



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(353)/2023/ 143

Date: 31 /01/2024

1.Mrs. Filomena Fernandes,

Age 44 years, married,
Wife of Shri Nicolau Geraldo Fernandes,
Indian National, House wife,
Resident of house no. 611/1,
St. Anthony Vaddo, Gurim, Mapusa,
Bardez, North Goa, Goa-403507.

2.Mr. Nicolau Geraldo Fernandes,

Son of Mr. Peter Fernandes,
Age 45 years, service, Indian National,
Resident of house no. 611/1,
St. Anthony Vaddo, Gurim, Mapusa,
Bardez, North Goa, Goa-403507.

.....Complainants

Versus

1.M/s Alfredo M. Cotta and Associates,

A proprietary firm,
Managed by Shri Alfredo M. Cotta,
Son of late Eustaquio Cotta, age 59 years,
Businessman, Portuguese National,
Having office at First floor,
Beach Plaza (Annexee),
Nomoxin, P.O. Caranzalem,
Tiswadi, Goa-403 002.
RERA No. PRGO06180509

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2. Shri Alfredo M. Cotta,
Son of late Eustaquio Cotta,
Age 59 years, businessman,
Portuguese National,
Having office at First floor,
Beach Plaza (Annexee),
Nomoxin, P.O. Caranzalem,
Tiswadi, Goa-403 002.

3. V.P.K. Urban Co-Operative Credit Society Limited,
Through its Taleigao Branch,
Rajdeep Apartments, Amaralwada,
Taleigao, Tiswadi, Goa-403 404.

.....Respondents

ORDER
(Dated 31.01.2024)

This order disposes of the aforesaid complaint filed under 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 respondents 1 and 2 to complete the work of the apartment, to obtain occupancy certificate, to execute the sale deed in favour of the complainants, to pay to the complainants interest at the rate of 24% per month from 31.12.2020 till actual possession of the apartment and to seek a release letter from the respondent no. 3.

2. It is the case of the complainants that they are the allottees and are allotted an apartment bearing no. AF 2, first floor, Block A, along with a car parking space in a residential project known as "Velha Cidade Residency" at Bainguinim,

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Tiswadi Goa and that the respondent no.1 is the developer/ promoter of the same whereas the respondent no. 2 is the managing partner of the respondent no. 1 and the respondent no. 3 is a financier for the said project. According to the complainants, they entered into an agreement for sale dated 16.01.2019 with the respondents no. 1 and 2 pertaining to the aforesaid apartment for the total consideration of ₹32,00,000/- (Rupees Thirty Two Lakhs only). It is stated by the complainants that till date the complainants have paid an amount of ₹ 29,68,000/- (Rupees Twenty Nine Lakhs Sixty Eight Thousand only) to the respondents 1 and 2 and the balance amount is ₹4,52,000/- (Rupees Four Lakhs Fifty Two Thousand only) inclusive of GST etc.

3. According to the complainants, as per the agreement for sale dated 16.01.2019, the respondent no. 1 had agreed and assured the complainants to give the possession of the said apartment latest by 31.03.2020, however till date the possession is not given.
4. According to the complainants, after making the aforesaid payments, the complainants collected a copy of the draft sale deed from the office of the respondent no. 1 and the complainants no. 1 vide letter dated 16.03.2020 informed the respondent no. 2 that there were certain mistakes in the copy of the draft sale deed inter alia with regards to the payment details, apartment details including the flat no., aadhar card no. etc. It is stated that vide letter dated



11.05.2020 the respondent no. 1 informed the complainants that due to the lockdown due to covid-19 pandemic, the project could not be completed.

5. According to the complainants, the said apartment was not ready for occupation as was found by the complainants on site inspection and there were many defects in the construction and as such the complainants demanded from the respondent no. 1 copies of completion certificate and occupancy certificate issued by the Town and Country Planning Department and Village Panchayat and on obtaining the completion certificate and occupancy certificate, the complainants were shocked to know that the apartment bearing flat no. AF-2 on the first floor of Block A of the said complex was not shown to be completed in the completion certificate dated 05.09.2019 and the occupancy certificate dated 04.10.2019 furnished to the complainants was not in respect of the said apartment allotted to the complainants and the said observations were also brought to the notice of the respondent no. 1 vide letter dated 10.06.2020.
6. The complainants have submitted that thereafter they persistently insisted the respondent no.1 to complete the remaining work and handover the possession of the said apartment to the complainants and also to execute the sale deed in respect of the apartment allotted to them but the respondent no. 1 showed no signs to complete the said apartment. It is stated by the complainants that the respondent no. 1 informed the complainants that the respondent no. 3 has "quantified an amount of ₹12,00,000/- (Rupees Twelve Lakhs only) as part



premium towards the loan amount, inter alia in respect of the said Apartment and that unless said amount was not paid no sale deed could be executed by the respondent no.1 in favour of the complainants". According to the complainants, thereafter the complainant no.1 informed the respondent no. 2 vide letters dated 10.10.2022 and 05.11.2022 to pay to the respondent no. 3 the mortgage dues to the tune of ₹12,00,000/- and informed to obtain release letter from the respondent no. 3 to enable the complainants and the respondents to execute the sale deed and in this regard the complainants also showed their willingness to pay the balance consideration of ₹4,52,000/- (Rupees Four Lakhs Fifty Two Thousand only). The complainants have also alleged that the respondent no. 1 is also demanding the amounts over and above the agreed terms of the agreement for sale. It is stated that such demand of the respondent no. 1 is not legal and there is no reason to escalate the sale consideration of the said apartment.

7. According to the complainants, the respondents 1 and 2 have failed to handover the possession of the apartment by 31.03.2020 and though the apartment is not complete, the respondents misrepresented to the complainants that the apartment is complete and ready for occupation. It is also stated that the construction of the apartment is of sub-standard quality. The complainants have stated that the respondent no. 1 has not taken any steps to secure completion certificate and occupancy certificate for the apartment bearing no. AF 2, first floor, Block A, Velha Cidade Residency Bainguinim, Ilhas, Goa, though the

complainants are ready and willing to complete the said contract by paying the balance amount of Rs. 4,52,000/- to the respondent. Hence the prayers of the complainants as stated above.

8. Reply has been filed by the respondents 1 and 2 as well as respondent no. 3. The reply of the respondents 1 and 2 is replete with bare denials. The respondents 1 and 2 have submitted that the said apartment would be handed over to the complainants on completion of the same. The respondents 1 and 2 in para 8 denied that the complainants were informed that the building was ready for occupation, however in para 12 thereof the complainants denied that the apartment was not ready for occupation as on 11.05.2020. Again, in para 15 the respondents 1 and 2 have stated that there was no question of the complainants insisting the respondent no. 1 to complete the work and handover the possession of the said apartment to the complainants since “the apartment was already complete in all respects and to the knowledge of the complainants”. In para 16 of the reply, the respondents 1 and 2 have again stated that “the apartment was ready in all respects and to the knowledge of the complainants”.
9. In para 19 of the reply, the respondents 1 and 2 have admitted that “As on today an amount of Rs. 4,52,000/- is due and payable by the complainants to the respondents towards balance consideration.....”
10. In para 22 of the reply, the respondents 1 and 2 have inter alia submitted as follows:-



“The flat is complete in all respects, the complainants have been informed in time about the stage of construction of the project. All the permissions and approvals have been obtained from time to timeupon receipt of the balance due by the complainants to the respondents 1 and 2, the deed of sale can be executed in terms of the agreement between the parties.”

11. The respondent no. 3 in the reply has taken preliminary objection to the effect that the present proceeding is legally untenable against the respondent no.3 and that the complainants have no cause of action to file the present proceedings against the respondent no. 3. It is also stated that the present proceeding is barred by law of limitation. The contents of the complaint are denied for want of knowledge, however it is stated that the respondent no. 2 along with his wife has executed a deed of mortgage, loan agreement and promissory note in favour of respondent no.3 since they mortgaged the plot no. B-12 bearing survey no. 18/1-R of Village Bainguinim for loan obtained by respondent no.2 for an amount of Rs. 55,00,000/- (Rupees Fifty Five Lakhs only) for the purchase of plot of land.
12. Documents and affidavits were filed by the parties. Oral arguments were heard from Ld. Advocate P. Vaze for the complainants and from Ld. Advocate A. Monteiro for the respondents 1 and 2.



13. 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 complainants are entitled for possession of the apartment bearing no. AF 2, first floor, Block A along with a car parking space in a residential project "Velha Cidade Residency" at Bainguinim, Tiswadi, Goa along with interest on the paid consideration amount? | In the affirmative. |
| 2. | Whether the promoter/ respondents 1 and 2 are liable to pay penalty for violation of the provisions of the RERA Act? | In the affirmative. |

REASONS

Point No. 1

14. The Ld. Advocate for the respondents 1 and 2 has pointed out to this Authority that the prayers in the instant complaint cannot be granted since the complainants have filed the complaint under Section 20 of the RERA Act and not under Section 31 of the RERA Act. There is no merit in the aforesaid



argument since mere wrong quoting of section under which complaint is filed does not disentitle the complainants to get the reliefs as per the provisions of the RERA Act.

15. The agreement for sale dated 16.01.2019, which was duly registered before the Sub Registrar, Ilhas Goa on 28.02.2019 clearly shows that the parties therein agreed to sell and purchase the following flat, as per schedule-II:-

“ALL THAT said Flat AF2 situated on the First Floor of Block ‘A’, admeasuring built-up area of 91.00 sq. mtrs. and carpet area admeasuring 59.00 sq. mtrs. The apartment shall also have an exclusive carpet area of balcony of 16.84 sq. mtrs. in the complex named “VELHA CIDADE RESIDENCY” along with open car parking space and with undivided right, title and interest in the said property proportionate to the super built-up area of the said flat located in the property more particularly described in schedule-I hereinabove written”

16. The aforesaid agreement for sale states in para 6 thereof that the developer/ builder shall give possession of the said apartment to the complainants/ the allottees “on or before 31st March of 2020”. The consideration amount fixed for the said apartment is ₹32,00,000/- (Rupees Thirty Two Lakhs only) as per the said agreement for sale.



17. The documents on record show that till date the respondent 1 and 2/ the promoters have not obtained occupancy certificate in respect of the apartment bearing no. AF2, First Floor, Block A in the project “Velha Cidade Residency” situated at Bainguinim, Tiswadi, Goa. The completion certificate and the occupancy certificate produced on record do not pertain to the aforesaid apartment bearing no. AF2, First Floor, Block A in the project “Velha Cidade Residency” situated at Bainguinim, Tiswadi, Goa.
18. The right under **Section 18 of the RERA Act** accrued in favour of the complainants on 31.03.2020, which is the due date of possession of the aforesaid apartment as per the agreement for sale dated 16.01.2019, however the fact remains that even the occupancy certificate has not been obtained by the respondents 1 and 2 in respect of the aforesaid flat bearing no. AF2, First Floor, Block A in the aforesaid project and hence till date possession of the aforesaid flat is not given to the complainants.
19. As stated above, till date the possession of the said premises is not given to the complainants, who are entitled to claim possession of the same under **Section 19(3) of the RERA Act**, which reads as follows:-

19(3) “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”



20. Since, till date the possession of the said residential unit is not given to the complainants, 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 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

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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)

21. From the aforesaid section it is clear that the complainants have the choice of either withdrawing from the project and asking for refund of the consideration amount paid by the complainants 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

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“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 complainants 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.

22. 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.”

23. Thus, invoking Section 18 and Rule 18 of the said Act the benefit of the aforesaid statutory interest goes to the complainants, who have 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.
24. The cause of action accrued in favour of the complainants and against the respondents 1 and 2 on 31.03.2020, on which date the respondents 1 and 2 were liable to give possession of the said apartment to the complainants. Thus, the date from which the interest on the consideration amount paid by the complainants is to be calculated is the date when the cause of action accrued in favour of the complainants. Therefore, the prescribed interest as per the aforesaid Rule 18 starts running from 31.03.2020 on the consideration amount paid by the complainants to the respondent.
25. It is also necessary to reproduce hereunder **Section 37 of the RERA Act** which gives power to this Authority to issue any direction to the party concerned :-

“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 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 respondents 1 and 2 to do the legal formalities in respect of the apartment bearing no. AF2, First



Floor, Block A of the said project, to obtain occupancy certificate in respect of the aforesaid apartment and to deliver possession of the said premises to the complainants within the specific period as per the terms and conditions of the agreement for sale dated 16.01.2019 with all the amenities and facilities as mentioned in the said agreement for sale. Such a direction is warranted since the interest on delayed possession runs till the actual delivery of possession of the said premises to the complainants.

26. The complainants have shown their willingness to pay the balance consideration amount of ₹4,52,000/- (Rupees Four Lakhs Fifty Two Thousand only) and the respondents 1 and 2 have also admitted in their reply and affidavit the aforesaid balance consideration amount to be paid by the complainants.
27. Though it is stated by the respondents 1 and 2 in the reply and affidavit that the apartment in question “was ready in terms of the completion certificate obtained” and that “the complainants were informed that the apartment was ready for occupation” however neither the completion certificate nor the occupancy certificate refers to the apartment bearing no. AF2, First floor, Block A, Velha Cidade Residency, Bainguinim, Tiswadi, Goa. In para 18 and 21 of the affidavit, the respondents 1 and 2 have stated as follows:-

“18. I say that the complainants only wanted a correction in the number allotted to the apartment in the completion certificate to be corrected which the respondent accepted to even handover a certificate to confirm that both the numbers allotted to the said apartment are of one and the same apartment agreed to be purchased by the complainants.

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21. I say that all mistakes in the document which is called as a draft agreement are always subject to corrections and the corrections may be effected as per law by either the complainants or the respondents 1 and 2 in terms of the agreement dated 19.01.2019”

28. The very admission on the part of the respondents 1 and 2 to the effect that the respondents 1 and 2 are ready to give in writing to the complainants that the number allotted to the complainants as per the completion certificate and the occupancy certificate is same as that mentioned in the agreement for sale dated 16.01.2019 is sufficient to show that even the respondents 1 and 2 admit that the completion certificate and the occupancy certificate do not pertain to flat bearing no. AF2, First floor, Block A of the said project as mentioned in the said agreement for sale dated 16.01.2019. The said agreement for sale is duly registered before the Sub Registrar and both the parties are bound by the terms and conditions of the said agreement for sale and accordingly the respondents 1 and 2 were bound to deliver the possession of the said flat AF2, First floor Block A of the said project on or before 31.03.2020 failing which indefeasible right accrues in favour of the complainants under section 18 of the RERA Act.

29. In the instant case the complainants have paid an amount of ₹29,68,000/- (Rupees Twenty Nine Lakhs Sixty Eight Thousand only) to the respondents 1 and 2 and the balance amount to be paid is ₹4,52,000/- (Rupees Four Lakhs Fifty Two Thousand only) which amount is admitted by the respondents 1 and 2. Under Section 18(1) of the said Act the complainants are entitled and the respondent is liable to pay to the complainants 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,**

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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 8.85% per annum. Adding two percent to the said interest as per Rule 18, it comes to 10.85% per annum. Hence, the respondent is liable to pay 10.85% per annum interest for every month of delay to complainants on the aforesaid amount paid by complainants from the date of delivery of possession i.e. 31.03.2020 as mentioned in the agreement for sale with the complainants, till the handing over of the possession to complainants.

The instant point is therefore answered in the affirmative.

Point No. 2

30. 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 16.01.2019 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 instant point is therefore answered in the affirmative.

In the premises aforesaid, I pass the following:-

ORDER

The respondents 1 and 2 are directed to obtain occupancy certificate in respect of the flat bearing no. AF2, First Floor, Block A, Velha Cidade Residency, Bainguinim, Tiswadi, Goa and deliver possession of the aforesaid

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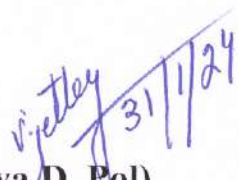
flat to the complainants with all the amenities and facilities as mentioned in the agreement for sale dated 16.01.2019 within five months from the date of this order upon taking the balance consideration amount from the complainants.

The complainants are directed to pay the balance consideration amount of ₹4,52,000/- (Rupees Four Lakhs Fifty Two Thousand only) to the respondents 1 and 2 on the day of and before taking possession of the said flat AF2, first floor, Block A, Velha Cidade Residency, Bainguinim, Tiswadi, Goa.

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 ₹29,68,000/- (Rupees Twenty Nine Lakhs Sixty Eight Thousand only) paid by the complainants from 31.03.2020 till the date of delivery of possession to the complainants.

As for the discussion above, the respondents 1 and 2 are directed to pay ₹1,00,000/- (Rupees One Lakh only) as penalty for violation of Section 11(4)(a) of the RERA Act. The said penalty amount, if realized by this Authority, be forfeited to the State Government.

The respondents 1 and 2 are directed to file compliance report of this order within five months failing which further legal action will be taken by this Authority under the RERA Act for execution of this order. Since, the respondent no. 3 has no liability under the RERA Act in the instant complaint, there is no order or direction against the respondent no. 3.


(Vijaya D. Pol)
Member, Goa RERA