



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (87)/2022 **1584**

Date: **23/06/2023**

BEFORE THE ADJUDICATING OFFICER

Bhiva Madso Gawas,

F2, Pandurang Niwas,

Near Soda Factory, Shantinagar.

Ponda, Goa, 403401.

.....Applicant/Complainant

Versus

Uday Ghanshyam Naik,

Address 1: GNC Group, 12/G, Nirmal Nagar CHS,

Opp. IOC Petrol Pump,

Mira Bhayandar Road, Mira Road East, Thane-401107.

Address 2: r/o. B/1, 604, New Ashok Nagar,

Bapu Paranjape Marg., Near Vazira Naka,

Borivali(W), Mumbai 400092.

Address 3: Having its site office at GN Legacy I,

(Under construction), Survey No. 148/1F,

Durgabhat, Opp. Gurkul School,

Upper Bazar, Ponda, Goa-403401.

.....Respondent

Ld. Advocate G. Panandikar for the Applicant/ Complainant.

Ld. Advocate Sonam Singh for the Respondent.

ORDER

(Delivered on this 23rd day of the month of June, 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(294)/2021.

2. The above said complaint was disposed off vide Order dated 16.11.2022 by the Goa Real Estate Regulatory Authority (for short 'Goa RERA'). The said Authority has ordered as follows:-

“The respondent is directed to give possession of the flat No. C-304 in the aforesaid project, G.N. Legacy-I situated in Ponda, North Goa to the complainant after obtaining occupancy certificate as per the terms of the Agreement for Sale executed on 27.07.2017 and registered on 08.08.2017, within eight months from the date of this order, as the Ld. Advocate for the respondent has submitted that the respondent will be able to complete the project and handover its possession to the complainant within eight months.

Further, the respondent is directed to pay 10.35% per annum interest for every month of delay to complainant on the aforesaid amount of ₹18,88,915/- (Rupees Eighteen Lakhs Eighty Eight Thousand Nine Hundred and Fifteen only) paid by complainant from the date of delivery of possession i.e. 27.01.2019 as mentioned in the agreement for sale with the complainant, till the handing over of the possession to complainant.

Under Section 61 of the said Act, if any promoter contravenes any other provisions of the said 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 per cent of the estimated cost of the real estate project as determined by the Authority. In the instant case, the promoter has not discharged his obligations, responsibilities and functions as per the agreement for sale and hence is liable to penalty under Section 61 of the said Act. Taking into consideration the facts and circumstances of the case, penalty of ₹50,000/- (Rupees Fifty Thousand only) will serve the ends of justice. Hence, the promoter/ the respondent is directed to pay the penalty of Rupees Fifty Thousand within a period of eight 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 directed to file compliance report of this order within eight months, failing which further legal action will be taken by this Authority under the said 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 his 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 monthly rent of ₹7,000/- per month paid from 27.01.2019 till the date of actual handover of the said flat and (b) ₹50,000/- towards legal expenses of the present proceedings.
4. The case of the applicant/ complainant is that the applicant/ complainant and the respondent executed an Agreement for Sale dated 27.07.2017, registered on

08.08.2017 for the purchase of flat no C-304, admeasuring 63.80 sq. mtrs. on the third floor of 'C' wing building known as 'G.N. Legacy-1' with one parking lot situated in the property of the respondent bearing survey no. 148/1-F admeasuring 3862 sq. mtrs. situated at Ponda Taluka, North-Goa.

5. The total consideration payment for the aforesaid flat was ₹24,24,400/- (Rupees Twenty Four Lakhs Twenty Four Thousand Four Hundred only). The applicant/ complainant has paid an amount of ₹18,88,915/- (Rupees Eighteen Lakhs Eighty Eight Thousand Nine Hundred and Fifteen only) towards consideration of the said flat including the service tax.
6. The respondent was required to handover the said flat to the applicant/ complainant within 18 months from the date of the said agreement i.e. on or before 27.01.2019. However, the respondent has failed to do so inspite of receiving timely payment from the applicant/ complainant towards its construction.
7. The said project is registered with the Goa RERA under the RERA Act. In terms of the registration dated 23.12.2019, the date for completion of the said project was 31.12.2019 which was subsequently revised to 31.12.2020. Further the respondent has revised the completion date of the said project to 31.12.2021. The respondent has failed to adhere to the said completion dates stipulated in its registration with the Goa RERA.
8. The applicant/ complainant has been regularly and periodically following up with the progress as regard the completion of the said flat. However, very little to no progress has been made. The respondent has till date not handed over the said flat to the applicant/complainant and the same is not even near to completion.
9. The cause of action of the applicant/ complainant is on-going and subsisting.

10. The applicant/ complainant is therefore entitled for compensation as prayed.
11. Respondent filed reply opposing the said claim for compensation.
12. It is the case of the respondent in the reply that the possession of the said flat was to be handed over to the applicant/ complainant in terms of the Agreement for Sale but due to unavoidable circumstances it was not handed over.
13. The respondent states that there is no violation of any provision of the RERA Act and therefore the complaint is not tenable under the law.
14. The respondent could not complete the construction of the said project as promised due to mitigating circumstances like non-availability of requisite material for construction, shortage of labour, financial crunch etc. and thereafter due to the outbreak of covid-19 pandemic it was affected badly. The construction work is now in progress and it is expected that the construction will be completed shortly and possession will be handed over immediately.
15. The respondent states that the applicant/ complainant does not have any cause of action to claim compensation over and above the interest granted by the Goa RERA since there is no provision to grant compensation over and above the interest for delay.
16. The respondent states that the demand of rent as the applicant/ complainant had to stay in rented accommodation pending the handing over of the possession of the said flat is not tenable in law for want of any provision under the said Act or Rules or Regulations thereunder. Further the claim towards legal expenses is unreasonable and unfair towards the respondent. Hence the claim for compensation be rejected.
17. The applicant/ complainant filed affidavit in evidence. Written submissions have been placed on record by both the parties respectively. Oral arguments were also heard.

18. The point for determination and my finding to the same is as under:-

Point for determination	Finding
<i>Whether the applicant/ complainant who has opted not to withdraw from the project is entitled to claim compensation as sought?</i>	<i>In the negative.</i>

REASONS

19. Ld. Advocate G. Panandikar 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. Shri G. Panandikar submitted that on account of the delay in handing over of the said flat to the applicant/ complainant, the applicant/complainant had to bear the additional financial burden of payment of monthly rent for the said rented premises. It is also submitted that the applicant/ complainant has to pay monthly instalment towards the loan taken for purchasing the said flat.
20. Ld. Advocate for the applicant/ complainant further submitted that the applicant/ complainant had to incur expenses in filing proceedings before the RERA and this Authority seeking interest and compensation. The applicant/ complainant also had to incur legal expenses in engaging advocates for filing the subject proceeding and getting the appropriate reliefs, as such the applicant/ complainant is entitled to total amount of Rs. 50,000/- (Rupees Fifty Thousand only) towards legal expenses incurred.
21. In support of the applicant's/ complainant's case, the applicant/ complainant has placed on record copies of the receipts towards rent paid for the rental premises by the applicant/ complainant.

22. On the other hand, Ld. Advocate Sonam Singh for the respondent has submitted that there is no provision under the RERA Act to grant compensation towards rental amount and legal expenses when already interest for delay has been granted under Section 18 of the RERA Act.
23. Ld. Advocate Sonam Singh in support of the respondent's case has placed reliance 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.
24. 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.
25. 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. The claim of the complainants towards compensation and rent stands rejected.

26. 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.
27. It is not in dispute that the Goa RERA in the said complaint by its Order dated 16.11.2022 has directed the respondent to pay interest @10.35% per annum for every month of delay to the applicant/ complainant on the aforesaid amount of ₹18,88,915/- (Rupees Eighteen Lakhs Eighty Eight Thousand Nine Hundred and Fifteen only) till the handing over of the said flat to the applicant/ complainant.
28. 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.”


29. 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.
30. 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.
31. 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 paid by the applicant/ complainant for the rented premises taken by the applicant/ complainant pending the handover of possession of the said flat as well as for legal expenses incurred has no substance in law as the aforesaid proviso to Section 18 of the RERA Act does not provide for any rent and/ or for legal expenses in case of delay in handing over possession of the said flat to the applicant/ complainant.

32. The point for determination, is therefore, answered in the negative.
33. 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 06.01.2023. The respondent sought time to file reply on 01.02.2023, 13.02.2023, 27.02.2023 and filed the same only on 08.03.2023. The applicant/ complainant filed affidavit in evidence on 23.03.2023. On 04.04.2023 applicant/ complainant filed written arguments. On 27.04.2023 respondent filed written arguments. Oral arguments were heard on 01.06.2023. Matter stands disposed off on 23.06.2023.

In the result, I pass the following:-

ORDER

The claim for compensation filed by the applicant/ complainant in Form 'B' under Section 12, 14, 18 and 19 read with Section 71 of the RERA Act stands dismissed.


23/06/2023
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA