



GOA REAL ESTATE REGULATORY AUTHORITY

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File no.3/RERA/Complaint (321)/2022/ 938

Date: 14 /09/2023

Mr. Heramb Raghunath Watve,
H.No. 22-B, 15 Golna, Pomburpa,
Bardez, Goa-403508.

.....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 SudeshGawandalkar,**

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,**

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/oH.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, DELAY IN POSSESSION, NON REGISTRATION RERA, NO ELECTRICITY AND WATER, NO LIFT, NO OCCUPANCY CERTIFICATE, NON COMPLIANCE OF SCHEDULE III OF THE SAID AGREEMENT, SUB STANDARD CONSTRUCTION, NON CONSTRUCTION OF COMPOUND AREA, CRACKS IN BUILDING RCC/ SLAB”



The complainant has prayed in the complaint for compensation, project completion with occupancy certificate. In the supplementary complaint the complainant has prayed this Authority 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/ promoter was required to deliver the possession of flat bearing no. F-3 located on the first floor of the building within a period of eighteen months from the period of execution of the agreement for construction and sale dated 25.08.2014 and accordingly the flat was required to be delivered on or before 25.02.2016 but the same has not been delivered by obtaining occupancy certificate and hence the complainant is



entitled for statutory interest on delayed possession from 26.02.2016 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. Reply has been filed by the respondents to the online complaint as well as to the supplementary complaint. In the reply the respondents have submitted that the complaint is not maintainable as the complainant has made the full payment of the consideration amount as per the sale deed dated 09.01.2019 and has taken the possession of the flat after the execution and registration of the sale deed. It is stated 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.



5. 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”.
6. 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.



7. 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.
8. 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.
9. 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.

10. 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.
11. 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 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.

12. 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 25.08.2014. On 09.01.2019 the same parties executed sale deed which was registered on 30.01.2019. In the said sale deed it is specifically mentioned in clause 1 on page 7 therein that the complainant has paid the total consideration amount towards the said flat bearing no. F-3 on the first floor of the building known as “Shree Vastu Residency”, situated at Mapusa, Bardez, Goa, “the receipt of which the vendors doth hereby admit and acknowledge”. In clause 5 on page 9 of the said sale deed, it is mentioned **“That the vendor has this day given and the purchaser has received the**



possession of the said flat along with proportionate undivided share in the land” (emphasis supplied).

13. From the aforesaid it is clear that not only possession of the said flat is given to the complainant but also the sale deed in favour of the complainant has been executed and duly registered before the Sub-Registrar. Hence, Section 18 of the RERA Act invoked by the complainant in the prayer clause of the supplementary complaint asking for grant of interest on the sale consideration from the stipulated date for handing over possession till obtaining occupancy certificate is not attracted in the instant case. For ready reference **Section 18** of the RERA Act 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.

(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.”



14. Section 18 therefore refers to the situation where the promoter fails to complete or is unable to give possession of an apartment, plot or building but in the instant case as stated above possession is already given to the complainant by sale deed dated 09.01.2019 and registered on 30.01.2019, by virtue of which the complainant has become the owner of the said flat. As per **Section 11(4) (a)** of the RERA Act, the promoter is responsible for all obligations, responsibilities and functions under the RERA Act/ Rules and regulations to the allottees/ association of allottees only “till the conveyance of all the apartments, plots or buildings as the case may be”.
15. Though sale deed has been executed in favour of the complainant, however, 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.
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, passed by this Authority which is reproduced herein below:-



“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 against the promoter/ respondent no. 2 before the Ld. JMFC having the concerned jurisdiction.



20. It is specifically provided in the **Section 11 (4) (a)** that the responsibility of the promoter shall continue even after conveyance deed is executed in favour of the allottee only in case where there is structural defect or any other defect as referred to in sub-Section (3) of Section 14 of the RERA Act.
21. 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.”

22. 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

The prayer of the complainant in the supplementary complaint to direct the promoter/ respondent no. 2 under Section 18 of the RERA Act to grant interest on the sale consideration amount from the stipulated date for handing over possession till obtaining occupancy certificate is rejected because of the reasons stated above.

In the interest of justice and taking into consideration the fact of the case, time is extended for the promoter/ respondent no. 2 to complete the entire said building, provide the necessary amenities like electricity and water connection to the flat bearing no. F-3 of the complainant, install the lift, construct the compound wall for the said building, rectify all the defects as mentioned in the complaint and obtain occupancy certificate within four months from the date of the instant order, as undertaken by the respondent in the undertaking dated 23.08.2023 given before this Authority.

Under Section 63 of the RERA Act, the respondent no.2/ the promoter is liable to pay penalty for violation of the interim order dated 25.04.2023 whereby the promoter was directed to pay Rs. 5,00,000/- and make an application for registration of the project with all the required documents and registration fees within thirty days from the date of the said order and as per the



said Section 63, the respondent no. 2/ the promoter is therefore liable to a penalty for every day during which such default continues, which may cumulatively extend upto five percent of the estimated cost of the real estate project as determined by this Authority. However, in the interest of justice and in compliance of Section 63 of the RERA Act, for violation of the aforesaid interim order dated 25.04.2023, the respondent no. 2 is directed to pay further penalty of Rs. 3,00,000/- (Rupees Three Lakhs only) within a period of 15 (fifteen) days from the date of this order. It is hereby ordered that no registration of the project 'Shree Vastu Residency' situated at Mapusa, Bardez, Goa, which is the subject matter of the instant complaint would be allowed unless the respondent no. 2/ the promoter pays the total penalty of Rs. 8,00,000/- (Rupees Eight Lakhs only) i.e. Rs. 5,00,000/- (Rupees Five Lakhs only) penalty as per the interim order dated 25.04.2023 and Rs. 3,00,000/- (Rupees Three Lakhs only) as per this order. After fifteen days of this order, the complaint to be filed by this Authority against the respondent no. 2/ the promoter before the Ld. Judicial Magistrate of First Class of concerned jurisdiction under Section 59(2) read with Section 80 of the RERA Act with the prayer before the Ld. JMFC to punish the respondent no. 2 with imprisonment for a term which may extend upto three years or with fine which may extend upto a further ten per cent of the estimated cost of the real estate project or with both.

Further, under section 63 of the RERA Act, the respondent no. 2/ the promoter is directed to pay within four months a penalty of Rs. 1,00,000/-



(Rupees One Lakh only) for violation of the order dated 01.06.2023 of this Authority. The said penalty amount, if realized by this Authority, be forfeited to the State Government.

The respondent no. 2 to file compliance report in the form of an affidavit immediately after compliance of this order, failing which further legal action as per RERA Act will be taken by this Authority against the respondent no. 2.

For compensation under Section 14(3) of the RERA Act, the complainant is at liberty to file complaint before the Adjudicating Officer of this Authority.

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