



## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint( 345)/2023/1174

Date: 21 /11/2023

**Mr. Ganpat Singh Bishnoi,**  
R/o UG-1, Venkatesh Annapurna Sankul,  
Nr. Pandav Chapel, Aquem-Alto,  
Margao, South Goa-403601.

..... Complainant

*Versus*

**1. M/s Expat Projects & Development Pvt. Ltd.,**

Company Identification No. (CIN)

U45202KA2007PTC043869.

Having registered office at 2<sup>nd</sup> Floor, Sobha Pearl No. 1,  
Commissariat Road, Bangalore, Karnataka. 560025.

Having GOA Office at, A2-213, 2<sup>nd</sup> floor,  
Expat VIDA Uptown Commercial, Kadamba Plateau, Goa-403402.

Represented by its Director,

Mr. Lancel Victor D'Souza,

Bearing, DIN 6398016,

Residing at new no. 16, LILIAN House, 3<sup>rd</sup> Floor,

Bhandar Lane, L. J. Road,

Mahim, Mumbai, Maharashtra, India. 400016.

**2. Naiknavare Construction Pvt. Ltd.,**

Having registered office at 1204/4, Ghole Road, Shivajinagar, Pune,  
Maharashtra-411004.

Represented by Mr. Satyawan Gorakh Ghadge,

R/o D-207, Swapnpurti Society, Sasane Nagar,

Kalepadal Road, Hadapsar,

Pune, Maharashtra. 411028.

..... Respondents

**ORDER**  
**(Dated 21.11.2023)**

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 complainant has prayed this Authority to direct the respondent no. 1 to refund the amount of ₹18,50,000/- (Rupees Eighteen Lakhs Fifty Thousand only) along with interest @10% per annum from 31.08.2020 till full and final payment by the Respondent no. 1 to the Complainant.

2. It is the case of the complainant that by virtue of the agreement for sale dated 29.01.2019, which was registered on 31.01.2019, the complainant was allotted by the respondent no. 1, an apartment in the housing complex named as "Expat Vida Uptown Goa Apartments, Phase 3" bearing no. 216 on the second floor of the building no. B 4 as mentioned in schedule II in the said agreement for sale. It is stated that in the said agreement for sale, the date fixed for handing over the possession of the said apartment was on or before 31.08.2020 and it is mentioned in the said agreement that in case of failure to deliver the possession by the said due date, the respondent would be liable to pay the penalty to the complainant @ 10% per annum from the date of default till the actual hand over of the said apartment.
3. According to the complainant inspite of paying the entire consideration amount of ₹18,50,000/- (Rupees Eighteen Lakhs Fifty Thousand only) towards the said apartment, the respondent no.1 failed to hand over the possession of the said



apartment till date nor paid any amount as penalty inspite of repeated requests and reminders. Hence the prayer of the complainant as stated above.

4. Reply has been filed by the respondent no. 1 wherein it is stated as preliminary objections that the complaint cannot be entertained as the complainant is an investor; that the complainant paid the consideration amount in contravention of the RERA Act and that the respondent has cancelled the agreement for sale dated 29.01.2019 by sending the termination letter dated 12.06.2023 and hence this Authority has no jurisdiction to decide the present complaint.
5. On merits, the respondent no. 1 has stated that the complainant as an investor invested ₹17,00,000/- (Rupees Seventeen Lakhs only) even before the respondent no.1 could even register the project with RERA and that in the year 2019 the respondent no.1 was “forced” to enter into an agreement for sale, which agreement is in derogation of the RERA Act since Section 13(1) prohibits the promoter to take anything more than 10% and thus makes the transaction illegal. It is further stated that the time line to achieve the completion of the project was not possible due to pandemic that prevailed from March 2020 to December 2021 and further the non payments of the other allottees added more problems and hence due to “unavoidable circumstances”, the said agreement was not possible to be performed and hence termination letter dated 12.06.2023 was issued to the complainant. According to the respondent no. 1, once the agreement for sale is cancelled there is no possibility

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for specific performance of the contract. Hence, the prayer of the respondent no. 1 that the complaint be dismissed with compensatory costs.

6. Documents were produced on record by both the parties. Parties also filed their respective affidavits. By order dated 31.10.2023, application for amendment of complaint was allowed and accordingly the complainant was allowed to carry out amendment in the cause title i.e. by making M/s Expat Projects and Development Pvt. Ltd. represented through its director, Mr. Lansen Victor D'Souza as respondent no. 1. Amended complaint was filed and served on the respondent no. 1 and opportunity was given to the respondent no. 1 to file additional reply to the complaint, if any, however the representative of respondent no.1 submitted before this Authority that respondent no. 1 does not wish to file any additional reply to the amended complaint. The amended complaint along with documents was also served on the aforesaid director, Mr. Lansen Victor D'Souza and opportunity was given to the said director to file reply to the amended complaint but no reply was filed by the said director. Written submissions were filed by Ld. Advocate T. Patel for the complainant and Ms. Malvina Franco, representative of the respondent no. 1, whereas none appeared on behalf of respondent no. 2. Oral arguments were also heard.
7. After going through the entire records of the case, the point which comes for my determination along with the findings and reasons thereon is as follows:-



Point for determination	Finding
Whether the complainant is entitled for the refund of ₹18,50,000/- (Rupees Eighteen Lakhs Fifty Thousand only) along with interest thereon from 31.08.2020 till full and final payment of the same by the respondent no. 1 to the complainant?	Partly in the affirmative to the extent of ₹ 17,00,000/- (Rupees Seventeen Lakhs only).

### REASONS

8. From the agreement of sale dated 29.01.2019 registered on 31.01.2019, it is clear that the respondent no. 1/ promoter was bound to give possession of the apartment bearing no. 216 on the second floor situated in the building no. B 4 in the said complex named as “Expat Vida Uptown Goa Apartments, Phase 3” on or before 31.08.2020 and the total consideration amount was Rs. 18,50,000/- (Rupees Eighteen Lakhs Fifty Thousand only). The agreement for sale states that “prior to the execution of these presents, the allottee has paid to the developer a sum of ₹17,00,000/- (Rupees Seventeen Lakhs only), being an advance payment or an Application Fee as provided in Section 13 of the said Act (the payment and receipt whereof the Developer both hereby admit and acknowledge) and the allottee has agreed to pay/ has paid to the Developer the balance of the sale consideration in the manner hereinafter appearing.” In recital 1 (b) on page 8 of the said agreement for sale, a chart is prepared wherein it is



mentioned that out of the total consideration of Rs. 18,50,000/- (Rupees Eighteen Lakhs Fifty Thousand only), the complainant has yet to pay Rs. 57,500/- as “part payment to be paid, on completion of the electricity and water connection” and Rs.92,500/- “to be paid on handing over of possession of the Apartment or after receipt of completion certificate which ever is earlier”. From the agreement for sale it is clear that the complainant has paid only an amount of ₹17,00,000/- (Rupees Seventeen Lakhs only) towards the total consideration amount of ₹18,50,000/-. Besides, the aforesaid amount of ₹17,00,000/- as admitted in the agreement for sale, no other document is produced on record by the respondent no.1 to show that he has paid the balance consideration amount to the respondent no. 1. From the records of the case, it is proved that the complainant has paid an amount of ₹17,00,000/- only towards the sale consideration of the said apartment.

9. As per the agreement for sale, the respondent no.1 was to give possession of the said apartment on or before 31.08.2020. It is an admitted fact that the developer/ the respondent no.1 has till date not given possession of the said apartment to the complainant. Hence an indefeasible and absolute right accrues in favour of the said complainant under Section 18 of the RERA Act, which is reproduced hereunder:-

**“18. Return of amount and compensation.-** (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—



(a) in accordance with the terms of the agreement for sale or, as the case may be, **duly completed by the date specified therein;** or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, **he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:**

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the



terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.” (emphasis supplied).

10. Thus, if the respondent no.1/ the promoter has failed to complete or is unable to give possession of the said apartment in accordance with the terms of the Agreement for Sale i.e. duly completed on or before 31.08.2020, statutory right accrues in favour of the allottee after August 2020 either to demand the refund of the money paid to the promoter along with interest or if the allottee does not wish to withdraw from the project, the allottee shall be paid by the promoter interest for every month of delay till handing over of the possession. In this case, the ruling of the Hon’ble Supreme Court in the case of **“Imperia Structures Ltd. Vs. Anil Patni and Another” 2020 (10) SCC 783** is squarely attracted and hence the relevant part of the same is reproduced herein below:-

“25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. **The right so given to the allottee is unqualified** and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed.” (emphasis supplied).





11. 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.”

12. Thus, invoking Section 18 and Rule 18 of the said Act the benefit of the aforesaid statutory interest goes to the complainant, who has entered into an agreement for sale with the promoter. As a consequence thereof Section 18 and Rule 18 of RERA are squarely attracted in the instant complaint.
13. The respondent no.1 in the reply and in the written submissions as well as in the oral arguments has submitted that the delay in completing the construction is due to the facts that the pandemic was prevailing from March 2020 till December 2021 which affected the real estate business; non payments by the other allottees and “financial blow due to EOW case which has frozen the bank account” of the respondent no.1. There is no merit in the aforesaid submissions



since it is held by the Hon'ble Supreme Court in the case of "**M/s Imperia Structures Ltd. vs. Anil Patni and another**" 2020 (10) SCC 783 that "**non-availability of contractual labour, delay in notifying approvals cannot be construed to be force majeure events from any angle**" (emphasis supplied). In the case of "**M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others**" in civil appeal no. (s) 6745-6749 and 6750-6757 of 2021, the Hon'ble Supreme Court has clarified that "if the promoter fails to give possession of the apartments, plot or building within the time stipulated under the terms of the agreement, then allottee's right under the Act to seek refund/claim/ interest for delay **is unconditional and absolute, regardless of unforeseen events or stay orders of the Court/ Tribunal**" (emphasis supplied). Thus, the grounds as stated by the respondent no. 1/ 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.

14. The respondent no.1 has submitted that "in the year 2019 the respondent was forced to enter into Agreement inspite of the fact that said Agreement is in derogation of the RERA Act Section 13 (1) which prohibits the promoter to take anything more than 10% which makes the whole transaction as illegal". There is no evidence on record to show that the respondent no.1 was "forced" to enter into the said agreement for sale. The records show that the respondent no.1



willingly entered into the said agreement for sale on 29.01.2019 and registered the same before the Sub-Registrar of Tiswadi on 31.01.2019.

15. Though the respondent no.1 has submitted that the complainant had assured the respondent no.1 that the said agreement was being entered “in order to secure the investment of the complainant for tax benefit” and that the said agreement for sale “would not be enforced”, however except the bare statements of the respondent no.1 there is nothing on record to suggest so. Even otherwise this Authority has no jurisdiction to declare the said agreement for sale as null and void or to look behind the façade of the clear and unambiguous recitals of the said agreement for sale.
16. The respondent no.1 has further submitted that this Authority has no jurisdiction to order to the respondent no.1 the refund of the amount to the complainant along with interest thereon since by legal notice dated 12.06.2023, the respondent no.1 has already cancelled the said agreement for sale dated 29.01.2019. In this regard the respondent no.1 has also produced on record the legal notice dated 12.06.2023 wherein it is inter alia stated that “I am under instruction to state that my client is unable to deliver the possession pertaining to your unit since the whole project is delayed and therefore under Section 11(5) of the RERA Act my client is hereby canceling the said agreement dated 29.01.2019 which by this notice stands terminated”. The reasons for termination of the said agreement are stated in the said legal notice as follows:-



“6. It is stated that as you are aware of the Pandemic that was prevailing from March 2020 which continued till December 2021 that impacted the whole construction industry therefore the timeline to achieve the completion of the project was not possible. The non-payments of the other allottee and job loss has added to the problem. My client was also dented with financial blow due to EOW case which has frozen the bank account of my client

7. ....

8.....

9....It is stated that you are aware that the said project is delayed, firstly due to covid, secondly due to non-payment of allottees and thirdly due to financial mobilization which my client is going through”

17. In this context, it is significant to reproduce hereunder **section 11 (5)** of the RERA Act:-

**“11. Functions and duties of promoter.-**

(5) The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause”

18. From the aforesaid Section 11(5) of the RERA Act it is clear that the promoter may cancel the allotment “only in terms of the agreement for sale” and if the allottee approaches this Authority being aggrieved by such cancellation, this Authority has to ascertain as to whether the said cancellation is in accordance



with the terms of the agreement for sale, whether such cancellation is unilateral or not and whether such cancellation is having sufficient cause. From the legal notice dated 12.06.2023, whereby the agreement for sale dated 29.01.2019 was cancelled by the respondent no.1, it is clear that the reasons given for cancellation of the said agreement are not in accordance with the terms of the agreement for sale and also that no "sufficient cause" within the purview of the RERA Act is shown/ submitted in the said legal notice. Since, the said termination of the agreement for sale by the respondent no.1 during the pendency of the complaint violates the provisions of Section 11(5) of the RERA Act, the said termination is bad in law and therefore will not affect the legal rights accrued in favour of the complainant after the due date of possession of the apartment i.e. 31.08.2020 as mentioned in the said agreement for sale.

19. The complainant has paid to the promoter/ respondent no.1 a sum of ₹17,00,000/- (Rupees Seventeen Lakhs only) towards the consideration of the said apartment, which amount he is entitled to get refunded along with statutory interest. The cause of action accrued in favour of the complainant and against the promoter on 31.08.2020, on or before which date the respondent was bound to give possession of the said apartment to the complainant. Thus the date from which the interest on the consideration amount paid by the complainant is to be calculated is the date when the cause of action accrued in favour of the complainant. Therefore, the prescribed interest as per the aforesaid Rule 18 starts running from 31.08.2020 on the consideration amount of ₹17,00,000/-



(Rupees Seventeen Lakhs only) paid by the complainant. 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 8.75% per annum. Adding two percent to the said interest as per Rule 18 comes to 10.75% per annum. Hence, the promoter/ respondent no.1 is liable to pay to the complainant 10.75% per annum interest for every month of delay to the complainant on the total amount of ₹17,00,000/- (Rupees Seventeen Lakhs only) paid by the complainant from the due date of delivery of possession i.e. from 31.08.2020 as mentioned in the Agreement for Sale till the actual return of the said amount to him.

Hence, the instant point is answered partly in the affirmative to the extent of ₹17,00,000/- (Rupees Seventeen Lakhs only) along with statutory interest thereon.

20. 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:-



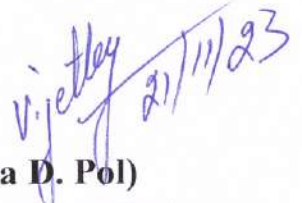
## ORDER

The Promoter/ respondent no.1 is directed to refund the amount of ₹17,00,000/- (Rupees Seventeen Lakhs only) to the complainant within two months from the date of this order.

Further the said promoter/ respondent no.1 is directed to pay 10.75 % per annum interest (present lending rate of interest by SBI which is 8.75 % per annum plus two percent) for every month of delay to the complainant on the aforesaid amount paid by him from 31.08.2020 till the date of actual payment of the aforesaid refund.

Under Section 61 of the RERA Act, the respondent no.1 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 no.1 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.

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