



## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (381)/2023/258

Date: 05/03/2025

### BEFORE THE MEMBER SHRI VINCENT D'SILVA

**1. Mr. Joseph Bonaventure Rodrigues,**  
82 years of age, son of Mr. Anthony Rodrigues,  
Indian National, married, retired, and his wife

**2. Mrs. Brenda Barbara Rodrigues,**  
79 years of age, married, retired,  
Indian National, both residents of  
Flat No. 202, Krishna Kripa, Jay Bharat CHSL,  
3<sup>rd</sup> Road, Khar West, Mumbai-400052.

.....Complainants

*Versus*

**PRESCON HOMES PRIVATE LTD.,**  
A company registered under the Companies Act,  
Having its registered office at 201, 2<sup>nd</sup> Floor,  
Prestige Precinct, Almeida Road,  
Panchpakhadi, Thane (West), 400601 and  
its Goa office at Prescon, Office No. 207,  
2<sup>nd</sup> Floor, Edcon Mindspace,  
Behind Campal Trade Centre, Campal,  
Panaji-Goa, 403001, represented by its Directors, namely:  
Director No. 1) Mr. Nirmal Bhagirathprasad Kedia  
Director No. 2) Mr. Vijay Kumar Puranmal Khowala.

.....Respondent

Ld. Advocate Sandesh G. Arabekar along with Ms. J. Fernandes for the complainants.

Ld. Advocate Jonathan George for the respondent.

**ORDER**

**(Delivered on this 5<sup>th</sup> day of the month of March, 2025)**

This order shall dispose of the complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016.

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

That the complainants are senior citizens and are lured by the promises made in the brochure of the respondent for Ikigai Senior Living Project in Kadamba Goa stated to be designed to cater to the specific needs of senior citizens. One Mr. Savio Ribeiro representing himself as sales manager of the respondent met and discussed with the complainants on several occasions promising many more things about the project than what was stated in the brochure and also promised to reduce the cost as special case for the complainants. The said representative emailed to the complainants on 27.09.2022 demanding certain KYC documents of the complainants and also demanded payment @ 62.50% of the consideration amount of ₹68,04,000/- which amounted to ₹42,52,500/- towards booking amount of the apartment which was to be made by the complainants latest by 30.09.2022 and the agreement for sale to be executed at Sub-Registrar office within 30 days of the booking. The said email also provided bank details for the payment of the booking amount. The said quotations were also discussed by said Mr. Savio Ribeiro with the complainants earlier and in addition to the consideration amount of ₹68,04,000/- considering other additional payments to be paid by the complainants to the respondents, the total amount worked out to a sum of ₹84,01,188/- as reflected in the above referred quotation.

3. The complainants accordingly decided to book an apartment in the said project named as "IKIGAI GOA" bearing flat no. 206, 2BHK, admeasuring 68.70 sq. mts. of carpet area, as defined under RERA, including a right to use common amenities and a right to access to the club subject to payment of charges on the 2<sup>nd</sup> floor in Building A-4 in the said project at Azossim-Goa. The Complainants on 29.09.2022 were called at the office of the respondent located at office no. 207, second floor, Edcon Mindspace, behind Campal Trade Centre, Campal Panaji-Goa and were asked to make payment of the booking amount of ₹42,52,500/- which was 62.50% of the consideration amount of ₹68,04,000/-. The respondent also provided duly signed receipt to the complainants towards payment effected of above referred booking amount.

4. It is also the case of the complainants that somewhere in the first week of October 2022, a draft of agreement for sale was provided to complainants by the respondent and as per email dated 27.09.2022 it is stated that "Booking formalities need to be completed/received latest by Friday 30<sup>th</sup> September, 2022". The complainants as per schedule of payments and status of work completed, paid up to completion of fourth slab and were willing and ready to make further payments as per the schedule, however the email dated 27.09.2022 stated "agreement to be executed at the local registrar within 30 days of booking". The complainants were agreeable to execute the agreement for sale at the local registrar before the due date, however the draft of the agreement was given to the complainants only after they made payments totaling to ₹42,52,500/- on 29.09.2023 as the draft gave rise to several queries and points that required verification from the respondent, however, no clarification was provided to the complainants.

5. The complainants informed the staff of the respondent that they were scheduled to leave Goa on first December, 2023 and would return in mid February,

however inspite of that there was no move on the part of the respondent to have agreement for sale executed before the local registrar by 31.10.2022, although the facts of requirement of correction and clarification in the draft were brought to the notice of the staff by whatsapp messages dated 17.02.2022 to 05.11.2022, however no concrete solutions were provided. The said draft agreement for sale was not as per standard draft of the RERA as such, the complainants brought to the notice of the respondent by letter dated 07.12.2022 that a draft agreement contains averments which are factually incorrect and clauses that necessitate clarification or modification and as such there is no way it could have been signed in the present form, however clarifications were not attended to and that there was inexplicable delay on the part of respondent and as such the deadline of 31.10.2022 for executing the agreement for sale has long passed.

6. There were several clauses requiring the purchasers to give permission/undertaking not to raise any objection to the promoters performing various acts to which the complainants were not agreeable. The complainants were assured that the clauses would be in conformity with law, rules and regulations. The complainants also pointed out clauses 9 and 10 of the agreement which required them to sign which were not true, however the complainants were told that they were "standard" clauses taken from RERA Model of Agreement, copy of which was not provided to them. The complainants had great expectation from IKIGAI and had spoken in glowing terms about it to large circle of friends, even urging them to book apartments, however the complainants found out the reality was a mere disillusionment.

7. The complainants thereafter addressed various letters and email to the respondent mentioning them that the respondent has been instrumental in causing senior citizens much mental and physical distress and financial loss and therefore,

the respondents were requested to return and refund the entire amount of the complainants of ₹42,52,500/- paid to the respondent by way of booking amount towards the said apartment along with interest from 30.09.2022 till 22.03.2023 as the complainants are not willing to continue with the transaction of purchasing the said apartment of the respondent. The respondent after repeated request and exchange of correspondences, emails, finally refunded the amount of ₹42,52,500/- to the complainants which was credited to the account of the complainants on 22.03.2023 and accordingly, a receipt was duly signed by the complainants on 02.06.2023, however, without prejudice to claim of the complainants to claim interest payable on the said amount. The respondent inspite of repeated requests have not paid interest on the said sum of ₹42,52,500/- deliberately in order to harass and force the complainants to take legal measures against the respondent. Hence, the complaint.

8. The respondents filed a reply inter-alia contending that the complainants have failed to show any legally enforceable right existing in its favour and have approached the Authority with unclean hands. The complainants approached the respondent with an offer to purchase the apartment which is Goa's first senior centric residential community offering premium apartments and that they decided to purchase the flat no. 206, 2 BHK, admeasuring 68.70 sq. mts. of carpet area in building A-4, and one car parking space at Ikigai, Goa. The complainants were in constant touch with the sales team of the respondent for the purchase of the said apartment and after conclusion of the negotiation, the representative of the respondent shared their final offer for the sale of the apartment with the complainant vide email dated 27.09.2022 in terms of which the complainants were responsible for paying a total consideration amount of ₹64,80,000/- which is ten percent booking amount and 52.50% payable with the execution of the said agreement and pursuant to sale, the parties executed a customer booking form on

30.09.2022 in terms of which the complainants paid booking amount of ₹6,48,000/- and no objection has been received from the complainants till date and the agreement for sale was to be executed within 30 days of the payment of the booking amount and the agreement amount of ₹34,02,000/- was to be paid on 30.09.2022.

9. The complainants even made payments of the booking amount and the agreement amount which shows that they were agreeable with the terms and conditions mentioned in the agreement. The queries raised by the complainants have been clarified by the respondent and duly addressed. The respondent however was shocked to receive a letter dated 07.12.2022 requesting the respondent to return the said amount. The respondent followed up with the complainants as they suddenly decided to back up from purchasing the said apartment, however complainants provided vague replies. The complainants vide a letter dated 31.01.2023 demanded the booking amount, agreement amount as well as interest. The respondent however returned the booking amount and the agreement amount amounting to ₹42,52,500/- vide cheque dated 08.03.2023 which was duly received and acknowledged by the complainants, however inspite of that, the complainants addressed a letter dated 10.03.2023 demanding interest on the said amount and threatened that they would file the case against the respondent. The complainants are not entitled for any reliefs and therefore, the complaint be dismissed.

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

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

Sr. No.	Points for determination	Findings
1.	Whether the complainants are entitled for interest as prayed for in the complaint?	In the affirmative.
2.	What order? What reliefs?	As per final order.

### REASONS

#### Point no. 1 and 2

12. The complainants have sought the following reliefs:

(i) For an interest at the rate of 10% on said sum of ₹42,52,500/- (Rupees Forty Two Lakhs Fifty Two Thousand Five Hundred only) for the period from 30.09.2022 till 22.03.2023 amounting to a sum of ₹2,03,887/- (Rupees Two Lakhs Three Thousand Eight Hundred and Eighty Seven only).

(ii) Further interest on the said sum of ₹42,52,500/- (Rupees Forty Two Lakhs Fifty Two Thousand Five Hundred only) at the rate of 10% from 23.03.2023 till its effective payment to the complainants.

(iii) The complainants are also entitled from the respondents compensation of ₹ 4,00,000/- (Rupees Four Lakhs only) for all the mental and physical distress, agony, loss of mental peace and stability and financial loss caused to the complainants on account of constant follow up with the respondents and especially the complainants both being senior citizens of 82 and 79 years of age.

(iv) The complainants are also entitled for legal charges spent by the complainants in filing the complaint before this Hon'ble Court and follow up thereafter to the tune of ₹1,00,000/- (Rupees One Lakh only).

(v) Respondent are liable and be punished with a penalty which may extend up to five percent of the estimated cost of the real estate project as determined by the Authority on account of contravention of Section 13 of the Real Estate (Regulation and Development) Act, 2015.

(vi) The respondents be punished as per the RERA Act.

(vii) Any other and further reliefs as deems fit and proper as per circumstances of this case.

13. Ld. Advocate Shri Sandesh Arabekar for the complainants has submitted that the respondent forced the complainants to effect an advance booking amount of ₹42,52,500/- which was 62.50% of the consideration amount of ₹68,04,000/-and accepted from the complainants the said amount more than 10% of the consideration without signing the agreement for sale and without presenting the same before the office of the Sub-Registrar for registration purpose in complete violation and derogation of Section 13 of the RERA Act and therefore, the complainants are entitled for the relief prayed. He further submitted that the contents of draft of both the agreements for sale provided to complainants were not in conformity with the model form of agreement provided by the RERA and thus delayed execution and registration of the agreement for sale. The complainants are therefore entitled for the reliefs prayed.

14. On the converse, Ld. Advocate Jonathan George for the respondent has submitted that the respondent has consistently demonstrated readiness and willingness to deliver possession of the apartment as per the terms of the agreement and that there is no failure on the part of the respondent to adhere to the terms of the agreement, on the contrary the complainants repeatedly delayed and refused to sign the agreement for sale and the said delay was entirely attributable to



the complainants as they raised objections and avoided finalising the agreement. The respondent has obtained both the completion and occupancy certificates and no issue was raised regarding quality or completion of the apartment. The respondent has fulfilled its obligations and the refusal by the complainants to sign the agreement is unwarranted and unilateral, which cannot justify a claim for refund of interest under the above provisions of law and therefore, the claim of the complainants be dismissed.

15. Admittedly, the email dated 27.09.2022 of the respondent clearly states that based on the discussion between the complainants and the respondent, the respondent is offering 'best and final offer' for A4-206, 2 BHK in Phase I at Ikigai Goa on the following terms. Booking formalities (KYC documents and 62.50% payment) needs to be completed/received latest by Friday 30.09.2022. Agreement to be executed at the local registrar before 30 days of the booking. Payment details (1) 10%=₹6,48,000/- plus GST ₹32,400/- and (2) ₹52.50%=₹34,02,000/- plus GST ₹1,70,100/-. The said email is accompanied by a quotation. There is no dispute that the complainants paid ₹42,52,500/- on 29.9.2022 towards the said booking of the apartment, which was @62.50% of the consideration amount of ₹68,04,000/-

16. The complainants admittedly paid the said amount more than 10% of the consideration without signing the agreement for sale allegedly under the garb of booking and agreement amount. The email dated 27.9.2022 clearly reveals that the amount of ₹42,52,500/- paid to the respondent on 29.9.2022 was an advance amount paid towards the 'booking' of the apartment and not towards 'booking and agreement' as fallaciously claimed by the respondent. The said acceptance of booking amount by the complainants cannot be said to be both-sided as the email dated 27.09.2022 indicates that payment of 62.50% needed to be completed before 30.09.2022 which was admittedly paid by complainants, within three days. There

is no dispute that agreement for sale was never executed between the parties and the parties never reached to the stage of executing the agreement for sale due to various reasons as both parties are blaming each other for the said violations. There is no need for any deliberation on the aspect as to who is responsible for non registration of agreement for sale as Section 13(1) of the RERA Act does not bestow any authority to the promoter to accept an amount more than 10% of the total consideration, before the date of execution of the agreement for sale.

17. Admittedly, the amount of 62.50% which is ₹42,52,500/- of the total consideration of ₹68,04,000/- has been received by the respondent, which exceeds the permissible limit stipulated under Section 13(1) of the RERA Act, 2016. Section 13 of the Act reads as under:

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

18. The above provision of Section 13 of the RERA Act makes it manifestly clear that the promoter is prohibited from accepting a sum more than ten per cent of the cost of the apartment as an advance payment without first entering into a written agreement for sale and the promoter accepting amount surpassing the said limit prior to entering into agreement constitute a clear violation of the above statutory provision, which is intended to protect the interest of the consumers, be it for any reason entitling the party for withdrawing from the project and seeking necessary reliefs against the promoter.

19. It is also well settled by the Hon'ble Apex Court in the case of *Pioneer Urban Land and Infrastructure vs. Govindan Raghavan* in Civil Appeal No. 12238 of 2018 on 02.04.2019 that court will not enforce an unreasonable, unfair contract or an unreasonable and unfair clause in a contract where contracting parties are not equal in bargaining power and where a man has no choice or rather a meaningful choice but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form...as a part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rule may be.

20. The email dated 27.9.2022 clearly reveals that the respondent had demanded the said amount as a condition to avail of their 'best and final offer' provided the complainants make 62.50% of the payment latest by 30.9.2022 without signing the agreement for sale. The complainants had no choice but to sign the booking form along with the quotation one-sidedly prepared by the respondent without signing the agreement for sale and without presenting the same before the office of the Sub-Registrar for registration purpose in complete violation and derogation of Section 13 of the RERA Act. The promoter/respondent cannot take undue advantage of such one-sided and unreasonable condition to execute the agreement of sale, within three days of email dated 27.09.2022 and accepting an amount of 62.50% which is ₹42,52,500/- of the total consideration of ₹68,04,000/-, which exceeds the permissible limit stipulated under Section 13(1) of the RERA Act 2016. There is no dispute that the object of RERA is to protect the interest of the consumers and therefore whatever amount is paid by the allottee under misconception or in violation of the Act, the said amount have to be refunded to the allottee on his withdrawal from the project along with interest due.

21. There is no dispute that the said amount of ₹42,52,500/- was paid by the complainants to the respondent on 29.09.2022 and the same amount has been

refunded by the respondent to the complainants on 22.03.2023. The complainants are claiming interest @ 10% on the said sum of ₹42,52,500/- from 30.09.2022 till 22.03.2023 of a sum of ₹2,03,887/- in terms of Para (i) and also interest @ 10% from 23.03.2023 till the date of effective payment.

22. Ld. Advocate Shri Jonathan George for the respondent has submitted that the complainants have accepted the refunded amount without objection, which bars them from claiming interest on the said amount under the principle of estoppels. He further submitted that Section 18 and Section 19(4) of the RERA Act are not applicable to the case at hand since the said provisions specifically apply to situations where a promoter fails to complete the project or is unable to give possession of an apartment and therefore, only if Section 18(1) and 19(4) of the RERA Act are violated, the promoter is liable to pay interest and hence, the claim of the complainants is without any merit and should be dismissed.

23. On the converse, Ld. Advocate Sandesh Arabekar for the complainants has relied upon the case between *Unnikrishnan Chandran Pillai vs. Tata Reality Infrastructure Ltd; Relationship Manager, Tata Reality and Infrastructure Ltd. 2022 LawSuit(ker) 697* and has submitted that it is the Regulatory Authority which has the power to examine and determine the outcome of a complaint. He further submitted that Section 13 prohibits the promoter to accept the sum of more than 10% of the cost of the apartment or building as advance payment without first entering into a written agreement for sale with such a person and the promoter accepting the payment in violation of Section 13, the course open to the Authority is not only to refund the amount but to award also interest on the said amount.

24. Discernibly, the amount of ₹42,52,500/- has been returned by the respondent and accepted by the complainants on 02.06.2023 with following rider "Without prejudice to our claim of interest payable on the amount below

₹42,52,500/- (Rupees Forty Two Lakhs Fifty Two Thousand Five Hundred only)". It is therefore the submissions of Ld. Adv. Shri Jonathan for the respondent that complainants have accepted the refunded amount without objection cannot be accepted, being preposterous. The complainants were forced to withdraw from the project for non-execution of the agreement as the complainants have raised various queries which were not satisfactorily answered by the respondent, as well as forcing the complainants to pay an amount more than 10% of the total consideration, before the date of execution of the agreement for sale, which is contrary to the provisions of law. It is also well settled in the case of **Devendra Kumar vs. State of Uttaranchal & Ors 2013 9 SCC 363** that a person having done wrong cannot take advantage of his own wrong and plead a bar of any law to frustrate the lawful trial by a competent court and the persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation nor can a person claim any right arising out of his own wrong. The submission of Ld. Advocate Shri Jonathan George that only if Section 18(1) and 19(4) of the RERA Act are violated, the promoter is liable to pay interest cannot be accepted as it is well settled that a person having done wrong cannot take advantage of his own wrong and plead a bar of any law to frustrate lawful entitlement of the party.

25. The respondent having violated the provision of Section 13 of the RERA Act in receiving more than 10% of the consideration amount in respect of the apartment without executing a sale agreement as provided under the Act, cannot be heard saying that the respondent is not bound to pay the interest on the said amount as the respondent cannot take advantage of his own wrong, thereby enriching itself. The respondent also cannot blame the complainants who are the senior citizens who wanted to settle themselves in the said apartment at Goa in terms of the oral agreement and therefore, the respondent cannot shirk its obligations to pay the

interest along with the amount already returned to the complainants. The complainants are entitled for the lending rate of interest by SBI, which is 9.10% per annum plus two percent i.e 11.10% per annum under Rule 18 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017.

26. The complainants are also entitled for costs for prosecuting the matter since October, 2023 as both the complainants are senior citizens of 82 and 79 years of age, respectively and have invested their hard-earned money in the project, only to be denied mere payment of interest and had made to wait 'indefinitely' for refund of the amount with the interest. It is therefore a reasonable costs of ₹2,00,000/- (Rupees Two Lakhs only) can be safely awarded to the complainants, being senior citizens, prosecuting a case against the respondent company, who claim to be Goa's first senior centric residential community complex offering premium apartments for senior citizens and at the same breath, are not inclined to grant interest to the complainants, although they are legally entitled to, for contravening and ignoring the clear provisions of Section 13 of the Act, which amount shall be borne by the respondent.

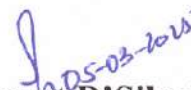
27. The complainants are also seeking compensation of ₹4,00,000/- for mental and physical distress, agony, loss of mental peace and stability and financial loss caused to the complainants on account of constant follow up with the respondent as well as ₹1,00,000/- for legal charges spent by the complainants. Needless to mention, under Section 71 of the RERA Act, compensation under Sections 12, 14, 18 and 19 of the RERA Act has to be adjudged only by the Adjudicating Officer. Accordingly, the above prayers for compensation have to be dealt with by the Adjudicating Officer for adjudging the compensation, if any. The

complainants may prefer an application before the Adjudication Officer for compensation, if so desires. Hence, the above points are answered accordingly.

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

**ORDER**

- i. The respondent is directed to pay interest @11.10% p.a. to the complainants on the sum of ₹42,52,500/- (Rupees Forty Two Lakhs Fifty Two Thousand Five Hundred only) for the period from 30.09.2022 till 22.03.2023 within 30 days from the date of this order.
- ii. The respondent is also directed to pay further interest @11.10% p.a. from 23.03.2023 till effective payment, in the event of failure to pay the aforesaid interest amount to the complainants, as referred above.
- iii. The respondent is directed to pay costs of ₹2,00,000 (Rupees Two Lakhs only) to the complainants, within thirty days of the order, failing which it will carry interest @11.10% p.a. till effective payment.
- iv. The respondent is directed to pay ₹5,00,000/- (Rupees Five Lakhs only) as penalty under Section 61 of the Act for violation of Section 13 of the RERA Act. The amount shall be deposited into the bank account of the Authority within 60 days, failing which necessary proceedings will be initiated against the respondent.
- v. The respondent is directed to file compliance report of this order in the form of an affidavit within sixty days of this order, failing which further legal action will be initiated by the Authority under the RERA Act for execution of the order.

  
(Vincent D'Silva)  
Member, Goa RERA

Panaji, Goa.  
Date: 05.03.2025