



GOA REAL ESTATE REGULATORY AUTHORITY
DEPARTMENT OF URBAN DEVELOPMENT
GOVERNMENT OF GOA

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No.3/RERA/Complaint (262)/2021/605

Date: 25/08/2022

Sayed Imran,

Chamunda Enclave,

Block E-2, F1,

Bondir, Santa Cruz-403005.

.....

Complainant

Vs.

Venkatesh Prabhu Moni,

7th Floor, Dempo Trade Center,

Patto, Panjim, Goa-403001.

.....

Respondent

ORDER

(Dated 25/08/2022)

This order disposes of the instant 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 "Prabhu Chambers" situated in the city of Mapusa Goa. In the said complaint, the complainant has alleged that there is water logging in the basement, lift is not working, kiosk in front of the main entrance has not been removed, parking area is submerged under water, there is no electricity connection, no occupancy

[Signature]

is given and therefore the relief sought from this Authority are “PROJ. TAKEOVER, COMPENSATION EXECUTION REG AGREEMENT”.

2. In the supplementary complaint, it is stated inter alia that this Authority vide its Order dated 17.03.2022 in complaint bearing no.3/RERA/Complaint (COMB. Prabhu Chambers)/2019/186 directed the developer to carry out all the pending works within a period of two months from the date of order and in addition also imposed a fine of Rs.50,00,000/- for violating the directions passed by this Authority and that a similar order may also be passed in the instant case. According to the complainant, the developer has accepted the entire sale consideration with respect to two units i.e. 3-TF-1 and 3-TF-3 and in this regard has issued two receipts which are dated 13.06.2016 for an amount of Rs. 10,00,000/- and Rs.10,25,000/- but the respondent has failed to execute a registered agreement in favour of the complainant. The complainant has further alleged that the respondent has executed a sale deed in favour of the third party in respect of aforesaid units. According to the complainant, he is entitled for statutory interest on the sale consideration amount of Rs. 20,25,000/- paid on 13.06.2016 till actual payment of the said amount or delivery of premises bearing no. 3-TF-3 with further interest on a sum of Rs. 16,50,000/- which was paid on 29.09.2016 with respect to premises bearing no. 3-TF-1 located in the said complex. It is also stated that the




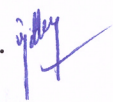
developer has failed to register his project and is defying the order passed by this Authority in another complaint to register the project. In the supplementary complaint therefore, the complainant has also prayed for grant of interest on the sale consideration received and failure to execute agreement and consequent sale deed with respect to the premises bearing no. 3-TF-1 and 3-TF-3 and also compensation.

3. The respondent in his reply has raised objections on maintainability of the instant complaint on the ground that the complainant has not entered in any agreement for purchase of any premises in the aforesaid project and therefore there is no Agreement for Construction and Sale of any premises between the parties. It is stated that the instant complaint is filed based on some fabricated receipts of payment. According to the respondent therefore, the complainant has no locus standi to approach this Authority as he is not the purchaser of any premises and accordingly, in the absence of any contract or agreement for purchase, the complainant is not entitled for any relief from this Authority.
4. The respondent has further stated in the reply that all the issues like water logging in the basement, non working of the lift, parking area being submerged under water and absence of electricity connection have already been resolved during the pendency of the other proceedings before this Authority. It is stated that the respondent has carried out fresh



water proofing by engaging Nitin Jain, Proprietor of Naman Contractors who is a known expert in this field and at present the said issue is resolved. The respondent has also referred to the scientific study and report on structural stability obtained from Goa Engineering College. According to the respondent, as regard the issue of removal of kiosk and provision for parking, since the said kiosk is illegal, Mapusa Municipal Council passed an Order dated 11.01.2021 for its removal against which the owner Jeevan Mayekar filed an appeal before Municipal Appellate Tribunal, which appeal is still pending and therefore on conclusion of the said proceedings, the illegal kiosk would be removed. It is stated that the Municipality has withheld occupancy certificate only on the ground that the illegal kiosk is not removed and the respondent is pursuing the matter before the Municipal Appellate Tribunal. It is further stated that once the occupancy is granted, the respondent would obtain electricity connection along with independent meters for each of the allottees and the transformer would also be made functional, though at present all the units are supplied electricity by the respondent through a temporary connection obtained by him for the project.


5. According to the respondent the prayer of the complainant for takeover of the project is an abuse of process of law. Hence, the prayer of the respondent to dismiss the instant complaint. 

6. Documents were placed on record and affidavits were filed by both the parties. Written submissions were filed by both the parties. In the written submissions, besides pointing to the aforesaid defects and deficiencies in the constructions, the complainant has also alleged that there is shortfall in area with respect to the units agreed to be sold by the developer and the said shortfall is also given in tabular form. It is further alleged that there is also shortfall in parking spaces also and that the material used by the complainant is of sub standard quality. It is stated therein that the complainant is unnecessarily blaming the Statutory Authorities including Mapusa Municipal Council in order to wriggle out of the lapses committed by the respondent. The complainant relied upon the judgements of the Hon'ble Supreme Court in the case of "Bikram Chatterjee and Others v/s Union of India" (2019) 19 SCC 161 and "Eminent Infra Developers Pvt. Ltd. v/s Vivek Radhu" (2019 SCC online Utt 1676).
7. The complainant has also made grievance in the written submissions regarding non execution of agreement for sale with respect to the units 3-Tf-1 and 3-TF-3, regarding which, according to the complainant there was oral agreement between the parties for purchase of the said units and in respect of which the complainant paid the entire sale consideration to the respondent and the respondent issued receipts towards the same. 

8. The respondent, in his written submissions has stated as to how due to the arbitrary approach of the Collector, the occupancy certificate got delayed. It is stated that after the construction was completed, the respondent handed over their individual premises to the purchasers and therefore most of the purchasers have already taken their possession and even started their business operations in the premises after obtaining the required licenses and doing the legal formalities and also have started paying municipal taxes. According to the respondent, excessive rainfall in Goa in the year 2019 and cloud burst created water logging in the basement and in this regard about 35 occupants out of about 120 occupants filed a false complaint dated 11.07.2019 before Mapusa Police Station under Sections 120, 336 of IPC and Section 73 of Contract Act due to which the respondent was restrained from interfering at the site and accordingly he could not take corrective steps at that time to prevent water logging in the basement. It is further stated that on the basis of the information given by the complainants including that of the aforesaid FIR, a Show Cause Notice dated 05.08.2019 was issued to the respondent by Mapusa Municipality to which the respondent filed reply, however, the Chief Officer by Order dated 30.08.2019 directed the respondent to comply with the directions given by him within 48 hours and since the same could not be complied within the said period, the occupancy certificate dated 29.05.2019 was revoked by order dated 12.09.2019.



According to the respondent, the said problem of water logging is now solved through expert Shri Nitin Jain but Mapusa Municipal Council is withholding the restoration of occupancy certificate only on the ground that the kiosk has not been removed from the site, regarding which, the respondent submitted that the case is pending before Municipal Appellate Tribunal. The respondent in his written submissions has also referred to the FIR registered against all the accused who are some of the allottees including allottee Imran Sayyed in respect of the incident of abduction of the son of the respondent on 23.03.2022, assaulting him and attempting to kill him and regarding which the matter was pending before District and Session Court. According to the respondent, the delay in construction/possession, if any, is attributable to reasons beyond the control of the respondent and such extraneous circumstances would be categorized as 'Force Majeure' and would extend the time line of handing over the possession of the unit and completion of the project. The respondent submitted that the Hon'ble Supreme Court in the case of 'Gajendra Sharma v. UOI & Ors' as well as "Credai MCHI & Anr. V. UOI & Ors." has taken cognizance of the devastating condition of the real estate sector and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector.



9. The respondent in his written submissions has reiterated that the complainant has not paid any consideration amount to the respondent and that the complainant is misusing the invoice receipt which was not realized and accordingly is misleading this Authority and therefore the complainant may be directed to place on record income tax returns of the year 2016-2017 or any other document with respect to payment of such huge amount which the complainant is falsely claiming to have paid to the respondent.
10. Oral arguments were heard from Ld. Advocate Shri N. Takkekar for the complainant and Ld. Advocate Shri Ankur Kumar for the respondent.
11. After going through the entire record of the case, the points which come for my determination along with the reasons and findings thereon are as follows:-


| Sr. No. | Points for determination | Findings |
|--------------------|--|------------------|
| 1. | Whether the complainant is entitled for project takeover? | In the negative. |
| 2. | Whether the complainant is entitled for statutory interest on delayed possession as prayed in the supplementary complaint? | In the negative. |
| 3. | Whether the complainant is entitled for possession of the said units? | In the negative. |



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|----|---|--|
| 4. | Whether the complainant is entitled for a direction to the respondent to execute an agreement for sale? | In the negative. |
| 5. | Whether the complainant is entitled for the compensation? | To be decided by the Adjudicating Officer. |

REASONS

Point No.1

12. **Section 8 of RERA Act** dealing with obligation of Authority consequent upon lapse of or on revocation of registration states inter-alia that “**upon lapse of the registration or on revocation of the registration** under this Act, the Authority may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority”.
13. Hence, once the decision to revoke the registration of the Real Estate project has been taken by the RERA **or the registration of the Real Estate project has expired as per the time limit mentioned in Section 5(3) of the Act**, the RERA may consult the appropriate Government to take such action, as it may deem fit, for carrying out the remaining development works. 

14. **In the instant case, the project in question is not registered** inspite of the order dated 17.03.2020 for registration of the project passed by this Authority in the complaint filed by Sanjay Raut in complaint No.3/RERA/Completed project(533)/2019 and hence there is neither any scope for revocation of registration nor for the expiry of the registration of Real Estate project as per the time limit mentioned in **Section 5(3) of the Act** as under the said Section **“the registration granted under this Section shall be valid for a period declared by the promoter under sub-clause (c) of Clause (1) of sub-Section (2) of Section 4 for completion of the project or phase thereof, as the case may be”**.
15. As the instant project is unregistered and as Section 8 of the Act applies only either upon lapse of the registration or on revocation of the registration, the aforesaid Section is not applicable to the instant project and hence cannot be invoked to take over the project.
16. Even otherwise, the respondent has already obtained completion certificate dated 27/08/2018. The respondent now has only to remove/rectify the deficiencies as pointed out by North Goa Planning and Development Authority (NGPDA) and Mapusa Municipal Council.
17. Further, in this context, it is necessary to reproduce here under the relevant portion of the order dated 28/06/2021 passed by the Hon'ble Bombay High Court in Writ petition No. 1156 of 2021 moved by the



respondent herein against the complainants in complaint No.3/RERA/Complaint(Comb. Prabhu Chambers)/2019:-

“3. With respect to the aforesaid submission we direct the Authorities of Mapusa Municipal Council, North Goa Planning and Development Authority and Directorate of Fire and Emergency Services to inspect the petitioner’s site within a period of six weeks from today and certify whether there are any deficiencies in the construction put up by the petitioner comprising the Ground plus five floors. The Authorities should then furnish the petitioner with the list of deficiencies, if any. **Mr. Joshi, Learned Counsel states that the petitioner will then rectify the deficiencies, if any and once again apply to the Authorities for fresh inspection to ascertain whether such deficiencies are indeed rectified.**” (emphasis supplied)

18. From the aforesaid order it is clear that undertaking is given by the respondent’s Advocate before the Hon’ble Bombay High Court in the aforesaid Writ petition that the respondent herein will rectify all the deficiencies in the construction as and when pointed out by the aforesaid Statutory Authorities. In view of the aforesaid undertaking of the



respondent before the Hon'ble Bombay High Court, even otherwise there is no issue left of takeover of the project. Moreover, there are many other unit holders in the said building who are not complainants in the instant case. **The instant point is, therefore, answered in the negative.**

Points No.2, 3 and 4

19. All the points are taken up together as they are interconnected and the reasons for their decisions overlap.
20. The complainant is entitled for statutory interest on delayed possession of the flats only in case the complainant shows that Section 18 of the Act is attracted in the instant case. In this regard it is necessary to reproduce hereunder Section 18 of the Act:-

“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.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the

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terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

21. From the aforesaid Section it is clear that the essential conditions/ingredients of the said Section to claim interest on delayed possession from the promoter are:-

(i) There should be an agreement for sale between the claimant/complainant and the promoter/respondent.

(ii) That the promoter fails to complete the project or is unable to give possession of the same in accordance with the terms of the agreement for sale or duly completed by the date specified in the agreement for sale.

(iii) That if the allottee wishes to withdraw from the project because of non-completion of the project by the promoter or inability to give possession of the same in accordance with the terms of the agreement for sale or by the date specified in the said agreement, then in that case the promoter will be liable on demand to return the amount received by him from the allottee with interest including compensation.

(iv) That if the allottee wants possession of the premises and does not intend to withdraw from the project, the allottee 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.

22. It is material to note that in the instant case the aforesaid essential ingredients of Section 18 to claim interest on delay in giving possession of the said flats are missing. **Firstly**, as admitted by the complainant there is no agreement for sale between the complainant and the respondent specifying the terms of the agreement for sale including the sale consideration and the specific date of completion of project/delivery of project. **Secondly**, Section 13 of the said Act mandates the entering of written and duly registered agreement for sale between the promoter and the allottee and even the terms and conditions to be specified/ incorporated in such agreement for sale are mentioned therein thus making any oral agreement for sale out of the purview of the said Act. **Section 13** of the said Act is reproduced hereunder for ready reference:-

“13. No deposit or advance to be taken by promoter without first entering into agreement for sale.- (1) A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person **and register the said agreement for sale**, under any law for the time being in force.

(2) The agreement for sale referred to in sub section (1) shall be in such form as may be prescribed and shall



specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external developments works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.” (emphasis supplied)”

23. From the aforesaid it is clear that the parties not only have to enter into a written agreement for sale but also it is mandatory to register the said agreement for sale. **Rule 10** of the Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosures on Website) Rules, 2017 also states that the agreement for sale shall be in conformity with the law in force. The said Rule 10(2) states that “Any application, allotment letter or any other document signed by the allottee, in respect of the apartment, plot or building, **prior to the execution and registration of the agreement for sale** for such apartment, plot or building, as the case may

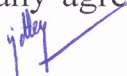



be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale or the Act or the rules or the regulations made thereunder". Thus, as per the said Rule 10, not only the agreement for sale should be in conformity with the law in force but also the said registered agreement for sale prevails over any application, allotment letter or any other document signed by the allottee and such other documents signed by the allottee prior to the execution and registration of the agreement for sale do not limit the rights and interests of the allottee under the said registered agreement for sale.

24. In para 4 of his affidavit, the complainant has stated as follows:-

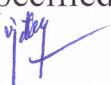
“(4) I say that the developer in the present case has accepted the entire sale consideration with respect to two units which are identified as 3TF1 and 3TF3 situated in the building complex known as Prabhu Chambers. The respondent developer has issued two receipts which are dated 13.06.2016 for an amount of Rs 10,00,000/- and 10,25,000/-.”

25. It is clear from the aforesaid that according to the complainant he has paid the entire sale consideration to the respondent without entering into any agreement for sale. Under Section 13 of the said Act, the promoter




can not accept a sum more than ten percent of the cost of the apartment without first executing a registered agreement for sale and this necessarily implies that the allottee can not advance a sum more than ten percent of the cost of the apartment to the promoter without first executing a registered sale agreement. Thus, even if the disputed receipts are taken into consideration, not only the promoter has done an illegal act of taking the entire sale consideration prior to executing a registered agreement for sale but also if the complainant is considered as allottee in the instant case, the complainant in that circumstances, is an accomplice to the said illegal act of the promoter since it is not the case of the complainant that the entire sale consideration was paid by him to the promoter due to misrepresentation, undue influence or coercion etc. If the case of the complainant regarding parting of entire sale consideration to the respondent is believed, even then the complainant admittedly has done an illegal act of parting with the entire sale consideration without first executing agreement for sale as per Section 13 of the said Act. **It is material to note that it is never the case of the complainant that he ever requested the respondent to execute the agreement for sale, either before parting the sale consideration or thereafter and that the respondent refused to do so or failed or neglected to do so.** 

26. All the rights and duties of the allottees as per **Section 19 under Chapter IV** of the said Act arise only when there is a registered agreement for sale between the parties. **Section 19(4)** states that “The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, **in accordance with the terms of agreement for sale** or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.” (Emphasis supplied). The said terms of agreement for sale refer to a registered agreement for sale as mentioned in Section 13 of the said Act. Similarly the remedy of the allottee under **Section 18 of the said Act** for the return of the amount paid by him to the promoter along with the interest and compensation if he intends to withdraw from the project or for the interest for every month of delay till handing over of possession if he does not intend to withdraw from the project provided the promoter fails to complete or is unable to give possession of an apartment, plot or building, “in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein” is available only if the agreement for sale is registered.



The “agreement for sale” referred to in Section 18 of the said Act means a registered agreement for sale as mentioned in Section 13 of the said Act. In the instant case, there is no registered agreement for sale as required under the said Act and the case of the complainant that he paid the entire sale consideration to the respondent without entering into and executing the agreement for sale, amounts to an illegal act contrary to the provisions of Section 13 of the said Act.

27. Thus in the absence of the agreement for sale between the complainant and the respondent specifying inter alia the sale consideration and the specific date of completion of the project/ date of delivery of the premises, no statutory interest under Section 18 of the Act, as prayed by the complainant can be granted. As stated above, oral agreement for sale is out of the purview of the said Act.
28. Further the complainant has produced on record a receipt dated 13.06.2016 wherein it is mentioned an amount of Rs.10,00,000/- towards the flat 3-TF-3 with duct as installment for the proposed construction of Prabhu Chambers; a receipt dated 13.06.2016 wherein it is mentioned an amount of Rs.10,25,000/-, however the number of the flat/the unit is not mentioned therein and another receipt dated 29.09.2016 wherein it is mentioned an amount of Rs. 16,50,000/- towards office no. 3-TF-1 in Prabhu Chambers, however it is material to note that according to the respondent, the said receipts are fabricated receipts of payment. 

29. In the absence of any written and registered agreement for sale as per Section 13 of the said Act, towards the said flats, the complainant has filed the complaint based only on the aforesaid receipts, which are however disputed by the respondent, according to whom the said receipts are fabricated. No other document is produced on record in support of the payment claimed to have been made by the complainant as mentioned in the said receipts. **This Authority has no jurisdiction to decide the authenticity and genuineness of the said disputed receipts which are the only main documents produced on record by the complainant in support of his locus standi.**
30. Thus the complainant has failed to show his locus standi to file the instant complaint. Therefore, in the absence of any registered agreement for sale as per law between the complainant and respondent and in view of the failure of the complainant to show his locus standi to file the instant complaint, no reliefs as prayed in the online complaint/supplementary complaint can be granted. Thus the ruling of the Hon'ble Supreme Court in the case of "Bikram Chatterji vs. Union of India" (2019)19 SSC 161 relied upon by the Ld. Advocate for the complainant does not help the case of the complainant. Accordingly the instant points are answered in the negative.

In view of the aforesaid, the instant complaint in respect of the points to be determined by this Authority is dismissed by this Authority,



however for deciding the issue of compensation, if any, the instant complaint is referred to the Adjudicating Officer under Section 71 of the said Act.

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25/8/2022
(Vijaya D. Pol)
Member, Goa RERA