1) of the Act. On perusal of Section 18(1) of the Act read with the proviso appended to it, it is clear that if Promoter fails to complete the project or is unable to deliver possession of the duly completed apartment, plot or building in accordance with the terms of the Agreement for sale to the allottee and the allottee does not intend to withdraw from the project which is the case herein, Promoter shall pay interest for every month of delay till the handing over of the possession, to Allottee at such rate as may be prescribed. Further, such delay in handing over the possession has to be assessed in terms of the Agreement for Sale.
- xv. On the issue, Maha REAT vide its order dated 14.06.2023 in Appeal No. AT006000000133980 while observing that Section 18 of the Act specifically delineates the importance of Agreement for Sale for the purpose of assessing delay in handing over of the possession. Maha REAT vide another order dated 14.03.2019 in Appeal No. 00600000010425 had elaborated on this aspect as follows:-
- “So, ratio of case law (1976) | S.C.C. 128 as referred by Ld. counsel of respondent can be made applicable to this matter by reading not only proviso with opening sentence but also the clause (a) and (b). Otherwise



opening sentence will remain meaningless and incomplete. Now the case of allottee falls under option second as allottee decided to continue with the project. So, as per proviso of Section 18(1), interest is to be calculated for every month of delay till the possession is handed over to the allottee. In the present matter, delay started from October, 2016 and it ends on 05/12/2017 when the possession is given to the allottee. So, period of delayed possession of the flat is 15 months. I would like to point out that period of delayed possession is required to be ascertained from the date on which possession was agreed to be given till the date on which the possession was actually given.”

- xvi. A similar provision is also incorporated in clause 9 of the Agreement for Sale dated 05.10.2023. Thus, the promoter in the instant case is under a statutory obligation and bounden duty in terms of the provisions of section 18(1) of the act as well as clause 9 of the Agreement for Sale dated 05.10.2023, to pay interest for every month of delay, till the handing over of the possession of the subject property to the allottee. Pertinently, the right of the complainant to interest is a statutory right which has been held to be absolute and unconditional by the Hon’ble Apex Court.
- xvii. In the case of **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors.” 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).
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xviii. In view of above, it could be safely inferred that the relevant period of delay for the purposes of calculating the interest liability of the promoter for delay in handing over of the possession of the subject property in the present case would be for the period commencing from 01.11.2023 (agreed date of handing over of the possession being 'on or before November, 2023') till the handing over of the possession of the subject property to the complainant which in this case would be deemed to be the date of execution of sale deed i.e. 19.03.2024. Pertinently, while promoter has not submitted any details as to the date of handing over of the possession of the subject property, the complainant has claimed to have taken over the possession of the subject property by virtue of clause 15 of the sale deed executed on 19.03.2024 and further registered on 12.04.2024. Since the content of the Deed of Sale executed on 19.03.2024 has been agreed to by both the parties and the documents has been voluntarily signed; it would be safe to infer that the possession of the subject property was handed over by the vendors and taken over by the purchaser complainant on 19.03.2024 particularly when the Clause 15 of the Sale Deed reads as follows:-

“15. That the vacant physical possession of the SAID FLAT has been handed over by the **VENDORS** to the **PURCHASERS** simultaneously upon execution of the present **Deed of Sale and Conveyance.**”

xix. Rules 18 of the Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosure on websites) Rules, 2017 prescribes the sale of interest payable by the promoter as follows:-

Rule 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 (MCLR) plus two percent.”

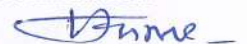
Since the highest SBI MCLR as applicable on date happens to be 8.8% (revised since 15.09.2026) and as such, the interest on the amount to be refunded would be leviable at the rate of 10.8 %.

- xx. In view of what has been discussed and noted herein above, the promoter in the present case, shall be liable to pay interest under Section 18(1) of the Act at the rate of 10.8% on an amount of Rs.66,60,000/- (the total amount paid by the complainant to the promoter before the agreed date of possession i.e. November 2023) for the period commencing from 01.11.2023 till 19.03.2024 and since the amount of Rs.7,77,000/- was paid on 12.04.2024 after the date of handing over of possession and execution of Sale Deed, no interest liability is made out on the promoter for the period. Further, the promoter has not claimed any converse interest liability on the complainant.

Thus Point No. C is answered in above terms.

10.Point No. D

- i. The complainant has also inter alia stated that since the internal work in the flat and certain project works remains incomplete even when the deed was executed, he had to spend more than Rs.15 lakhs from his personal funds to rectify these deficiencies which needs to be imbursed to him by the promoter. The promoter/Respondent while denying the allegations and contesting the said claim, submitted that no invoices, bills, receipts or comparable documentary evidence have been produced to substantiate this expenditure and the photographs relied upon by the complainant are illegible and appear to depict interior decoration/ customization



undertaken by the purchaser rather than incomplete construction attributable to the developer. It was thus pleaded that the costs of such personal interior works cannot be imposed upon the builder.

- ii. A perusal of the photographs and submissions made by the complainant in support of his contentions reveals that the alleged deficiencies has neither been elaborated in his complaint, written submissions etc. nor the alleged deficiencies are duly marked on the photographs submitted. Further, no details of the works undertaken to rectify these deficiencies have been furnished besides any bills showing the goods brought or payment done for job work/ labour etc. Thus, the mere assertion of the complainant that the subject property and building was not complete as per the Agreement and submission of same photographs without clearly marking the alleged deficiencies; and any support to the claim made by the complainant particularly when the Completion Certificate and Occupancy Certificate for the complete project have already been granted on 03.10.2023 and 03.11.2023 respectively. In view of what has been noted herein above, the claim of the complainant does not get substantiated even in terms of his own submissions. As the claim of the complainant is otherwise also not well supported with relevant submissions and documents, the same need not be examined any further and is thus rejected.

Thus the Point No.D is answered in negative.

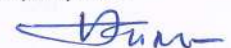
11.Point No. E

- i. While alleging violation of Section 13 of the Act on the part of the promoter, the complainant has stated that the Respondents received an advance/token amount of Rs. 10,00,000/- before execution and registration of the Agreement for Sale which exceeded the statutory limit of 10% of the total sale consideration of ₹74,00,000, permitted under Section 13 of



the Act and the promoter is thus liable for penalty under the provisions of the Act.

- ii. Admittedly, Section 13 of the Act mandates the promoter not to accept a sum more than ten per cent of the cost of the apartment, as an advance payment or an application fee, from a person without first entering into a written agreement for sale. It goes without saying that the applicability of any legal provision has to be assessed in the factual matrix of the case. The submission of the parties reveals that the complainant had made the initial payment of Rs.50000 to the promoter on 07.07.2023, thereafter of Rs.9,50,000/- on 20.07.2023 which was followed by execution and registration of Agreement for Sale on 05.10.2023. It was followed by a lumpsum payment of Rs.55,86,000/- made by the complainant on 27.10.2023. Thereafter, a payment of Rs.7,77,000/- was made by the complainant on 12.04.2024. It is also pertinent to note that the delivery of possession vide agreement for sale dated 05.10.2023 was promised to be made on or before November 2023.
- iii. The above conspectus of the payments made by the complainant to the promoter reveals the payment of Rs.10,00,000/- i.e. approximately 13.5% was made by the complainant to the promoter approximately 75 days prior to the execution of the Agreement for Sale and a further lumpsum payment of approximately 75.5% was made to the promoter on 27.10.2023 and the specified date of possession was on or before November 2023. Evidently, the booking of the flat was initiated when the project was expected to be completed in next 03-04 months and accordingly the payments were made by the purchaser complainant in lumpsum as per his convenience as the schedule of payment prescribed in the agreement was hardly applicable at that stage. Further the payment of Rs.10,00,000/-



(13.5% of the total sale consideration) received by the promoter from the complainant before execution and registration of agreement for sale, exceeded marginally the prescribed limit of 10%. It is further relevant to note that this issue has been raised by the complainant only at the stage of filing of the complaint under section 31 of the Act as it has not even averred any statement in his submission that the said acceptance of Rs.10,00,000/- which happened to be more than 10% of the total consideration permitted under the provisions of the Act; was objected to or opposed by it prior to initiating the present proceedings.

- iv. Keeping in view what has been noted herein above, this does not appear to be a case of actionable violation of section 13 of the Act particularly when the complainant has not specifically sought any relief on this count under the prayer clause of the complaint.

Thus the Point No.E is answered in negative.

12.Directions

In view of the findings arrived at in respect of various points of determination listed from para 7 to 11, it will be just to issue the following directions in the matter.

- (i) It is directed that the Respondent shall within four weeks from the date of issue of the order, pay to the Complainant interest @ 10.80% (highest rate of MCLR as on 15.09.2026 i.e 8.80% + 2%) on the total amount of Rs.66,60,000/- paid before the specified date of possession in the instant case, for the period from 01.11.2023 till 19.03.2024 in lump sum.


Virendra Kumar, IAS(Retd)
Member, Goa RERA