



## GOA REAL ESTATE REGULATORY AUTHORITY

101, 1<sup>st</sup> 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:3/RERA/Complaint (276)/2021 | 318

Date: 24/04/2023

**Mrs. Sugandha Pravinkumar Shirodkar,**

H.No. 1038/3, Situated on Ground Floor at Zosswado,  
Succorro, Bardez-Goa, 403501.

.....Complainant

*Versus*

**Shri Viresh Kamalanath Nadkarni**

Partner of Nadkarni Libra Developers,  
C/o K.V. Nadkarni & Associates,  
L-45/46, 4<sup>th</sup> Floor, Alfran Plaza,  
M.G. Road Panaji, Goa, 403001.

.....Respondent

### **ORDER** **(Dated 24.04.2023)**

This order disposes of the aforesaid complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act'), wherein the complainant has stated that she executed an agreement for sale dated 29.08.2018 with the respondent and the said agreement was registered on 05.09.2018. According to the complainant, the said agreement is with respect to the apartment no. 104 having carpet area of 76.96 sq. mtrs. on the upper ground floor of the project "Ferreira Manor" along with parking slot

*Yash*

situated at Mapusa, Bardez, Goa. The complainant has stated that as per the agreement for sale the respondent had to hand over the possession of the said apartment on or before 26.12.2019 but the possession has not been handed over till date. According to the complainant, she has paid ₹37,10,320/- (Rupees Thirty Seven Lakhs Ten Thousand Three Hundred and Twenty only) including GST amount out of the total consideration of ₹42,00,000/- (Rupees Forty Two Lakhs only). Earlier the complainant prayed for refund of the said amount along with interest and compensation, however after amendment in the prayer, the complainant now prays for possession of the said apartment along with interest and compensation. The complainant has prayed in the amended complaint to direct the respondent to deliver the said apartment along with occupancy certificate and interest for every month of delay till the handing over of the possession and also the compensation, the details of which are given in the prayer clause.

2. In the reply the respondent has submitted that as per the terms of the agreement dated 29.08.2018, the complainant was required to pay a total sale consideration of ₹42,00,000/- (Rupees Forty Two Lakhs only) as per the schedule of payment mentioned in the agreement, however the complainant has still not paid balance amount of ₹7,05,600/- (Rupees Seven Lakhs Five Thousand Six Hundred only). It is further submitted that the complainant has not complied with the time schedule of making payments and there was delay in making the payments due



to which the construction and completion of the project as per the time line was extended. The respondent referred to the agreement for sale which required the complainant to make timely payments of the installments and other dues payable for simultaneous construction and completion by the respondent as a developer.

3. The respondent has stated that though the possession of the premises was to be delivered on or before 26.12.2019, however clause 6 of the said agreement states that the developer would be entitled to reasonable extension of time for giving delivery of the apartment if the completion of the building was delayed inter alia on account of war, civil commotion or act of God. According to the respondent, between February 2020 to February 2022 the entire country was severely hit by covid19 pandemic and lockdown and the restrictions were relaxed only in the later part of the year 2021. The respondent states that during the said pandemic, there was acute shortage of labour, raw material, machinery etc., due to which the real estate industry got affected and the respondent was also a victim of the said pandemic. The respondent referred to the covid19 relaxations and extension orders issued by the Hon'ble Supreme Court and Central and State Government from time to time.
4. According to the respondent as on 26.12.2019, the complainant's flat was duly completed in all respects and only the work of tiling and painting was remained to be done. The respondent states that occupancy certificate is awaited, however

*y. atty*

upon receiving the occupancy certificate, the respondent shall offer in writing the delivery of possession to the complainant, subject to the complainant making the balance payment due and payable to be made before delivery of possession of the apartment.

5. According to the respondent, the complainant delayed the payment of installments, which also resulted in delay in completion of the work. It is stated that the 9<sup>th</sup> and 10<sup>th</sup> installment which was to be paid by 09.09.2021 is yet to be paid and thus an amount of ₹7,05,600/- is yet to be paid by the complainant to the respondent. Rest of the allegations of the complainant are denied by the respondent.
6. Affidavit in rejoinder was filed by the complainant wherein it is inter alia stated that she has till date paid to the respondent ₹37,10,320/- (Rupees Thirty Seven lakhs Ten Thousand Three Hundred and Twenty only) including GST out of total sale consideration of ₹42,00,000/- (Rupees Forty Two Lakhs only) and thereafter on her instructions, the bank stopped making further payment of installments to the respondent since the respondent was not keen and willing to complete the work. She further states that after receipt of the respondent's letter dated 06.06.2022 and perusing the documents annexed by the respondent along with his affidavit, she personally visited and found that the building is not complete in all respect and it is not habitable. She has further stated that as per



the statement of account all the installments released by the bank were within the time schedule mentioned in the said agreement for sale.

7. The complainant further stated that as on 26.12.2019, the building was not complete and further pandemic restrictions started only after March 2020 though after the first phase of pandemic the Government did not lay down any restrictions on completion of the construction of building. According to the complainant, all the permissions were obtained by the respondent after filing of the present complaint before this Authority and all the authorities issued those permissions by fastening the liabilities on the buyers of the apartment.
  
8. Affidavit in sur-rejoinder was filed by the respondent wherein it is inter alia stated that the complainant has yet to pay balance amount of Rs. 7,05,600/- along with cost of extra items/ extra work carried out by the respondent on the instructions of the complainant. It is stated that failure to make the balance payment disentitles the complainant to any relief from this Authority. The respondent further submitted that the apartment is fully complete with all the amenities and is in a habitable condition and in this regard relied upon the photographs of the apartment. According to the respondent other flats are also complete and possession is delivered to the other apartment owners with whom the respondent has executed sale deeds. It is stated that the Municipality has issued a part occupancy certificate not because the building is incomplete but because of the condition to develop a path way beyond the property developed.



The respondent states that the respondent is not required to provide any amenities or facilities to the complainant beyond that which is agreed upon in the agreement for sale.

9. Documents were produced by both the parties and also the affidavits. Written submissions were filed by Ld. Advocate S. Mandrekar for the complainant and Ld. Advocate Ms. R. Mishra for the respondent. Oral arguments were heard from Ld. Advocate S. Mandrekar for the complainant and Ld. Advocate G. Agni for the respondent. 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 complainant is entitled for possession of the said apartment along with statutory interest, after payment of balance amount to the respondent?	In the affirmative.
2.	Whether the promoter is liable to pay penalty for violation of the provisions of the RERA Act?	In the affirmative.
3.	Whether the complainant is entitled for compensation as prayed in the complaint?	To be decided by the Adjudicating Officer under Section 71 of the RERA Act.

## REASONS

### **Point no.1**

10. As per the agreement for sale dated 29.08.2018 and which was registered on 05.09.2018, as mentioned in para 6 thereof, “the DEVELOPERS shall give possession of the Apartment to the PURCHASER on or before 26<sup>th</sup> day of December 2019”. Since, till date the possession of the said residential unit is not given to the complainant, Section 18 of the said Act is therefore, squarely applicable and is quoted below:-

**“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**

*velley*

**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.

(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)

11. From the aforesaid section it is clear that the complainant has the choice of either withdrawing from the project and asking for refund of the consideration amount paid by the complainant to the respondent with interest including compensation **or not to withdraw from the project and ask from the respondent “interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”**. As stated above, Section 18 of the said Act clearly gives right to the complainant to ask for statutory interest on the consideration amount paid for every month of delay till the handing over of the possession. In this regard, 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. **The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In the 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)**” (emphasis supplied)

The instant case of the complainant comes under the latter category. The RERA Act thus provides a remedy to an allottee who does not wish to withdraw from the project to claim interest on the delayed possession till the handing over of possession to the allottee.

12. 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:-**

*Yalley*

**“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.”

13. Thus, invoking Section 18 and Rule 18 of the said Act the benefit of the aforesaid statutory interest goes to the complainant, who has entered into agreement for sale with the respondent. As a consequence thereof Section 18 and Rule 18 of RERA are squarely attracted in the instant complaint.

14. Chapter III of the RERA Act gives details of the functions and duties of the promoter. Section 11 (4) (a) 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

*Victory*

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.”(emphasis supplied)

From the aforesaid Section 11(4) (a) it is clear that the promoter is responsible for all obligations, responsibilities and functions under the provisions of the said Act/Rules/ Regulations or **to the allottees as per the agreement for sale**. Thus, the promoter is bound by the terms, recitals and conditions as mentioned in the agreement for sale.

15. Even under Section 18 of the said Act (supra), the complainant is entitled for the return of amount and compensation only if the promoter fails to complete or is unable to give possession of an apartment, plot or building “in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified in the said agreement for sale.” Thus, if the promoter does not give possession of an apartment, plot or building, as per the terms of the agreement for sale or as per the date specified therein, the cause of action accrues in favour of the complainant for the return of amount and compensation.
16. **The cause of action accrued in favour of the complainant and against the respondent on 26<sup>th</sup> December 2019 on which date the respondent was liable**

*vetley*

**to give possession of the residential unit to the complainant.** Thus the date from which the interest on the consideration amount paid by the complainant is to be calculated is the date when the cause of action accrued in favour of the complainant. Therefore the prescribed interest as per the aforesaid Rule 18 starts running from 26<sup>th</sup> December 2019 on the consideration amount paid by the complainant to the respondent.

17. The Ld. Advocate for the respondent brought to the notice of this Authority the proviso to clause 6 of the agreement for sale wherein it is mentioned that the developers shall be entitled to reasonable extension of time for giving delivery of apartment on the aforesaid due date of possession, if the completion of building is delayed on account of (i) war, civil commotion or act of God; (ii) any notice, order, rule, notification of the Government and/ or other public or competent authority/ court. The Ld. Advocate for the respondent has further argued that between February 2020 to February 2022 the entire Country including the State of Goa was severely hit by the Covid-19 pandemic and there was complete lockdown from 21.03.2020 with restrictions in force from time to time and which restrictions were relaxed only towards the later part of the year 2021. According to the Ld. Advocate, there was acute shortage of labour, raw materials, machinery etc. which severely affected the industrial sector including the real estate industry, which was badly hit and most of the projects could not be completed in time during the said pandemic period. According to the Ld. Advocate, the respondent was also a victim of the pandemic. The Ld. Advocate for the respondent also named the complainant for delay in giving instalments of amount towards the construction.
18. The statement of account of the bank produced by the complainant does not show any delay on behalf of the bank in releasing the instalment amount in favour of the respondent. The other aforesaid arguments of the Ld. Advocate for



the respondent have no merit since it is held by the Apex court in the case of **“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”. In the case of **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors.” 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 aforesaid ground for delay in delivering of possession, as given by the respondent, will not come to the rescue of the respondent from legal liabilities under the said Act and corresponding legal rights accrued to the complainant under the said Act.

19. The complainant is also 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

*Vietky*

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 complainant 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 complainant.

20. The Ld. Advocate for the respondent, in his arguments pointed out to the letter dated 29.09.2021 by the respondent addressed to the complainant, wherein the complainant was informed that her booked “Flat is progressing satisfactorily and the installment no. 9 & 10 has fallen due” and the total amount payable is Rs. 7,05,600/- including GST and whereby the complainant was called upon to make the aforesaid payments at the earliest. The Ld. Advocate argued that since the respondent did not make the aforesaid payments of installment no. 9 & 10 and since without receiving the aforesaid installment, the respondent has completed the construction of the flat of the complainant, the respondent is not liable to pay any statutory interest after 29.09.2021. The Ld. Advocate further pointed out to the letter/ reply dated 22.02.2021 of the respondent addressed to the complainant wherein the reasons are given for the delay in completing the construction and it is further mentioned therein that “we reassure you that we are trying our best to complete your flat by July 2021 and we would appreciate your support for the same”.

There is no merit in the aforesaid arguments **firstly** because if prior to the due date of possession i.e. 26.12.2019, the complainant had not paid the installments no. 9 & 10 on demand by the respondent and the respondent in that situation would have completed the construction inspite of not receiving the aforesaid installments, the complainant would have been liable for breach of



contract but in the instant case the installment no 9 & 10 were demanded after the expiry of the due date of possession as mentioned in the agreement for sale and at that time i.e. on 29.09.2021, the right of the complainant under Section 18 of the RERA Act had already accrued in her favour, **Secondly**, by letter dated 22.02.2021, the respondent unilaterally extended the time of delivery of possession to the complainant, i.e. by July 2021, for which date, the respondent never gave any acceptance and thus there is no agreement between the parties to that effect and therefore the due date of delivery of possession remains as 26.12.2019 as per the agreement for sale dated 29.08.2018, **thirdly**, the aforesaid installments no. 9 & 10 were demanded by the respondent by letter dated 29.09.2021 i.e. after the unilateral extension of time of delivery of possession by July 2021, **fourthly**, the complainant in the legal notice dated 21.10.2021 addressed to the respondent has clearly stated that “Even my client has given visit to the construction site of the said apartment but it is stand still. **And further to inform you that on the visit it is observed that no work has been completed as per the paragraph 1(c) v, vi and vii of the agreement for sale page 9** and on the contrary my client was shocked and dismayed by the quality of work standard carried by you of the said apartment is not up to the building specifications mentioned as per the schedule-III of the agreement for sale page 27. **Thereafter, my client has instructed her bank to stop further payment as you are not keen and willing to complete the work**” (emphasis supplied). Thus, the complainant out of compulsion stopped the payment of installments and instructed her bank accordingly.

Though in the reply dated 05.11.2021, the respondent stated that “of late the speed of construction has picked up and almost all the items pertaining to your flat is complete, which your client must have noticed during her site visit in October 2021” however, as stated above in the legal notice dated 21.10.2021, the Ld. Advocate for the complainant had clearly stated that “on the visit it is observed that no work has been completed as per the paragraph 1(c), v, vi and



vii of the agreement for sale” and further there are no documents on record to show the status/ stage of the work in September 2021 or in October 2021.

21. Moreover, it is worth mentioning that the respondent obtained both the completion certificate and part occupancy certificate much after 26.12.2019, the due date of possession of the premises i.e. completion certificate on 15.12.2021 and part occupancy certificate on 18.05.2022.
22. By letter dated 06.06.2022 the respondent informed the complainant that her flat no. 104 “is completed in all respect and is ready for possession” and that the following payments are due from the complainant and may be settled at the earliest:-

Sr. No.	Particulars	Amount(Rupees)
1.	Previous installment no. 9 & 10	6,30,000/-
	Previous GST @12%	75,600/-
2.	Installment no. 11 (on possession)	2,10,000/-
	GST @12%	25,200/-
	<b>Total</b>	9,40,800/-
3.	<b>Other maintenance amount:-</b>	
	a)maintenance deposit	1,43,970/-
	b)membership of entity for the society	510/-
	c) Electrical transformer	45,000/-
	d) Electrical meter deposit	10,000/-
	e) Infrastructure tax	19,196/-
	f) Legal fees	3,000/-
	<b>Total</b>	2,21,676/-
	<b>Total amount payable</b>	11,62,476/-

*Mithey*



23. It is an admitted fact that the complainant has still to pay the installments no. 9 and 10 whereas the amount of installment no. 11 has to be paid at the time of taking possession. Thus, there is no dispute over the total amount of Rs. 9,40,800/- as shown above in the table to be paid by the complainant towards the aforesaid installments. However, in the column of “other maintenance amount” there are some amount shown which are not to be paid by the complainant before taking possession of the flat. In this regard it is relevant to reproduce hereunder clause 1(d) of the “MODEL FORM OF AGREEMENT TO BE ENTERED INTO BETWEEN PROMOTER AND THE ALLOTTEE(S)” 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, which clause comes after the breakup of mode and amount of payment to be made by the complainant on completion of certain stages of the premises:-

“1(d) 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]”



It is worth mentioning that even in the agreement for sale dated 29.08.2018 entered into between the promoter and the complainant herein, the aforesaid clause 1(d) of the Model Form of Agreement for Sale is incorporated on page 9 thereof as follows:-

“1(d) the total price above excludes Taxes (consisting of tax paid or payable by the DEVELOPERS 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 DEVELOPERS) upto the date of handing over the possession of the Apartment.”

24. Thus, it is the responsibility of the promoter herein/ the developers to pay all the taxes including infrastructure tax etc. in connection with the construction of and carrying out the project upto the date of handing over the possession of the flat to the complainant. Thus, the maintenance charges of ₹1,43,970/-, infrastructure tax of ₹19,196/- and legal fees of ₹3,000/- has to be paid by the promoter/ the respondent herein till the date of handing over the possession of the flat to the complainant. The amount of ₹510/- towards membership of entity for the society has to be paid by the complainant at the time of the formation of the society/ association of allottees and not prior to that. However, the respondent can claim an amount of ₹45,000/- towards electrical transformer and ₹10,000/- towards electrical meter deposit as per the agreement for sale. Hence, the

demands of amount by the respondent from the complainant which are inconsistent with the RERA Act/ Rules are not allowed. The respondent can therefore only claim at this stage for the amount of ₹55,000/- towards electrical transformer and electrical meter deposit i.e. ₹45,000/- plus ₹10,000/-. Thus, the complainant at this stage is liable to pay to the respondent the amount of ₹9,40,800/- plus ₹55,000/- to the respondent and the total comes to ₹9,95,800/-.

25. In the instant case the complainant has paid an amount of ₹37,10,320/- (Rupees Thirty Seven Lakhs Ten Thousand Three Hundred Twenty 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 8.70% per annum. Adding two percent to the said interest as per Rule 18, it comes to 10.70% per annum. Hence, the respondent is liable to pay 10.70% per annum interest for every month of delay to complainant on the aforesaid amount paid by complainant from the date of delivery of possession i.e. 26.12.2019 as mentioned in the agreement for sale with the complainant, till the handing over of the possession to complainant. In the reply, the respondent has clearly stated that the flat of the complainant is fully complete with all amenities and even in other apartments the allottees have started residing therein and the respondent has executed sale deeds with the other apartment owners. Part occupancy certificate is already obtained by the



respondent. The complainant is therefore entitled for the possession of the said flat along with the aforesaid statutory interest after payment of balance amount of ₹9,95,800/- (Rupees Nine Lakhs Ninety Five Thousand Eight Hundred only) to the respondent. The instant point is therefore answered in the affirmative.

**Point No.2**

26. 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 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 complainant as per the date of delivery of possession as mentioned in the agreement for sale dated 29.08.2018 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 registration of the project of the respondent lapsed on 26.12.2019 and the respondent has not obtained the extension of the registration of the project even though by e-mail dated 27.12.2019, this Authority directed the respondent to pay registration extension fees and has therefore violated the mandate of Section 6 of the RERA Act. Hence, the respondent is liable to pay ₹20,000/- (Rupees Twenty Thousand only) as penalty for not obtaining the extension of the registration of the project in time. The instant point is therefore answered in the affirmative.

**Point No. 3**

27. Under Section 71 of the said Act, compensation under Sections 12, 14, 18 and 19 of the 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**

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 percent) 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.

*Vijaya D. Pol* 24/7/2023  
**(Vijaya D. Pol)**  
**Member, Goa RERA**