



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:3/RERA/Complaint(357)/2023/ 34

Date: 04/01/2024

1. Mr. Jitendra Kumar Pawan,
S/o Mr. Janardhan Sharma,
40 Years of age,
Indian national and his wife,

2. Ms. Kabita Roy,
D/o Mr. Pramod Singh,
39 years of age,
Indian national,
Both residents of ID,
Amar Apartment,
Behind Kawasaki showroom,
Airport Road,
Near Navy Children School,
Chicalim, Vasco da Gama,
South-Goa, 403711.

.....Complainants

Versus

Shree Maa Gayatri Construction Pvt. Ltd.,
Through its Director (Promoter) **Mr. Ramsagar Prasad,**
Having its Registered Office Address at S.No. 152/2/1A,
Hinjawadi, Marunji Mulashi Pune,
Maharashtra-411027.
Or
Survey No. 268/2B, Jail Park,
Near Yelwande Basti, Hinjewadi,
Pune, 411057,
Presently residing and having office at Ishta Goa,

B wing, Ground Floor,
Alto Dabolim,
Behind Dabolim Railway Station,
Dabolim, Vasco –Da-Gama,
South Goa, State of Goa, 403801.

.....Respondent

ORDER
(Dated 04.01.2024)

This order disposes of the aforesaid complaint filed under Section 12 read with Section 18 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as ‘the RERA Act’) wherein the complainants have prayed this Authority to direct the respondent to refund an amount of Rs. 53,66,100/- (Rupees Fifty Three Lakhs Sixty Six Thousand One Hundred only) to the complainants @18% interest thereon till date of payment an also for compensation.

2. According to the complainants, they agreed to purchase a 3 BHK flat bearing no. 509 on the fourth floor, B wing of the building in the project known as “Ishta” in Dabolim Village of Mormugao Taluka on the basis of the representation and advertisement of the respondent, which was later found to be false. According to the complainants, on the basis of wrong representation/ advertisement, the respondent agreed to sell the aforesaid 3BHK flat by executing the agreement for sale even though the occupancy certificate and the approved building plan clearly show that the project does not have any 3 BHK flat at all. The complainants have submitted that on seeing the prospectus plan

Victory

of the respondent and on the basis of the assurances and representations of the respondent they made advance payment of Rs. 2,00,000/- (Rupees Two Lakhs only) to book the said 3 BHK flat, applied for a loan from Canara Bank to purchase the said 3 BHK flat and subsequently entered into and duly registered an agreement for sale dated 30.06.2020 with the respondent for sale and purchase of a flat number 509, 3BHK situated on the 4th floor of B wing, Ishta.

3. According to the complainants, pursuant to the said agreement, they made additional payment of Rs. 3,00,000/- (Rupees Three Lakhs only) to the respondent and subsequently the Canara Bank disbursed loan amount of Rs. 44,00,000/- (Rupees Forty Four Lakhs only) on 22.07.2020. It is stated that complainants also paid a sum of Rs. 2,95,000/- (Rupees Two Lakhs Ninety Five Thousand only) towards GST as instructed by the respondent.
4. According to the complainants, without obtaining occupancy certificate, the respondent asked the purchasers to start staying in their respective flats purchased by them, however the complainant no. 1 got aware of the discrepancy in the occupancy certificate and when he tried to meet the respondent, the respondent evaded the meeting. It is stated that the complainants and other purchasers addressed email dated 19.07.2021 to this Authority seeking redressal of their complaints and the complaints were filed before the Sarpanch of the Village Panchayat of Chicalim. According to them, legal notice dated

Yethy

28.06.2021 was issued to the respondent demanding from the respondent to complete the said flat as per the terms of the agreement for sale.

5. The complainants have submitted that they informed the respondent that they would make the balance consideration amount only after receiving a copy of the occupancy certificate and after repeated requests, the occupancy certificate dated 27.09.2021 was given to them, however on perusing the same they were shocked to see that the entire block B of the said project Ishta of the respondent does not have a single 3 BHK flat. According to the complainants, a legal notice dated 17.03.2022 was issued to the respondent seeking refund of the entire amount paid by the complainants along with the compensation and legal fees but no reply was given by the respondent.
6. According to the complainants, as per the approved layout plan and occupancy certificate it is clear that the flat being given to the complainants is a 2 BHK flat and not a 3 BHK flat, which was recorded in the agreement for sale dated 30.06.2020. Hence the prayers of the complainants as stated above.
7. Reply has been filed by the respondent wherein the respondent has inter alia stated that the respondent had handed over to the complainants a copy of the approved plan of building B prior to the execution of the agreement for sale dated 30.06.2020 and upon verifying the approved plan of the building and all other documents, the complainants agreed to enter into an agreement for sale. It is further submitted that all the documents including the approved plan of

Vijay

building was handed over to the complainants to be submitted to bank to obtain housing loan for the said flat prior to execution of the agreement for sale.

8. The respondent has stated that Mormugao Planning and Development Authority, Vasco issued completion certificate dated 19.08.2021 and subsequently the Village Panchayat of Chicalim issued occupancy certificate dated 27.09.2021 and after obtaining the same, the respondent requested the complainants to pay the balance amount and take the possession of the flat by executing the deed of sale.
9. According to the respondent, in the agreement for sale dated 30.06.2020, instead of store room, it is mentioned as bedroom and the complainants were aware prior to entering into an agreement for sale that the said third room is in fact a store room and not a bedroom as per the approved plan. According to the respondent, the area, size and number of rooms are the same as shown on the plan and the flat was ready in all respects for delivery of possession. The respondent has further submitted that the complainants have paid only an amount of Rs. 51,95,000/- (Rupees Fifty One Lakhs Ninety Five Thousand only) till date and have failed to pay balance amount of Rs. 7,05,000/- (Rupees Seven Lakhs Five Thousand only) plus the GST amount of Rs. 2,95,000/- (Rupees Two Lakhs Ninety Five Thousand only) and also infrastructure tax, Panchayat tax, transformer charges and society charges regarding which legal notice was issued to the complainants, which was unclaimed by the

Wally

complainants. The respondent has referred to a criminal case filed by the respondent before the Ld. JMFC, Vasco against the complainants. Thus, the prayer of the respondent to dismiss the complaint.

10. Documents were filed by both the parties. Written submissions were filed by Ld. Advocate Shri Anthony Naiker for the complainants and Ld. Advocate C. Palekar for the respondent. Oral arguments were also heard from the Advocates.
11. After going through the entire records of the case, the points which come for my determination along with the findings and reasons thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the complainants are entitled for refund of the entire amount paid by them to the respondent under Section 12 of the RERA Act?	In the negative.
2.	Whether the complainants are entitled for refund of the entire amount paid by them to the respondent along with interest thereon under Section 18 of the RERA Act?	In the affirmative.
3.	Whether the complainants are entitled for compensation of Rs. 1,00,00,000/- (Rupees One Crore only) from the respondent?	To be decided by the Adjudicating Officer under

Handwritten signature

		Section 71 of the RERA Act.
--	--	--------------------------------

REASONS

Point no. 1

12. At the outset, it is worth reproducing hereunder **Section 12** of the RERA Act:-

“12. Obligations of promoter regarding veracity of the advertisement or prospectus.- Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate



as may be prescribed and the compensation in the manner provided under this Act.”

13. From the aforesaid Section 12 of the RERA Act, it is clear that an advance or a deposit should have been made by the allottee based on any incorrect or false statement contained in the notice, advertisement or prospectus or the model apartment, plot or building, as the case may be. In the instant case, the complainants have not produced on record any notice, advertisement or prospectus or the document pertaining to the model apartment, plot or building to show any incorrect or false statement therein and hence the ingredients of Section 12 of the RERA Act are not satisfied in the instant case. The instant point is therefore answered in the negative.

Point No. 2

14. In the instant case, the agreement for sale between the complainants and the respondent was executed and registered on 30.06.2020. In the said agreement for sale schedule V on page 28 thereof the description of the flat to be sold is given as “ALL THAT FLAT bearing no. **flat no. F 509, 3BHK** having carpet area 105.28 sq. mts. (which includes carpet area of flat 79.55 sq. mts., carpet area of enclosed balcony 25.73 sq. mts.) **located on the fourth floor, B wing** building of project known as “ISHTA” to be constructed on the said plot and the said plot no. 1 described in schedule III & IV.” (emphasis supplied).



15. It is further mentioned in the said agreement for sale in para 16 thereof that “The DEVELOPER shall complete the construction of the said Flat within a period of 7 months from the date hereof, provided the FLAT PURCHASER makes the payment of the amounts due and payable to the OWNER/ DEVELOPER as per the said schedule of payment, regularly.” It is also mentioned in the said para of the agreement that the owner/ developer shall be entitled to reasonable extension of time for giving possession of the said flat if the completion of the building is delayed on account of non availability of construction material, war, civil commotion or act of God, delays in granting permission licenses etc.
16. The receipts produced on record by the complainants prove that the complainants have paid ₹51,95,000/- (Rupees Fifty One Lakhs Ninety Five Thousand only) to the respondent towards the part consideration amount of the said flat. The occupancy certificate dated 27.09.2021 produced on record by the complainants refers only to 1BHK flats and 2BHK flats and there is no mention of any 3BHK flat on any floor of the said building, though as mentioned above as per the agreement for sale the complainants and the respondent agreed to purchase and sell flat no. 509 which is described therein as 3BHK flat located on the fourth floor, B wing building of the said project. In the legal notice dated 07.03.2022 by the respondent to the complainants, the respondent has stated that “My client states that upon obtaining the occupancy certificate my client



had requested you to pay the balance amount and take the possession of the flat by executing the Deed of sale at the relevant time you have started raising unnecessary query without any reasonable cause”.

17. From the aforesaid it is clear firstly that as per the agreement for sale dated 30.06.2020, the flat to be sold to the complainants was bearing no. 509 and the same was 3BHK flat located on the fourth floor, B wing building of the said project, whereas the occupancy certificate does not show any 3 BHK flat at all, secondly that even the occupancy certificate dated 27.09.2021 was obtained beyond the due date of possession as mentioned in the agreement for sale and thirdly as per the legal notice of the respondent, the respondent called upon the complainants to pay the balance amount “upon obtaining the occupancy certificate” and when the complainants did not find any 3BHK flat in the said occupancy certificate, they refused to hand over the balance consideration amount to the respondent.
18. The Ld. Advocate for the respondent has submitted that the approved plan which was shown to the complainants prior to the execution of the agreement for sale did not show 3BHK flat and hence the complainants were aware that there was no 3BHK flat in the said building. There is no merit in the aforesaid submission because the agreement for sale dated 30.06.2020 which was duly registered on the same day mentions flat no. 509, as a 3BHK flat on the fourth floor, B wing building of the said project “Ishta”.



19. The Ld. Advocate for the respondent has further submitted that even if the flat 509 is not a 3BHK flat, there is no change in the area of the said flat and hence the same will not affect the complainants in any manner. Even though there may be no change in the area of the flat, as submitted by the Ld. Advocate for the respondent, however the fact remains that the aforesaid flat is not a 3BHK flat as per the terms of the agreement for sale but is a 2BHK flat which is contrary to the terms of the agreement for sale.
20. The Ld. Advocate for the respondent has further submitted that instead of store room it is appearing as bedroom in the said agreement for sale and that the third room is actually a store room and the complainants were aware of the said fact. There is not merit in the aforesaid submission since it is a settled law that the nature of the transaction is determined by the contents of the documents and not by any oral submission of any party contrary to the contents of the documents.
21. As stated above, the due date of possession as per the agreement for sale dated 30.06.2020 is within a period of seven months from the said date i.e. 31.01.2021 however the respondent failed to complete the construction and handover the possession of the flat no. 509, as described in the agreement for sale within the said period and till date. Hence an indefeasible and absolute right accrues in favour of the said complainant under Section 18 of the RERA Act, which is reproduced hereunder:-



“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.

(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.

Victory

(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).

22. Thus, if the respondent has failed to complete or is unable to give possession of the said apartment in accordance with the terms of the Agreement for Sale i.e. duly completed on or before 31.01.2021, statutory right accrues in favour of the allottee after January 2021 either to demand the refund of the money paid to the promoter along with interest or if the allottee does not wish to withdraw from the project, the allottee shall be paid by the promoter interest for every month of delay till handing over of the possession. In this case, 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.”
(emphasis supplied).

23. 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:-**

“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.”

24. 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 an agreement for sale with the promoter. As a consequence thereof Section 18 and Rule 18 of RERA are squarely attracted in the instant complaint.

25. The complainants have paid to the respondent a sum of ₹51,95,000/- (Rupees Fifty One Lakhs Ninety Five Thousand only) towards the consideration of the said flat, which amount he is entitled to get refunded along with statutory

interest. As per the explanation (ii) of Section 2 (za) of the RERA Act, the interest payable for refund by the promoter to the allottees has to be from the date on which the amounts have been received from allottees till the date the total amount has been refunded.

26. In this regard it is relevant to reproduce hereunder Section 2(za) of the RERA Act along with the explanation:-

“2(za) “Interest” means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.- For the purpose of this clause-

(i)....

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;”

27. The Hon’ble Supreme Court in the case of “ **Experian Developers Pvt. Ltd. vs. Sushma Ashok Shiroor**” (2022) SCC Online SC 416” held as follows:-

“22.1 We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The commission in the order impugned has granted interest from the date of last deposit. We find that this does not amount to



restitution. *Following the decision in DLF Homes Panchkula Pvt. Ltd. vs. DS Dhandra and in modification of the direction issued by the commission, we direct that the interest on the refund shall be payable from the dates of deposits. Therefore, the appeal filed by the purchaser deserves to be partly allowed. The interests shall be payable from the dates of such deposits.*”

28. Thus, it is settled position of law that the payment of such interest is not a penalty and in this regard the Hon'ble Bombay High Court in the case of **“Neel Kamal Realtors Suburban Pvt. Ltd. and another Vs. Union of India and others” (2017) SCC Online BOM 9302** held as follows:-

“257.....

The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment is handed over to him is not unreasonable. The interest is merely compensation for use of money.

258 *In paragraph -9 of Alok Shankar Pandey Vs. Union of India (2007) 3 SCC 545, the Apex Court has held that “there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital.....”*

Wetley

“.....The object of Section 18 is to recompense an allottee for depriving him of the use of the funds paid by him. The promoter who has received money from the allottee but has failed to adhere to his contractual or statutory obligations, cannot claim that he is entitled to utilise the monies without paying any interest with respect thereto to the allottee”

29. From the aforesaid discussion, it is clear that it will be just and fair to refund the paid amount along with interest to the complainants from the date of receipt of such amount by the respondent as per **Section 2 (za) (ii) of the RERA Act** and not from any other date.
30. The complainants have paid to the respondent an amount of ₹2,00,000/- (Rupees Two Lakhs only) by cheque dated 22.06.2020 as per receipt dated 22.06.2020; an amount of ₹3,00,000/- (Rupees Three Lakhs only) by cheque dated 05.07.2020 as per receipt dated 04.07.2020; an amount of ₹44,00,000/- (Rupees Forty Four Lakhs only) disbursed through Bank on 22.07.2020 as per the receipt dated 24.07.2020 and an amount of ₹2,95,000/- (Rupees Two Lakhs Ninety Five Thousand only) by cheque dated 15.10.2020 as per receipt dated 10.08.2020. Hence, the prescribed interest as per the aforesaid Rule 18 starts running from the said cheques dates/amount disbursement date on the respective consideration amounts. As stated above, as per the aforesaid Rule 18, the rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of pending Rate plus two percent. At present such

lending rate of interest by SBI is 8.85 % per annum. Adding two percent to the said interest as per Rule 18 comes to 10.85% per annum. Hence, respondent is liable to pay to the complainant 10.85% per annum interest for every month of delay to the complainant on the total amount of ₹51,95,000/- (Rupees Fifty One Lakhs Ninety Five Thousand only) paid by the complainants from the aforesaid dates i.e. from 22.06.2020 on the amount of ₹2,00,000/-; from 05.07.2020 on the amount of ₹3,00,000/-; from 22.07.2020 on the amount of ₹44,00,000/- from 15.10.2020 on the amount of ₹2,95,000/- till the actual return of the said amount to them.

Hence, the instant point is answered in the affirmative.

Point No. 3

31. 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.
32. Under Section 61 of the RERA Act, if any promoter contravenes any other provisions of the RERA 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. Hence, the respondent is also liable to pay penalty under Section 61 of the RERA Act.



In view of the aforesaid, I pass the following:-

ORDER

The respondent is directed to refund the amount of ₹51,95,000/- (Rupees Fifty One Lakhs Ninety Five Thousand only) to the complainants within two months from the date of this order.

Further the said 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 ₹51,95,000/- paid by him as stated above i.e. from 22.06.2020 on the amount of ₹2,00,000/-; from 05.07.2020 on the amount of ₹3,00,000/-; from 22.07.2020 on the amount of ₹44,00,000/- from 15.10.2020 on the amount of ₹2,95,000/- till the actual return of the said amount to them.

Under Section 61 of the RERA Act, the respondent is directed to pay a penalty of ₹1,00,000/- (Rupees One Lakhs only) within two months from the date of this order. The said penalty, if realized, be forfeited to the State Government.

The respondent is directed to file compliance report of this order in the form of an affidavit within two months of this order, 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 4/1/24
(Vijaya D. Pol)
Member, Goa RERA