



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (107)/2023/1093

Date: 31/10/2023

BEFORE THE ADJUDICATING OFFICER

Francy Agnelo Gonsalves,

Flat no. 503, Anand Towers-I,
Airport Road, Chicalim,
Goa, 403711.

.....Applicant/Complainant

Versus

Civilco Engineers and Associates

Represented herein by its partner
Mr. Gous Mohammed Shiraguppi,
SF-4, Block D, Qadria Plaza,
Haveli, Curti, Ponda,
Goa-403401.

.....Respondent

Ld. Advocate M. Kamat for the Applicant/ Complainant.

Ld. Advocate R. Rivonkar for the Respondent.

ORDER

(Delivered on this 31st day of the month of October, 2023)

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 applicant/complainant against the respondent bearing complaint no. 3/RERA/Complaint(341)/2023.

2. The above said complaint was disposed off vide Order dated 27.07.2023 by the Goa Real Estate Regulatory Authority (for short 'Goa RERA'). The said Authority ordered as follows:-

“In the reply, the respondent has stated that the respondent has obtained occupancy certificate dated 14.12.2022 of the said project “Civilco Arcade-I”. The respondent is therefore, directed to give possession of the said flat bearing no. S-303 on the second floor of the said building to the complainant as per the terms of the agreement for sale dated 12.11.2018, within two months from the date of this order.

Further the respondent 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 complainants on the aforesaid amount of ₹39,45,375/- (Rupees Thirty Nine Lakhs Forty Five Thousand Three Hundred and Seventy Five only) paid by the complainant from 12.11.2019 till the date of delivery of possession to the complainant.

Taking into consideration the facts and circumstances of the case, penalty of ₹1,00,000/- (Rupees One Lakh only) under Section 61 of the RERA Act will serve the ends of justice.

Hence the promoter/ the respondent herein is directed to pay the penalty of ₹1,00,000/- 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 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.”

3. The applicant/ complainant thereafter filed his claim for compensation in Form ‘B’ under Sections 12, 14, 18 and/ or 19 read with Section 71 of the RERA Act seeking compensation as under:-
- a) To direct the respondent to pay @ ₹500/- (Rupees Five Hundred only) per day for damages for the delay in handing over the actual possession of the said flat till the date of actual handing over of the same.
 - b) To direct the respondent to pay a sum of ₹50,000/- (Rupees Fifty Thousand only) towards costs as compensation for mental trauma, loss of time, hardship, notional losses and legal fees incurred by the applicant/ complainant.

4. The case of the applicant/ complainant is that he intended to purchase a residential flat being flat no. S-303, carpet area of 87.78 sq. mtrs. admeasuring 154.15 sq. mtrs. plus open terrace of 42.40 sq. mtrs. including car parking proposed to be constructed on the second floor of the building project known as "Civilco Arcade-1" situated in survey nos. 45/1 A and 45/2 at Cotwada, Curti, Ponda-Goa for a total consideration of ₹39,45,375/- (Rupees Thirty Nine Lakhs Forty Five Thousand Three Hundred and Seventy Five only) and accordingly executed with the respondent an Agreement for Sale dated 12.11.2018 which was duly registered.
5. The applicant/ complainant states that as per the said Agreement for Sale, the said flat was to be delivered within 12 months from the date of its execution i.e. on or before 12.11.2019. However, till date the respondent has failed to deliver the said flat to the applicant/ complainant.
6. The applicant/ complainant has stated that on inspection of the said flat he was shocked to see two doors instead of one door and noticed that the said flat has been divided by the respondent into two flats thereby violating the terms of the Agreement of Sale by changing the shape and structure of the said flat without the consent and knowledge of the applicant/ complainant.
7. The respondent filed reply raising preliminary objections namely viz:-

a) That the present application for claim is not maintainable in law as well as on facts.

b) That the Hon'ble Adjudicating Officer has no jurisdiction to entertain the present application for claim and hence the application be dismissed.

c) The application is frivolous, vexatious, malafide attempt and filed with an ulterior motive to extort money from the respondent.

d) The applicant/ complainant has not approached this Hon'ble Court with clean hands and has suppressed material facts and projected or stated falsehoods. Therefore the application is liable to be dismissed in limine.

e) This Hon'ble Authority has no jurisdiction to decide the claim of the applicant/ complainant.

f) The application is not maintainable before this Hon'ble Authority and the provisions of the Act would not apply to the present claim. If the applicant/ complainant is aggrieved then it is a civil dispute and the claim is not maintainable under the RERA Act.

g) The present application is not maintainable as there is no contravention or violation of any provisions of the RERA Act, as such the application is not maintainable in law.

8. The respondent states that the applicant/ complainant is a businessman and an investor and he invests money in building projects of the respondent and he is

not a prospective buyer of one flat. The respondent states that for security purpose of the invested money in the building projects of the respondent, both the applicant/ complainant and the respondent used to reserve constructed premises or under-construction premises or proposed construction premises in the construction project of the respondent by executing the Agreement for Sale of the flats/ villas/ shops in the building projects in which the applicant/ complainant invested his money. The purpose of the said Agreement for Sale dated 12.11.2018 or other agreements in the building projects of the respondent executed between the applicant/ complainant and the respondent is to reserve the premises as a security for repayment of the said investment amount. In this connection, the respondent has referred to various agreements for sale/ memorandum of understating between the applicant/ complainant and the respondent in respect of other premises in the projects of the respondent in which it is clearly mentioned that he is an investor and investing money in the building project of the respondent.

9. The respondent states that the relations between the applicant/ complainant and the respondent is cordial and the contract between them is always on the basis of the understanding and considering their good relation with each other and at the instance of the applicant/ complainant the terms and conditions were set out at the time of investment.

10. The respondent states that the applicant/ complainant used to invest in the respondent's project and upon good commission he used to sell the same. Similarly, in the present project the applicant/ complainant has invested and the applicant/ complainant and the respondent had executed three agreements for sale to reserve them as security of two flats and one shop. The respondent has stated in the reply that annexed hereto is the statement of account maintained by the applicant/ complainant and the respondent. However, no such statement of account has been annexed to the said reply.
11. Both the applicant/ complainant and the respondent filed their affidavits in evidence and written arguments. Oral arguments were also heard.
12. The points for determination and my findings to the same are as under:-

Sr. No.	Points for determination	Findings
(a)	Whether this Authority has jurisdiction to entertain and decide the present claim for compensation?	In the affirmative.
(b)	Whether the claim for compensation filed by the applicant/complainant is maintainable under the RERA Act?	In the affirmative.
(c)	Whether the claim for compensation filed by the applicant/ complainant is barred under The Limitation	In the negative.

	Act?	
(d)	Whether the respondent is liable to pay compensation to the applicant/ complainant @ ₹500/- per day for damages?	In the negative as per order.
(e)	Whether the respondent is liable to pay a sum of ₹50,000/- towards costs for mental trauma, loss of time, hardship, notional losses and legal fees incurred by the applicant/ complainant?	In the affirmative as per order.

REASONS

Points (a) and (b)

Both these points are taken up jointly as they are inter connected and for the sake of brevity.

13. Ld. Advocate Shri R. Rivonkar for the respondent has submitted that this Hon'ble Authority has no jurisdiction to decide the claim of the applicant/ complainant. Shri R. Rivonkar submitted that the present application for claim of compensation is not maintainable before this Authority as the provisions of the RERA Act would not apply. Shri R. Rivonkar submitted that if incase the applicant/ complainant is aggrieved then it is a civil dispute and the claim of the applicant/ complainant is not maintainable under the RERA Act as there is no contravention or violation of any provisions of the RERA Act.

14. According to the Ld. Advocate for the respondent the present case is a civil dispute as the said Agreement for Sale dated 12.11.2018 is in fact a fake agreement without any intention or obligation of the respondent to sell the said flat to the applicant/ complainant and without the intention and entitlement of the applicant/ complainant to purchase the said flat on paying any consideration amount as mentioned in the said Agreement for Sale. It is the case of the respondent that the said Agreement for Sale was never executed to create any relation of buyer and seller between the applicant/ complainant and the respondent but was executed only to reserve the said flat as a security towards the repayment of the principal sum of investment for the security purpose of the invested money in the building project of the respondent. It is the respondent's case that the applicant/ complainant is a mere investor and the said Agreement for Sale was never intended to be acted upon by the respective parties.
15. The said Agreement for Sale dated 12.11.2018 has been duly registered before the Sub-Registrar of Ponda. The records of the RERA office indicates that the said project "Civilco Arcade I" has been duly registered on 12.03.2023 bearing registration no. PRGO05180122 with its status indicating that the project has been completed. The said project of the respondent has thus been duly registered under the RERA Act. There is no power and jurisdiction vested in this Authority to travel beyond the explicit terms and conditions set out in the said agreement to decide and conclude as to whether the same is a fake

agreement or incorrect or that the parties thereto have no intention whatsoever to act upon the said Agreement for Sale.

16. As the said project of the respondent has been duly registered under the RERA Act this Authority has jurisdiction to entertain and consider the application for compensation filed by the applicant/ complainant and consequently the claim for compensation filed by the applicant/ complainant is maintainable under the RERA Act. Hence, points (a) and (b) are therefore both answered in the affirmative.

Point (c)

17. Ld. Advocate Shri R. Rivonkar for the respondent in his oral arguments submitted that the present application for compensation filed by the applicant/ complainant is barred by limitation as the cause of action arose on 12.11.2019 and the online complaint was filed only on 13.02.2023 i.e. more than three years after the cause of action. Shri R. Rivonkar therefore submitted that the present application for compensation is accordingly barred by the law of limitation.
18. Ld. Advocate M. Kamat for the applicant/ complainant disputed this contention raised by Ld. Advocate R. Rivonkar for the respondent. The Ld. Advocate for the applicant/ complainant submitted that the limitation in the cases of home buyers is purely on the basis of the delivery of the possession of the unit purchased. She submitted that incase the possession is not handed over the

limitation to file a case against the same becomes continuous/ recurrent till its delivery.

19. In support of the applicant's/ complainant's case, the Ld. Advocate for the applicant/ complainant has placed reliance:-

(a) In the case of **“B. Venu Madhav Vs. National Consumer Disputes Redressal Commission, represented by its Registrar, New Delhi & Ors, in W.P.No. 30394 of 2011, dated 18.01.2012, reported in CDJ 2012 APHC 421”**, wherein it was held that when there is immovable property and the amenities promised by the opposite party were not provided, the National Commission held that it can be construed as continuing cause of action and it cannot be said to be barred by time.

(b) In the case of **“Meerut Development Authority vs. M.K. Gupta IV (2012) CPJ 12”**, wherein the Hon'ble Supreme Court held that in such a case the buyer has recurrent cause for filing a complaint about non-delivery of possession of the plot.

(c) In the case of **“Satish Kumar Pandey & Anr. V. M/s Unitech Ltd (<https://indiakanoon.org/doc/153557946/>). 2015 (3) CPJ 440 (NC)”**, wherein it was held by the Hon'ble National Consumer Dispute Redressal Commission that it is now settled legal proposition that failure to deliver possession being a continuous wrong it constitutes a recurrent cause of action and, therefore, so

long as the possession is not delivered to him the buyers can always approach a Consumer Forum.

20. There is considerable merit in the submissions of the Ld. Advocate for the applicant/ complainant in the light of the rulings above which supports the contention that in case the possession is not handed over the limitation to file a case is continuous/ recurrent till delivery of possession. Therefore the argument raised by the Ld. Advocate for the respondent on the ground of limitation cannot be accepted. Hence, point (c) is answered in the negative.

Point (d)

21. It is the case of the respondent that the said Agreement for Sale dated 12.11.2018 is in fact a fake agreement without the intention and obligation of the respondent to sell the said flat to the applicant/ complainant and without the intention or entitlement of the applicant/ complainant to purchase the said flat upon paying the consideration amount as mentioned in the said agreement for sale.
22. It is the respondent's case that the said Agreement for Sale was never executed to create any relation of buyer and seller between the respective parties but the same was executed only to reserve the said flat as a security towards the repayment/ refund of the principal investment amount and for the security purpose of the invested money on the building projects of the respondent. The



respondent has submitted that the applicant/ complainant is a mere investor and that the said Agreement for Sale was never intended to be acted upon by the respective parties.

23. It can be noted that the said Agreement for Sale dated 12.11.2018 has been duly registered before the Sub-Registrar of Ponda. This Authority has no power and jurisdiction to go beyond the terms and conditions as set out in the said Agreement for Sale to ascertain whether the same is a fake agreement or whether the recitals and the terms and conditions therein contain false or incorrect statements and that the parties thereto had no intention whatsoever to act upon the said Agreement for Sale.
24. The respondent has not placed before this Authority any declaration from the Civil Court declaring that the said Agreement for Sale is not binding on the applicant/ complainant and the respondent or that the said Agreement for Sale is a fake agreement or that the said Agreement for Sale is in fact only a security for the money invested by the applicant/ complainant in the building project of the respondent.
25. The respondent in his reply, affidavit in evidence as well as in the written submissions has placed reliance on the statement of account maintained by the applicant/ complainant and the respondent. However, no such statement of account has been placed on record either along with the reply, affidavit in evidence and written arguments of the respondent. Thus, from the documents



produced on record by the respondent before this Authority regarding the other projects in the form of other Agreements for Sale etc. do not help the case of the respondent as this Authority has no jurisdiction to decide and declare that the said Agreement for Sale dated 12.11.2018 duly executed and registered between the respective parties was in fact executed only to reserve the said flat as security towards repayment of the amount invested by the applicant/ complainant and that the said Agreement was in fact not for selling/ buying the said flat.

26. Clause 3 of the Agreement for Sale dated 12.11.2018 specifically provides that the delivery and possession of the said flat shall be handed over to the applicant for his use and occupation within 12 months i.e. on or before 12.11.2019. Clause 5 of the said Agreement for Sale provides that the respondent shall be liable to pay the applicant @ Rs. 500/- (Rupees Five Hundred only) per day for damages for the delay in handing over the possession of the said flat.
27. The respondent has not denied that till date the said flat has not been handed over to the applicant/ complainant. In fact by Order dated 27.07.2023 the Hon'ble Regulatory Authority directed the respondent to give possession of the said flat to the applicant/ complainant as per the terms of the Agreement for Sale dated 12.11.2018 within two months form the date of the Order. Admittedly, till date the said Order dated 27.07.2023 has not been complied with by the respondent.

28. In the present case, the applicant/ complainant has not withdrawn from the project. The applicant/ complainant has claimed compensation of ₹500/- (Rupees Five Hundred only) per day for damages for the delay in handing over actual possession of the said flat.

29. Section 18 of the RERA Act 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.”

30. In the case of **Brahmanand Kadam Vs. G.T. Developers** Appeal No. AT005000000052390 in Complaint No. CC005000000011089, decided on 20.08.2021 before the Maharashtra Real Estate Appellate Tribunal; in the case of **Roopa N. Hedge and Ors. Vs. Sanvo Resort Pvt. Ltd.** in Complaint No.

CC006000000100497, decided on 01.08.2022 before the Real Estate Regulatory Authority Maharashtra; in the case of **Anant Mahadev Joshi and Ors. Vs. Vijaygroup Housing Private Limited and Ors.** in Compliant nos. CC006000000195758, CC006000000195861, CC006000000195997, CC006000000196092, CC006000000196094, CC006000000196245, CC006000000196247 and CC006000000196281, decided on 16.06.2021 before the Real Estate Regulatory Authority Maharashtra.

31. In the case of **Brahmanand Kadam** (cited supra) the Maharashtra Real Estate Appellate Tribunal, Mumbai has held that as the allottee is staying in the project, in such cases no compensation is envisaged under Section 18. Hence the relief for compensation cannot be granted and is therefore rejected.
32. In the case of **Roopa N. Hedge and Ors.** (cited supra) the Real Estate Regulatory Authority Maharashtra has held that the claim for compensation has no substance in law. Moreover, the aforesaid provision of section 18 of the RERA does not provide for any rent for the delay. Hence the claim of the complainants for rent stands rejected. The claim of the complainants towards compensation and rent stands rejected.
33. In the case of **Anant Mahadev Joshi and Ors.** (cited supra) the Real Estate Regulatory Authority Maharashtra 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.

34. It is not in dispute that the Regulatory Authority in the said complaint no. 3/RERA/Complaint (341)/2023 by its Order dated 27.07.2023 has directed the respondent to pay interest @10.75% p.a. for every month of delay to the applicant/ complainant on the aforesaid amount of ₹39, 45,375/- (Rupees Thirty Nine Lakhs Forty Five Thousand Three Hundred and Seventy Five only) paid by the applicant/ complainant from 12.11.2019 till the date of delivery of possession to the complainant.
35. It is also not in dispute that the applicant/ complainant has chosen to continue in the project. Hence, in view of the aforesaid explicit proviso to Section 18 of the RERA Act, the applicant/ complainant can only claim interest for every month of delay till the handing over of the possession of the said flat to the applicant/ complainant.
36. In view of the above, the applicant/ complainant is not entitled to claim compensation of ₹500/- (Rupees Five Hundred only) per day for delayed possession of the said flat. Hence point (d) is accordingly answered in the negative.

Point (e)

37. Despite the directions of the Hon'ble Regulatory Authority vide Order dated 27.07.2023, the Respondent till date has failed to comply with the same. The applicant/ complainant was therefore perforced to engage in litigation proceedings by filing the complaint before the Hon'ble Regulatory Authority as well as the present application for compensation before the Adjudicating Officer.

38. Section 19(4) of the RERA Act provides as under:-

“19. Rights and duties of allottees.- (1)

(2)

(3)

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.”

39. The broad factors to be considered while adjudging compensation has been provided under section 72 of the said Act which reads as under:-



“72. Factors to be taken into account by the adjudicating officer.- While adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused as a result of the default;

(c) the repetitive nature of the default;

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.”

40. In the case of **ONGC LTD. v. SAW PIPES LTD. (2003) 5 Supreme Court Cases 705.** The Apex Court while dealing with Section 73 and 74 of the Contract Act has held that:

“(1) Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same.

(2) If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act.

(3) Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage

is proved to have been suffered in consequence of the breach of a contract.

(4) In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is genuine pre-estimate by the parties as the measure of reasonable compensation.”

41. In the present case, the applicant/ complainant has not withdrawn from the project but has been affected by the delay in handing over the possession of the said flat despite the said Order dated 27.07.2023.
42. The applicant/ complainant has sought compensation of ₹50,000/- (Rupees Fifty Thousand only) towards costs of the present application as well as for mental trauma, loss of time, hardship, notional losses and legal fees incurred.
43. In the circumstances, the applicant/ complainant is entitled to compensation of ₹50,000/- (Rupees Fifty Thousand only) under Section 19 (4) read with Section 71 and 72 of the RERA Act towards legal costs. Point (e) is therefore answered in the affirmative.
44. Before parting with this order, it is necessary to mention that the claim for compensation in Form ‘B’ was filed by the applicant/ complainant on 23.08.2023. The respondent filed reply to the claim for compensation on 15.09.2023. The applicant/ complainant sought time on 25.09.2023 and filed affidavit in evidence on 05.10.2023 and written arguments on 06.10.2023. The respondent filed affidavit in evidence on 13.10.2023 and written arguments on

16.10.2023. Oral arguments were heard on 20.10.2023 and matter stands disposed on 31.10.2023.


In the result, I pass the following:-

ORDER

- a) The claim for compensation filed by the applicant/ complainant in Form 'B' under Sections 12, 14, 18 and 19 read with Section 71 of the RERA Act is partly allowed.
- b) The respondent is directed to pay the applicant/ complainant compensation of ₹50,000/- (Rupees Fifty Thousand only) under Section 19 (4) read with Section 71 and 72 of the RERA Act towards legal costs within 60 (Sixty) days from the date of this Order.
- c) In default, the respondent/ promoter shall be liable to pay to the applicant/ complainant the said amount of ₹50,000/- (Rupees Fifty Thousand only) by way of compensation with interest 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 per cent. At present, such lending rate of interest is 8.75 per annum. Hence, the respondent/ promoter shall be liable to pay interest at the rate of



10.75% p.a. for every month of delay to the applicant/ complainant on the aforesaid compensatory amount of ₹50,000/- (Rupees Fifty Thousand only).


31/10/2023
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA

