



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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No.3/RERA/Complaint (266)/2021 /609

Date: 25/08/2022

Dawood Ismail Shaikh

Jasmin complex, villa No.1,

Chandra Waddo, Fatorda,

Goa-403602.

..... **Complainant**

Vs.

Venkatesh Prabhu Moni,

7th Floor, Dempo Trade Center,

Patto, Panjim, Goa-403001.

..... **Respondent**

ORDER

(Dated 25.08.2022)

This order disposes of the instant complaint filed under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act') in respect of the project "Prabhu Chambers" situated in the city of Mapusa Goa. In the said complaint, the complainant has alleged that there is water logging in the basement, lift is not working, kiosk in front of the main entrance has not been removed, parking area is submerged under water, there is no electricity connection, no occupancy is given and therefore the relief sought from this Authority are "PROJ. TAKEOVER, COMPENSATION EXECUTION REG AGREEMENT".

2. In the supplementary complaint, it is stated inter alia that this Authority vide its Order dated 17.03.2022 in complaint bearing no.3/RERA/Complaint (COMB. Prabhu Chambers)/2019/186 directed the developer to carry out all the pending works within a period of two months from the date of order and in addition also imposed a fine of Rs.50,00,000/- for violating the directions passed by this Authority and that a similar order may also be passed in the instant case. It is further stated in the supplementary complaint that the developer was required to deliver the possession of unit bearing no. GS-12A on or before 10.10.2016 and therefore the respondent is liable to pay the statutory interest for delayed possession from 10.10.2016 “till actual handing over of possession”. It is also stated that the developer has failed to register his project and is defying the order passed by this Authority in another complaint to register the project. In the supplementary complaint therefore, the complainant has also prayed for grant of interest for delayed possession in addition to the prayers mentioned in the online complaint.

3. The respondent has stated in the reply that all the issues like water logging in the basement, non working of the lift, parking area being submerged under water and absence of electricity connection have already been resolved during the pendency of the other proceedings before this Authority. It is stated that the respondent has carried out fresh water proofing by engaging Nitin Jain, Proprietor of Naman Contractors who is a known expert in this field and at present the said issue is resolved. The respondent has also referred to the scientific study and report on structural stability obtained from Goa Engineering College. According to the respondent, as regard the issue of removal of kiosk and provision for parking, since the said kiosk is illegal, Mapusa Municipal



Council passed an Order dated 11.01.2021 for its removal against which the owner Jeevan Mayekar filed an appeal before Municipal Appellate Tribunal, which appeal is still pending and therefore on conclusion of the said proceedings, the illegal kiosk would be removed. It is stated that the Municipality has withheld occupancy certificate only on the ground that the illegal kiosk is not removed and the respondent is pursuing the matter before the Municipal Appellate Tribunal. It is further stated that once the occupancy is granted, the respondent would obtain electricity connection along with independent meters for each of the allottees and the transformer would also be made functional, though at present all the units are supplied electricity by the respondent through a temporary connection obtained by him for the project.

4. According to the respondent the prayer of the complainant for takeover of the project is an abuse of process of law. Hence, the prayer of the respondent to dismiss the instant complaint.
5. Documents were placed on record and affidavits were filed by both the parties. Written submissions were filed by both the parties. In the written submissions, besides pointing to the aforesaid defects and deficiencies in the constructions, the complainant has also alleged that there is shortfall in area with respect to the units agreed to be sold by the developer and the said shortfall is also given in tabular form. It is further alleged that there is also shortfall in parking spaces also and that the material used by the complainant is of sub standard quality. It is stated therein that the complainant is unnecessarily blaming the Statutory Authorities including Mapusa Municipal Council in order to wriggle out of the lapses committed by the respondent. The complainant relied upon the judgements of the Hon'ble Supreme Court in the case of "Bikram



Chatterjee and Others v/s Union of India” (2019) 19 SCC 161 and “Eminent Infra Developers Pvt. Ltd. v/s Vivek Radhu” (2019 SCC online Utt 1676).

6. The respondent, in his written submissions has stated as to how due to the arbitrary approach of the Collector, the occupancy certificate got delayed. It is stated that after the construction was completed, the respondent handed over their individual premises to the purchasers and therefore most of the purchasers have already taken their possession and even started their business operations in the premises after obtaining the required licenses and doing the legal formalities and also have started paying municipal taxes. According to the respondent, excessive rainfall in Goa in the year 2019 and cloud burst created water logging in the basement and in this regard about 35 occupants out of about 120 occupants filed a false compliant dated 11.07.2019 before Mapusa Police Station under Sections 120, 336 of IPC and Section 73 of Contract Act due to which the respondent was restrained from interfering at the site and accordingly he could not take corrective steps at that time to prevent water logging in the basement. It is further stated that on the basis of the information given by the complainants including that of the aforesaid FIR, a Show Cause Notice dated 05.08.2019 was issued to the respondent by Mapusa Municipality to which the respondent filed reply, however, the Chief Officer by Order dated 30.08.2019 directed the respondent to comply with the directions given by him within 48 hours and since the same could not be complied within the said period, the occupancy certificate dated 29.05.2019 was revoked by order dated 12.09.2019. According to the respondent, the said problem of water logging is now solved through expert Shri Nitin Jain but Mapusa Municipal Council is withholding the restoration of occupancy certificate only on the ground

that the kiosk has not been removed from the site, regarding which, the respondent submitted that the case is pending before Municipal Appellate Tribunal. The respondent in his written submissions has also referred to the FIR registered against all the accused who are some of the allottees including allottee Imran Sayyed in respect of the incident of abduction of the son of the respondent on 23.03.2022, assaulting him and attempting to kill him and regarding which the matter was pending before District and Session Court. According to the respondent, the delay in construction/ possession, if any, is attributable to reasons beyond the control of the respondent and such extraneous circumstances would be categorized as 'Force Majeure' and would extend the time line of handing over the possession of the unit and completion of the project. The respondent submitted that the Hon'ble Supreme Court in the case of 'Gajendra Sharma v. UOI & Ors' as well as "Credai MCHI & Anr. V. UOI & Ors." has taken cognizance of the devastating condition of the real estate sector and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector.

7. Oral arguments were heard from Ld. Advocate Shri N. Takkekar for the complainant and Ld. Advocate Shri Ankur Kumar for the respondent.
8. After going through the entire record 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 complainant is entitled for project takeover?	In the negative.

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2.	Whether the complainant is entitled for statutory interest on delayed possession as prayed in the supplementary complaint?	In the affirmative.
3.	Whether the complainant is entitled for possession of the said unit?	In the affirmative.
4.	Whether the complainant is entitled for the compensation?	To be decided by the Adjudicating Officer.

REASONS

Point No.1

9. **Section 8 of RERA Act** dealing with obligation of Authority consequent upon lapse of or on revocation of registration states inter-alia that “**upon lapse of the registration or on revocation of the registration** under this Act, the Authority may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority”.
10. Hence, once the decision to revoke the registration of the Real Estate project has been taken by the RERA **or the registration of the Real Estate project has expired as per the time limit mentioned in Section 5(3) of the Act**, the RERA may consult the appropriate Government to take such action, as it may deem fit, for carrying out the remaining development works.
11. **In the instant case, the project in question is not registered** inspite of the order dated 17.03.2020 for registration of the project passed by this Authority in the complaint filed by Sanjay Raut in complaint

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No.3/RERA/Completed project(533)/2019 and hence there is neither any scope for revocation of registration nor for the expiry of the registration of Real Estate project as per the time limit mentioned in **Section 5(3) of the Act** as under the said Section **“the registration granted under this Section shall be valid for a period declared by the promoter under sub-clause (c) of Clause (1) of sub-Section (2) of Section 4 for completion of the project or phase thereof, as the case may be”**.

12. As the instant project is unregistered and as Section 8 of the Act applies only either upon lapse of the registration or on revocation of the registration, the aforesaid Section is not applicable to the instant project and hence cannot be invoked to take over the project.
13. Even otherwise, the respondent has already obtained completion certificate dated 27/08/2018. The respondent now has only to remove/rectify the deficiencies as pointed out by North Goa Planning and Development Authority (NGPDA) and Mapusa Municipal Council.
14. Further, in this context, it is necessary to reproduce here under the relevant portion of the order dated 28/06/2021 passed by the Hon'ble Bombay High Court in Writ petition No. 1156 of 2021 moved by the respondent herein against the complainants in complaint No.3/RERA/Complaint(Comb. Prabhu Chambers)/2019:-

“3. With respect to the aforesaid submission we direct the Authorities of Mapusa Municipal Council, North Goa Planning and Development Authority and Directorate of Fire and Emergency Services to inspect the petitioner’s site within a period of six weeks from today and certify whether there are any deficiencies in the construction put



up by the petitioner comprising the Ground plus five floors. The Authorities should then furnish the petitioner with the list of deficiencies, if any. **Mr. Joshi, Learned Counsel states that the petitioner will then rectify the deficiencies, if any and once again apply to the Authorities for fresh inspection to ascertain whether such deficiencies are indeed rectified.**” (emphasis supplied)

15. From the aforesaid order it is clear that undertaking is given by the respondent's Advocate before the Hon'ble Bombay High Court in the aforesaid Writ petition that the respondent herein will rectify all the deficiencies in the construction as and when pointed out by the aforesaid Statutory Authorities. In view of the aforesaid undertaking of the respondent before the Hon'ble Bombay High Court, even otherwise there is no issue left of takeover of the project. Moreover, there are many other unit holders in the said building who are not complainants in the instant case. **The instant point is, therefore, answered in the negative.**

Points no. 2 and 3

16. Both the points are taken up together as they are interconnected and the reasons for deciding the same over lap.

Nowhere in the reply or in the affidavit or in the written submissions, respondent has stated that the possession of the said unit is already given to the complainant and hence admittedly the respondent has failed to give possession of the said unit to the complainant till date. 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 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.”

17. The date of delivery of possession of the said unit is given in the agreement for construction cum sale executed on 14.10.2014 as follows:-

“3. DELIVERY, USE AND MAINTENANCE OF THE said shop unit:

(a) The BUILDER/VENDORS shall complete the said shop unit within 24 months from the date of signing this Agreement, subject to an extension of further period of 9 months, and after obtaining the occupancy certificate from the Competent Authorities hand over its delivery to the PURCHASERS provided all the amount due and payable by the PURCHASERS under this Agreement are paid by the PURCHASERS to the BUILDER/VENDOR.”

18. From the aforesaid it is clear that the date of delivery of the said shop unit is within 24 months from the signing of the said Agreement subject to an extension of further period of 9 months and after obtaining the occupancy certificate from the Competent Authorities. In the instant case the complainant is not praying for refund of his amount and hence he is entitled for statutory interest on his paid amount from the date fixed for delivery of possession. 

19. 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.”

20. 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. As a consequence thereof Section 18 and Rule 18 of RERA are squarely attracted in the instant complaint.

21. The Ld. Advocate for the respondent in his written submissions as well as in oral arguments has invoked the doctrine of *force majeure* and has submitted that because of force majeure due to covid-19 pandemic, the time for handing over the possession of the said unit will have to be extended. In this regard **it is pertinent to mention that the Act takes into consideration *force majeure* under Section 6 only for extension of registration.** Section 6 dealing with extension of registration inter alia states that **“The registration granted under Section 5 may be extended by the Authority** on an application made by the promoter due to *force majeure*, in such form and on payment of such fee as may be prescribed.”



Thus it is clear that *force majeure* is only a ground for extension of registration under section 6 of the said Act. It is significant to note that the said benefit is not available to the respondent in the instant case since in spite of the order dated 17.03.2020 passed by this Authority in the complaint filed by Mr. Sanjay Raut bearing no. 3/RERA/Completed Project (533)/2019, the respondent did not get the instant project registered and the execution proceedings for the same are pending. Moreover as held by the Apex court in the case of “**M/s Imperia Structures Ltd. Vs. Anil Patni and another**” (Civil appeal no. 3581-3590 of 2020), “non-availability of contractual labour, delay in notifying approvals cannot be construed to be force majeure events from any angle”. In the case of **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors.**” in civil appeal no. (s) 6745-6749 and 6750-6757 of 2021, the Hon’ble Supreme Court has clarified that “if the promoter fails to give possession of the apartments, plot or building within the time stipulated under the terms of the agreement, then allottee’s right under the Act to seek refund/claim interest for delay is **unconditional and absolute, regardless of unforeseen events or stay orders of the court/Tribunal.**”(emphasis supplied). Thus, the aforesaid ground for delay in delivering of possession, as given by the respondent, will not come to the rescue of the respondent from legal liabilities under the said Act and corresponding legal rights accrued to the complainant under the said Act.

22. Similarly the argument of Ld. Advocate for respondent referring to the doctrine of frustration (Section 56 of the Indian Contract Act, 1872) and his submission regarding impossibility of performance of the contract is without any merit since nowhere it is the case of the respondent that the said agreement for sale is impossible to be enforced. On the contrary in

the case bearing no. 3/RERA/Complaint (Comb.Prabhu Chambers)/2019, this Authority took into consideration the undertaking given by the Ld. Advocate for the respondent before the Hon'ble Bombay High Court in writ petition no. 1156 of 2021 to the effect that the respondent herein will rectify all the deficiencies in the project in question as pointed out by the Statutory Authorities in order to get the occupancy certificate which had been revoked. Moreover, in the reply the respondent has submitted that the Municipality has withheld the occupancy certificate only on the ground that the illegal kiosk of Shri Jeevan Mayekar is not removed but in this regard according to the respondent, he is pursuing the matter before the Municipal Appellate Tribunal and once the occupancy is granted, further action will be taken by the respondent in respect of the premises in question. Thus, the doctrine of frustration of contract is not applicable in the instant case, as the defence raised by the respondent is not covered by the test of impossibility or illegality which are the pre conditions to invoke the doctrine of frustration under the Contract law. Hence, both the instant points are answered in the affirmative.

23. Regarding the issue of non registration of the project, the same is not considered in the instant complaint since in the complaint filed by Mr. Sanjay Raut bearing no.3/RERA/Completed Project (533)/2019 by order dated 17.03.2020 the respondent herein was ordered to pay penalty of Rs. 5,00,000/- and get the instant project registered and the execution proceedings regarding the same are pending. Similarly, the criminal cases pending between the parties are not relevant in the instant complaint and this Authority has no jurisdiction to deliberate on the said criminal disputes. The rulings and the other notifications relied upon by the Ld. Advocate for the respondent are also not applicable in the instant complaint, because of the reasons stated above. Further for contravention



of the provisions of this Act, penalty has already been imposed on the respondent in the aforesaid complaint bearing no.3 / RERA/Complaint(Comb.Prabhu Chambers)/2019 regarding which execution proceedings are pending and hence no further penalty is imposed on the respondent in the instant case. Suffice that the direction is given to the respondent to give possession of the said unit to the complainant along with statutory interest on the payment made by the complainant to the respondent. In the instant case, the respondent has paid an amount of Rs. 42,19,200/- (Rupees Forty Two Lakhs Nineteen Thousand Two Hundred only) towards sale consideration.

Point No. 4

24. Under **Section 71 of RERA Act**, compensation under Sections 12, 14, 18 and 19 of the Act has to be adjudged only by the Adjudicating Officer. Accordingly, the prayer for compensation by the complainant has to be referred to the Adjudicating Officer for adjudging the compensation, if any.

In the premises aforesaid, I pass the following:-

ORDER

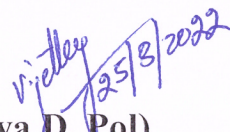
The respondent is directed to give possession of the unit bearing no. GS-12A to the complainant after obtaining occupancy certificate as per the terms of the Agreement for Construction cum Sale executed on 14.10.2014 with all the essentials facilities/supplies/connection and the quality of work as mentioned in the said Agreement, within two months from the date of this order.

Further, under Section 18(1) of RERA 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 8.00% per annum. Adding two percent to the said interest as per Rule 18, it comes to 10.00% per annum. Hence, the respondent is directed to pay 10.00% per annum interest for every month of delay to complainant on the aforesaid amount paid by complainant from the date of delivery of possession including extended date as mentioned in the agreement for sale with the complainant, till the handing over of the possession to complainant.

The instant complaint is now referred to the Adjudicating Officer to adjudge compensation, if any, as per Section 71 of the said Act.


(Vijaya D. Pol)
Member, Goa RERA