



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (103)/2023/ 961

Date: 29/09/2023

BEFORE THE ADJUDICATING OFFICER

Mrs. Sugandha Pravinkumar Shirodkar,

H.No. 1038/3, Situated on Ground Floor at Zosswado,

Sucorro, Bardez-Goa, 403501.

.....Applicant/Complainant

Versus

Shri Viresh Kamalanath Nadkarni

Partner of Nadkarni Libra Developers,

C/o K.V. Nadkarni & Associates,

L-45/46, 4th Floor, Alfran Plaza,

M.G. Road Panaji, Goa, 403001.

.....Respondent

Ld. Advocate Smt Sushma Mandrekar for the applicant/ complainant.

Ld. Advocate Shri K. Kavlekar for the respondent.

ORDER

(Delivered on this 29th day of the month of September, 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/ complainant against the respondent bearing complaint no. 3/RERA/ Complaint (276)/2021.

2. The above said complaint was disposed off vide Order dated 24.04.2023 by the Goa Real Estate Regulatory Authority (for short Goa RERA). The said Authority ordered as follows:-

“In the reply, the respondent has stated that the flat of the complainant is fully complete and the respondent has obtained part occupancy certificate regarding the same. The respondent is therefore directed to give possession of the Apartment no. 104 on the upper ground floor of the project “Ferreira Manor” along with parking slot situated at Mapusa, Goa to the complainant with all the amenities and facilities as mentioned in the agreement for sale dated 29.08.2018 within two months from the date of this order upon taking the balance amount of Rs. 9,95,800/- (Rupees Nine Lakhs Ninety Five Thousand Eight Hundred only) from the respondent as per the calculation given above. Thereafter, the respondent shall comply other mandatory provisions of the RERA Act.

The complainant is directed to pay the aforesaid balance amount to the respondent on the day of and before taking possession of the said flat.

Further, the respondent is directed to pay 10.70% per annum interest (present lending rate of interest by SBI which is 8.70% per annum plus two per cent) for every month of delay to the complainant on the aforesaid amount of ₹37,10,320/- (Rupees Thirty Seven Lakhs Ten Thousand Three Hundred and Twenty only) paid by the complainant from 26.12.2019 (the due date of possession as per the

agreement for sale) 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 and directed to pay penalty of ₹20,000/- (Rupees Twenty Thousand only) for not obtaining the extension of the registration of the project immediately after the expiry of its registration. Thus, the total penalty of ₹1,20,000/- (Rupees One Lakh Twenty Thousand only) to be paid by the respondent within a period of two months from the date of this order. The said penalty amount, if realized by this Authority, be forfeited to the State Government.

The respondent is also directed to take steps for extension of the registration of the project by paying the above penalty of ₹20,000/- (Rupees Twenty Thousand only) plus charges for extension of registration of the project within two months from the date of this order, though the application for extension of registration by the respondent will be decided on merits by this Authority.

The respondent is directed to file compliance report of this order in the form of an affidavit within two months 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.”

3. The applicant/ complainant thereafter filed her claim for compensation in Form 'B' under Section 12, 14, 18 and / or 19 read with Section 71 of the RERA Act seeking compensation (a) towards House rent of ₹4,20,000/- (Rupees Four Lakhs Twenty Thousand only); Electricity charges ₹27,655/- (Rupees Twenty Seven Thousand Six Hundred Fifty Five only) and Water charges ₹25,000/- (Rupees Twenty Five Thousand only); (b) medical expenditure and petrol charges of ₹1,67,250/- (Rupees One Lakh Sixty Seven Thousand Two Hundred and Fifty only); (c) mental agony and physical loss of ₹1,00,000/- (Rupees One Lakhs only) and (d) Cost of the proceedings ₹1,00,000/- (Rupees One Lakh only).
4. The case of the applicant/ complainant is that the applicant/ complainant has executed agreement for sale dated 29.08.2018 registered before the Sub-Registrar of Bardez Goa on 05.09.2018 with respect to the apartment no. 104 having a carpet area of 76.96 sq. mtrs. located on the upper ground floor along with a parking slot no. SP4 located in the stilt in the "Ferreira Manor" at Mapusa, Bardez, Goa. As per the agreement for sale, the date of handing over of possession of the apartment was 26.12.2019 but till date the possession has not been handed over. The applicant/complainant has till date paid ₹37,10,320/- (Rupees Thirty Seven Lakhs Ten Thousand Three Hundred and Twenty only) including GST amount out of the total sale consideration of ₹42,00,000/- (Rupees Forty Two Lakhs only). The respondent has till date failed to deliver

possession of the said apartment in time as a result of which the applicant/complainant has to incur additional expenditure without any fault of the applicant/complainant on house rent, electricity, water charges, medical expenditure and filing of complaint before the Goa RERA and cost of the proceedings etc..

5. The respondent filed reply denying the case of the applicant/complainant as set out in the claim for compensation. The respondent states that as on 26.12.2019, the applicant's/ complainant's flat was duly completed in all respect and only the work of tiling and painting was remained to be completed. The respondent states that thereafter between February 2020 to February 2022 the entire country including the State of Goa was severally hit by the covid-19 pandemic. During the said pandemic period, there was acute shortage of labour, raw material, machinery, etc. which severally affected the industrial sector including the real estate industry. Thus, the project could not be completed in time during the said pandemic period. The respondent states that as per the terms of the agreement the possession of the apartment was to be delivered to the purchaser upon the occupancy certificate having issued by the competent authorities. The inspection for issuance of occupancy certificate was fixed by the Municipal Authorities on 09.03.2022 which has been completed and the occupancy certificate is awaited. Upon the occupancy certificate being made available, the respondent within the time stipulated in the agreement shall offer in writing the

delivery of possession to the applicant/ complainant subject to the complainant making the balance payment due and payable before delivery of possession of the apartment. The respondent states that the applicant/ complainant has delayed in the payment of instalments which delayed in the completion of the work. Hence the claim for compensation be dismissed.

6. The applicant/ complainant filed affidavit in evidence and the affidavit of Smt Sudha S. Thali in support of the applicant's/ complainant's case.
7. The applicant/ complainant thereafter filed application for production of documents. The respondent filed reply to the application for production of documents opposing the same. The respondent filed affidavit in evidence in support of the respondent's case.
8. The applicant/ complainant filed a second application for production of notice of execution of the award.
9. The respondent thereafter filed application seeking amendment of the reply filed by the respondent. The applicant/ complainant filed reply to the amendment application filed by the respondent. Written arguments have been filed by the applicant/ complainant and by the respondent respectively. Oral arguments were also heard.
10. The points for determination and my findings to the same are as under:-

Sr. No.	Points for determination	Findings
(a)	Whether the two applications for production of documents filed by the applicant/ complainant are admissible?	In the affirmative.
(b)	Whether the application for amendment of the reply filed by the respondent is admissible?	In the affirmative.
(c)	Whether the applicant/ complainant is entitled to claim for compensation towards house rent, electricity and water charges, medical expenditure and petrol charges?	In the negative.
(d)	Whether the applicant/ complainant is entitled to compensation of ₹1.00 Lakh towards mental agony?	In the affirmative.
(e)	Whether the applicant/ complainant is entitled to compensation of ₹1.00 Lakh towards costs of proceedings?	Partly in the affirmative as per the order.

REASONS

Point (a)

11. The applicant/ complainant has filed two applications for production of documents which have been opposed by the respondent. The first application is for production of water bills in support of the claim for compensation. The

second application is for production of the letter and the reply of the respondent dated 15.02.2021; legal notice and reply dated 21.10.2021 and the Bank statement. The objections raised by the respondent that the applications are not maintainable as they are attempts to gain backdoor entry and get around the bar of limitation and to fish out a cause of action cannot be sustained. It is for the applicant/ complainant to establish her case in support of the claim as set out in her claim for compensation. No prejudice can be caused to the respondent, if both the applications are allowed as the respondent has every opportunity to contest the same as desired. Therefore, both the applications for production of documents are hereby allowed. Point (a) is therefore answered in the affirmative.

Point (b)

12. The respondent by the present application is seeking to amend the reply filed by the respondent to the claim for compensation. It is the case of the respondent that in para 9 seventh line the amount mentioned inadvertently is ₹7,05,600/- which is ₹11,62,476/- instead. It is the case of the respondent that the letter dated 06.06.2022 clearly mentions the amount of ₹11,62,476/- which was addressed by the respondent to the applicant/ complainant.
13. The applicant/ complainant has opposed the proposed amendment. It is the case of the applicant/ complainant that the contents of the letter dated 06.06.2022 are denied being false and have never been admitted by the applicant/ complainant.

14. It is also the case of the applicant/ complainant that the order dated 24.04.2023 in complaint no. 3/RERA/Complaint (276)/2021 specifically mentions that balance amount to be paid is ₹9,95,800/- (Rupees Nine Lakhs Ninety Five Thousand Eight Hundred only) which amount is determined as per the terms of the agreement and as per the RERA Act, 2016.
15. Admittedly, vide Order dated 24.04.2023 passed by the Goa RERA in the complaint bearing no. 3/RERA/Complaint (276)/2021 between the present parties, the respondent had also claimed the very said amount of ₹11,62,476/- by its letter dated 06.06.2022. The Hon'ble Authority taking into consideration clause 1 (d) of the Model Form of Agreement in respect of Rule 10(1) 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 has held that the respondent is not entitled to claim the amount which are inconsistent with the RERA Act/ Rules and therefore was not entitled to claim the amount of ₹11,62,476/- but only ₹9,95,800/-.
16. Be that as it may, the respondent by the amendment application is seeking to correct the amount from ₹7,05,600/- to ₹11,62,476/- in terms of the letter dated 06.06.2022. The applicant/ complainant has denied the contention of the respondent on the ground that she has never admitted the same.
17. It is for the respondent to establish his case. The applicant/ complainant is also entitled to contest the same. No prejudice can be caused to the applicant/

complainant if the said amendment is allowed as the onus to establish the same lies on the respondent. Consequently, the application for amendment is allowed. Point (b) is accordingly answered in the affirmative.

Point (c)

18. Ld. Advocate Smt S. Mandrekar for the applicant/ complainant submitted that the applicant/ complainant is residing in a rented premises and as such, has to pay monthly rent towards the said premises. Smt S. Mandrekar submitted that on account of the delay in handing over the said apartment to the applicant/ complainant, the applicant/ complainant has to bear the additional financial burden of monthly rent, electricity charges and water charges amounting to ₹ 4,20,000/-, ₹27,655/- and ₹25,000/- respectively. In support of the applicant's/ complainant's case, Leave & License Agreements executed between the applicant/ complainant and her land-lady Smt Sudha S. Thali effective from 02.04.2019 till the Leave & License Agreement dated 26.05.2022; electricity bills and water consumption bills have been produced in support of the case of the applicant/ complainant.
19. Ld. Advocate for the applicant/ complainant has also submitted that the applicant/ complainant has to travel to and fro everyday 70 kilo meters to her work place which has resulted in a severe tennis elbow problem resulting in the applicant/ complainant incurring medical expenditure and also petrol charges to

the extent of ₹ 1,67,250/-. In support of the applicant's/ complainant's case, the applicant/ complainant has produced a medical receipt of ₹16,000/-.

20. Ld. Advocate Shri K. Kavlekar for the respondent on the other hand submitted that the applicant/ complainant has already been granted interest on the investment made so far by the applicant/ complainant under Section 18 of the RERA Act. Shri K. Kavlekar submitted that false documents have been produced by the applicant/ complainant to support her claim for compensation which is not admissible under the law.

21. In the case of **Brahmanand Kadam Vs. G.T. Developers** Appeal No. AT005000000052390 in Complaint No. CC005000000011089, decided on 20.08.2021 before the Maharashtra Real Estate Appellate Tribunal; in the case of **Roopa N. Hedge and Ors. Vs. Sanvo Resort Pvt. Ltd.** in Complaint No. CC006000000100497, decided on 01.08.2022 before the Real Estate Regulatory Authority Maharashtra; in the case of **Anant Mahadev Joshi and Ors. Vs. Vijaygroup Housing Private Limited and Ors.** in Compliant nos. CC006000000195758, CC006000000195861, CC006000000195997, CC006000000196092, CC006000000196094, CC006000000196245, CC006000000196247 and CC006000000196281, decided on 16.06.2021 before the Real Estate Regulatory Authority Maharashtra.

22. In the case of **Brahmanand Kadam** (cited supra) the Maharashtra Real Estate Appellate Tribunal, Mumbai has held that as the allottee is staying in the

project, in such cases no compensation is envisaged under Section 18. Hence the relief for compensation cannot be granted and is therefore rejected.

23. In the case of **Roopa N. Hedge and Ors.** (cited supra) the Real Estate Regulatory Authority Maharashtra has held that the claim for compensation has no substance in law. Moreover, the aforesaid provision of section 18 of the RERA does not provide for any rent for the delay. Hence the claim of the complainants for rent stands rejected.
24. In the case of **Anant Mahadev Joshi and Ors.** (cited supra) the Real Estate Regulatory Authority Maharashtra has held that with regards to the claim of compensation raised by the complainants at sr. nos. 1, 3 to 7 under Section 18 of the RERA, the MahaRERA is of the view that since the complainants want to continue in the project, they are not entitled to seek compensation under section 18 of the RERA. Hence their claim for compensation stands rejected.
25. It is not in dispute that the Goa RERA in the said complaint between the present parties bearing no. 3/RERA/ Complaint (276)/2021 by its Order dated 24.04.2023 has directed the respondent to pay interest @10.70% per annum for every month of delay to the applicant/ complainant on the aforesaid amount of ₹37,10,320/- (Rupees Thirty Seven Lakhs Ten Thousand Three Hundred and Twenty only) paid by the complainant from 26.12.2019 (the due date of possession as per the agreement for sale) till date of delivery of possession to the complainant.

26. Section 18 of the RERA Act provides as under:-

“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.”

27. From the plain reading of Section 18, it is evident that if the promoter fails to hand over possession as per the terms of the Agreement for Sale or as the case may be, by the stipulated date therein, the applicant has a choice either to withdraw from the said project or to stay with the project. Further, in case the

allottee chooses to stay in the project and take possession, he is entitled to claim interest for the same for the delayed period of possession on the actual amount paid by him for every month of delay.

28. It is not in dispute that in the present case the applicant/ complainant has chosen to continue in the project. Hence, in view of the aforesaid explicit proviso to Section 18 of the RERA Act, the applicant/ complainant can only claim interest for every month of delay, till the handing over of possession of the said flat to the applicant/ complainant.
29. In view of the above and in the light of the rulings cited supra, which supports the respondent's case, the claim for compensation towards rent, electricity, water charges, medical expenses and petrol charges paid by the applicant/ complainant for the rented premises taken by the applicant/ complainant pending the handover of possession of the said flat has no substance in law as the aforesaid proviso to Section 18 of the RERA Act does not provide for reimbursement of any rent, electricity, water charges, medical expenditure, petrol charges in case of delay in handing over possession of the said flat to the applicant/ complainant. Point (c) is accordingly answered in the negative.

Point (d)

30. The applicant/ complainant has sought compensation of ₹1,00,000/- (Rupees One Lakh only) towards mental agony. The respondent has denied that the

applicant/ complainant is entitled to any compensation towards mental agony as claimed.

31. Section 19(4) of the RERA Act provides as under:-

“19. Rights and duties of allottees.- (1)

(2)

(3)

(4) 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.”

32. The broad factors to be considered while adjudging compensation has been provided under section 72 of the said Act which reads as under:-

“72. Factors to be taken into account by the adjudicating officer.- While adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused as a result of the default;



- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.”

33. In the case of **ONGC LTD. v. SAW PIPES LTD. (2003) 5 Supreme Court Cases 705**. The Apex Court while dealing with Section 73 and 74 of the Contract Act has held that:

“(1) Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same.

(2) If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act.

(3) Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of a contract.

(4) In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is genuine pre-estimate by the parties as the measure of reasonable compensation.”

34. The Hon'ble Regulatory Authority vide Order dated 24.04.2023 in the complaint bearing no. 3/RERA/Complaint (276)/ 2021 between the same parties has held that in the reply , the respondent has stated that the flat of the applicant/ complainant is fully complete and the respondent has obtained part occupancy certificate regarding the same. The respondent is therefore directed to give possession of the apartment no. 104 on the upper ground floor of the project "Ferreira Manor" along with parking situated at Mapusa, Goa to the complainant with all the amenities and facilities as mentioned in the agreement for sale dated 29.08.2018 within two months from the date of this Order upon taking the balance amount of ₹9,95,800/- (Rupees Nine Lakhs Ninety Five Thousand Eight Hundred only).

35. Despite the above express direction the respondent has wilfully failed to comply with the same till date thereby causing considerable mental agony to the applicant/ complainant. The applicant/ complainant is therefore entitled to be compensated for the same in the sum of ₹1,00,000/- (Rupees One Lakh only) under Section 19(4) read with Sections 71 and 72 of the RERA Act. Point (d) is therefore answered in the affirmative.

Point (e)

36. The applicant/ complainant has sought compensation of ₹1,00,000/- (Rupees One Lakh only) towards costs of proceedings. As the respondent had failed to hand over possession of the said flat, the applicant had filed the said complaint



before the Hon'ble Regulatory Authority. Despite the directions given by Hon'ble Regulatory Authority to handover possession of the said flat to the applicant/complainant within two months of the passing of the order dated 24.04.2023, the respondent till date has wilfully not complied with the same due to which the applicant/ complainant was forced to file the present application for compensation for which purpose professional legal services had to be engaged by the applicant/ complainant to conduct the two legal proceedings. To my mind the applicant/ complainant is therefore entitled to be compensated in the amount of ₹30,000/- (Rupees Thirty Thousand only) under Section 19(4) read with Sections 71 and 72 of the RERA Act towards costs of filing and conducting the said two legal proceedings. Point (e) is therefore answered partly in the affirmative.

37. Before parting with this order it is necessary to mention that the claim for compensation in Form 'B' was filed by the applicant/ complainant on 02.06.2023. The respondent filed reply on 15.06.2023. On 27.06.2023 and 04.07.2023 the applicant/ complainant sought time and filed her affidavit in evidence only on 19.07.2023. Written arguments and application for production of documents of the applicant/ complainant were filed thereafter on 26.07.2023. On 10.08.2023, respondent filed reply to application for production of documents. On 14.08.2023 respondent filed affidavit in evidence. On 25.08.2023 applicant/ complainant filed second application for production of



documents. On 12.09.2023 respondent filed application for amendment. Applicant/ complainant filed reply to amendment application. Oral arguments were also heard. The matter stands disposed off on 29.09.2023.


In the result, I pass the following:-

ORDER

- a) The claim for compensation filed by the applicant/ complainant in Form 'B' under Sections 12, 14, 18 and 19 read with Section 71 of the RERA Act is partly allowed.
- b) The Respondent is directed to pay to the applicant/ complainant compensation of ₹1,00,000/- (Rupees One Lakh only) for causing mental agony under Section 19(4) read with Sections 71 and 72 of the RERA Act within 60 (sixty) days from the date of this Order.
- c) The respondent is directed to pay to the applicant/ complainant compensation of ₹30,000/- (Rupees Thirty Thousand only) towards legal costs of proceedings under Section 19(4) read with Sections 71 and 72 of the RERA Act within 60 (sixty) days from the date of this order.
- d) In default, the respondent shall be liable to pay to the applicant/complainant the said amounts with interest 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 per cent. At present, such lending rate of interest is 8.75 per annum. Hence, the respondent shall be liable to pay interest at the rate of 10.75% p.a. for every month of delay in case of default to the applicant/ complainant on the aforesaid compensatory amounts under clauses (b) and (c) above.


29/9/2023
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA