



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA

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No.3/RERA/Complaint (151)/2020/112

Date: 15/02/2022

Ann Marie De Souza,
AG1 Nirvana Housing complex,
Shetye Waddo Duler,
Bardez-Goa, 403507.

.....

Complainant

V/s

Navkar Goa Enterprises,
203/204 Joia De Souza
Opp. Angel Resort, Chogm Road,
North-Goa, 403521

.....

Respondent

ORDER

This is to dispose of the complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the 'Act') made by Ann Marie D'Souza (hereinafter referred as the complainant) received online on 27/02/2021. The complaint has been filed against M/s Navkar Goa Enterprises (hereinafter referred as the respondent) in respect of the project 'POSTCARD PORTICO'. The complainant had booked a flat with respondent and entered into an Agreement on 05/12/2013. As per this Agreement, a flat bearing no. 203, admeasuring 76.02 square meters, on the second floor of the building project 'POSTCARD PORTICO' along with the proportionate undivided share in the property at Guirim, Bardez, Goa was booked for a total consideration of Rs. 22,80,600/- (Rupees Twenty Two Lakhs Eighty Thousand Six Hundred only). As per the agreement dated 05/12/2013, the respondent was to deliver the possession of the said flat to the complainant within a period of 18 months from the date of execution of this Agreement i.e. by 06/06/2015. Thereafter, the respondents through their

emails, assured the complainants on different occasions that they would hand over the possession but till date the said flat is still incomplete. Till date the complainant has paid to the respondent a total amount of Rupees 16,45,749/- (Rupees Sixteen Lakhs Forty five thousand seven hundred and forty nine only) and the balance amount is 7,76,794/- (Rupees Seven Lakhs Seventy Six Thousand Seven Hundred and Ninety four only). The flat is still not complete. It is mentioned in the complaint that respondent handed over the completion order dated 16/05/2019 to the complainant on 05/06/2019 and demanded the remaining balance of Rs. 7,76,794 (Rupees Seven Lakhs Seventy Six Thousand Seven Hundred and Ninety four only) by 30/11/2019. As per complainant, it was assured by the respondent to complete the little balance work in the mean time and obtain the occupancy certificate only once the balance amount is paid. Project is not registered under RERA. Complainant in this case has requested before the Authority for interest on Rs.16, 45,749/- (Rupees Sixteen Lakhs Forty five thousand seven hundred and forty nine only) for delayed period and compensation.

2. A notice dated 19/03/2021 was issued to respondent to file the written reply by 01/04/2021. Respondent has filed the reply dated 31/03/2021. During the course of hearing on 06/10/2021, the complainant filed written arguments through advocate. Respondent has also filed written arguments on 07/01/2022 and submitted citations/rulings on 17/01/2022.

3. In its reply dated 31/03/2021, respondent/promoter stated that occupation certificate for the project 'POSTCARD PORTICO has been obtained 14/02/2020 and the construction work on site is complete. It has been mentioned that only certain finishing work is pending and shall be completed within 10 days. Respondent has further submitted that complaint filed by the

complainant is false, unwarranted and baseless in order to avoid making the balance payment of Rs. 7,76,794/-. Respondent has further submitted that registration under RERA was not applicable in this case as there was no RERA at that time. It has been stated by the respondent that though it was agreed to deliver the possession within a period of 18 months, the delay was not intentional, the delay was caused due to non-availability of building materials, mainly the sand, non availability of labors, and this lead to slow down of the project. Now, that said flat is complete in all aspect and the respondent has directed the complainant to take over the possession of the same and to receive the occupancy certificate and to make the balance payment.

4. I have gone through the contents of the complaint, reply filed by the respondent and written arguments of both the parties. In this case the flat bearing no. 203, admeasuring 76.02 square meters in the building project 'POSTCARD PORTICO' was booked and an agreement for sale was executed between the parties on 05/12/2013. Respondent was to give the delivery/possession of the flat within 18 months i.e. by 06/06/2015. It is admitted position by the respondent himself that occupancy certificate for the project was received on 14/02/2020 and even after that certain finishing work was pending.

5. Apart from arguments on merit, the respondent has raised the issue of jurisdiction. As per respondent, building is completed before introduction of RERA and hence Sections cited by the complainant is not applicable. Para 11 to 14 of the written arguments dated 07/01/2022 are transcribed below.

“11. Further the Respondent states and submits that the building is completed before introduction of RERA and hence sections cited by

the Complainant in her written Arguments is not applicable against the Respondents nor she can claim any compensation from the Respondents and all the incidences communicated to her by the Respondents.

12. So also this Authority has no jurisdiction to entertain the false complaint filed by the Complainant since building was completed before 2017.

13. That the Complainant has come to this Forum with ill motive with lure of money by taking shelter of Goa RERA, Since Clause 33 of said Agreement provides that: "In case of any dispute or differences arise between the parties hereto in respect of, in connection with, relating to or with respect to said Agreement the same shall be referred to the arbitration and conciliation Act 1996 as amended from time to time". Here she has to invoke Arbitration first and then after getting order from Arbitrator she can approach any court to redress her complaint, hence it is premature complaint before RERA and same is illegal.



14. That as regards above clause, the Complainant has to invoke arbitration Clause 33 before approaching the RERA Authority, without arbitration the Complaint filed by the Complainant is bad in law and she had filed the Complaint against this Respondent before RERA Authority is with her convenience."

6. As far as applicability of RERA is concerned, the Act provides applicability and Registration of all the ongoing projects on the date of commencement of the Act. Relevant provision of Section 3(1) is as follows:-

“3. (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:”

Hence as per this Section all the ongoing projects for which completion certificate was not issued at the time of commencement of the Act, the Promoter was bound to register the same under the Act. Accordingly, the Act becomes applicable in respect of those projects. This Section 3 came in force on 01/05/2017 as per the notice by the Government of India. As far as State of Goa is concerned, the rules were framed in November 2017 and last date for registration of ongoing projects were extended upto 23/03/2018 without penalty. In this case, the completion order was obtained on 15/05/2019 and the same was handed over to the complainant/allottee on 07/06/2019. Since, the completion certificate was obtained on 15/05/2019, the project very well comes within the purview of the Act as ongoing project and hence claim of the Respondent that building was completed before the introduction of RERA doesn't hold good.

7. The respondent has taken the issue of Arbitration clause mentioned in the Agreement for sale. He has quoted that as per clause 33 of the Agreement for sale, any dispute between the parties should be referred to Arbitration and

Conciliation Act 1996 as amended from time to time. The Ld. Advocate for the respondent has also cited a Supreme Court order M/s Duro Felguera S.A vs M/s. Gangavaram Port Limited on 10 October, 2017. However, it is seen that the said Supreme Court order is in respect of the two parties i.e. one party is contractor and other is party which has floated the tender. This work order has to be regulated strictly in terms of the Agreement itself as there is no regulatory Authority to regulate this effect. Hence in my opinion this judgment will not be applicable in this case. Reference is also invited to order dated 13/07/2007 passed by National Consumer Disputes Redressal Commission in the case of Aftab Singh Vs. EMAAR MGF Land Ltd. and Anr. In this case the commission had held that presence of an arbitration clause could not be construed to take away the jurisdiction of a Special Forum such as Consumer Courts, and by analogy this Authority. This order of National Consumer Commission has been maintained upto the level of Hon'ble Supreme Court, which had dismissed the appeal filed against it vide its order dated 13/02/2018.

8. Further, it may be noted that Section 79 of The Real Estate (Regulation and Development) Act, 2016 bars the jurisdiction of Civil Court about any matter which falls within the purview of this Authority. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Finally, Section 88 of the Act says that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. Hence, in my opinion, law in this respect is very well settled and the complainant has got every right to file the complaint before this Authority under Section 31 of the Act. Accordingly, the objections raised by Ld. Advocate for the Respondent about non-applicability of RERA as well as applicability of arbitration clause are over ruled.

9. Now, coming to the aspect of Registration, it has been pointed out by the complainant that the project is not registered under RERA. In its reply dated 31/03/2021 in Para 6(b) respondent has contested the issue and stated that the registration under RERA is not applicable. However, in its written arguments dated 07/01/2022, respondent himself has stated that process to register the project under RERA has already been initiated. This is some kind of admission on the part of respondent himself that registration under the Act is very well required in respect of this project. The issue has been discussed in the preceding Para 6 of this order and now it is reiterated that registration under Section 3 of the Act is required in this case as ongoing project. Section 59 of the Act deals with the penalty for non-registration under section 3 of the Act. This provision is as follows:-

“59. (1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten percent of the estimated cost of the real estate project as determined by the Authority.”

From the above, it is very clear that Promoter has violated the provisions of the Act by not registering the project. He should have made application for registration before 23/03/2018 but he failed to do so. Hence, it is a fit case for action u/s 59(1) of the Act. As per this Section, the promoter can be penalized upto 10% of the project cost. However, taking a lenient view and practice adopted in similar cases, I feel that a penalty of Rs. 5,00,000/- should be imposed on the promoter with the direction to register the project within 60 days.

10. Coming to the merit of the case, complainant has requested that interest on Rs. 16,45,749/- (Rupees Sixteen Lakhs Forty five thousand seven hundred and forty nine only) for delayed period of the project as well as compensation. As

already mentioned earlier, Agreement for sale in this case was executed on 05/12/2013 and respondent was to deliver the possession of the said flat to the complainant within a period of 18 months i.e. by 06/06/2015. It is also mentioned by complainant in its arguments dated 07/12/2021 that balance amount of Rs. 7,76,794/- (Rupees Seven Lakhs Seventy Six Thousand Seven Hundred and ninety four Only) has been paid to respondent by the complainant on 27/09/2021 and 28/09/2021. However, he has yet to deliver the possession of the flat. The respondent in his reply has pleaded that state of Goa has banned the erection of sand for more than 05 years and there was no supply of sand. However, Respondent has not produced any evidence to support its claim. Instances suggest that activities of construction were taking place everywhere in Goa during that period and hence the plea of the respondent has no base. As per Section 18 of the Act, the allottee is entitled for interest for delayed period. Section 18(1) of the Act is as follows:

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

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

or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment,

plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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

The rate of interest chargeable is prescribed under Rule 18 The Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures of website) Rules, 2017 . As per this Rule, the rate of interest payable by the promoter shall be State Bank of India highest marginal cost of lending rate plus 2%. At present highest Marginal cost of lending rate of SBI is 7.3%. Thus, the total interest rate payable in this case will be 9.3% per annum. Based on this, rate of interest i.e. at the rate of 9.3% per annum, the entire interest on the amount Rs. 16,45,749/- (Rupees Sixteen Lakhs Forty five thousand seven hundred and forty nine only) from period 1st July 2015 to 31st January 2022 comes to Rs. 10,07,602/- (Rupees Ten Lakhs Seven Thousand Six Hundred and Two only). The total monthly interest on the amount of Rs. 16,45,749/- (Rupees Sixteen Lakhs Forty five thousand seven hundred and forty nine only) comes to Rs. 12,754/- (Rupees Twelve Thousand Seven Hundred and Fifty Four only). As far as determination of compensation is concerned, the power to determine the same is vested in Adjudicating Officer under section 71 of the Act. Hence, the case should be referred to Adjudicating Officer for the same.

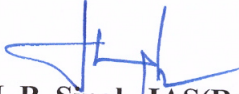
11. In view of the above observations, the following directions are issued:

a) Respondent/Promoter is directed to pay the penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) within 30 days and also get the project registered after submitting all the documents within 60 days failing which he will be liable for action u/s 59 (2) of the Act.

b) The Respondent is directed to pay the interest amount for delayed period with effect from 01/07/2015 till 31/01/2022 at the rate of 9.3% p.a. which comes to Rs. 10,07,602/- (Rupees Ten Lakhs Seven Thousand Six Hundred and Two only) within 30 days after receipt of this order. Further respondent is also directed to pay the monthly interest at the rate of 9.3% p.a. and the said interest will be payable with effect from 01/02/2022 till delivery of the possession of the premises to the complainant. This monthly interest amount comes to Rs. 12,754/- (Rupees Twelve Thousand Seven Hundred and Fifty Four only) and it should be paid between 1st to 10th of the subsequent month. Apart from this, in case of failure on payment of interest amount Rs. 10,07,602/- (Rupees Ten Lakhs Seven Thousand Six Hundred and Two only) within the prescribed period of 30 days, respondent will be liable to pay the interest on this amount at the rate of 9.3% p.a. from 01/02/2022 till the entire amount is paid or recovered as per law. Similarly, respondent will also be liable to pay interest at the same rate in case of default of monthly interest described above. The entire amount under this clause will be payable by respondent to complainant directly.

c) For the purpose of determination of compensation, the case is referred to
Adjudicating Officer u/s 71 of the Act.

Order accordingly,


J. B. Singh, IAS(Retd.)
Member, Goa RERA.

To,
1. Ann Marie De Souza,
AG1 Nirvana Housing complex,
Shetye Waddo Duler,
Bardez-Goa, 403507.

2. Navkar Goa Enterprises,
203/204 Joia De Souza
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