



GOA REAL ESTATE REGULATORY AUTHORITY

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File no.3/RERA/Complaint (322)/2022/935

Date: 14/09/2023

Mr. Roque Rodrigues,

aged about 59 years, r/o Room No. 401,

St. Anthony Co. Housing Society

Bhavani Sharukar Road, Near Shardashram School,

Dadar West-Mumbai, Maharashtra 400028.

.....Complainant

Versus

1. **Mr. Suresh R. Gawandalkar and his wife Mrs.Sushma**

Suresh Gawandalkar,

both since deceased, represented through their legal heirs,

(i) **Mr. Sudesh Suresh Gawandalkar,**

son of late Mr. Suresh Gawandalkar, aged 46 years,
r/o E-5/32, Ward No.9, Mapusa, Goa, 403507.

(ii) **Mrs. Swati Sudesh Gawandalkar,**

wife of Mr. Sudesh Suresh Gawandalkar,
aged 40 years, r/o E-5/32,
Ward No. 9, Mapusa, Goa, 403507.

(iii) **Mr. Swapnil Suresh Gawandalkar,**

son of Mr. Suresh Gawandalkar,
Aged 43 years, r/o E-5/32,
ward no. 9, Mapusa, Goa, 403507.

(iv) **Mrs. Siya Swapnil Gawandalkar,**

Yathay

wife of Mr. Swapnil Gawandalkar,
aged 40 years, r/o E-5/32,
Ward No. 9, Mapusa, Goa, 403507.

(v) **Mr. Vinit Gurunath Swar,**

son of Mr. Ghanashyam Swar, aged 51 years,
R/o H.No.114/BAR/64/1036, Mapusa, Goa, 403507.

(vi) **Mrs. Poonam Vinit Swar,**

wife of Mr, Vinit Swar, aged 39 years,
r/o H.No. 114/BAR/64/1036,
Mapusa, Goa, 403507.

2. **M/s S.V. Developers Partnership Firm,**

Mr. Kiran Dabolkar, r/o Shree Samrudhi 95 c/5 Alto Guimaies,
Altinho, Panaji-Goa, 403001.

.....Respondent(s)

ORDER
(Dated 14.09.2023)

This order disposes of the online complaint and also the supplementary complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act'). In the online complaint, the complainant has mentioned the facts of the case as follows:-

“NON COMPLETION OF THE BUILDING AND FLAT, DELAY IN POSSESSION, NON REGISTRATION RERA, NO ELECTRICITY AND WATER, NO LIFT, NON REGISTRATION OF SALE DEED, NO OCCUPANCY CERTIFICATE, NON COMPLIANCE OF SCHEDULE III OF

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THE SAID AGREEMENT, SUB STANDARD CONSTRUCTION, NON CONSTRUCTION OF COMPOUND AREA, CRACKS IN BUILDING RCC/ SLAB”

In the supplementary complaint the complainant has prayed this Authority to direct the respondent to pay compensation in terms of Section 18 of the Act by way of granting interest on the sale consideration amount, to direct the respondent/ promoter to rectify all defects mentioned in the complaint within a period of thirty days, to obtain occupancy certificate, to grant interest on the sale consideration from the stipulated date for handing over possession till obtaining occupancy certificate and to register the project in terms of the RERA Act.

2. In the supplementary complaint, the complainant has mentioned various defects in the building which are to be rectified i.e. cracks in the building RCC pillars and slab because of which there is water accumulation during the monsoon period causing dampness and leakages in the internal walls when there is a heavy rainfall; failure to install lift for the said building in terms of the agreement for sale; failure to obtain regular electricity connection and water connection to the respective flats in the building and failure to construct compound wall around the building.
3. It is submitted by the complainant that the respondent was required to deliver the possession of flat bearing no. T-2 located on the third floor of the building within a period of eighteen months from the period of execution of the



agreement for construction and sale dated 04.06.2015 and accordingly the flat was required to be delivered on or before 04.12.2016 but the same has not been delivered by obtaining occupancy certificate and hence the complainant is entitled for compensation in the form of statutory interest on delayed possession from 04.12.2016 till actual handing over of possession. It is also submitted that the developer has till date failed to register his project under the RERA Act.

4. Amendment has been done to the supplementary complaint wherein the complainant has submitted that he has already paid to the developer an amount of ₹18,30,000/- (Rupees Eighteen Lakhs Thirty Thousand only) towards the sale consideration and the additional work carried out by the promoter in the said flat. The agreement for sale dated 04.06.2015 mentions that the total sale consideration is ₹18,00,000/- (Rupees Eighteen Lakhs only). According to the complainant, no more sale consideration is due to the respondent no. 2. Reply was filed by the respondent no. 2 to the aforesaid amendment to the supplementary complaint and in the said reply the respondent no. 2 admitted receiving the aforesaid payment by stating that “the payments mentioned in the application is received by the respondent as and when the work of the project progressed”.
5. Reply had earlier been filed by the respondents to the online complaint as well as to the supplementary complaint. In the said reply the respondents have submitted that the circumstances arose due to the regular civil suit bearing no.



70/2015/B filed by the neighboring plot owners in the Civil Court Mapusa against the respondent and Mapusa Municipal Council in which the order was delivered on 06.01.2016 for the demarcation of the boundary of the project in question and due to the said order Mapusa Municipality directed the respondent to stop the work. It is further submitted that the demarcation of the plot was already done in 2013 but later Mapusa Municipality directed the respondents to do the demarcation of the plot again and fix the boundaries. According to the respondents, since the neighboring plot owner filed complaint in NGPDA and Municipality there was delay in getting the completion certificate from NGPDA and the same was received on 05.12.2018. The respondent further submitted that NOC was received from Urban Health Department on 17.01.2019, from Electricity Department on 10.01.2019 and from PWD on 21.01.2019.

6. According to the respondents, there was outbreak of pandemic and consequently the respondents had to face national lockdown, labour migration, inability to secure material and restricted entry in government offices etc. and hence the things were beyond the control of the respondents due to which the work of the project had to stop. It is submitted by respondents that as per the terms of the agreement for sale, the respondent was entitled to reasonable extension of time for delivery of the flats in case of "the act of God and the factors of any notice, order, rule, notification of the government and/ or other public or competent authority/ court".



7. The respondents have submitted that the final hearing of the case in the presence of Chief Officer of Mapusa Municipal Council was on 20.10.2022 in which the CEO directed the technical department of Mapusa Municipality to proceed with the process for occupancy certificate. It is further submitted that the work was completed in 2017 with good quality material and the respondents have denied the allegations of cracks in RCC/ slab etc. and according to the respondents the RCC consultant has provided stability certificate and the completion certificate of the project. The respondents admitted that lift remains to be installed in the project and also the compound wall has not been constructed due to the boundary issue with the neighboring plot owners. The respondents have submitted that they will proceed after getting permission from Mapusa Municipal Engineer after his checking and fixing the boundaries of the plot.
8. In the reply dated 17.04.2023, the respondents have submitted that the electrical transformer for providing electricity for the said building is already installed and the respondents have also built a necessary water tank for providing water. It is reiterated that the Chief Officer of Mapusa Municipality by order dated 20.10.2022 directed the technical department to proceed with the process of occupancy certificate. In the said reply also, the respondents denied the allegations of the complainant regarding sub standard work and the respondents have stated that the work was completed in 2017 as per the schedule of the



agreement with standard quality material and the RCC consultant has given stability certificate of the said project.

9. According to the respondents, the allottees have already taken the possession of their respective flats and have been residing in the said project, however due to some balance payment still pending from some of the customers, the installation of the lift is pending. They have further stated that the compound wall will be completed after getting required permissions from Mapusa Municipality which is delayed due to above mentioned civil suit. The respondents have prayed to appoint a commissioner to inspect the building and to appoint a civil engineer to inspect and give a structural report of the building.
10. The instant complaint along with four other similar complaints were clubbed by this Authority since the same were filed in respect of the same project and the promoter/ respondents are the same in all the complaints and thereafter the matter of registration of the project under Section 3 of the RERA Act was decided and accordingly a common interim order dated 25.04.2023 was passed by this Authority whereby the promoter was directed to pay ₹5,00,000/- (Rupees Five Lakhs only) and make an application for registration of the project with all the required documents and fees within 30 (thirty) days failing which he will be liable for further action and penalty under Section 59(2) of the RERA Act.



11. The records of the case show that till date the promoter who is respondent no. 2 in the instant complaint has not complied the above order dated 25.04.2023, though by application dated 13.06.2023, the Ld. Advocate for the respondents submitted therein that “all the compliance regarding the project registration and paying the penalty will be done by 3rd of July 2023.
12. Heard arguments from Ld. Advocates N. Takkekar and S. Mandrekar for the complainant and Ld. Advocate N. Verenkar for the respondent, who also filed written submissions. During the course of oral arguments, the Ld. Advocate for the respondents filed the undertaking of the promoter/ respondent no. 2 before this Authority, inter alia stating therein that the respondent no. 2 undertakes to solve all the problems of the complainants within four months from the said undertaking i.e. the problem of “all the cracks causing dampness and leakages in the internal walls”; “water accumulation problem during the monsoon” by doing waterproofing of the roof/ terrace; “to install the lift and the transformer; to make available PWD water connection to the complainants as soon as the respondent gets the occupancy certificate; to take necessary steps in getting the occupancy certificate; to construct the compound wall for the said building. Thus, the respondent no. 2 gave the undertaking before this Authority that the respondent no. 2 would rectify all the defects as mentioned in the complaint within four months from the date of the said undertaking. In the said undertaking, the respondent no. 2 prayed this Authority to grant four months



time to complete the entire work. The Ld. Advocate for the complainants objected for the grant of four months to the respondent for completing the entire work.

13. In the instant case the agreement for construction and sale was executed between the complainant, the promoter/ respondent no.2 and the earlier owners i.e. since deceased Mr. Suresh Gawandalkar and Mrs. Sushma Gawandalkar and the same was registered on 04.06.2015. As admitted by the promoter/ respondent no. 2, the occupancy certificate is not yet obtained regarding the said building, lift is yet to be installed and the compound wall is yet to be constructed, though the respondents have denied the other defects in the said building. Though the respondent no. 2 has submitted that possession of the said flat has been given to the complainant, however no document is produced on record by the respondent no. 2 in support of his said submission. Thus, there is no document on record to show that possession of the said flat has been given to the complainant. Moreover, as admitted by the respondent no. 2, occupancy certificate is not yet obtained. Thus, **Section 18** of the RERA Act is clearly attracted in the instant case and the complainant is entitled to interest for every month of delay till the handing over of the possession, at such rate as prescribed under **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 and therefore both the provisions of law are reproduced hereunder for ready reference:-

Section 18 of the RERA Act:-

“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.

(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)

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.”

14. 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. The cause of action accrued in favour of the complainant and against the respondent on the completion of 18 (eighteen) months from the date of the said agreement on which date the respondent was liable to give possession of the said residential unit to the complainant however as per the said agreement, an additional period of six months to be extended for handing over possession for implementation of any extra work requested by the allottee and/ or for unforeseen circumstances beyond the control of the promoter and force majeure. In the instant case, extra work was requested by the complainant and completed by the respondent no. 2 and hence the date of delivery of the said flat to the complainant is eighteen plus six months from the date of said agreement for sale i.e. 04.06.2017. 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 04.06.2017 on the consideration amount paid by the complainant to the respondent.

15. In the instant case the complainant has paid ₹18,30,000/- (Rupees Eighteen Lakhs Thirty Thousand only) to the respondent no. 2 towards the agreed consideration amount and the additional amount for additional work. 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 8.75% per annum. Adding two percent to the said interest as per Rule 18, it comes to 10.75% per annum. Hence, the respondent is liable to pay 10.75% per annum interest for every month of delay to complainant on the aforesaid amount paid by complainant from the due date of delivery of possession i.e. 04.06.2017 as mentioned in the agreement for sale with the complainant, till the handing over of the possession to the complainant.

16. The promoter/ the respondent no. 2 has neither complied with the interim order dated 25.04.2023 whereby the promoter was directed to pay the penalty of ₹ 5,00,000/- and make an application for registration of the project with all the required documents and fees within 30 (thirty) days of the passing of the said interim order nor complied with the other interim order dated 01.06.2023, reproduced herein below, passed by this Authority in complaint bearing no. 3/RERA/Complaint(321)/2022 “Mr. Heramb Raghunath Watve vs. Mr. Suresh Gawandalkar and seven others” (all the five complaints including the instant complaint were clubbed together) :-



“Both the parties present. Case was argued. It was observed that building is not complete in various ways and even occupancy certificate is not obtained. Respondent/ promoter is directed to complete entire building as per agreement and obtain occupancy certificate within 45 days.”

17. For non compliance of the order dated 01.06.2023 of this Authority, **Section 63** of the RERA Act is attracted and is quoted below:-

“63. Penalty for failure to comply with orders of Authority by Promoter.- If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority.”

18. For non compliance of the order dated 25.04.2023 passed by this Authority under **Section 59(1)** of the RERA Act regarding payment of penalty and violation of the provisions of Section 3 of the RERA Act, **Section 59(2)** of the RERA Act is applicable. For ready reference, **Section 59** of the RERA Act is quoted below:-

“59. Punishment for non-registration under section 3.-

(1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he

shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.”

19. However, in order to invoke **Section 59(2)** of the RERA Act, complaint has to be filed by this Authority before the Ld. Judicial Magistrate of the first class of the concerned jurisdiction, as per **Section 80** of the RERA Act, which is quoted below:-

“**80. Cognizance of offences.-** (1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose.

(2) No court inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.”

Hence, under **Section 59(2)** read with **Section 80** of the RERA Act, complaint can be filed by this Authority before the Ld. JMFC having the concerned jurisdiction.

20. After the taking of possession of the flat and after the execution and registration of the sale deed, if any structural defects are found in the premises, the complainant is at liberty to invoke **Section 14(3)** of the RERA Act, which is quoted below:-



“14. Adherence to sanctioned plans and project specifications by the promoter.-(1).....

(2).....

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.”

21. Since, according to the complainant, the promoter has failed to rectify the defects coming within the purview of Section 14(3) of the RERA Act, the complainant is at liberty to invoke Section 14(3) of the RERA Act and to apply for appropriate compensation before the Adjudicating Officer in the manner as provided under this Act.

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

ORDER

In view of the undertaking dated 23.08.2023 given by the respondent no. 2, the promoter/ the respondent no. 2 is directed to obtain occupancy certificate and give a valid and legal possession of flat no. T-2 located on the third floor of



the building in the complex 'Shree Vastu Residency' Mapusa, Bardez, Goa with all the amenities and facilities as mentioned in the agreement for sale dated 04.06.2015 within four months from the date of this order.

Further, the respondent no. 2 is directed to pay 10.75% per annum interest (present lending rate of interest by SBI which is 8.75 % per annum plus two percent) for every month of delay to the complainant on the aforesaid amount of ₹18,30,000/- (Rupees Eighteen Lakhs Thirty Thousand only) paid by the complainant from 04.06.2017 till the date of delivery of possession to the complainant.

In view of the undertaking dated 23.08.2023 given by the respondent no. 2 before this Authority, the promoter/ the respondent no. 2 is directed to rectify all the defects as mentioned in the instant complaint, install the lift and construct a compound wall for the said building, within four months from the date of the instant order.

Since for violation of interim order dated 25.04.2023 regarding non registration of the project, further penalty is already imposed on the respondent no. 2 and further order is passed in complaint bearing no. 3/RERA/ Complaint (321)/2022 "Mr. Heramb Raghunath Watve vs. Mr. Suresh R. Gawandalkar and others" to file complaint against the respondent no. 2 before the Ld. JMFC of the concerned jurisdiction under Section 59(2) read with Section 80 of the RERA Act no further penalty/ order against the respondent no. 2 is imposed in

the instant complaint for violation of the said interim order dated 25.04.2023 (the said complaint filed by Mr. Heramb Raghunath Watve is clubbed with the instant complaint). Similarly, in view of the penalty imposed by this Authority under Section 63 of the RERA Act in the aforesaid complaint filed by Mr. Heramb Raghunath Watve for violation of the interim order dated 01.06.2023 passed by this Authority, no further penalty in the instant complaint is warranted.

The respondent no. 2 is directed to file compliance report of this order within four months failing which further legal action will be taken by this Authority under the RERA Act for execution of this order.

Vijaya D. Pol
14/9/2023
(Vijaya D. Pol)
Member, Goa RERA