



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (346)/2023/369

Date: 28/02/2024

1. Mr. Vinesh Varghese,
S/o late Mr. Pappy Varghese,
43 years of age, service,
Indian National.

2. Mrs. Asha Susan John,
Wife of Mr. Vinesh Varghese,
38 years of age, Business,
Indian National
Both r/o Flat no. F-4, Block II,
Rich Builder's, Hill view Apartment,
Alto Santacruz, Bambolim, Goa.

.....Complainants

Versus

M/s Expat Projects & Development Private Limited,
Pvt. Limited Company,
Represented by its Director Mr. Lancel Victor D'Souza,
RIC 616 to 619, 6th floor, B-Wing,
Carton Tower, No-1 HAL, 2nd stage,
Old Airport Road-Bengaluru- 560008.

.....Respondent

ORDER

(Dated 28.02.2024)

This order disposes of the complaint filed under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') wherein the complainants have prayed this Authority to give

direction to the respondent to complete the project as per the agreement for sale dated 07.09.2017 which was registered on 08.09.2017 and to direct the respondent to pay penalty from October 2018 till completion of the project at the rate of 18% per annum and compensation of ₹15,00,000/- (Rupees Fifteen Lakhs only) for causing mental torture and harassment to the complainants.

2. It is the case of the complainants that they entered into an agreement for sale with the respondent and the same was registered on 08.09.2017 before the Sub-Registrar for purchase of the unit row house bearing no. 053, admeasuring an area of 2144 sq. ft. on the land known as "ANEXIO DO OITEIRO or GAUCHM XIR E FUXAL GALE" situated at Panelim Taluka, Tiswadi, District North Goa.
3. According to the complainants, it was agreed in the said agreement that the project unit row house no. 053 would be completed on or before October 2018. It is stated that the total consideration amount as agreed and mentioned in the said agreement for sale was ₹95,00,000/- (Rupees Ninety Five Lakhs only). The complainants have further submitted that they availed loan from HDFC Bank, Panaji branch at the rate of 10.75% and as per schedule mentioned in the agreement, all the payments were released by the complainants' bank and some amount has been paid by the complainants to the respondent through their bank.
4. According to the complainants, the complainant no. 1 is a marine engineer and hence mostly out of the country and therefore progress of the work was followed by his wife through various emails, telephonic conversation and regularly visiting the office of the respondent but whenever the complainant no. 1 used to be in Goa, he used to visit the office of the respondent and the site.
5. It is stated by the complainants that after the registration of the agreement, the respondent started the work with regard to the plinth area, however it was stopped thereafter for unknown reasons and on enquiry, the office of the

respondent used to give lame excuses for the non completion of the project. According to the complainants, the project could not be completed by October 2018 as per the agreement for sale and therefore the complainants started writing emails to the respondent and in this regard the complainants relied upon various emails sent to the respondent.

6. According to the complainants, they have paid all the due amount as per the schedule to the respondent and in this regard the complainants relied upon the email from the respondent dated 06.02.2020 whereby the respondent acknowledged the amount received from the complainants for the completion of the project and also filed certificate under Section 65 B of the Indian Evidence Act.
7. According to the complainants, on visiting the site they were shocked to see that the work was not completed and the same was not as per plan and schedule mentioned in the agreement for sale. The complainants have relied upon the photographs of the project and have stated many defects in the construction work and also that till date there is no sewage treatment work, no electricity connection, no water connection, no proper road for access to the specific units and the incomplete work done is of low quality. Hence the prayers of the complainants as stated above.
8. Reply has been filed by the respondent wherein it is stated in preliminary objections that the complainants have come to this Authority with unclean hands; that the contract was mutually decided to be extended as per RERA extension and that the complainants were found to be in breach of the agreement for sale by not making payments after the completion of the milestones.
9. It is further stated by the respondent that it was mutually decided between the parties to extend the time period as per the RERA registration and the time line of the agreement of sale would not be the realistic timeline and therefore the

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date of possession given in the agreement for sale was tentative. According to the respondent, the project was registered on 06.06.2018 and its validity was extended till 31.12.2021 and further extended till December 2023.

10. According to the respondent, the complainants have to pay an amount of ₹ 2,00,000/- (Rupees Two Lakhs only) for club house and other expenses as per the terms of the agreement for sale and also other applicable taxes as per the central and state government rules.
11. The respondent has submitted that the complainants are investors who approached the respondent prior to coming into force of RERA and they showed interest in the project at the initial stages when the respondent was in the process of acquiring land from M/s Naiknavare Construction Pvt. Ltd. It is stated by the respondent that the complainants were allotted a row house at a throwaway price subject to approval from RERA and subject to obtaining necessary licenses. The respondent has stated that the agreement for sale was entered into and registered before RERA came into force just to secure the interest of all the allottees.
12. According to the respondent, substantial construction has been done and only sanitary fittings remained to be fitted. It is stated that the complainants were aware of the difficulties faced by the respondent due to covid pandemic, scarcity of skilled labour, raw materials etc. It is stated that the pandemic in Goa was in full force from March 2020 till April 2021 making construction activity impossible. The respondent referred to clause 4 (k) of the agreement to sell and submitted that the period of delay caused in completion of the unit due to force majeure or covid pandemic has to be excluded. It is further stated by the respondent that delay in the project was due to RERA registration/ approval which was obtained only on 12.10.2018 and the project was stalled due to a matter pending in the Hon'ble High Court during the interim period without any



fault of the respondent. It is further stated that the consideration paid has been parted with M/s Naiknavare Construction Pvt. Ltd. and the other amount collected has been fully utilized for construction

13. According to the respondent, the complainants have requested many changes in the said unit which were adhered to and resulted in delay and the said extra work was done without asking for extra cost from the complainants. The respondent refuted the allegation of structural stability and submitted that an engineer was hired who gave a report stating the nature of construction completed, however without prejudice to the above, the respondent has stated that the work on the site is going on and whatever defects were pointed out by the complainants are being rectified.
14. It is further stated by the respondent that the complainants have not paid more than 90% of the cost of unit and that the current milestone has been completed but the payment has not been made. It is stated that the complainants have demanded to finish the entire row house and only then they will release further payment. It is reiterated by the respondent that the row house is completed more than 80% and the same would be handed over to the complainants by 31.12.2023. Rest of the allegations of the complainants are denied by the respondent.
15. The complainants amended the complaint in order to show the breakup and the mode of payment of the total amount of ₹83,49,674/- (Rupees Eighty Three Lakhs Forty Nine Thousand Six Hundred and Seventy four only) to the respondent to which additional reply was filed by the respondent denying the same. In the additional reply, it is reiterated that the amount paid by the complainants to the respondent includes GST, other taxes and delayed payment amount and hence the amount paid by the complainants cannot be considered solely towards the consideration amount. It is stated that an amount of ₹

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2,00,000/- (Rupees Two Lakhs only) has to be paid by the complainants for the club house and other expenses as per the terms of the agreement and further the complainants have to pay other taxes applicable as per the central and state government rules. Memo of payments made by the complainants was also submitted by the respondent wherein it is showed that the total consideration amount as per the agreement to sell is ₹95,00,000/- (Rupees Ninety Five Lakhs only), Type B charges are ₹3,94,368/- (Rupees Three Lakhs Ninety Four Thousand Three Hundred and Sixty Eight only) which includes electricity, water, club house charges and maintenance charges to be paid when the demand is made and that the GST charges are ₹9,64,461/- (Rupees Nine Lakhs Sixty Four Thousand Four Hundred and Sixty one only) out of which the complainants have paid so far ₹5,02,875/- (Rupees Five Lakhs Two Thousand Eight Hundred and Seventy Five only). Thus, according to the respondent, the amount paid by the complainants for construction is ₹78,31,000/- (Rupees Seventy Eight Lakhs Thirty One Thousand only) and the balance payable is ₹16,69,000/- (Rupees Sixteen Lakhs Sixty Nine Thousand only).

16. Reply was filed by the complainants to the said memo of payment filed by the respondent and in the said reply it is stated that the respondent has admitted that till date the complainants have paid an amount of ₹83,49,674/- (Rupees Eighty Three Lakhs Forty Nine Thousand Six Hundred and Seventy Four only) however, according to the complainants, the bifurcation of the amount by the respondent as ₹78,31,000/- towards consideration amount, ₹15,799/- as delayed penalty and ₹5,02,875/- as GST to Government is illegal and wrong. It is stated by the complainants that an amount shown as delayed penalty is an abuse of law since the respondent delayed in giving the possession and that the respondent has not produced anything on record to show that an amount of ₹5,02,875/- has been paid by the respondent, especially when no such amount is mentioned in the agreement to sell. It is stated by the complainants that even

after making the payment of ₹83,49,674/-, the structure was not completed though the respondent was bound to complete the same in October 2018. According to the complainants, due to delay in completing the structure the respondent sent an email dated 10.11.2017 to the complainant wherein Type B charges were waived off and hence the complainants are not liable to pay any Type B charges to the respondent. The complainants have filed certificate under Section 65 B of the Indian Evidence Act pertaining to various emails produced on record by the complainants.

17. Affidavits were filed by both the parties along with the documents. Arguments were heard from Ld. Advocate Vahida Yelgar for the complainants and Ld. Advocate P. Shetty for the respondent.
18. After going through the entire records 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 respondent is liable to complete the said unit row house, obtain occupancy certificate and handover the possession of the same to the complainants along with occupancy certificate?	In the affirmative.
2.	Whether the respondent is liable to pay to the complainants interest on the amount paid by the complainants to the respondent?	In the affirmative.
3.	Whether the respondent is liable to pay penalty under Section 61 of the RERA Act?	In the affirmative.
4.	Whether the complainants are entitled for	To be decided by the

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	compensation as prayed in the complaint?	Adjudicating Officer as per Section 71 of the RERA Act.
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REASONS

Points 1 and 2

Both the points are taken up together as they are interconnected and the reasoning for deciding the same overlap each other.

19. From the agreement to sell dated 07.09.2017 it is clear that the respondent/promoter was bound to give possession of the said unit on or before October 2018. In this regard, relevant portion of clause 4(j) of the said agreement is reproduced hereinbelow:-

“(j) the Developer shall complete the construction of this project of comprising of the said unit as agreed to herein and shall deliver possession thereof to the purchaser, **on or before October 2018**, after the issuance of completion certificate by the architect of the project and/or from local authority.....”(emphasis supplied).

20. It is an admitted fact that the developer/ the respondent has till date not given possession of the said unit to the complainants and hence an indefeasible and absolute right accrues in favour of the said complainants under Section 18 of the RERA Act, which is reproduced hereunder:-

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“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.

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

21. Thus, if the respondent/ the promoter has failed to complete or is unable to give possession of the said unit in accordance with the terms of the Agreement to Sell i.e. duly completed on or before October 2018, statutory right accrues in favour of the allottee after October 2018 either to demand the refund of the money paid to the promoter along with interest or if the allottee does not wish to withdraw from the project, the allottee shall be paid by the promoter interest for every month of delay till handing over of the possession. In this case, the ruling of the Hon’ble Supreme Court in the case of **“Imperia Structures Ltd. Vs. Anil Patni and Another” 2020 (10) SCC 783** is squarely attracted and hence the relevant part of the same is reproduced herein below:-

“25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”.



The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed.”
(emphasis supplied).

22. In this context it is relevant to quote **Rule 18 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosures on websites) Rules, 2017:-**

“18. Rate of interest payable by the promoter and the allottee.— The rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent:
Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use it would be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

23. Thus, invoking Section 18 and Rule 18 of the said Act the benefit of the aforesaid statutory interest goes to the complainants who have entered into an agreement to sell with the promoter. As a consequence thereof Section 18 and Rule 18 of RERA are squarely attracted in the instant complaint.
24. According to the Ld. Advocate of the respondent, no relief can be granted to the complainants since the complainants defaulted in making payments. There is no merit in the aforesaid arguments firstly because even though the unit is not

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complete, documents are produced on record by the complainants to show that the complainants have paid total amount of ₹83,49,674/- to the respondent and the bifurcation of the said amount including the dates and the modes of payment are given in the tabular form by the complainants and are reproduced hereunder for ready reference:-

Dated	Amount	Remark
24/03/2017	Rs. 10,00,000/- from the complainant	Cheque bearing No. 172930 drawn on SBI Secretariate Branch Panaji Goa from the account of the complainant
12/06/2017	Rs. 13,75, 000/-	Cheque bearing no. 172946 drawn on SBI Secretariat Branch Panaji Goa from the account of the complainant
31/08/2017	Rs. 5,00,000/-	Cheque bearing no. 172937 drawn on SBI Secretariat from the account of the complainant Branch Panaji Goa
15/11/2017	Rs. 15,68,000/-	Released from HDFC bank, Panaji Branch from Loan account No. 628134731 of the complainant.
04/09/2019	Rs.3,50,674/-	Issued vide RTGS from the SBI complainant's Bank account.
07/12/2019	Rs.15,80,000/-	Issued vide RTGS from the SBI complainant's Bank account.
06/01/2020	Rs.3,80,000/-	Issued vide RTGS from the SBI complainant's Bank account.
25/06/2020	Rs. 15,96,000/-	Released from HDFC bank, Panaji Branch from Loan account No. 628134731 of the

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		complainant.
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25. Secondly, in this regard the judgment of the Hon'ble Supreme Court in the case of **"M/s Newtech Promoters and Developers Pvt. Ltd."** (supra) is squarely attracted. In the aforesaid rulings same point was raised by the Ld. Counsel for the appellants therein to the effect that it is not possible to claim refund by the allottee if the allottee has defaulted the terms of the agreement, to which the Apex Court gave the following findings:-

"80.....The submission appears to be attractive but is not supported with legislative intent for the reason that if the allottee has made a default either in making installments or made any breach of the agreement, the promoter has a right to cancel the allotment in terms of Section 11(5) of the Act and the proviso to sub-section 5 of the Section 11 enables the allottee to approach the Regulatory Authority to question the termination or cancellation of the agreement by the promoter and thus, the interest of the promoter is equally safe guarded"

26. In the instant case, if the allottee has made breach of the agreement to sell and defaulted in making any installment before the due date of possession i.e. on or before October 2018, the promoter had right to cancel the allotment in terms of Section 11(5) of the RERA Act, however no such option/ statutory right was availed by the promoter. Nor the promoter, before the above due date of possession approached this Regulatory Authority for the direction to the allottee

to pay any installment due towards the consideration amount. Since, no legal action was taken by the promoter against the complainants under the RERA Act before October 2018, an indefeasible and absolute right accrued in favour of the complainants under Section 18 of the RERA Act.

27. The Ld. Advocate for the respondent argued that as mentioned by the respondent in the reply/ additional reply the delay in construction occurred due to force majeure as the covid pandemic affected the real estate in the entire country from March 2020 till April 2021 and also because of matters pending in the Hon'ble High Court and therefore, the said period of delay has to be excluded. There is no merit in the aforesaid submissions since it is held by the Hon'ble Supreme Court in the case of "**M/s Imperia Structures Ltd. vs. Anil Patni and another**" 2020 (10) SCC 783 that "**non-availability of contractual labour, delay in notifying approvals cannot be construed to be force majeure events from any angle**" (emphasis supplied). In the case of "**M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others**" in civil appeal no. (s) 6745-6749 and 6750-6757 of 2021, the Hon'ble Supreme Court has clarified that "if the promoter fails to give possession of the apartments, plot or building within the time stipulated under the terms of the agreement, then allottee's right under the Act to seek refund/claim/ interest for delay is **unconditional and absolute, regardless of unforeseen events or stay orders of the Court/ Tribunal**" (emphasis supplied). Thus, the grounds as



stated by the Ld. Advocate for the promoter for delay in delivering of possession, will not come to the rescue of the promoter from legal liabilities under the RERA Act and corresponding legal rights accrued to the allottee under the RERA Act.

28. The Ld. Advocate for the respondent argued that the complainants are merely investors and the same is mentioned by the respondent in the reply to the complainant. In this context, it is significant to note that the term “investment” or “investor” is not defined under RERA Act and only under Section 12 of the RERA Act, the term “investment” is used. **Section 12** of the RERA Act states as follows:-

“12. Obligations of promoter regarding veracity of the advertisement or prospectus.- Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends



to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.”

Thus, promoter is liable to return the amount (investment) paid by allottee along with interest and compensation, if allottee has chosen to withdraw from project on account of incorrect and false statement contained in advertisement, prospectus, notice or model apartment. Hence, under the RERA Act, as per Section 12 therein, the only interpretation of “investment” is the amount paid/ deposit made by allottee to/ in favour of the promoter for purchase of flat etc.

29. It is settled law that the nature of the transaction is determined by the contents of the documents and not by any oral submissions of any party contrary to the contents of the documents. In the instant case, the parties have executed an agreement to sell dated 07.09.2017 which was duly registered before the Sub Registrar of Ilhas, Goa and from the said agreement the relationship between the parties as allottees and the promoter is vivid. Because of unambiguous and clear language of the said agreement to sell, there is no need to look behind the façade of the said agreement. Hence, there is nothing on record to suggest that the complainants were the “investors” as interpreted by the respondent.
30. It is repeatedly stated by the respondent in the reply/ additional reply and also argued by the Ld. Advocate for the respondent that the agreement to sell

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mentioned only the tentative date of possession as it was mutually agreed between the parties that the time for giving possession of the unit would be extended as per the date provided under RERA certificate for completion of the project. There is no merit in the aforesaid argument of the respondent firstly, as stated above, the nature of the transaction and its terms are determined by the contents of the document and in the instant case by agreement to sell dated 07.09.2017 and not by any oral submission of any party contrary to the contents of the documents. Secondly, it is well settled that the rights of the allottees are not affected by the period of extension of registration granted by this Authority.

31. In the case of “**M/s Imperia Structures Ltd.**” (supra), the Hon’ble Supreme Court held as follows:-

“We may now consider the effect of the registration of the project under the RERA Act. In the present case, the apartments were booked by the complainants in 2011-2012 and the Builder Buyer Agreements were entered into in November 2013. As promised, the construction should have been completed in 42 months. The period had expired well before the project was registered under the provisions of the RERA Act. **Merely because the registration under the RERA Act is valid till 31.12.2020 does not mean that the entitlement of the concerned allottees to maintain an action stands deferred. It is relevant to note that even for the purposes of Section 18, the period has to be reckoned**



in terms of the agreement and not the registration.”(emphasis supplied)

Thus in the instant case for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration/ extension of registration granted by this Authority.

32. The next dispute between the parties is regarding the consideration amount paid by the complainants to the respondent. It is the case of the complainants that out of the total consideration amount of ₹95,00,000/- (Rupees Ninety Five Lakhs only), the complainants have paid the amount of ₹83,49,674/- (Rupees Eighty Three Lakhs Forty Nine Thousand Six Hundred and Seventy Four only), however according to the respondent the aforesaid amount paid by the complainants includes delayed penalty of ₹15,799/- and also GST to Government of ₹5,02,875/- and hence according to the respondent after excluding the delayed penalty and GST the consideration amount paid by the complainants comes to ₹78,31,000/-.
33. As rightly pointed out by the complainants charging of delayed penalty by the respondent is illegal and unwarranted since it is the respondent which delayed completing the structure though the respondent was bound to complete the same on or before October 2018 and also no document is produced on record to show that any GST has been paid. The Ld. Advocate for the complainants also rightly pointed out to the email dated 10.11.2017 supported by certificate under Section 65 B of the Indian Evidence Act wherein it is specifically mentioned in the Note

that “as per GST law, the input benefit has to be passed on to the customer. Hence in this sale we have waived off INR 3,80,000/- from his Type B charges for the unit” and as per the table given therein Type B charges pertain to electricity and water charges, club house charges, advance towards maintenance fro first two years and GST.

34. It is pertinent to note that the agreement to sell dated 07.09.2017 is not in consonance with the Model Form of Agreement for Sale as given under **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 as annexure ‘A’ as per Rule 10(1) of the aforesaid rules.** It is clearly mentioned in the Explanatory Note in the aforesaid Model Form of Agreement as follows:-

“This is a Model Form of Agreement, which may be modified and adapted in each case having regard to the facts and circumstances of respective case but in any event, matter and substance mentioned in those clauses, which are inaccordance with the statute and mandatory according to the provisions of the Act shall be retained in each and every Agreement executed between the promoter and the allottee. **Any clause in this Agreement found contrary to or inconsistent with any provisions of the Act, Rules and Regulations would be void ab-initio.**” (emphasis supplied).

35. Thus, in the instant case the Agreement for sale executed between the promoter and the allottee is not as per the Model Form of Agreement for Sale as given in the aforesaid rules. Moreover, the aforesaid demands made by the respondent



are contrary to the provisions of the RERA Act and rules. **Section 11(4) (a)** pertaining to “**Functions and duties of promoter**” states as follows:-

“ 11 (4) The promoter shall –

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of Section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed”

From the aforesaid it is clear that till the conveyance of the apartments, plots or buildings, as the case may be, to the allottees, the promoter is responsible for all obligations, responsibilities and functions under the provisions of the RERA Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale which no doubt, necessarily should be as per the Model Form of Agreement for Sale.

36. As stated above the demand of delayed penalty and other charges including GST by the respondent is not legally valid and is inconsistent with the Model Form of Agreement for Sale wherein in clause 1(d) it is included as follows:-



“The total price above excludes Taxes (consisting of tax paid or payable by the promoter by way of infrastructure tax, GST and Cess or any other taxes which may be levied in connection with the construction of and carrying out the project payable by the promoter) upto the date of handing over the possession of the apartment/plot.”

From the aforesaid Model Form of Agreement, it is clear that all kinds of taxes like infrastructure tax, GST and Cess or any other tax which may be levied in connection with the construction of and carrying out the project is payable by the promoter upto the date of handing over the possession of the apartment/plot. In the instant case also, till the possession is handed over to the complainants, all such taxes have to be paid by the respondent.

37. In the instant case the complainants have paid consideration amount of ₹83,49,674/- out of the total consideration of ₹95,00,000/- and the balance amount to be paid by the complainants to the respondent is ₹11,50,326/-. However, the prayer of the complainants before this Authority to deduct the balance amount of ₹11,50,326/- from the compensation due from the respondent cannot be granted since the compensation amount, if any, has to be decided by the Adjudicating Officer under Section 71 of the RERA Act and not by this Authority.
38. As prayed by the complainants, they are entitled for the possession of the said residential unit. **Section 19 (3)** lays down that “The allottee shall be entitled to

claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (c) of clause 1 of sub-section (2) of Section 4". Moreover, **Section 37** of the said Act which gives power to this Authority to issue any direction to the party concerned is quoted below:-

"37. Powers of Authority to issue directions.- The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agent, as the case may be, as it may consider necessary and such direction shall be binding on all concerned"

Thus, this Authority has power to give direction to the respondent to complete the project and the legal formalities and to deliver possession of the premises to the complainants within the specific period. Such a direction is warranted since the interest on delayed possession runs till the actual delivery of possession of the premises to the complainants.

39. In the instant case the complainants have paid an amount of ₹83,49,674/- (Rupees Eighty Three Lakhs Forty Nine Thousand Six Hundred and Seventy Four only) to the respondent. Under Section 18(1) of the said Act the complainant is entitled and the respondent is liable to pay to the complainant

interest for every month of delay till the handing over of the possession, at such rate as may be prescribed. As per **Rule 18 of “The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017**, the rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent. At present such Lending Rate of interest by SBI is 8.85% per annum. Adding two percent to the said interest as per Rule 18, it comes to 10.85% per annum. Hence, the respondent is liable to pay 10.85% per annum interest for every month of delay to complainants on the aforesaid amount paid by complainants from the due date of possession i.e. 31.10.2018 as per the agreement to sell till the handing over of the possession to complainants, as the cause of action for filing the complaint accrued after the due date of possession mentioned in the agreement to sell dated 07.09.2017. Hence, the points 1 and 2 are answered in the affirmative.

Point No. 3

40. Under Section 61 of the RERA Act, if any promoter contravenes any other provisions of the RERA Act, other than that provided under Section 3 or Section 4, or the Rules or Regulations made thereunder, he shall be liable to a penalty which may extend upto five percent of the estimated cost of the real estate project as determined by the Authority. The promoter has not given the



possession of the said premises to the complainants as per the date of delivery of possession as mentioned in the agreement to sell dated 07.09.2017 and hence has violated the mandate of Section 11(4) (a) of the RERA Act, regarding which the respondent is liable to pay ₹1,00,000/- (Rupees One Lakh only) as penalty.

The instant point is therefore answered in the affirmative.

Point No. 4

41. Under Section 71 of the RERA Act, compensation under Sections 12, 14, 18 and 19 of the RERA Act has to be adjudged only by the Adjudicating Officer. Accordingly, the prayer for compensation has to be referred to the Adjudicating Officer for adjudging the compensation, if any.

In the premises aforesaid, I pass the following:-

ORDER

The respondent in the reply and affidavit in evidence has stated that the respondent is willing to deliver the said unit by the end of April 2024 to the complainants and that the balance payment will be collected from the complainants at the time of handing over the said possession. Therefore, the respondent is directed to give possession of the unit row house bearing no. 053, admeasuring an area of 2144 sq. ft. constructed on the land known as 'ANEXIO DO OITEIRO or GAUCHM XIR E FUXAL GALE' situated at Panelim, Taluka Tiswadi, North Goa by end of April 2024 with all the amenities and



facilities as mentioned in the agreement to sell dated 07.09.2017 upon taking the balance consideration amount of ₹11,50,326/- (Rupees Eleven Lakhs Fifty Thousand Three Hundred and Twenty Six only) from the complainants.

The complainants are directed to pay the aforesaid balance consideration amount to the respondent on the day of and before taking possession of the said flat.

Further, the respondent is directed to pay 10.85% per annum interest (present lending rate of interest by SBI which is 8.85% per annum plus two percent) for every month of delay to the complainant on the aforesaid amount of ₹83,49,674/- (Rupees Eighty Three Lakhs Forty Nine Thousand Six Hundred and Seventy Four only) paid by the complainants from 31.10.2018 till the date of delivery of possession to the complainant.

As per the discussion above, the respondent is directed to pay ₹1,00,000/- (Rupees One Lakh only) as penalty for violation of Section 11 (4) (a) of the RERA Act to be paid by the end of April 2024. The said penalty amount, if realized by this Authority, be forfeited to the State Government.

The respondent is directed to file compliance report of this order by end of April 2024 failing which further legal action will be taken by this Authority under the RERA 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.

vijeta 28/2/24
(Vijaya D. Pol)
Member, Goa RERA