



GOA REAL ESTATE REGULATORY AUTHORITY

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 Goa
www.rera.goa.gov.in

Tel: 0832-2437655; e-mail: goa-rera@gov.in

F.No:4/RERA/Adj. Matters (123)/2024/1255

Date: 29/08/2024

BEFORE THE ADJUDICATING OFFICER

M/s Jai Bhuvan Builders Pvt. Ltd.

Represented through its Director

Mr. Rajesh Sadanand Sheth

Having registered office at Gera Imperium Star,

Office No. 202-206, Second Floor,

Panaji Goa-403001

.....

Applicant

Versus

M/s Gera Developments Pvt. Ltd.

Through its Authorized Signatory

Mr. Rohit Gera,

Having its registered office at 200,

Gera Plaza, Boat Club Road,

Pune- 411001.

.....

Respondent

Ld. Advocate S. B. Karpe along with K. Parab for the applicant.

Ld. Advocate A. A. Kamat along with Advocate Ms P. Remedios for the respondent.

ORDER

(Delivered on this 29th day of the month of August, 2024)

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(362)/2023.

2. The above said complaint was disposed of vide Order dated 04.04.2024 by the Hon'ble Goa Real Estate Regulatory Authority. The said Authority passed the order as follows:-

"The respondent is hereby directed to pay monthly interest to the complainant on the total amount of Rs. 1,38,03,587/- towards cost of the unit including excess amount paid by the complainant to the tune of Rs. 1,66,448/- for the period from 05.07.2023 to 05.12.2023 calculated at the rate of interest of 10.40% per annum.

The respondent is hereby further directed to deduct and adjust an amount out of the above dues payable to the complainant as arrived at paragraph 29 above, (a) an amount of Rs. 4,17,230/-, registration charges which is already refunded to the complainant along with interest calculated on the said amount at the rate of 10.40% per annum for the period between 16.03.2023 to 05.12.2023 (b) Maintenance charges without interest for the period between 24.11.2022 to 05.12.2023 and pay remaining balance amount, if any to the complainant or vice versa.

The complainant is hereby directed to return the stamp duty charges to the extent of Rs. 4,00,400/- to the respondent without interest and retain the same as and when it is reimbursed by the Sub-Registrar to them.

Both respondent and complainant are hereby directed to comply the said order within two months.

The matter shall be further referred to Ld. Adjudicator for determining compensation.

The issues raised by this Authority for resolution of the complaint as recorded at paragraph No. 6 and paragraph No. 7 above has been decided accordingly.”

3. Briefly stated, the case of the applicant is as follows:-

The applicant is a company having its registered office at the address shown in the clause title. The respondent is a private limited company. The subject matter is an agreement entered between the parties dated 17.11.2022 to purchase the office no. 620 but due to the fault attributed to the respondent, the agreement remained to be registered and the same was presented for registration on 24.11.2022. The applicant had preferred a complaint under Section 31 for failure of the respondent to comply with contractual obligation in handing over of the possession of the office premises to the applicant which was disposed of by the Authority on 04.04.2024. The applicant was carrying on their business from a premise bearing no. 202 to 206 in the same building only on license basis. The respondent impressed upon the applicant that the project comprises of good quality construction and workmanship skill based on which the applicant agreed to purchase the said office premises for ₹1,38,03,587/- for which the applicant obtained a loan of a sum of ₹1,10,00,000/-.

4. The entire consideration was paid to the respondent but despite payment of full consideration as per the agreement, the respondent failed to hand over the possession of the office premises to the applicant. The respondent on 19.11.2022 under the garb of issuing the possession letter issued a letter containing terms

which are totally contrary to the said agreement and is trying to impose conditions which were never agreed upon. The respondent had sought to put the entire blame on the applicant alleging that it is the applicant who is delaying to take the possession of the said office by not accepting the possession letter. The respondent in their reply to the legal notice has chosen and neglected to make a reference of the agreement for sale executed between the parties. The respondent inspite of receiving the entire consideration and other charges has not handed over the possession of the office premises to the applicant. There is substantial delay in handing over the possession of the said office premises to the applicant.

5. The respondent is required to deliver the possession of the office premises from the date of registration of the said agreement. The applicant has invested their hard earned money in the said office premises and had also obtained loan from the bank. The respondent has handed over the possession of the office premises vide letter dated 27.11.2023, however there are losses which has been incurred to the applicant for not handing over the possession on time. The applicant is therefore entitled to claim compensation from the respondent due to financial burden and loss caused to the complainant on account of default of the respondent. Hence, the application.

6. The respondent filed a reply inter-alia contending that the Hon'ble Regulatory Authority by virtue of the order dated 04.04.2024 has categorically rejected the prayer clauses (a) and (b) and has referred only for the determination

of compensation as per prayer clause (c) for adjudication. The applicant itself has delayed in taking over the possession of the said office premises despite the same being offered by the respondent immediately upon the execution of the agreement for sale on 24.11.2022 itself. There was never any intention on the part of the respondent to avoid handing over the possession to the applicant or to gain any benefit for such a delay. The respondent has already compensated the applicant for any loss caused to it by paying the interest and other charges as directed by Goa RERA.

7. Both the parties have filed their affidavits-in-evidence. Oral arguments were heard.

8. The points for determination and my findings to the same are as under:-

Sr. No.	Points for determination	Findings
(a)	<i>Whether the applicant is entitled for the relief claimed?</i>	<i>In the negative.</i>
(b)	<i>What Order? What relief?</i>	<i>As per final order.</i>

Points (a) & (b)

9. Ld. Advocate S. B. Karpe for the applicant has submitted that due to the fault attributed to the respondent, the registration process could not be completed although full consideration amount has been paid as per the agreement. The respondent has falsely sought to put blame on the applicant claiming that it is the

2

applicant who is delaying to take possession of the office premises. The respondent was required to handover the possession of the said office premises forthwith, which was not done despite the entire amount was paid to the respondent. There cannot be any restrictions under Section 18 of the RERA Act in granting compensation. The applicant is therefore entitled for an amount of ₹9,80,154/- towards the loss suffered due to the delay in handing over the possession and license fees in respect of the premises taken on lis for a period of 7 months from December to June 2023 as well as other reliefs prayed for.

10. Per contra, learned advocate A. A. Kamat for the respondent has submitted that the applicant has itself delayed in taking over possession of the said office premises despite the same being offered by the respondent immediately upon execution of the agreement as rightly observed by the learned Regulatory Authority vide its order dated 04.04.2024. It is also evident from the record that the draft of possession letter was shared with the applicant on 19.11.2022 and the agreement for sale was thereafter registered on 24.11.2022. The applicant at no stage before the registration of the agreement raised any objection to the said draft possession letter but for the first time on 26.11.2022 raised the issue. The applicant is not entitled for any reliefs.

11. Discernibly, the applicant at Para 5(A) to (D) of the application have claimed compensation as per the order dated 04.04.2024 passed by the Hon'ble Regulatory Authority claiming that the respondent is liable to pay an amount of

₹9,80,154/- towards the loss suffered due to delay in handing over possession and the license fees that had to be paid by the applicant in respect of the office premises nos. 202 to 206 during the period for the month of December to June along with the interest @ of 18% attributable to the delay in handing over possession of the suit office premises by the respondent and further interest on the said license fee till 27.11.2023 on which date possession of the said premises is handed over to the applicant, as well as a sum of ₹1,00,000/- (One lakhs only) towards the costs of the present lis and ₹50,00,000/- (Fifty Lakhs only) towards the mental trauma, agony, and gross inconvenience caused to the applicant on account of non handing over of the said premises to the applicant and further wrongfully withholding the monies of the applicant.

12. Apparently, the applicant is staying invested in the project and is claiming relief under Section 18 of the RERA Act, which 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.”

13. From the plain reading of Section 18 of RERA Act, 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 invested in 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.

14. In the case of **Brahmanand Kadam Vs. G.T. Developers Appeal No. AT005000000052390 in Complaint No. CC005000000011089**, decided on 20.08.2021, The Maharashtra Real Estate Appellate Tribunal has held that as the allottee is staying in the project, in such cases, no compensation is envisaged under Section 18 of the Act. Hence, the relief for compensation cannot be granted and is therefore rejected.

15. In the case of **Anant Mahadev Joshi and Ors. Vs. Vijay Group Housing Private Limited and Ors.** in Complaint nos. CC006000000195758 and others, decided on 16.06.2021, the Maharashtra Real Estate Regulatory Authority, 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 Maha RERA 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.

16. In the case of **Imperia Structures Ltd. V. Anil Patni (2020) 10 SCC 783**, it was held that the proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In that case, he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1).

17. The Hon'ble Regulatory Authority in its order dated 04.04.2024 has held that the clauses objected to by the applicant as being additional clauses were in fact all already contained in the agreement for sale and that the applicant was responsible for not studying the conditions of the agreement of sale and the possession letter carefully to understand that they were identical and that the only deficiency on the part of the respondent was that they included clauses in the draft possession letter which were already part of the agreement of sale and failed to

convince the applicant that the clauses were identical and therefore, it is clear that there was never any intention to avoid handing over possession to the applicant or to gain any benefit on such a delay.

18 Moreover, it is well settled in the case of *Roopa N. Hegde and Ors. Vs Sanvo Resort Pvt. Ltd., MANU/RR/0633/2022* that when the complainants have chosen to continue in the project as per the aforesaid explicit provision of section 18 of the RERA, the complainants can claim only interest for delayed possession. Hence, their 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 above claim for payment of an amount of ₹9,80,154/- towards the loss suffered due to delay in handing over possession and the license fees/rents cannot be entertained being not justified in the facts and circumstances of the case.

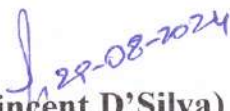
19 The applicant is also not entitled for ₹1,00,000/- towards cost of present lis as the said relief has been already denied to the applicant by the Ld. Regulatory Authority. The applicant is also seeking a sum of ₹50,00,000/- towards mental trauma, agony and gross inconvenience allegedly caused to the applicant, however no justification has been shown by the applicant for grant of said reliefs. Moreover, there was never any intention to avoid handing over possession to the applicant or to gain any benefit on such a delay on the part of the respondent. The above submissions of Ld. Adv. S. B. Karpe therefore cannot be accepted having any merits.

20. The applicant has chosen to stay invested in the project and in view of the above provisions of Section 18 of the RERA Act as well as the judgments cited above, the applicant can only claim interest for every month of delay till handing over possession of the said office premises to the applicant, which the Hon'ble Regulatory Authority has granted to the applicant. The application filed by the applicant is not maintainable as claim for compensation is not available when the applicant is staying invested in the project and is getting month to month interest as per the order dated 04.04.2024 passed by the Hon'ble Regulatory Authority. The applicant is therefore not entitled for any reliefs as prayed for. Hence, the above points are answered accordingly.

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

ORDER

The claim for compensation filed by the applicant in Form 'B' stands dismissed.


(Vincent D'Silva)
Adjudicating Officer,
Goa RERA

Panaji, Goa.
Date: 29.08.2024.