



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (117)/2024/858

Date: 14/06/2024

BEFORE THE ADJUDICATING OFFICER

1. Mr. Vinesh Varghese,
S/o late Mr. Pappy Varghese,
43 years of age, service,
Indian National.

2. Mrs. Asha Susan John,
Wife of Mr. Vinesh Varghese,
38 years of age, Business,
Indian National
Both r/o Flat no. F-4, Block II,
Rich Builder's, Hill View Apartment,
Alto Santa cruz, Bambolim, Goa.

.....Applicants

Versus

M/s Expat Projects & Development Private Limited,
Represented by its Director Mr. Lansel Victor D'Souza,
RIC 616 to 619, 6th floor, B-Wing,
Carton Tower, No-1 HAL, 2nd stage,
Old Airport Road-Bengaluru- 560008.

.....Respondent

Ld. Advocate Ms Shashikala Chavhan for the applicants.
Ld. Advocate Shri Pritesh Shetty for the respondent.

ORDER

(Delivered on this 14th day of the month of June, 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 applicants against the respondent bearing complaint no. 3/RERA/Complaint(346)/2023.

2. The above said complaint was disposed of vide Order dated 28.02.2024 by the Hon'ble Goa Real Estate Regulatory Authority. The said Authority directed as follows:-

“The respondent in the reply and affidavit in evidence has stated that the respondent is willing to deliver the said unit by the end of April 2024 to the complainants and that the balance payment will be collected from the complainants at the time of handing over the said possession. Therefore, the respondent is directed to give possession of the unit row house bearing no. 053, admeasuring an area of 2144 sq. ft. constructed on the land known as 'ANEXIO DO OITEIRO or GAUCHM XIR E FUXAL GALE' situated at Panelim, Taluka Tiswadi, North Goa by end of April 2024 with all the amenities and facilities as mentioned in the agreement to sell dated 07.09.2017 upon taking the balance consideration amount of ₹11,50,326/- (Rupees Eleven Lakhs Fifty Thousand Three Hundred and Twenty Six only) from the complainants.

The complainants are directed to pay the aforesaid balance consideration amount to the respondent on the day of and before taking possession of the said flat.

Further, the respondent is directed to pay 10.85% per annum interest (present lending rate of interest by SBI which is 8.85% per annum plus two percent) for every month of delay to the complainants on the aforesaid amount of ₹83,49,674/- (Rupees Eighty Three Lakhs Forty Nine Thousand Six Hundred

and Seventy Four only) paid by the complainants from 31.10.2018 till the date of delivery of possession to the complainants.

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 to be paid by the end of April 2024. 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 by end of April 2024 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. Briefly stated, the case of the applicants is as follows:-

That the applicants entered into an agreement with the respondent vide agreement dated 08.09.2017 for unit row house bearing no. 053 admeasuring an area of 2144 sq. ft. on the land known as “ANEXIO DO OITERIO or GAUCHM XIR E FUXAL GALE” situated at Panelim, Taluka Tiswadi District, North Goa and as per the agreement, the row house would be completed on or before October 2018 which was not completed and as such, the applicants were forced to approach the RERA Authority to file the complaint. The applicants prayed for the compensation as per the order dated 28.02.2024 passed by the Hon’ble Regulatory Authority who has directed the respondent to pay an amount of Rs. 49,82,664/- i.e. 10.85% per annum on Rs. 83,49,674/- till date.

4. The respondent filed a reply raising preliminary objections namely (a) The applicants petition is not maintainable as claim for compensation is not available when the applicants are staying invested in the project; (b) The petition is not maintainable as this Hon'ble Court is not an Execution Court which has no powers to execute the Order of the Regulatory Court; (c) The petition is not maintainable as claim for compensation remedy is not provided to allottee who stays invested in the project; (d) The complaint under section 31 r/w 71 is not maintainable since the applicants are staying invested in project and is getting month to month interest as per the Order of Regulatory Court; (e) The applicants are investors in the project and that cannot be termed as allottee as per the RERA Act; (f) The Applicants have not given particulars of compensation and therefore another reason this petition needs to be dismissed. It is also claimed that the row house is completed more than 80% and the applicants are well aware of the said row house. The applicants have suppressed and concealed various material facts from this Authority and approached the Court with unclean hands and therefore, the applicants are not entitled for any reliefs.

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

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

Sr. No.	Points for determination	Findings
(a)	<i>Whether the applicants are entitled for the relief</i>	<i>In the negative.</i>

	<i>claimed?</i>	
(b)	<i>What Order? What relief?</i>	<i>As per final order.</i>

Point (a) & (b)

7. Discernibly, the applicants at Para 5 of the application have claimed compensation as per the order dated 28.02.2024 passed by the Hon'ble Regulatory Authority claiming that the respondent is liable to pay an amount of Rs. 49,82,664/- i.e. 10.85% per annum on Rs. 83,49,674/- till date. There is no dispute that the Hon'ble Regulatory Authority has directed the respondent to pay 10.85% per annum interest (present lending rate of interest by SBI which is 8.85% per annum plus two percent) for every month of delay to the applicants on the aforesaid amount of ₹83,49,674/- (Rupees Eighty Three Lakhs Forty Nine Thousand Six Hundred and Seventy Four only) paid by the applicants from 31.10.2018 till the date of delivery of possession to the applicants and other reliefs mentioned above.

8. Apparently, the applicants do not wish to withdraw from the project and are 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.”

9. 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.

10. 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.

11. 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.

12. 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).

13. Ld. Advocate Pritesh Shetty has submitted and rightly so that the application filed by the applicants is not maintainable as claim for compensation is not available when the applicants are staying invested in the project, so also that the petition is not maintainable as this Authority is not an execution Court which has no powers to execute the Order of the Hon'ble Regulatory Authority.

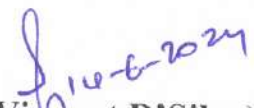
Similarly, the complaint under Section 31 r/w 71 is not maintainable since the applicants are staying invested in project and is getting month to month interest as per the order dated 28.02.2024 passed by the Hon'ble Regulatory Authority.

14. The applicants have chosen to stay invested in the project and in view of the above provision of Section 18 of the RERA Act as well as the judgments cited above, the applicants can only claim interest for every month of delay till handing over possession of the said row house to the applicants, which the Hon'ble Regulatory Authority has granted to the applicants. The applicants are therefore not entitled for any relief as they have chosen to stay invested in the project and therefore, relief for compensation cannot be granted. Hence, the above points are answered accordingly.

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

ORDER

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


(Vincent D'Silva)
Adjudicating Officer,
Goa RERA

Panaji, Goa.

Date: 14.06.2024.