



**GOA REAL ESTATE REGULATORY AUTHORITY**  
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F.No:3/RERA/Complaint (364)/2023/299

Date: 13/03/2025

**(BEFORE THE MEMBER SHRI VINCENT D'SILVA)**

**Col. Vijay Kumar,**  
B-316, Defence Enclave,  
Kankerkhera, Sardhana Road,  
Meerut, Uttar Pradesh-250001.

.....Complainant

*Versus*

**M/s. Expat Projects & Development Private Limited,**  
Through its Director Santosh Balakrishna Shetty,  
Carlron Towers, A-Wing,  
3<sup>rd</sup> Floor, No. 1, Airport Road,  
Bengaluru, 56008.

.....Respondent

Ld. Advocate Saeesh Vaman Naik for the Complainant.  
Ld. Advocate Pritesh Shetty for the respondent.

**ORDER**

**(Delivered on this 13<sup>th</sup> day of the month of March, 2025)**

This is a complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016.

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

The Complainant purchased a smart one BHK in Expat Vida Uptown Phase 4, flat No. 210, Building C1 in 2018 and had made full payment in advance to the builder. The delivery date as per the agreement was 31.10.2020, however there has been no progress on the project so far, even the construction has not been started since last three years, after the promised handover date. The builder has also promised as per Clause 4 of the agreement to pay 10% interest on the payment made, in the event of a delay in handover. There has been no commitment by the builder despite numerous communication with them both telephonically, email as well as personal intervention. There is a poor state of progress on the project with no activity on the apartment and no visibility of handover date and therefore seeking refund of money with interest till date.

3. The Respondent filed a reply inter-alia contending that the complainant is an investor who has invested in the project in the year 2018 and said payment is in contravention of RERA Act. The complainant has shown their interest in investing in the project via email of allotment which states that the complainant is an investor who has voluntarily paid. The complainant was aware of COVID pandemic that was prevailing from March 2020 till December 2021, therefore the timeline to achieve the completion of the project was not possible. The complainant has induced the respondent in signing the agreement despite the complainant being an investor, who has promised that he would not enforce the

said agreement. The construction activity has been severely affected by the Covid Pandemic and the all timeline has been affected. The complaint is barred being speculative, manipulative and seek unjust enrichment. The complainant is disentitled for any reliefs.

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

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

Sr. No.	Points for determination	Findings
1.	Whether the complainant is entitled for the refund of sale consideration from the respondent along with interest thereon?	In the affirmative.
2.	What reliefs, what order?	As per final order

### **REASONS**

#### **Point No. 1 and 2**

6. The complainant has prayed for refund of payment made along with the interest.

7. Ld. Advocate Saesh Naik for the complainant has submitted that the respondent has violated Section 13 of the Act by accepting a sum more than ten per cent of the cost of the apartment without entering into a written agreement and registering the said agreement for sale under the law time being in force. He further submitted that the complainant is an 'allottee' and not an 'investor' as claimed by the respondent nor the same is expressly referred in the agreement for sale. He further submitted that under Section 11(4)(a) of the Act, the promoter is responsible for all the obligations, responsibilities and functions as per the agreement for sale and that if the promoter fails to abide by the time schedule for completing the project and handing over the apartment to the allottee, who intends to withdraw from the project, the promoter is bound to pay penalty to the purchaser @10% per annum from the date of default till the date of actual handing over in terms of Clause 4 of the agreement for sale and therefore, the application be granted as prayed for.

8. Per contra, Ld. Advocate Shri Pritesh Shetty for the respondent has submitted that the complainant is an investor and not a allottee who invested ₹20,50,000/- and approached the respondent prior to RERA coming into force and willingly showed interest in the project and forced to enter into agreement inspite of the fact that the agreement is in derogation of Section 13(1) of the RERA Act and had made a promise that the agreement dated 29.11.2018 would not be

enforced. He further submitted that complainant was aware of Covid pandemic prevailing, which impacted the whole construction industry and therefore, it could not achieve the completion of the project. Both the parties have amicably extended the time period and the complainant has not even made any grievance on delay as per the agreement. The complainant is also aware that M/s Naiknavare Construction Private Limited are the owners of the land and hence, they are required as necessary parties and therefore, the complaint is not maintainable as the agreement was executed only for tax purpose nor the complainant falls under the definition of an allottee under Section 2(d) of the RERA Act.

9. The respondent has claimed that the complainant is the investor in the project and that the investor would not come under the purview of the allottee. It is also claimed that the complainant has misled the respondent in believing on a false promise that the said agreement dated 29.11.2018 would not be enforced since the role of the complainant was of an investor in the project, however as rightly pointed out by Ld. Advocate Saesh Naik, the term investor is not expressly referred in the agreement to sell dated 29.11.2018 with respect to the complainant nor there is anything on record that the amount paid by the complainant is towards investment in the said project. The agreement to sell clearly refers to the complainant as a 'Purchaser/allottee' and the respondent as 'Developer'. There is no addendum to the said agreement stating that the complainant is an investor in

the said project. The complainant in terms of Para 1(c), on page 8 and page 9 paid the entire amount as per the schedule of payment. It is well settled law that the nature of the transaction is determined by the contents of the document and not by any oral submission of any party, contrary to the contents of the document. The above submissions of Advocate Shri Pritesh for respondent therefore have no basis and are not applicable to the proceedings.

10. It is also claimed by the respondent that the complainant have not added M/s Naiknavare Construction Private Limited as party to the proceedings, they being the owners of the land as they are parties to the agreement to sell dated 29.11.2018 and in the event of cancellation and for any refund, they are necessary parties to adjudicate the case as they would also be required to refund the amount, they received from the complainant as per the agreement. Nonetheless, the above objection for non joinder of the above party has no merit since the respondent, M/s Expat Project & Development Private Limited is the promoter and under Section 18(1)(b) of the Act, the liability to return the amount received from the purchaser is on the promoter. The complainant has joined the respondent as proper and necessary party to the proceedings and the non joinder of said owner will not affect the proceedings as the complainant have a legal remedy against the promoter who had entered into an agreement to sell and who had not delivered the possession to

the complainant as per the said agreement and hence, the above submissions of the respondent pales into insignificance.

11. The respondent has also taken a stand that the complainant did not approach the Authority immediately in the year 2020 once the time period had elapsed and there is no justification for the complainant for such a long time specially when the said unit was ready and occupancy was about to be delivered. The respondent has however not produced any document with respect to the occupancy and completion certificate on record. Moreover, the Limitation Act, 1963 does not apply to the Real Estate (Regulation and Development) Act, 2016 in view of specific provisions within RERA itself. The overriding effect of RERA ensures that the rights of allottees are protected and that the developers are held accountable without the procedural constraints of limitation period. In short, the Limitation Act, 1963 does not restrict the filing of complaints or seeking relief under RERA, which prioritizes the rights and remedies of the allottees, even if the transactions or agreements were made prior to the enactment of RERA. The RERA does not provide a timeline for availing relief, thus the provisions of the Limitation Act, 1963 do not apply and therefore, the above submissions of Ld. Advocate Pritesh cannot be accepted having any merits.

12. The respondent has also claimed that the handing over of the possession in the year 2021 was not possible due to Covid pandemic and that in terms of clause

6 of the agreement, the developer would be entitled to a reasonable extension of time for giving delivery of the apartment, if the completion of the building is delayed on account of war, civil commotion or act of God or any notice, order, rule, notification of the government and/or other public or competent authority/ court. The Covid pandemic was prevalent and in view of national lockdown, the construction activity of real estate project across the country was severely affected and therefore, the time period mentioned in the agreement could not be adhered to.

13. Nonetheless, the observations of the Hon'ble Apex Court in the case of ***“Imperia Structures Ltd. Vs. Anil Patni and Another” 2020 (10) SCC 783*** are squarely attracted in the present case and the relevant part of the same is reproduced here-in-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.”



The Hon'ble Supreme Court further held therein that "non-availability of contractual labour, delay in notifying approvals cannot be construed to be force majeure events from any angle.

14. In the case of *M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others*, 2021 SCC, Online 1044, 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". The relevant abstract is reproduced below for ready reference:

"25. The unqualified right of the allottee to seek refund referred to under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement *regardless of unforeseen events or stay orders of the Court/Tribunal*, which is in either way not attributable to the allottee/home buyer, the Promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he

shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

It is thus the grounds as stated by the respondent/promoter for delay in delivering of possession, will not come to the rescue of the promoter from legal liabilities under the RERA Act and corresponding legal rights accrued to the allottee under the RERA Act.

15. Needless to mention, the complainant has paid the entire amount of ₹20,50,000/- as per the agreement and the respondent was unable to give possession of the apartment to the complainant on or before 31<sup>st</sup> October 2020 as per Clause 6 of the agreement to sell. The Clause 6 of the agreement further states that ‘the Developer shall give possession of the apartment to the allottee on or before 31<sup>st</sup> day of October 2020. If the Developer fails or neglects to give possession of the apartment to the allottee on account of reasons beyond his control and of his agents by the aforesaid date, then the Developer shall be liable on demand to refund to the allottee the amounts already received by him in respect of the apartment with interest at the same rate as may mentioned in the Clause 4.1 here-in-above from the date the developer received the sum till the date the amounts and interest thereon is repaid.”

16. The respondent was required to deliver possession of the said apartment to the complainant on or before 31.10.2020 but till date possession is neither given as

per the agreement nor obtained necessary permissions. Under Section 18 of the RERA Act, 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.

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

17. It is thus seen that the respondent has failed in its obligations, responsibility and functions under the provision of the Act to obtain completion certificate as well as occupancy certificate from the competent authority and provide possession to the complainant in terms of Clause 6 of the agreement and execute a registered conveyance deed and the failure on the part of the respondent to complete the



project before 31<sup>st</sup> October 2020, the complainant is entitled for seeking reliefs of refund along with interest in terms of law.

18. There is no dispute that the complainant paid the entire consideration amount of Rs. 20,50,000/- for the purchase of the said flat in advance to the respondent through Cheques no. 303684 and 303685 dated 22.01.2018 and 23.01.2018 respectively, as evidenced by receipt no. 10339 dated 22.01.2018 which is on record.

19. The Hon'ble Supreme Court in the case of "*Experian Developers Pvt. Ltd. vs. Sushma Ashok Shiroor*" (2022) SCC Online SC 416" has held as follows:

"22.1 We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The commission in the order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. *Following the decision in DLF Homes Panchkula Pvt. Ltd. vs. DS Dhanda and in modification of the direction issued by the commission, we direct that the interest on the refund shall be payable from the dates of deposits. Therefore, the appeal filed by the purchaser deserves to be partly allowed. The interests shall be payable from the dates of such deposits.*"

20. 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 states as follows:

*“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.”

21. It is therefore once the respondent has received the entire consideration towards the purchase of the apartment from the complainant and that the respondent has failed to adhere to its contractual and statutory obligation, the respondent is duty bound to refund the amount paid along interest @ 11.10% (i.e. 9.10% plus 2%) per annum which is presently State Bank of India highest Marginal Cost of Lending Rate, to the complainant from the date of receipt of such amount as referred at Para 18 above. The benefit of the statutory interest goes to the complainant having regard to Section 18 and Rule 18 of the Act as parties had entered into a written agreement to sell the said apartment as the respondent has failed to complete and was unable to give possession of the apartment in

accordance with the terms and conditions duly completed by the date specified in the agreement.

22. 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 up to five per cent of the estimated cost of the real estate project as determined by the Authority. The respondent has contravened the provisions of Section 11(4)(a) and (f) read with Section 18 of the Act and therefore, is liable to pay penalty under Section 61 of the RERA Act.

23. Ld. Advocate Pritesh Shetty for the respondent has submitted that if for any reason, the agreement stands cancelled, then in terms of Clause 4.2 of the agreement to sell dated 29.11.2018, the developer shall return to the allottee the said amount with deduction of ten per cent of the amount, whichever is higher as liquidated damages. The complainant has unilaterally cancelled the said agreement and therefore, the above clause would come into force and the respondent is entitled to levy cancellation fees and return the said amount. He further submitted that once the agreement is cancelled, the parties should be also ready to execute the cancellation deed or at least seek declaration that the agreement to sell dated 29.11.2018 as cancelled and Sub-Registrar be directed to cancel the said agreement.

24. The Clause 4.2 of the agreement referred by the respondent is not applicable to the case at hand, more particularly when the respondent failed to complete the project and or unable to give possession of the apartment before 31.10.2020 in accordance with the terms of the agreement to sell due to which the complainant was forced to seek refund of the said amount with other relief. It is entirely due to the failure of the respondent to provide the possession of the apartment as per the agreement, the complainant is seeking the refund of the said amount. The termination of the agreement is not due to the fault of the complainant but of the respondent, who failed to fulfill its obligation and therefore, the above contention of Learned Advocate Shri Pritesh cannot be accepted having any merits.

25. The other submissions of Ld. Advocate Pritesh that in the event the agreement is cancelled, the parties should also be ready to execute the cancellation deed or seek declaration that the agreement dated 29.11.2018 is cancelled and the Sub-Registrar be directed to cancel the said agreement, would be in the circumstances of the case required, only after the entire amount of refund along with the interest is paid to the complainant, although there is no such a prayer from the complainant as well as the respondent. Needless to mention, such a prayer is indispensable for advancing proper and effectual justice between the parties. In such circumstances, the Sub-Registrar of Ilhas shall make necessary entries/notes/endorsement in its records to the effect that the Agreement to sell

dated 29.11.2018 registered in the office of Sub-Registrar of Ilhas/Tiswadi at Panaji Goa under no. PNJ-BK1-03266-2018 (CD Number PNJD70) as terminated and cancelled, only after ensuring that the entire amount of refund along with the interest is paid to the complainant. Hence, above points are answered accordingly.

26. Pursuant to above discussion, I pass the following:-

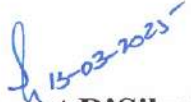
**ORDER**

- i. The respondent is directed to refund the amount of ₹20,50,000/- (Rupees Twenty Lakhs, Fifty Thousand only) to the complainant, within thirty days from the date of this order.
- ii. The respondent is directed to pay interest @ 11.10% per annum on the sum of ₹20,50,000/- (Rupees Twenty Lakhs, Fifty Thousand only) to the complainant from 23.01.2018 till the date of effectual payment for delay in delivering possession to the complainant.
- iii. The respondent is directed to pay costs of ₹1,00,000 (Rupees one Lakh only) to the complainant within thirty days of the order, failing which it will carry interest in terms of law.
- iv. The respondent is directed to pay ₹6,00,000/- (Rupees six Lakhs only) as penalty under Section 61 of the Act for violation of Section 11(4)(a) and (f) read with Section 18 of the Act. The amount shall be deposited in the bank



account of the Authority, within sixty days, failing which necessary proceedings will be initiated against the respondent.

- v. The Agreement for sell dated 29.11.2018 registered in the office of the Sub-Registrar of Ilhas/Tiswadi at Panaji under registration no. PNJ-BK1-03266-2018 (CD Number PNJD70) on 29.11.2018 stands terminated and cancelled.
- vi. Consequently, the office of the Sub-Registrar of Ilhas/Tiswadi at Panaji Goa shall make appropriate entry/note/endorsement in its records to the effect that the said Agreement to sell dated 29.11.2018 registered in the Office of Sub-Registrar of Ilhas/Tiswadi at Panaji Goa as terminated and cancelled, provided that the entire amount of refund along with the interest is paid to the complainant.
- vii. 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: 13.03.2025