



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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F.No.3/RERA/Complaint(150)/2020/593

Date: 23/08/2022

Mr. Gastao Edith Francisco Faria,

H.No.17/204, Santissimo waddo,

Taleigao, Goa-403002.

.....

Complainant

V/s

Ms Sunstar Homes,

C/o National Medical Equipment Stores

Narvekar chambers,

Opp. Mapusa Municipal Market,

Goa-403507.

.....


Respondent

ORDER

(Dated 23/08/2022)

This order disposes of the complaint filed under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act') in respect of the project, "Tara Gardens Phase II", situated at Mapusa, Bardez Goa, the promoter of which is the respondent M/s Sunstar Homes. In the complaint, the complainant has sought the relief of handing over the possession of six flats bearing nos. A6, B6, C6, D1, D7 and D8 with penal interest. A separate detailed complaint is also filed by the complainant along with documents and in the said complaint an alternative prayer is also made to the effect that the respondent be directed to refund the entire amount paid to the respondent along with penal interest at the rate of 18% p.a. amounting to Rs. 2,16,43,500/- (Rupees Two Crores Sixteen Lakhs Forty Three Thousand Five Hundred only) and also interim relief directing

the promoter not to create third party rights in respect of the said six flats in the above building.

2. Reply has been filed by the respondent, wherein preliminary objections were raised as to the maintainability of the instant complaint and further reply has been given on the merits of the case.
3. It is the case of the complainant that he initially entered into three agreements for sale dated 01.03.2013 with the respondent for purchase of flats bearing nos. A6, B6, C6 and further entered into three agreements for sale dated 08.05.2017 for purchase of three more flats bearing nos. D1, D7 and D8 in the said building, "Tara Gardens Phase II". According to the complainant, the consideration amount towards the purchase of the flats bearing nos. A6, B6 and C6 was Rs. 29,00,000/- (Rupees Twenty Nine Lakhs only) each and the same were to be handed over to the complainant on or before 31.08.2014. He has stated that he has paid entire consideration amount of Rs. 87,00,000/- (Rupees Eighty Seven Lakhs only) towards purchase of flats bearing nos. A6, B6, C6 i.e. Rs. 60,00,000/- (Rupees Sixty Lakhs only) were paid by way of three cheques of Rs.20,00,000/- (Rupees Twenty Lakhs only) each and the remaining Rs. 27,00,000/- (Rupees Twenty Seven Lakhs only) was paid by way of cash.
4. According to the complainant, since the promoter failed to hand over possession of the said flats on or before 31.08.2014, addendums dated 16.06.2017 were executed to the agreements dated 01.03.2013 thereby extending the period of handing over possession of the said flats bearing nos. A6, B6 and C6 and the same were to be handed over on or before 31.04.2018. 

5. According to the complainant, on the failure of the respondent to handover the possession of the flats A6, B6, and C6 within the stipulated period, the promoter is liable to refund the consideration amount received by him i.e. Rs. 87,00,000/- (Rupees Eighty Seven Lakhs only) along with 18% interest p.a. thereon i.e. Rs.1,53,55,500/- (Rupees One Crore Fifty Three Lakhs Fifty Five thousand Five Hundred only) which is inclusive of the principal amount and penal interest for the period 01.03.2013 to 31.05.2017.
6. The complainant has stated that in view of failure of the respondent to hand over possession of the flats A6, B6 and C6 on or before 31.04.2018 as per the addendums dated 16.06.2017, the promoter is liable to refund the said amount of Rs. 87,00,000/- (Rupees Eighty Seven Lakhs only) along with additional interest of Rs.69,16,500/- (Rupee Sixty Nine Lakhs Sixteen Thousand Five Hundred only) for the period 01.06.2017 to 30.11.2021.
7. The complainant has further stated that he has received a sum of Rs. 30,00,000/- (Rupees Thirty Lakhs only) from the promoter on 14.10.2014 which was based on an understanding between the parties as the complainant had requested the respondent for finance to tide over some financial difficulty and therefore, according to the complainant, the complainant owes to the respondent an amount of Rs. 68,70,000/- (Rupees Sixty Eight Lakhs Seventy Thousand only) with interest at the rate of 18% p.a. for the period from 01.10.2014 to 30.11.2021 on the said loan amount of Rs. 30,00,000/- (Rupees Thirty lakhs only).
8. The complainant has further stated that subsequently there were three agreements of sale dated 08.05.2017 executed for the sale of three flats bearing nos. D1, D7 and D8 in the same building and the total consideration amount payable for each flat was Rs. 38,00,000/- (Rupees Thirty Eight

Lakhs only) and that out of the said consideration amount, an amount of Rs. 20,88,000/- (Rupees Twenty Lakhs Eighty Eight Thousand only) each was adjusted towards consideration amount of each flat bearing nos. D1, D7 and D8, as the same was due from promoter as penal interest on account of delay in handing over possession of flats A6, B6 and C6 which amount was adjusted against the interest of Rs. 66,55,500/- (Rupees Sixty Six Lakhs Fifty Five Thousand Five Hundred only) which had accrued for the period from 01.03.2013 to 31.05.2017 and the said sums were adjusted by mutual agreement towards the purchase price of the respective flats bearing nos. D1, D7 and D8 and the same is mentioned in the agreements dated 08.05.2017 and therefore a sum of Rs. 62,64,000/- (Rupees Sixty Two Lakhs Sixty Four Thousand only) was adjusted towards the consideration amount of Rs. 1,14,00,000/- (Rupees One Crore Fourteen Lakhs only) payable for purchase of flats bearing nos. D1, D7 and D8.

9. According to the complainant, pursuant to the aforesaid adjustment of Rs. 62,64,000/- (Rupees Sixty Two Lakhs Sixty Four Thousand only) as penal interest, the remaining consideration amount of Rs. 51,36,000/- (Rupees Fifty One Lakhs Thirty Six Thousand only) with respect to the flats D1, D7 and D8 was paid by the complainant to the promoter by way three cheques dated 08.05.2017 for an amount of Rs. 17,12,000/- (Rupees Seventeen Lakhs Twelve Thousand only) each but the said cheques were never deposited by the promoter.
10. The complainant has stated that the balance penal interest due from the promoter was Rs.3,91,500/- (Rupees Three Lakhs Ninety One Thousand Five Hundred only) as per the agreements dated 01.03.2013 and Addendums dated 16.06.2017 and therefore the total amount due from the promoter is

Rs. 90,91,500/- (Rupees Ninety Lakhs Ninety one Thousand Five Hundred only) including the principal amount of Rs. 87,00,000/- (Rupees Eighty Seven Lakhs only) and penal interest of Rs. 3,91,500/- (Rupees Three Lakhs Ninety One Thousand Five Hundred only) as on 31.05.2017.

11. The complainant further states that upon adding the additional interest of Rs. 67,86,000/- (Rupees Sixty Seven Lakhs Eighty Six Thousand only) which was due from 01.06.2017 to 31.12.2020 towards the flats bearing nos. A6, B6 and C6, the total amount due as on 31.10.2021 is Rs. 1,58,77,500/- (Rupees One Crore Fifty Eight Lakhs Seventy Seven Thousand Five Hundred only).
12. According to the complainant, as per the agreements dated 08.05.2017 for the purchase of three flats bearing nos. D1, D7 and D8, the possession of the same was to be handed over on or before 07.10.2018 and since the promoter had again failed to perform his obligations under the said agreements, there were three memorandum of understanding dated 15.11.2018 executed whereby promoter was required to hand over possession of all the six flats on or before 12.11.2019, failing which the promoter was liable to refund to the complainant the entire amount paid with respect to the flats with interest of 18% per annum from the date the promoter received the said amount till the date the same is paid along with interest and accordingly the promoter was liable to refund the amount of Rs. 1,14,00,000/- (Rupees One Crore Fourteen Lakhs only) along with interest at the rate of 18% per annum and thus the interest which accrued for the period from 01.06.2017 to 31.10.2021 is Rs. 88,92,000/- (Rupees Eighty Eight Lakhs Ninety Two Thousand only) with regard to flats bearing nos. D1, D7 and D8 and therefore the total



amount due along with interest towards the said flats is Rupees Two Crores Twenty Nine Lakhs Two Thousand only.

13. The complainant has stated that the entire interest amount which the promoter is bound to pay to the complainant in compliance with the agreements for sale dated 01.03.2013 read with Addendums dated 16.06.2017, agreements dated 08.05.2017 and MOUs dated 15.11.2018 is Rs. 1,58,77,500/- (Rupees One Crore Fifty Eight Lakhs Seventy Seven Thousand and Five Hundred only) calculated at the rate of 18% interest per annum along with possession of said 06 flats and upon deducting the liabilities i.e. Rs. 67,80,000/- plus Rs. 51,36,000/- owed by the complainant to the promoter, the promoter is liable to pay a sum of Rs. 39,61,500/- as penal interest .
14. According to the complainant, if the promoter intends not to hand over possession of the said six flats, the entire amount which the promoter is bound to refund as per the agreements, Addendums and MOUs is Rs. 3,61,69,500/- (Rupees Three Crores Sixty One Lakhs Sixty Nine Thousand Five Hundred only), which amount upon deducting the liabilities, as stated above amounts to Rs. 2,42,53,500/- (Rupees Two Crores Forty Two Lakhs Fifty Three Thousand Five Hundred only).
15. Thus according to the complainant, the promoter is liable (i) to pay to the complainant a sum of Rs. 2,42,53,500/- (Rupees Two Crores Forty Two Lakhs Fifty Three Thousand Five Hundred only) which includes principal amount plus penal interest and excludes the amount owed by the complainant to the promoter without possession of all the said six flats or (ii) Rs.39,61,500/- as penal interest with possession of all the said six flats. It is further stated that the promoter wrote a letter to the complainant dated

14.10.2021, thereby enclosing a cheque of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) as refund amount but since the amount was erroneous and the same was offered during the pendency of the instant complaint, the said cheque was returned.

16. Thus according to the complainant, he is entitled for an order directing the promoter to hand over possession of all the said six flats along with penal interest of Rs. 39,61,500/- (Rupees Thirty Nine Lakhs Sixty One Thousand Five Hundred only) or in the alternative refund the entire amount paid along with penal interest amounting to Rs. 2,42,53,500/- (Rupees Two Crores Forty Two Lakhs Fifty Three Thousand Five Hundred only).
17. It is the case of the respondent that the complainant and respondent executed three agreements for sale which were duly registered i.e. (a) Agreement for Sale dated 01.03.2013 with respect to flat no. A6 registered on 07.03.2013, (b) Agreement for Sale dated 01.03.2013 with respect to flat no B6 registered on 07.03.2013 and (c) Agreement for Sale dated 01.03.2013 with respect to flat no. C6 registered on 07.03.2013. It is stated by the complainant that all the three agreements contained identical clauses and were for a total consideration of Rs. 29,00,000/- (Rupees Twenty Nine Lakhs only) each and out of the said amount, an amount of Rs. 20,00,000/- (Rupees Twenty Lakhs only) each was paid by cheques and the balance amount of Rs.9,00,000/- (Rupees Nine Lakhs only) for each flat, although never paid by the complainant has been taken into account for the purpose of computation.
18. According to the respondent, since by March 2014 it appeared that the respondent would not be in a position to hand over possession of the said three flats within the stipulated time, the complainant expressed their desire

to terminate the aforesaid three agreements and to seek refund of the consideration amount and accordingly it was agreed that on completion of the refund process, the complainant would hand over the original agreements to the respondent and execute necessary documents with regard to cancellation of the aforesaid agreements. The respondent submits that accordingly on 30.03.2014, the complainant paid to the respondent an amount of Rs. 30,00,000/- (Rupees Thirty Lakhs only) by cheque dated 16.10.2014, however since the entire amount could not be refunded by the respondent in time, as security, three Addendums pertaining to each of the agreement for sale were executed on 16.06.2017.

19. According to the respondent, subsequently as the building construction reached more advanced stage, the complainant expressed his desire to book three other flats at market value and to adjust unpaid balance refund therein and accordingly the parties executed three agreements dated 08.05.2017 with respect to flats nos. D1, D7 and D8, which have identical clauses and the total consideration for each flat was Rs. 38,00,000/- (Rupees Thirty Eight Lakhs only), out of which an amount of Rs. 20,88,000/- (Rupees Twenty Lakhs Eighty Eight Thousand only) each was adjusted from the unpaid balance of refund pertaining to flat nos. A6, B6 and C6 and therefore on execution of the agreements dated 08.05.2017, the entire refund pertaining to flat nos. A6, B6 and C6 was complete.

20. According to the respondent the balance consideration of Rs. 17,12,000/- (Rupees Seventeen Lakhs Twelve Thousand only) for each flat was to be paid by the complainant to the respondent by cheques as per the said three agreements dated 08.05.2017, which cheques although mentioned in the said agreements were never given by the complainant to the respondent and



the same is admitted by the complainant in letter dated 20.01.2021 issued through Advocate Nigel Da Costa Frias and therefore the unpaid amount also carries interest at the rate of 18 % per annum.

21. Thus, according to the respondent, on execution of the three new agreements dated 08.05.2017, the settlement of consideration towards the refund and interest pertaining to the flat nos. A6, B6 and C6 was complete but the complainant has failed to hand over the original agreements to the respondent pertaining to the said flats. It is further stated that the fact that the complainant accepted the refund itself shows that the three agreements dated 01.03.2013 were terminated.
22. According to the respondent, he has paid an amount of Rs. 1,16,00,000/- (Rupees One Crore Sixteen Lakhs only) towards refund as against the total amount of Rs. 1,00,00,000/- (Rupees One Crore only) which was received by the respondent from the complainant, however the amount due from the complainant to the respondent also carry interest at the rate of 18% per annum. According to the respondent, as per his calculations of all payments received till date, only an amount of Rs. 1,60,00,000/- (Rupees One Crore Sixty Lakhs only) is payable by the respondent to the complainant. The respondent also refers to the letter dated 14.10.2021 enclosing cheque drawn in favour of the complainant and the letter dated 26.10.2021 by which the complainant returned the said cheque.
23. According to the respondent, since the refund pertaining to flat nos. D1, D7 and D8 could not be completed within time, three Memorandums of Understanding dated 15.11.2018 were executed wherein erroneously reference was made of flats nos. A6, B6 and C6 towards which refund was already completed instead of mentioning of D1, D7 and D8 only. According



to the respondent, the said MOUs were executed as security for the balance refund towards flat nos. D1, D7 and D8.

24. The respondent submits that in reply dated 24.09.2020 to the legal notice dated 24.08.2020 of the complainant, the respondent stated that the complainant had already received an amount of Rs. 1,16,00,000/- (Rupees One Crore Sixteen Lakhs only) and there was an outstanding liability of Rs. 44,00,000/- (Rupees Forty Four Lakhs only) and it was further stated in the said reply that since the complainant had sought refund of major part of consideration, the question of specific performance and executing any conveyance could not arise and that the respondent would pay the entire balance consideration upon the complainant executing necessary documents towards cancellation of the said agreements.
25. According to the respondent, this Authority does not have jurisdiction in cases pertaining to contracts which are terminated and where refund had been initiated. It is stated that an amount of Rs. 44,00,000/- (Rupees Forty Four Lakhs only) was payable by the respondent as refund which the respondent is ready and willing to pay. According to the respondent, due to the failure of the complainant to execute cancellation of the said six agreements, the respondent is unable to sell the said flats despite having refunded almost the entire consideration and is maintaining the said flats at his own cost. It is further stated that the interest on refund stops running on 24.09.2020 when the respondent called upon the complainant to execute document of cancellation.
26. According to the respondent, regarding the payment of refund, only an amount of Rs. 1,60,000/- (Rupees One Lakh Sixty Thousand only) was outstanding as on 14.10.2021 and accordingly the respondent issued a letter



on 14.10.2021 to the complainant to accept the balance refund which was sought to be paid through the attached cheque, however the complainant returned the said cheque on the ground that the matter was sub judice before this Authority.

27. According to the respondent, the complainant after accepting almost the entire refund is now demanding possession of the flats, which is not legal.
28. The respondent has referred to the Special Civil Suit No. 76/2021/B filed by him before the Civil Judge Senior Division at Mapusa, Goa against the complainant for a decree of declaration declaring that the agreements for sale with respect to flat nos. A6, B6 C6, D1, D7 and D8 as cancelled for all legal purposes in view of the refund of the entire consideration amount to the complainant and accordingly directing the complainant to hand over the original documents of the said agreements to the respondent. Thus, according to the respondent, the complaint may be dismissed since the same is not maintainable.
29. Documents, Affidavits and written submissions were filed by both the parties. Oral arguments were heard from Ld. Advocate Shri Vishal Sawant for the complainant and Ld. Advocate Shri P. Agrawal for the respondent.
30. After going through entire records of the case, the points which come for my determination are as follows:-
 - (i) Whether the complainant is entitled for the possession of six flats bearing nos. A6, B6, C6, D1, D7 and D8 along with penal interest?
 - (ii) Whether in the alternative the complainant is entitled for the refund of entire consideration amount paid towards the said six flats along with penal interest?




31. Both the aforesaid points are taken up together as they are interconnected and the reasons for the findings overlap.
32. In the nutshell, it is the case of the complainant that as per the addendums dated 16.06.2017 added to the agreements dated 01.03.2013 in respect of the flats bearing nos. A6, B6 and C6, the said flats were to be handed over to the complainant on or before 31.04.2018 and though the total consideration amount of Rs. 87,00,000/- (Rupees Eighty Seven Lakhs only) was already paid towards the said flats, the same were not handed over on or before 31.04.2018.
33. It is material to note that according to the complainant, he took loan amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) from the respondent on 14.10.2014. In this regard the following statement of the complainant in para 11 of his affidavit is worth reproducing hereunder:-

“I say that I had received a sum of Rs. 30,00,000/- (Rupees Thirty lakhs only), from the promoter on 14.10.2014 which was based on an understanding between us whereby I had requested him for finance to tide over some financial difficulty and therefore I am due to the promoter a sum of Rs. 68,70,000/- (Rupees Sixty Eight Lakhs Seventy Thousand only) with interest @ 18% p.a. for the period from 01.10.2014 till 30.11.2021 on the loan amount of Rs.30 lakhs.”

34. According to the complainant, subsequently three agreements for sale dated 08.05.2017 were executed for three flats bearing nos. D1, D7 and D8 for the consideration of Rs.38,00,000/- (Rupees Thirty Eight Lakhs only) for each flat out of which Rs. 20,88,000/- (Rupees Twenty Lakhs Eighty Eight

Thousand only) each was adjusted towards the consideration amount of each flat bearing nos. D1, D7 and D8, which amount was due from the promoter as penal interest towards delay in handing over possession of flats A6, B6 and C6 and hence the said amount was adjusted against the said penal interest and thus a sum of Rs. 62,64,000/- (Rupees Sixty Two Lakhs Sixty Four Thousand only) was adjusted towards the consideration amount of Rs. 1,14,00,000/- (One Crore Fourteen Lakhs only) payable for purchase of flats D1, D7 and D8 and the remaining consideration amount payable towards the flats D1, D7 and D8 was Rs. 51,36,000/- (Rupees Fifty One Lakhs Thirty Six Thousand only), which according to the complainant was paid to the respondent by cheques date 08.05.2017 but the said cheques were not deposited by the promoter.

35. According to the complainant, the amount due from the promoter is Rs. 1,60,08,000/- (Rupees One Crore Sixty Lakhs Eight Thousand only) including the interest thereon as on 31.10.2021 towards the flats A6, B6 and C6 and the amount due from the promoter as on 31.11.2021 towards the flats D1, D7 and D8 is Rs. 1,12,43,880/- (Rupees One Crore Twelve Lakhs Forty Three Thousand Eight Hundred and Eighty only) including the interest thereon.

36. It is significant to note that according to the complainant, the entire penal interest amount which the respondent is bound to pay as per the agreements for sale dated 01.03.2013, addendums dated 16.06.2017, agreements dated 08.05.2017 and MOUs dated 15.01.2018 is Rs. 1,22,87,880/- (Rupees One Crore Twenty Two Lakhs Eighty Seven Thousand Eight Hundred Eighty only) calculated @18% interest per annum, however, the complainant has further submitted in para 18 of his affidavit as follows:- 

“upon deducting the liabilities (i.e. Rs 68,70,000/- + Rs 51,36,000/-) owed to promoter by me, the promoter is liable to pay to me a sum of Rs. 2,81,880/-(Rupees Two Lakhs Eighty One Thousand Eight Hundred and Eighty only) as penal interest.”

37. Thus according to the complainant, **upon deducting the amount due from the complainant to the respondent**, as stated above, the respondent is liable to pay to the complainant a sum of Rs.2,81,880/-as penal interest along with possession of all the said six flats or in the alternative, if the respondent intends not to hand over the possession of the said six flats then **after deducting the amount due from the complainant to the respondent i.e. Rs. 63,75,000/- (Rupees Sixty Three Lakhs Seventy Five Thousand only)**, the amount to be refunded by the respondent without giving possession of the flats is Rs. 2,03,81,880/- (Rupees Two Crore Three Lakhs Eighty One Thousand Eight Hundred Eighty only).
38. From the aforesaid submissions of the complainant in the complaint as well as in his affidavit, it is clear that according to the complainant, he had taken a loan of Rs. 30,00,000/- (Rupees Thirty lakhs only) from the respondent on 14.10.2014 and till 30.11.2021 the complainant is due to pay to the promoter a sum of Rs. 68,70,000/- (Rupees Sixty Eight Lakhs Seventy Thousand only) with interest @18% p.a. on the said loan amount.
39. It is the case of the complainant that upon deducting the liabilities of the complainant towards the respondent i.e. Rs. 68,70,000/- + Rs. 51,36,000/-, the respondent is liable to pay to the complainant a sum of Rs.2,81,880/- as penal interest along with possession of the said six flats, however, without possession of the said flats, the respondent is liable to pay to the



complainant a sum of Rs. 2,03,81,880/- (Rupees Two Crore Three Lakhs Eighty One Thousand Eight Hundred and Eighty only) after deducting the liability of the complainant towards the respondent i.e. Rs. 63,75,000/- (Rupees Sixty Three Lakhs Seventy Five Thousand only).

40. **It is therefore material to note that the amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) which according to the complainant was the loan amount taken from the respondent and the interest thereon @18% p.a. becomes part and parcel of the refund amount, as claimed by the complainant and also part and parcel of the penal interest as claimed by the complainant as well as part and parcel of the consideration amount towards the said six flats regarding which the complainant is praying for possession and which amount, according to the complainant has to be adjusted as liability of the complainant towards the respondent.**
41. Coming briefly to the case of the respondent, it is submitted by the respondent in its reply that since the respondent failed to give possession of three flats A6, B6 and C6 on or before 31.08.2014, he was liable to refund the amount of Rs.76,65,863.01/- (Rupees Seventy Six lakhs Sixty Five Thousand Eight Hundred Sixty Three and one paisa only) which includes interest of 18% p.a. and **the respondent paid to the complainant an amount of Rs. 30,00,000/- (Rupees Thirty Lakhs only) as part payment towards refund consideration of three flats**, which amount was deposited in the account of the complainant on 16.10.2014 and which amount if excluded from the total refund amount due to the complainant comes to Rs. 46,65,863.01/- (Rupees Forty Six Lakhs Sixty Five Thousand Eight Hundred Sixty Three and one Paisa only).

42. In para 9 of the reply it is specifically denied by the respondent that the amount of Rs. 30,00,000/- (Rupees Thirty lakhs only) paid by the respondent to the complainant was not a part of refund but was a “finance to tide over financial difficulty” of the complainant. According to the respondent, the said payment of Rs.30,00,000/- was never a loan amount given to the complainant but was “a part of refund for the said flats.”
43. In para 12 of the reply, the respondent reiterates that the complainant had paid Rs. 60,00,000/- (Rupees Sixty Lakhs only) upon the execution of the agreements of three flats A6, B6 and C6 on 31.03.2013 out of which the respondent has already repaid an amount of Rs. 30,00,000/- (Rupees Thirty Lakhs only) with interest of 18% p.a.
44. In para 15 of the reply, the respondent again submits as follows:-
- “It is further submitted that there has been no breach of contract as alleged by the Complainant. It is submitted that as far as possession of the flat No. A6, B6 and C6 is concerned, since Opponent was unable to give within the period of 18 months i.e. on or before 31.08.2014, to the Complainant, **the Opponent had repaid an amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) with 18% interest on 16.10.2014.**” (emphasis supplied).
45. In para 20 of the reply, the respondent submits that the respondent has already complied with the clauses of the agreement dated 01.03.2013 by way of reimbursement of amount in the account of opponent on different occasions.
46. In the affidavit also, the respondent has stated that it was agreed that on completion of the refund process, the complainant would hand over the

original agreements to the respondent in respect of flats A6, B6 and C6 and execute necessary written instruments with regards to cancellation of the said agreements dated 07.03.2013 and **“accordingly on 30.03.2014 the Complainant paid to the Opponent an amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) by a cheque bearing no. 42090 dated 16.10.2014 drawn on PNB Bank, Mapusa Branch in favour of the Opponent no.1”**(paras 5 and 6 of the affidavit of the respondent).

47. In para7 of the affidavit, the respondent has stated that “since the entire amount could not be refunded by the Opponent in time, **for the Complainant’s security**, three Addendums pertaining to each of the Agreement for Sale were executed on 16.06.2017.”(emphasis supplied)
48. It is further the case of the respondent that subsequently when the building construction reached more advanced stage, the complainant expressed his desire to book three other flats **“and to adjust unpaid component of refund therein”** and accordingly the parties executed three agreements dated 08.05.2017 with respect to flat D1, D7 and D8, which agreements contained identical clauses and were for a total consideration of Rs. 38,00,000/- (Rupees Thirty Eight Lakhs only) each.
49. The respondent has specifically stated in his affidavit that out of the aforesaid total consideration towards each flat, **“an amount of Rs. 20,88,000/- (Rupees Twenty Lakhs Eighty Eight Thousand only) each was adjusted from the unpaid value of refund pertaining to flats nos. A6, B6 and C6. On execution of the Agreements dated 08.05.2017, the entire refund pertaining to flat no. A6, B6 and C6 were therefore complete”** (Para 9 of the affidavit of the respondent). In para 11 of the affidavit, the respondent has again stated that on execution of the three



agreements dated 08.05.2017, the settlement of the consideration towards the refund and interest pertaining to the flats nos. A6, B6 and C6 was complete. The respondent has further stated in para 12 of the affidavit that the fact that the complainant accepted the refund itself shows that the three agreements dated 01.03.2013 were terminated.

50. In para 13 of the affidavit, the respondent has stated that **“the amount due from the Complainants to the Opponents, also carry interest at the rate of 18% per annum.”**
51. In para 14 of the affidavit, the respondent has stated that since the refund pertaining to the flats D1, D7 and D8 could not be completed by the opponent within time, three MOUs dated 15.11.2018 were executed, however the said MOUs erroneously mentioned flats nos. A6, B6 and C6 towards which refund was already completed. It is further stated that the said MOUs were executed “as security” for the balance refund of flats D1, D7 and D8.
52. The respondent in his affidavit also referred to the legal notice dated 24.08.2020 sent by the complainant’s advocate and the reply of the respondent wherein the respondent has stated that the complainant has also received an amount of Rs. 1,16,00,000/- (Rupees One Crore Sixteen Lakhs only) and that the outstanding liability of the respondent was only Rs.44,00,000/- (Rupees Forty Four Lakhs only). Thus, according to the respondent, as on 24.09.2020, an amount of Rs. 44,00,000/- (Rupees Forty Four Lakhs only) was payable by the respondent as refund which respondent is ready and willing to pay and that the interest on refund stops running on 24.09.2020 when the respondent called upon the complainant to execute document of cancellation. According to the respondent, after accepting



almost the entire refund, the complainant is now demanding possession of the flats.

53. In para 26 of the affidavit, the respondent referred to the Special Civil Suit filed by him as follows:-

“I say that the Opponent has filed Special Civil Suit No 76/2021/B before the Civil Judge Senior Division at Mapusa, Goa against the complainant for a decree of declaration ordering/ declaring that the agreements for sale with respect to Flat no. A-6, B-6, C-6, D-1, D-7 and D-8 registered in the Office of Sub-Registrar of Bardez as cancelled for all legal purposes in view of the refund of entire consideration amount to the Complainant and subsequently directing the Complainant to hand over the original documents of the said agreements to the Opponent”.

54. From the stand taken by the respondent in the reply, in its affidavit and written submissions, it is clear that according to respondent an amount of Rs. 30,00,000/- (Rupees Thirty Lakhs only) was never given to the complainant as loan but the said amount was paid to the complainant as part payment towards refund of the consideration amount in respect of flats A6, B6 and C6; that according to the respondent, three addendums dated 16.06.2017 were added to the agreements for sale dated 07.03.2013 “for the complainant’s security”; that according to the respondent, on execution of the agreements dated 08.05.2017, the entire refund pertaining to flats A6, B6 and C6 was complete; that an amount of Rs. 44,00,000/- (Rupees Forty Four Lakhs only) was due from the respondent to the complainant as on 24.09.2020 and thereafter the interest on refund stopped running when the



respondent called upon the complainant to execute documents of cancellation of the aforesaid agreements, addendums and MOUs.

55. In order to decide whether the complainant is entitled for the possession of aforesaid six flats along with penal interest or in the alternative is entitled for the refund of entire consideration amount paid towards the said six flats along with penal interest, the following material and relevant issues have to be decided:-

- a) Whether the amount of Rs.30,00,000/- (Rupees Thirty lakhs only) received by the complainant from the respondent was **a loan amount** as claimed by the complainant or whether the said amount was as part payment of refund of consideration amount in respect of the flats A6, B6 and C6 as claimed by the respondent.
- b) Whether the three addendums dated 16.06.2017 pertaining to the agreements for sale dated 07.03.2013 were merely **as complainant's security**, as claimed by the respondent.
- c) Whether after taking into consideration the aforesaid amount of Rs. 30,00,000/- (Rupees Thirty Lakhs only) towards part payment of refund of consideration amount towards A6, B6 and C6, an amount of Rs. 20,88,000/- (Rupees Twenty Lakhs Eighty Eight Thousand only) towards each flat D1, D7 and D8 when adjusted from the unpaid value of refund pertaining to flats A6, B6 and C6 and on execution of agreements dated 08.05.2017, **the entire refund pertaining to flats A6, B6 and C6 was complete**, as claimed by the respondent.
- d) Whether the three MOUs dated 15.11.2018 erroneously mentioned flats A6, B6 and C6 towards which refund was already completed, as claimed by the respondent .

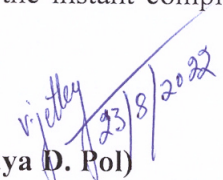
- e) Whether the said three **MOUs were executed as a security** for the balance of refund for flats D1, D7 and D8, as claimed by the respondent.
- f) Whether **the complainant owed a sum** of Rs. 68,70,000/- (Rupees Sixty Eight Lakhs Seventy Thousand only) with interest @ 18% p.a. for the period from 01.10.2014 till 30.11.2021 on the said loan amount, as claimed by the complainant.
- g) What is the amount towards the **liabilities of the complainant** since according to the complainant, with possession of the said flats, the respondent is liable to pay to the complainant a sum of Rs.2,81,880/- (Rupees Two Lakhs Eighty One Thousand Eight Hundred and Eighty only) as penal interest, **“upon deducting the liabilities (i.e. Rs.68,70,000/- + Rs.51,36,000/-)”**.
- h) What is the amount towards the **liability of the complainant**, since according to the complainant, without possession of the said flats, the respondent is liable to pay to the complainant a sum of Rs. 2,03,81,880/- (Rupees Two Crore Three Lakhs Eighty One Thousand Eight Hundred and Eighty only), **after deducting the amount of Rs. 63,75,000/- (Rupees Sixty Three Lakhs Seventy Five Thousand only) as liability of the complainant.**

56. The aforesaid issues cannot be decided by this Authority as the same are beyond the scope and jurisdiction of this Authority. It is significant to note that the respondent has already filed a Special Civil Suit No 76/2021/B before the Ld. Civil Judge Senior Division at Mapusa, Goa against the complainant inter alia for a decree of declaration declaring that the agreements for sale with respect to flats A6, B6, C6, D1, D7 and D8 as



cancelled for all legal purposes in view of the refund of the entire consideration amount to the defendant therein/ the complainant herein; directing the complainant herein to hand over the original documents of the said flats to the respondent herein; to permanently restrain the complainant, his family members etc. from creating any third party rights or interest in the said flats; to permanently restrain the complainant herein from obstructing the entry of the respondent to the said flats and/or from enjoying and possessing the said flats; directing the complainant to pay the damages to the respondent herein and an application for temporary injunction is also filed against the complainant and the said suit is still pending.

57. All the aforesaid issues which are part and parcel of the points for determination in the instant complaint are directly the issues before the Civil Court and the decision of the Civil Court will have direct bearing on the points for determination in the instant complaint.
58. The decision on the aforesaid issues mentioned in para 55 herein is sine qua non for deciding the points for determination as framed above in the instant complaint and/or for granting or rejecting the reliefs sought by the complainant in the instant complaint and since the determination of the aforesaid issues is beyond the jurisdiction of this Authority and the said issues are pending for decision in the Civil Court, the instant complaint is dismissed.


(Vijaya D. Pol)
Member, Goa RERA