GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (106)/2023/1294 Dated: 15/12/2023

Naiknavare Constructions Pvt. Ltd.,
A private limited company, registered under
The Indian Companies Act, 1956,
Through its authorized representative
Mr. Satyavan Ghadge, r/o at D-207, Swapnapurthi Society,
Sasane Nagar, Kalepadal road,
Hadapsar, Pune-411028. **.....Applicant**

Versus

Pradeep S. Sharma,
Resident of GF-9,
Preeti Aashiyana,
Sirur Park Hubli-580021. **.....Respondent**

Ld. Advocate Pritesh Shetty for the Applicant.
Ld. Advocate Prabhav Sirvoicar for the Respondent.

ORDER

(Delivered on this 15th day of the month of December, 2023)

The present proceedings have arisen as a corollary to the complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') filed by the applicant against the respondent bearing complaint no. 3/RERA/Complaint(324)/2022.

2. The above said complaint was disposed of vide Order dated 28.06.2023 by the Goa Real Estate Regulatory Authority (for short 'Goa RERA') by which the complaint was dismissed. However, the matter was referred to the Adjudicating Officer for deciding the relief for compensation.

3. The above matter came to be filed before this Forum under Section 19 read with Section 71 of the RERA Act and the applicant has filed its claim for compensation in Form 'B' at exhibit 222/c seeking following reliefs:-

a) The respondent be directed to pay the sum of ₹27,55,479/- (Rupees Twenty Seven Lakhs Fifty Five Thousand Four Hundred and Seventy Nine only) for loss of interest from 22.06.2012 (22.06.2017) till the realization which is calculated @18%.

b) The respondent be directed to pay maintenance charges ₹96,192/- (Rupees Ninety Six Thousand One Hundred and Ninety Two only) along with GST ₹17,315/- (Rupees Seventeen Thousand Three Hundred and Fifteen only) which is paid by the complainant along with rate 18% till the realization of this present complaint as RERA.

c) The respondent be directed to pay compensation of ₹25,00,000/- (Rupees Twenty Five Lakhs only) to the complainant for tarnishing name of the company, financial losses, damages, opportunity cost, delay in payment, loss of interest and breach of agreement.

d) The respondent be directed to pay ₹1,00,000/- (Rupees One Lakh only) for legal expenses, legal charges.

4. Shorn of details, the case of the applicant is as follows:-

The applicant is a private limited company having its site address at Kadamba Plateau, Panelim, Tiswadi, Old Goa bypass Road, Goa and is involved in the business of real estate development projects. The applicant is the owner in possession of the property known as "ANEIXO DO OITEIRO" or "GAUCHEM XIR E FUXAL GALE", situated at Panelim, Sao Pedro, Taluka Tiswadi and Sub District of Ilhas, District of North Goa, State of Goa, bearing survey no. 14/1-B and 15/1-B purchased vide a deed of sale dated 26.09.2007 and the said property was developed by construction of building and by sub dividing the same into plots by getting all approvals from necessary authorities and the complex was named as "Esmeralda".

5. The applicant and the respondent entered into an Agreement dated 15.06.2017 by which the applicant agreed to sell to the respondent plot no. 9 admeasuring 250 sq. mts. which is forming part of the said property for a total consideration of ₹35,70,126/- (Rupees Thirty Five Lakhs Seventy Thousand One Hundred and Twenty Six only) and after registration of the said agreement, the respondent has made payment of ₹10,71,038/- (Rupees Ten Lakhs Seventy One Thousand and Thirty Eight only) and that as per the agreement, the respondent was supposed to pay an amount of ₹17,85,063/- (Rupees Seventeen Lakhs Eighty

Five Thousand and Sixty Three only) within one month from the date of the agreement. The respondent also made payment of ₹8,74,038/- (Rupees Eight Lakhs Seventy Four Thousand and Thirty Eight only) totaling to ₹19,70,000/- (Rupees Nineteen Lakhs Seventy Thousand only).

6. The respondent expressed financial difficulty and requested time to make payments as per the agreement. The applicant have been providing regular updates pertaining to necessary permissions obtained from various departments and waited patiently for payments as the respondent was going through financial difficulty. The applicant after receiving final NOC from Panchayat informed the respondent and called upon him to come forward to take possession and execute necessary sale deed by clearing the balance amount vide various emails. The applicant based upon final NOC and TCP, necessary sale deeds have been executed in favour of other allottees for the plots.

7. The applicant was shocked to receive a legal notice dated 26.04.2022 taking false plea. The applicant vide reply dated 20.06.2022 refuted the allegations and demanded the respondent to clear the balance amount of ₹25,00,126/- along with 18% interest till the date of realization and ₹2,50,000/- towards one time entrance fee for club house, failing which to cancel the agreement. The respondent has also not paid the maintenance amount of ₹96,192/- since August 2021 and GST of ₹17,315/-. The act of non cooperation on the part of respondent is creating interference in the rights of the other flat owners/plots.

The applicant has incurred financial burden due to breach committed by the respondent who has failed to make timely payments. The applicant has suffered loss of interest of ₹27,55,479/-. Hence, the complaint.

8. The respondent filed a reply inter-alia contending that the application filed by the applicant is misconceived in facts as well as in law and therefore deserves to be dismissed with cost. The reliefs prayed for by the applicant are in the nature of compelling specific performance of a contract which can be availed only under the Specific Relief Act, 1963 by approaching the civil court and not this Hon'ble Authority under the RERA Act. There is no jurisdiction bestowed upon the Adjudicating Officer under the RERA Act to grant any compensation to the promoter. The only compensation contemplated under Section 19 is to the allottee and not the promoter. On this preliminary ground itself, the present application is liable to be dismissed in limine. The respondent had purchased the said plot with the hope of getting its delivery by September 2017, however, the Developers have time and again delayed the completion of the project and handing over the plots.

9. The applicant as well as the respondent filed affidavit in evidence at exhibit 314/c and exhibit 322/c respectively.

10. Heard arguments. Both Ld. Advocate Pritesh Shetty for the applicant and Ld. Advocate Prabhav Sirvoicar have filed their written submissions at exhibit 340/c and exhibits 352/c and 406/c respectively.

11. The points springing for the determination and the findings to the same are as follows:-

Sr. No.	Points for determination	Findings
(a)	Whether the applicant is entitled to receive compensation/interest from the respondent in terms of prayer 5 (a), (b), (c) and (d)?	Partly in the affirmative.
(b)	Whether the Forum has jurisdiction under the RERA Act to grant compensations/interest to the promoter/applicant?	In the affirmative.

REASONS

Points (a) and (b)

12. Both the above referred points are taken up together for discussion as there are interlinked.

13. There is no dispute that the applicant had agreed to sell to the respondent the above referred plot no. 9 and that the respondent made part payment to the applicant and that the balance amount of ₹25,00,126/- was due in terms of the Agreement to sell dated 15.06.2017. The claim of the applicant in Para 20 with respect to the balance amount is not denied by the respondent by way of reply or evidence. Necessary demand letters and other updates were provided to the

respondent and that both the parties have mutually decided to extend the time period for performance of the agreement.

14. It is claimed by the applicant that since the respondent was going through financial difficulty, the applicant waited for payments and after receiving the final NOC from the Panchayat and TCP called upon the respondent to take possession and execute necessary sale deed by clearing the balance amount. It is nowhere the case of the respondent that he was ready and willing to pay the balance amount in terms of the agreement and that the applicant was refusing to execute the sale deed. The emails, demand notice/reply dated 20.06.2022 clearly show that respondent was called upon to take possession by clearing the balance amount along with the interest. The sale deed executed in favour of other allottee of plots at exhibit 86/c clearly shows that all the documents required for executing the sale deed have been obtained by the applicant.

15. It is therefore manifestly clear that the respondent has committed a breach of agreement dated 15.06.2017 although he was granted sufficient time to make the balance payment and that the applicant was ready and willing to perform its part of the contract as rightly submitted by Ld. Advocate Shri Pritesh Shetty for the applicant.

16. Ld. Advocate Prabhav Sirvoicar for the respondent has submitted that the relief prayed for in prayer 5 (a) is not tenable under Section 19 of the RERA Act as Section 19 does not contemplate any damage or amount for loss of interest as

claimed by the applicant. He also submitted that under Section 71 of the RERA Act, the Adjudicating Officer has jurisdiction to only adjudge compensation under Section 12, 14, 18 and 19 of the RERA Act therefore, any other claims such as amounts for loss of interest is not tenable under Section 71 read with Section 19 of the Act. He further submitted that no compensation is contemplated under Section 19 for the promoter and it is only the allottee, which can claim compensation under Section 19(4) of the RERA Act. The applicant is therefore not entitled to the reliefs as claimed in the relief/prayer clauses (a), (b) (c) and (d) of the application and the only remedy available to the applicant is to approach the civil court.

17. In order to appreciate the above arguments of Ld. Advocate Shri Prabhav Sirvoicar, it is apposite to transcribe relevant provisions of Section 19(6), (7) and (8) under Chapter IV, rights and duties of allottees of RERA Act. It reads thus:-

> **"19. Rights and duties of allottees.**-(1)...
> (2) ...
> (3)...
> (4)...
> (5)...
> (6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement

for sale and shall pay at the proper time and place, the share of the registration charges municipal taxes, water and electricity charges, maintenance charges ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee."

18. The above provisions clearly postulate that every allottee who has entered into an agreement for sale to take a plot under Section 13 shall be responsible to make necessary payment in the manner and within the time as specified in the agreement for sale and shall pay at proper time and place other charges, failing which the allottee shall be liable to pay *interest* at such a rate as may be prescribed for delay in payment towards any amount or charges to be paid under Sub Section 6. There is nothing on record that the provisions of Section 13 have been infringed nor the agreement of sale has been disputed. The respondent has not denied the said fact in the reply or in the evidence, but merely claimed that the Forum has no jurisdiction, which submission cannot be accepted having regard to section 19 of the RERA Act. The respondent having failed to pay the balance amount in terms of the said agreement is liable to pay the interest in terms of Section 19(7) of the RERA Act.

19. It is also well established principle of interpretation of law that the court should read the section in literal sense and cannot rewrite it to suit its convenience nor does any canon of construction permit the court to read the section in such a manner as to render it to some extent otiose as held in the case of **"Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others", 2021 SCC Online SC 1044.** The provision of Section 19 of the RERA Act positively empowers the Forum to impose interest at such rate as may be prescribed for any delay in payment towards any amount to be paid under sub-section 7 and therefore, the submission advanced by Ld. Advocate Prabhav Sirvoicar for the respondent as stated above pales into insignificance.

20. The applicant is claiming a sum of ₹27,55,479/- (Rupees Twenty Seven Lakhs Fifty Five Thousand Four Hundred and Seventy Nine only) for loss of interest from 22.06.2017 till the realization which is calculated at 18% by the applicant. He has filed a chart at exhibit 408/c on 12.12.2023 showing total interest to be ₹27,55,479/- (Rupees Twenty Seven Lakhs Fifty Five Thousand Four Hundred and Seventy Nine only) as per prayer clause (a) of the complaint. Nonetheless, the applicant in its claim as well as in evidence has not specified as to how the applicant has arrived at such an exorbitant compensation/interest when the provision under Section 19 is clear that the applicant is entitled to receive only the interest for the delay in payment of the amount, which has to be paid from the date of default till its realization.

21. The applicant has claimed the amount along with interest at the rate of 18% per annum. Chapter IV, 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 states that 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 per cent: 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. At present, the lending rate of interest is 8.85% p.a. as on 15.12.2023 for every month of delay hence, the applicant is entitled to receive interest at the rate 10.85% per annum i.e. (8.85% plus 2%) for every month of delay from the respondent by way of compensation.

22. There is no dispute that the balance amount payable towards the purchase of the said plot is ₹25,00,126/- (Rupees Twenty Five Lakhs One Hundred and Twenty Six only) and that the applicant has demanded the said amount vide reply/ demand notice dated 20.06.2022, which has not been replied to nor the respondent has paid the balance amount within time. The applicant is thus entitled for the claim of interest for delay in payment on the balance amount of ₹25,00,126/- (Rupees Twenty Five Lakhs One Hundred and Twenty Six only) @10.85% p.a. from 20.06.2022 till its realization.

23. The applicant is also claiming an amount of ₹96,192/- (Rupees Ninety Six Thousand One Hundred and Ninety Two only) in terms of prayer 5(b) towards maintenance charges along with GST of ₹17,315/- paid by the applicant along with interest @ 18% till realization. However, the applicant has not specified under which provision of law, it is seeking such a relief. No such a relief is admissible under Section 19 of the RERA Act as compensation. Therefore, the above relief cannot be granted. The applicant is also seeking compensation of ₹25,00,000/- (Rupees Twenty Five Lakhs only) from the respondent for tarnishing the name of the company, financial losses, damages, opportunity cost delay in payment, loss of interest and breach of agreement in terms of prayer 5(c) and legal expenses and legal charges of ₹1,00,000/- (Rupees One Lakh only) in terms of prayer 5 (d) however, no evidence has been led by the applicant for grant of such a prayer nor shown any provision of law under which such a relief can be granted. The above points (a) and (b) are therefore answered accordingly.

24. In the result, I pass the following:-

ORDER

a) The claim for compensation/interest by the applicant stands partly granted.

b) The respondent is directed to pay to the applicant interest @ 10.85% per annum on the sum of ₹25,00,126/- (Rupees Twenty Five Lakhs One Hundred and Twenty Six only) from 20.06.2022 till the date of realization,

for violation of Section 19 read with Sections 71 and 72 of the RERA Act, within sixty (60) days of this order.

15-12-2023

(Vincent D'Silva)
Adjudicating Officer,
Goa RERA

Panaji, Goa.
Date: 15.12.2023.