

BEFORE THE MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL, MUMBAI

Appeal No. G-20 of 2022

In

Complaint No.F.No.3/RERA/Complaint (271)/2021/700

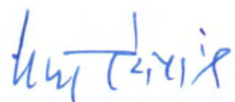
Mrs. Jessica Arun Naidu and]
Mr. Arun Jairam Naidu,]
1102, Saryu Tower Building,]
Jangid Complex, Silver Park Road,]
Mira Road (East), Thane-401107.]
Mumbai City, Maharashtra-401107.] ... Appellants.

Versus

1. M/s. Expat Projects and Development]
Private Limited.]
VIDA Phase-2, Survey No.20/1-L(Part),]
Opp. Shiva Temple, Bainguinnim,]
Tiswadi, North Goa, Goa.]

AND

611, A, Kohinoor Mall, Kohinoor City,]
Kiroi Road, Off. L.B.S. Road, Kurla (W)]
Mumbai-400 070.]
2. Mr. Santosh Shetty,]
Chairman and Managing Director,]
Corporate Office: Carlton Towers No.1,]
A Wing, 3rd Floor, Unit Mo.301-314,]
No.1 Old Airport Road,]
Bangalore KA 560008 T.]
3. Mr. Diwakar Mysore Ramammurthy,]
Director and Authorized Representative,]
4. Sachhidanand Ramappa Kanchan]
Director,]
5. Nenumal Bhatia,]
Director,]
6. Lansel Victor D'Souza,]



Director,]
7. Mr. Beryln D'Souza,]
General Manager,]
8. Mr. William Fernandes.] ... Respondents.

ALONGWITH

Appeal No. G-21 of 2022

In

Complaint No.F.No.3/RERA/Complaint (270)/2021/699

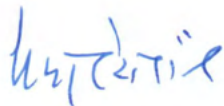
Mr. Spancer Xavier Fernandes]
H.No.482, Sonarbag, Usgao,]
Ponda, Goa-403406.]... Appellant.

Versus

1. M/s. Expat Projects and Development]
Private Limited.]
VIDA Phase-2, Survey No.20/1-L(Part),]
Opp. Shiva Temple, Bainguinnim,]
Tiswadi, North Goa, Goa.]

AND

611, A, Kohinoor Mall, Kohinoor City,]
Kirool Road, Off. L.B.S. Road, Kurla (W)]
Mumbai-400 070.]
2. Mr. Santosh Shetty,]
Chairman and Managing Director,]
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No.1 Old Airport Road,]
Bangalore KA 560008 T.]
3. Mr. Diwakar Mysore Ramammurthy,]
Director and Authorized Representative,]
4. Sachhidanand Ramappa Kanchan]
Director,]
5. Nenumal Bhatia,]
Director,]
6. Lansel Victor D'Souza,]
Director,]



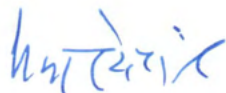
7. Mr. Beryln D'Souza,]
General Manager,]
8. Mr. William Fernandes.] ... Respondents.

ALONGWITH
Appeal No. G-22 of 2022
In
Complaint No.F.No.3/RERA/Complaint (274)/2021/701

Mr. Paul Remigio Fernandes]
Rushila Maria Fatima Fernandes,]
H.No.948, Tarchi Bhatt,]
Siolim, Bardez, Goa-403 517.] ... Appellant.

Versus

1. M/s. Expat Projects and Development]
Private Limited.]
VIDA Phase-2, Survey No.20/1-L(Part),]
Opp. Shiva Temple, Bainguinnim,]
Tiswadi, North Goa, Goa.]
AND
611, A, Kohinoor Mall, Kohinoor City,]
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Mumbai-400 070.]
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3. Mr. Diwakar Mysore Ramammurthy,]
Director and Authorized Representative,]
4. Sachhidanand Ramappa Kanchan]
Director,]
5. Nenumal Bhatia,]
Director,]
6. Lansel Victor D'Souza,]
Director,]



7. Mr. Beryl D'Souza,]
General Manager,]
8. Mr. William Fernandes.] ... Respondents.

ALONGWITH

Appeal No. G-23 of 2022

In

Complaint No.F.No.3/RERA/Complaint (272)/2021/698

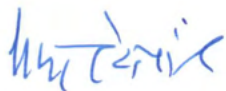
Mr. Francis Rebellow and Rosita Rebello,]
Siddharth Nagar CHS Ltd., Flat No.501,]
Building No.8, Station Road, Sheetal Nagar,]
Mira Road (East), Thane401107]
Maharashtra.] ... Appellants.

Versus

1. M/s. Expat Projects and Development]
Private Limited.]
VIDA Phase-2, Survey No.20/1-L(Part),]
Opp. Shiva Temple, Bainguinnim,]
Tiswadi, North Goa, Goa.]

AND

- 611, A, Kohinoor Mall, Kohinoor City,]
Kiro Road, Off. L.B.S. Road, Kurla (W)]
Mumbai-400 070.]
2. Mr. Santosh Shetty,]
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3. Mr. Diwakar Mysore Ramammurthy,]
Director and Authorized Representative,]
4. Sachhidanand Ramappa Kanchan]
Director,]
5. Nenumal Bhatia,]
Director,]



6. Lansel Victor D'Souza,]
Director,]
7. Mr. Beryln D'Souza,]
General Manager,]
8. Mr. William Fernandes.] ... Respondents.

Appellants in person.

Adv. Dr. Sanjay Chaturvedi for Respondents

CORAM : SHRI S.S. SHINDE (J), CHAIRPERSON &
SHRIKANT M. DESHPANDE, MEMBER (A)

RESERVED ON : 16th February, 2026

PRONOUNCED ON : 13th March, 2026

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

[PER: SHRIKANT M. DESHPANDE, MEMBER (A)]

1. The captioned appeals arise from the separate orders dated 28.09.2022 passed by the learned Goa Real Estate Regulatory Authority (for short "the Authority") in complaint Nos.
 - i) F.No.3/RERA/Complaint (271)/2021/700,
 - ii) F.No.3/RERA/Complaint (270)/2021/699,
 - iii) F.No.3/RERA/Complaint(272)/2021/698,
 - iv) F.No.3/RERA/Complaint(274)/2021/701 respectively.
2. The appellants are allottees within the meaning of Section 2(d) of Real Estate (Regulation and Development) Act, 2016 (for short 'the RERA Act, 2016'). The respondents are promoters within the meaning of Section 2(zk) of the RERA Act, 2016, developing a project in the name and style "Expat Vida Phase-II", bearing Project Registration No. PRG04180244, situated at Bainguinnium, Tiswadi, North Goa.

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3. For the sake of convenience, the appellants and respondents will be hereinafter referred to as "complainants/allottees" and "promoters/respondents" respectively.
4. Since the facts of these cases are more or less similar and the law points involved being identical, these appeals were heard together and decided by this common judgment.
5. The brief facts culled out from the pleadings, documents on record, and the impugned order are that the appellant purchased their respective flats in the promoter's said project with following details:

Sr.	Name of allottees	Flat No.	Consideration (Rs.)	Paid Amount (Rs.)	Date of Agreement for Sale	Date of possession
1	Jessica Arun Naidu & Mr. Arun Jairam Naidu	B 04-202, B 04 202	23,80,000 22,30,000	13,09,000 12,30,387	8-2-2019	30-6-2021
2	Mr.Spancer Xavier Fernandes	E 02/204	41,05,000	26,63,375	1-6-2018	30-6-2021
3	Mr. Paul Navel Remigio Fernandes and Rushila Maria Fatima Fernandes	B 23-203	37,90,000	30,85,240	22-12-17	30-6-2021
4	Francis Rebello and Rosita Rebello	A 21-201	22,45,000	20,13,463	13-08-18	30-6-2021


6. Although the promoter committed to hand over possession of the respective flats to the appellants on or before 30-06-2021 as per the respective agreements for sale, the promoter failed to complete the construction and hand over possession of the said flats to the appellants by the date specified in the respective

agreements for sale. According to the appellants, the promoter was given 3 extensions for project registration by the Authority which were not in accordance with the law and hence liable to be revoked. The appellants also alleged that the various documents filed by the promoters at the time of registration and uploaded on the website of the Goa RERA are forged. Further, the promoter failed to upload regular quarterly progress reports of the projects on the website of the Authority. According to the appellants, the promoter has violated various provisions of the RERA Act, 2016, mis-representation, fraud and cheating and that the promoter is not owner of the land on which the project is being developed. Further, the appellants apprehended that the project will be never be completed.

7. Aggrieved by the above conduct of the promoters, the appellants filed the captioned complaints before the Authority on the grounds as set out in the said complaints and sought the following identical reliefs in all complaints:

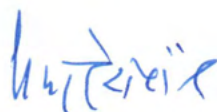
"1) Refund of all the amounts paid till date and calculated as per the current value of the amount (inflation loss) with 12% plus 2% interest under signed Letter of Intent in 2016 under the provision of Section 13(1)(2) of the said Act read with Rule 10(1) (2) of The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017.

ii) Compensation



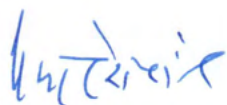
iii) Revocation of all the three extensions granted to the respondent, which according to the complainants are unlawful and in contravention of Section 6 of the said Act."

8. The promoter appeared in the complaints and remonstrated the complaints by filing reply/s. The promoters contended that there is neither any deliberate default or any criminal intent of defrauding any of the allottees and that the promoters have given bonafide reasons for the delay in the completion of the project in the application for extension of registration of the project registration. Further, the promoter is continuing with the work at site in spite of default of payments by the allottees and shall complete the project within the timeline and that any adverse order will put all the allottees in jeopardy as project will face financial constraints.
9. The promoter further contended that all the necessary details of the project and concerned papers are uploaded on the RERA website. Further, the format of agreement for sale is also uploaded on the website in consonance with the Act and the requirement of the rules made thereunder. The promoters have given detailed inspection of all the documents to the allottees/complainants before executing agreements for sale and bank has disbursed loans based on the authenticity of the project documents. The complainants took detailed inspection of the title/plans and the project documents from time to time for purchase of the respective flats. As per the clause 9 of the agreement for sale under the heading "Allottees Declaration", it is mentioned that the owner has made full and true disclosure to the allottees about the title and the use of TDR and that it is



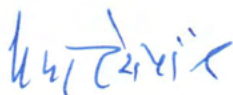
accepted and declared by the allottees that the owner/developer called upon the complainants to take detailed search about project. Accordingly, the complainants took detailed inspection of all the documents before executing the agreements for sale including approved plans.

10. The promoters also contended that there is no issue about title of the property. It is stated that the option letter clearly states that the promoters are planning to develop the property comprising of the land totally admeasuring 37.500 sq. mts. in the project and when the promoter registered the project under RERA, the final area of 28.423 sq. mts. was uploaded on RERA website and the said area was also mentioned in the agreements for sale. The promoter further contended that an area admeasuring 37.500 sq. mts. of the larger property was sold by one Melba Lima Britto and Jose Filipe Pegado Braganza and his wife Wilma Jaques Branganza to Prithvi Consultants Pvt. Ltd. vide sale deed dated 20.10.1994 and sold on 19.04.1996. Vide the agreement for sale dated 18.08.2015, Prithvi Consultants Pvt. Ltd. and M/s. Unicorn Owners agreed to sell, transfer, convey and assign the said land to the promoters. Thus, the promoters have clear title of the said property. The said agreement for sale was followed by supplementary agreement dated 07.02.2017 and agreed to sell an area admeasuring about 28.423 sq. mts. to the promoters.
11. The promoter also contended that with regard to the third party rights, that under section 15(1) of the RERA Act, 2016, the promoter is entitled to create third party rights subject to the written consent from the 2/3rd allottees and further under clause



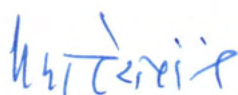
8 of the agreements for sale under heading 'loan', it has been mentioned that the allottees shall give consent to such an arrangement and under clause 8(d), the promoters shall keep the allottees indemnified under such arrangement. Further, clause 8(e) also mentioned that the arrangement shall not impact the title of the allottees concerning the purchase of apartments/flats. Therefore, the interests of the complainants are not affected by the promoters creating third part rights by availing the loan.

12. The promoters also contended that the project got delayed due to the reasons beyond their control like lockdown, persistent defaults of payments by many allottees, delay in giving consent by the allottees to bring in a development partner. The promoters further contended that the promoters are committed to complete the project within extended time and therefore the allottees are not entitled to relief of interest on account of delay.
13. With regard to the refund of the amount as sought by the complainants, the promoters contended that if it is allowed it will only over burden the promoters who are already cash strapped putting the whole project in jeopardy and therefore any order of refund will have adverse effect on the existing allottees. The promoters have carried out work of more than Rs.16.00 crores and out of which the payment of about Rs.7 crores is yet to be received from the defaulting allottees. If the refund is allowed and/or project registration is revoked it will have adverse impact on 370 allottees of the said project. The extension is granted by the Authority for completion of the project till 31.12.2023 and the promoter is doing the work with bonafide intention to meet



the said target. With these submissions, the promoter prayed to dismiss the complaints.

14. After hearing the parties, the Authority passed the impugned order. While passing the impugned order, the Authority observed that the reasons given for the delay in completion of the project do not have any merits and the promoters have failed to hand over possession by the date specified in the agreements for sale and therefore the complainants are entitled to relief of refund with interest under section 18 of the RERA Act, 2016.
15. With regard to the extension of project registration granted from time to time the Authority observed that the said extensions given by the Authority cannot be set aside as Authority is not competent to set aside its own orders. Further, the complainants have not challenged the said extensions before the Appellate Authority. The Authority has no jurisdiction to declare its own orders as illegal nor set aside its own order. Therefore, the extensions given to the project are legal and lawful.
16. With regard to the prayer of the complainants to revoke the project registration, the Authority observed that complainants have given various grounds for revocation of the registration of the project under the RERA Act, 2016. In this regard it is material to note that there are various other complaints filed by the allottees against the promoters in respect of the same project where the allottees have not prayed for revocation of the registration of the project. In some of the other complaints against the promoter, the parties have arrived at amicable settlement. There are about 370 allottees and the promoters have carried out work of more Rs.16.00 crores. Thus, taking



into consideration the fact that there are many other allottees in the said project, any order of revocation of registration of the said project will have a dire impact on the rights and interests of other allottees. Hence, for the revocation of registration of the project it was incumbent on the part of the complainants to make all other allottees of the project as party in the present complaints. In absence of other allottees of the project in the instant complaint, the aforesaid relief of revocation of registration of the said project can not be considered by the Authority.

17. With regard to the relief of compensation, the Authority observed that under section 71 of the RERA Act, 2016, the compensation under section 12, 14, 18 and 19 of the RERA Act, 2016, has to be adjudged only by the Adjudicating Officer for adjudging the quantum of compensation, if any. With these observations, the Authority passed the following order in the respective complaints"

"The respondent is directed to refund the amount of Rs.25,39,387.20/- (Rupees Twenty five Lakhs Thirty Nine Thousand Three Hundred Eighty Seven and Paise twenty only) to the complainants within two months from the date of this order.

Further the respondent is directed to pay 10.00% per annum interest (present lending rate of interest by SBI which is 8.00% per annum plus two percent) for every month of delay to the complainants on the aforesaid amount paid by the complainants from 30th June, 2021 till the date of actual payment of the aforesaid refund.



Under Section 61 of the said Act, if any promoter contravenes any other provisions of the said 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 percent of the estimated cost of the real estate project as determined by the Authority. In the instant case, the promoter has not discharged his obligations, responsibilities and functions as per the agreement for sale registered on 08.02.2019 and hence is liable to penalty under Section 61 of the said Act. Taking into consideration the facts and circumstances of the case, penalty of Rs.1,00,000/- (Rupees One Lakh only) will serve the ends of justice. Hence, the promoter/the respondent is directed to pay the penalty of Rupees One Lakh within a period of two months from the date of this order. The said penalty amount, if realized by this Authority, be forfeited to the State Government. The respondent is directed to file compliance report this order within two months, failing which further legal action will be taken by this Authority under the said Act for execution of this order.

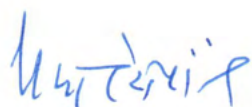
The instant complaint is now referred to the Adjudicating Officer to adjudge compensation, if any as per Section 71 of the said Act."

18. Aggrieved by the impugned order the appellants have filed the captioned appeals on the grounds as set out in the respective memorandum of appeals and sought, inter-alia, the relief of



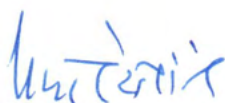
refund with interest and compensation and revocation of the project registration.

19. We have heard the appellants in person and the learned Advocate for the promoter. Their submissions are nothing but re-iteration of the contents of the respective memorandums of appeal, reply, and written submissions.
20. The appellants have contended that the Authority has granted unlawful extension of project registration 3 times from time to time without ascertaining the requirement of disclosure and ascertaining the genuineness of uploaded documents by the promoter in violation of provisions of RERA Act, 2016, Rules and Regulations made thereunder. It is the contention of the appellants that the Authority has failed to see the authenticity of the approved construction license and permissions, the forged title report of land, forged completion certificate from unregistered Architect, forged estimated cost and estimate completion certificate from a Structural Engineer Cum Cost Consultant Cum Quantity Surveyor, forged cost and completion certificate from Civil Engineer Cum Architect, forged audit report from a practicing Chartered Accountant and a forged self certified cost report promoter itself.
21. The appellants have contended that the Authority ought to have examined the genuineness of the uploaded documents for the institutional integrity. The appellants also contended that the promoter has not uploaded Form-I on the web page/RERA portal for public viewing. The promoter from the onset of the project never had any, nor submitted under its ownership/name any authenticated copy of the clear flow of tile for land/sale deed



proof of ownership of land for 37.500 sq. mts approvals, commencement certificate, sanction plans, layout plans and specifications of the proposed project or the phase thereof and the whole project as mentioned by the Competent Authority obtained in accordance with laws, as may be applicable for the real estate project including firefighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy, location details with clear land demarcation, allotment letter, agreement for sale, conveyance deed, the number, type and the carpet area of apartments, number of garages, the names and addressed of the contractors, Architect, Structural Engineer, mentioned in the application in Form-I, where in the said form and details therein was concealed from public viewing.

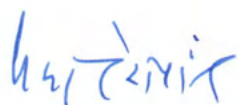
22. The appellants also contended that the sworn affidavit as mandated under Form II wherein the promoters have brazenly violated the RERA provisions from the original registration of 2018 and also under the 3 subsequent extensions granted to it wherein the subject to its legal title to the land, encumbrances, timelines to complete the project and funds for the real estate project to be mentioned in the scheduled bank and audited annual financial report for 3 consecutive years from 2018 to 2021 by a Chartered Accountant in practice, has never been complied with. The appellants have also contended that if the promoter have made the true disclosures of the title, use of TDR, approved plans and the appellants having taken detailed inspection of the documents why have the same not been appended to the agreement for sale as mandated by law? There is no disclosure as per section 2(k) of Goa RERA Rules 17.



23. The appellants have also contended that the agreements for sale contains the clause 'loan' wherein the said clause without dwelling into the exposure of risks and liabilities the promoters have put the appellants by its clauses in the agreements at risk. These clauses are in violation of model agreement for sale. The promoters have also not disclosed the names of the company directors, genuine registered business address, company activities, defunct corporate website, and were never in genuine ownership of land, construction license and permissions etc. The appellants contended that the above are the gross violations of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder and the promoters have failed to do these acts as required under the law. The Authority has not gone into these violations in spite of having wide powers under section 35 of the RERA Act, 2016 to carry out investigations. These violations are sufficient grounds for revocation of registration of the project under section 7 of the RERA Act, 2016.
24. The appellants have also contended that they are also praying for compensation, besides the refund with interest. The compensation should in fact take into account the changing value of investment in market segments, such as stock market, appreciation in the property value, EMI's being paid by the appellants, increased cost of higher education, increase in the consumer index, declining purchasing power in the amounts that were paid to the promoter as well as mental harassment etc. With these submissions, the appellants prayed to allow the appeals.

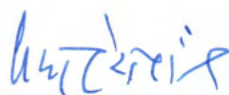


25. Per contra, the learned Advocate for the promoters has contended that the agreed date of possession as per the agreement for sale was 30.06.2021. However, the project completion was delayed due to lockdown during covid-19 pandemic and default in payments by the allottees which caused the promoter to be cash strapped. The promoters also wanted to bring in an additional development partner and they sought consent of the allottees, which further delayed the completion of project. The promoters had applied for extension of the project registration and rightfully granted extension for 18 months. For these extensions the promoter had complied with the rules under RERA Act, 2016 and had not violated any rules. Further, if any suspicion or question against this grant given by the Authority ought to have been taken up by the appellants with Civil Court.
26. The learned Advocate further submitted that the Authority by its impugned order has awarded appellants full refund of the amount paid plus interest from, 30.06.2021 till the actual date of payment. By the present appeals, the appellants are trying to extract more monies from the promoter by attempting to enhance interest and compensation. With regard to the compensation part, the same has been referred by the Authority to the Adjudicating Officer under section 71 of the RERA Act, 2016. The appellants have pursued the said matters before the Adjudicating Officer by filing an application dated 22.11.2022. By an order dated 19.05.2023, the Adjudicating Officer has awarded compensation as mentioned in the respective orders to be paid by the promoters within 30 days of the said orders,



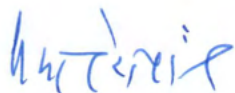
failing which the promoters are liable to pay interest on the said amounts till the date of realization of the amounts.

27. The learned Advocate submitted that the appellants have alleged innumerable allegations not only on the promoters, but also on the Board of Directors, employees, and respectful professionals associated with project and surprisingly on the Authority. However, these allegations are without concrete or substantial evidence. The learned Advocate submitted that the promoter from the onset of the project had submitted and uploaded the ownership authenticated copy of the clear flow of title or land/sale deed proof of ownership of land for 37.500 sq. mts., all approvals, commencement certificate, sanctioned plan, layout and specifications of the proposed project of the phase. The entire project was sanctioned by the Competent Authority and all the required details including agreement for sale for the project were submitted in the option letter and agreement for sale and also uploaded on the website. The option letter containing that the details and terms and conditions were first inspected and the accepted by the appellants and only then they registered the agreements for sale.
28. With regard to the issue of the property, the promoter had given option letter clearly stating that the promoters had plans to develop the total of 37.500 sq. mts. of land in the proposed project and the same plan was in planning stage. The final area of 28.423 sq. mts. was uploaded on the RERA website. The appellants booked their respective units in or around 2016 wherein it was clearly mentioned that the area admeasuring 37.500 sq. mts. of the larger property was sold by one Melba

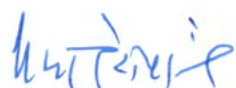


Lima Britto & Jose Flipe Pegado Breganza and his wife Wilma Jaques Braganza sold to Prithvi Consultants Pvt. Ltd. by sale deed dated 20.10.1994 and sold on 10.04.1996. Vide agreement for sale dated 18.08.2015, Prithvi Consultant Pvt Ltd. and M/s. Unicorn Owners agreed to sale, transfer, convey and assign the said land to the promoter. The said agreement for sale was followed by supplementary agreement dated 07.02.2017 and agreed to sale and area admeasuring about 28.423 sq. mts. area to the promoter. The said description of the area was also specifically stated in the appendix II of the agreement for sale. All the allegations regarding the entire project and its documents are baseless and uncorroborated.

29. The learned Advocate submitted that the appellants had inspected the entire project and all the documents rigorously and had even conducted a title search themselves. The appellants are finely educated individuals with their free will and had complete knowledge of the project. Therefore, the allegations of defraud or coercion to sign agreements for sale are absolutely baseless. The appellants have also alleged cheating and fraud on various qualified professional Chartered Accountant, Engineers, Architects and Advocates associated with the said project. All these allegations are baseless and without any substance. Also, the appellants have not made them party to these appeals so as to keep this claim unchallenged. The reports submitted by the professionals are true to their notice and in compliance with the RERA Act, 2016.



30. The learned Advocate submitted that the promoters have abided by the provisions of RERA Act, 2016 right from the planning of the project and made complete disclosure and the compliances of the project. The commitment of the promoters towards the project and its allottees can be seen from the fact that the promoters have carried out the work of nearly Rs.16 crores plus and nearly Rs.7 crores are yet to be received from the defaulting allottees. The promoter would even be infusing their profits in the project funds for its timely completion. In such an event, if the promoter is saddled with the refund orders, then that would bring the project to a standstill which would gravely affect the interest of all the other allottees. With these submissions, the learned Advocate for the promoter has prayed to dismiss the appeals and direct the appellants let the promoters continue with the project without asking for delayed interest and compensation and take possession as and when occupation certificate is issued and further participate in the society formation.
31. We have heard the appellants in person as well as the learned Advocate for the respondents/promoter at length. On examination of the pleadings of the parties, submissions advanced by the appellants as well as the learned Advocate for the promoter, impugned order, and the material placed on record, the following points arise for our consideration, and we have recorded our findings thereupon, for the reasons to follow, as under.



Sr.No.	Points	Findings
1.	Whether the appellants are entitled to relief of refund with interest under section 18 of the RERA Act, 2016 for delay in handing over possession?	In the Affirmative.
2.	Whether the impugned order warrants interference in this appeal?	Partly in the affirmative.
3.	Whether the appellants have made out a case for compensation?	In the negative.
4.	What order?	As per final order.

REASONS

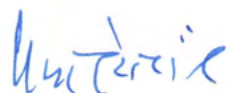
Point No.1

32.On ensemble of the facts as submitted by the appellants and the material on record, it reveals that it is not in dispute that the appellants have purchased the subject flats by registered agreement for sale for consideration as mentioned in the said agreements for sale and had paid substantial amounts towards consideration of the respective flats as per the table in Para-5 above.

33.It is not in dispute that the promoters committed to hand over possession of the subject flats on/or before 30.06.2021 as stipulated in the respective agreements for sale. However, the promoters failed to hand over possession of the subject flats by

the dates stipulated in the respective agreements for sale. Further, the construction of the project is still incomplete and the promoters have not obtained occupation certificate till date. This demonstrates that the promoters have failed to hand over possession to the appellants by the date specified in the respective agreements for sale. Therefore, the appellants are entitled to seek relief under section 18 of the RERA Act, 2016.

34. It is the contention of the promoters that the project has been delayed on account of circumstances beyond its control like lockdown and persistent defaults in payments by many allottees. Further, there was delay in giving consent by the allottees to bring in additional development partner. The reasons for the delay as demonstrated by the promoter do not fall within the ambit of explanation to Section 6 of RERA Act, 2016, which clearly clarifies that the '*force majeure*' shall mean case of war, flood, drought, fire, cyclone, earthquake, or any other calamities caused by the nature affecting regular development of real estate project. None of the grounds demonstrated by the promoter fall within the scope of explanation to Section 6 of RERA Act, 2016, which could have justified the delay. Even if the *force majeure* factors as demonstrated by the promoter are given some consideration, we are of the view that the promoters are not entitled to get benefit of the same for the reasons that the same are not attributable to the appellants nor is the case of the promoters that the appellants, in any way, have caused delay in possession. As we have already that the due date of possession is 30.06.2021. The construction is still incomplete and therefore



the promoter has failed to hand over possession of the subject flats to the appellants by the date as specified in the agreements for sale and therefore the appellants are entitled to relief under section 18 of the RERA Act, 2016.

35. Section 18 of the RERA Act, 2016 provides for refund of amounts and compensation if the promoter fails to complete or is unable to give possession of an apartment in accordance with the terms of the agreement for sale. The said clause is reproduced below:

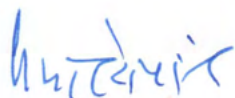
“18. Return of amount and compensation. –

(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.

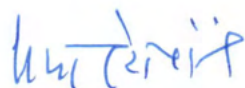
He shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be, with interest at such rate as may be prescribed 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”.

36. The said provision makes it clear that if the promoters fail to handover possession of the subject flats by the date specified in the agreement, then the promoters shall be liable, on demand, to the allottees, in case allottees wish to withdraw from the project, without prejudice of any other remedy available, to return the amount received by the promoters in respect of the flats along with interest at such rate, as may be prescribed in this regard.
37. It is worth noting that it is not in dispute that the promoter has failed to hand over possession of the subject flats to the appellants by the date of possession as mentioned in the said MoUs. There is no material on record to show that the appellants are responsible for the delay in completing the subject project. The ratio laid down by the Hon'ble Supreme Court in *M/s. Imperia Structures Ltd. Vs. Anil Patani & Ors.* [in Civil Appeal No. 35813590 of 2020] is that-

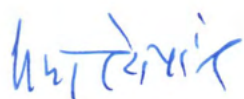
"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes 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 proviso to Section 18 (1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18 (1) or under proviso to Section 18 (1)."

38. While explaining the scope of Section 18 of RERA, the Hon'ble Supreme Court in *M/s. Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh* [2021 SCC Online 1044] dated 11 November, 2021 held that;

"Para 25. The unqualified right of the allottee to seek refund referred 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 had 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

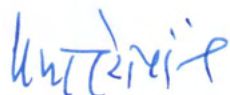


withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed”.

39. Section 18 of the RERA Act, 2016, thus spells out the consequences that if the promoter fails to complete or is unable to give possession of an apartment by the date specified in the agreement, the allottee holds an unqualified right to seek refund of the amount with interest on such rate as may be prescribed in this behalf, including compensation in the manner as provided in the RERA Act, 2016. We have already observed that the promoter has failed to hand over possession by the date specified in the said agreements for sale, therefore in the light of the ratio laid down by the Hon'ble Supreme Court in above judgements, the promoters/respondents are liable to refund the amount paid by the appellants in respect of the subject flats along with interest under section 18 of the RERA Act, 2016.
40. In view of the above, the appellants are entitled to refund along with interest under Section 18 the RERA Act, 2016. Accordingly, we answer point no.1 in the affirmative.

Point No.2

41. While granting relief of refund with interest, the Authority has granted interest with effect from 30.06.2021 till date of actual payment of the refund amount. In this regard it is pertinent to visit relevant section of the RERA Act, 2016, which defines term interest.
42. Section 2(z) defines the term interest. The said clause is reproduced below:



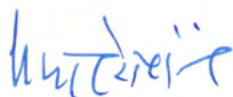
"2(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation – For the purpose of this clause –

- i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- ii) The interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid".*

43. As per the said definition of interest, it has made it clear that the interest payable by the promoter to the allottee shall be from the date promoter receives the amount or any part thereof till the date amount or part thereof and interest thereon is refunded. Further, the interest payable by the allottee to the promoter shall be from the date of alleged default to payment to the promoter till the date it is paid. Thus, this provision makes it abundantly clear that in case of refund of the amount, the interest payable by the promoter to the allottee shall be from the date the promoter received the amount till it is refunded to the allottee. Thus, the promoter is liable to pay interest from the date of respective payments.


44. The Hon'ble Supreme Court in the case of *Experian Developers* (supra) has held that interest payable on amount deposited by the flat buyers is not only restitutionary but also compensatory



and interest has to be paid from the date of deposits and not from the estimated date of possession. The Hon'ble Supreme Court in the case of *Experian Developers* (supra) has in para-22.1 has held as under:

"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 v. DS Dhanda¹⁶ 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 deposit. Therefore, the appeal filed by purchaser deserves to be partly allowed. The interests shall be payable from the dates of such deposits."

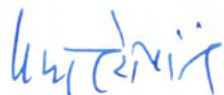
45. In the light of the discussion above, we come to the conclusion that appellants are entitled to relief of refund of the paid amounts with interest from the dates of respective payments under section 18 of RERA Act, 2016.
46. In view of above, the grant of relief of refund from the due date of possession as granted by the Authority in the impugned orders are not legally sustainable. Accordingly, we are of the considered view that the appellants are entitled to refund of the paid amounts with interest from the dates of respective payments till the amounts are realized to the appellants. On



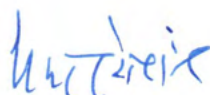
this ground, the impugned order warrants interference in this appeal. Accordingly, we answer point no.2 in the affirmative.

Point No.3

47. It is the contention of the appellants that the compensation is required to be awarded based on the various grounds such as time value of the investment money, loss of appreciation in property value, losses on account of change in value in market segment such as stock market, property value, bank loan EMI's, consumer price index, cost of leaving etc. We are of the considered view that all the grounds taken by the appellants are notional one. In order to award compensation, it is necessary for the appellants to demonstrate the actual losses suffered in order to determine the quantum of liquidated damages as a result of failure to hand over possession by due dates as mentioned in the agreement for sale. We can not take notional losses as contended by the appellants and award any compensation. The appellants have failed to demonstrate the actual losses incurred as a result of failure on the part of the promoter and compensation can not be awarded on the basis of notional losses.
48. We also note that the impugned order besides awarding refund with interest, has referred the matter to the Adjudicating Officer to adjudge the compensation as per section 71 of the RERA Act, 2016. It is also not in dispute that the Adjudicating Officer also passed the orders of awarding compensation which are not, however, the subject matter of these appeals. In view of this, the prayer of the appellants for grant of compensation is rejected. Accordingly, we answer point No.3 in the negative.



49. With regard to the prayer of the appellants for revocation of the registration, the appellants have contended several violations of the RERA Act, 2016, Rules and Regulations made thereunder. The appellants have contended that the promoter has not disclosed the various constructions licenses and permissions, title report of the land, completion certificate from the registered Architect and alleged that the promoters have forged estimate cost and estimated completion certificate from the Structural Cum Cost Consultant Cum Quantity Surveyor and also forged audit reports from the practicing Chartered Accountant and forged self certified cost report by the promoter himself.
50. The appellants have also contended that the promoter has failed to upload the Form I on the website of RERA portal for public viewing. The promoter from onset of the project never had submitted its ownership any authenticated copy of clear flow of title for the project land, commencing certificate, sanctioned plans, layout plans, specifications of the proposed project or the phase thereof etc. The promoter also failed to upload Form II in violation of RERA Act and Rules. The promoter has failed to upload audited annual financial reports for 3 consecutive years from 2018-2021. Similarly, the promoter has not made true disclosure about title, use of TDR, approved plans and the same also do not form the part of the agreement for sale as mandated by the disclosure under section 2(k) of the Goa RERA Rules, 2017.
51. We note that the appellants have made serious allegations and brought to the notice of the Authority various violations of provisions of RERA Act, 2016, Rules and Regulations made



thereunder. We also note that the Authority in its order has not recorded any findings as to whether there have been any merits in the said contentions of the applicants, before rejecting the prayer of the appellants for revocation of registration under section 7 of RERA Act, 2016.

52. The appellants in the captioned complaint have sought revocation of the project registration under section 7 of the RERA Act, 2016. The said provision is reproduced below:

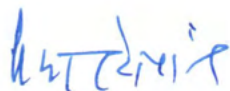
“7. Revocation of registration-(1) *The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that-*

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder,

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority,

(c) the promoter is involved in any kind of unfair practice or irregularities.”

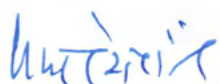
53. It is pertinent that Section 7 of the RERA Act, 2016 provides that the Authority may on receipt of complaint or suo motu in this behalf or on the recommendations of the competent authority revoke the registration granted under section 5 of the RERA Act, 2016. Further, Goa RERA has also prescribed the detailed procedure for revocation of the registration of the project. Thus, the Authority is empowered to initiate action under section 7 on receipt of a complaint. Therefore, in view of



the above, the failure of the Authority to reject the said prayer of revocation without recording its findings on the contentions of the appellants is not sustainable in the eyes of law.

54. As mentioned above, Section 7 of the RERA Act, 2016 provides for grounds for revocation of registration of a project. From the said provision, it is clear that the Authority can revoke the registration after being satisfied that when promoter makes default in doing anything required by or under the RERA Act, 2016 or the rules or the regulations made thereunder. In view of the above, we are of the view that the appellants have produced on record various grounds for violation of RERA Act, 2016, rules and regulations made thereunder which the Authority ought to have taken into account while dealing with the said complaints. We are of the considered view that the impugned order warrants interference to the extent of failure of the Authority to record its findings on the prayer of revocation under Section 7 of the RERA Act, 2016. We re-iterate Section 35 of the RERA Act, 2016, granted wide power of investigation. The said provision is also reproduced below:

*"35. **Powers of Authority to call for information, conduct investigations-(1)** Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or*



more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (7), the Authority shall have the same powers as are vested in a civil under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-

(i) the discovery and production of books of account and other documents, at much place and at such time as may be specified by the Authority,

(ii) summoning and enforcing the attendance of persons and examining them on oath

(iii) issuing commissions for the examination of witnesses or documents:

(iv) any other matter which may be prescribed."

55. In view of the aforesaid, we are of the considered view the matters are required to be remanded back only to the extent of recording its findings and taking appropriate actions, if needed, with regard to the prayer of revocation of the registration of the project under section 7 of the RERA Act, 2016. Such a step is essential to safeguard the procedural and institutional integrity.

56. Accordingly, we proceed to pass the following order.

ORDER

1. Appeal Nos. G-20 of 2022, G-21 of 2022, G-22 of 2022 and G-23 of 2022 are partly allowed.



2. The impugned orders are modified to the extent of award of interest on the paid amounts, with directions that the interest shall apply "instead from 30.06.2021" as held by the Authority in the impugned order, "from the date of respective dates of payments of consideration amount" till the said amounts are realized to the appellants.
3. We further direct the promoters/respondents to pay the said refund amounts with interest within 30 days of this order, failing which the promoters/respondents shall pay interest on the outstanding amount as on 13.04.2026 with the same interest rate as prescribed in the impugned order.
4. Rest of the impugned orders are upheld.
5. Prayer for compensation is rejected.
6. The matters are remanded back to the Authority only to the extent of deciding the matters afresh on the prayer of the complainants/appellants on revocation of the registration of the project under Section 7 of the RERA Act, 2016, by keeping the contentions of the parties open.
7. Parties to bear their own costs.
8. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA Act, 2016.
9. Accordingly, all the appeals stand disposed of in above terms.



(SHRIKANT M. DESHPANDE)



(S.S. SHINDE, J.)

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