



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (101)/2023/966

Date: 29/09/2023

BEFORE THE ADJUDICATING OFFICER

Mahmadarafi Jangalisab Hosamani and Tabasum Mahmadarafi Hosamani

C/o HanumantPatil,
Flat 507, C Block, 7th Floor,
Kim Heights Morod,
Mapusa, Goa, 403507.

.....Applicants/ Complainants

Versus

Sunstar Homes,

Address 1:

MS Sunstar Homes, National Narvekar Chambers,
Mapusa, Bardez, Goa, 403507.

Address 2:

Flat No. B1 F1 Prudential Paradise,
Peddem, Mapusa
Bardez, Goa, 403507.

.....Respondent/ Promoter

Ld. Representative CA Sagar Teli for the Applicants/ Complainants.

Ld. Advocate Shri P. Agrawal for the Respondent/ Promoter.

ORDER

(Delivered on this 29th day of the month of September, 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 applicants/complainants against the respondent bearing complaint no. 3/RERA/Complaint(303)/2022.

2. The above said complaint was disposed off vide Order dated 13.02.2023 by the Goa Real Estate Regulatory Authority (for short 'Goa RERA'). The said Authority ordered as follows:-

“The respondent has stated in the reply as well as in the written submissions and oral arguments that the complainants' flat no. D-5 on the fourth floor of the building is ready for occupancy on issuance of Part Occupancy Certificate. The respondent is therefore directed to give possession of the said flat to the complainants with all the amenities and facilities as mentioned in the agreement for sale dated 14.05.2019 within two months from the date of this order upon taking the balance consideration amount as well as electric meter charges and society formation charges strictly as per the said agreement for sale dated 14.05.2019 from the complainants. Thereafter, the respondent shall comply the mandate of Section 11(4)(e) regarding the formation of an association of allottees/ society and other mandatory provisions of the RERA Act.

The complainants are directed to pay the aforesaid balance consideration amount and aforesaid charges to the respondent on the day of and before taking possession of the said flat.

Further, the respondent is directed to pay 10.60% per annum interest (present lending rate of interest by SBI which is 8.60 % per annum plus two per cent) for every month of delay to the complainants on the aforesaid amount of ₹41.00



Lakhs paid by the complainants from 07.05.2020 till the date of delivery of possession to the complainants.

As per the discussion above, the respondent is directed to pay ₹1,00,000/- (Rupees One Lakh only) as penalty for violation of Section 11 (4) (a) of the RERA Act and directed to pay penalty of ₹1,00,000/- (Rupees One Lakh only) for violation of Section 14 (2) of the RERA Act. Thus, the total penalty of ₹2,00,000/- (Rupees Two Lakhs only) to be paid by the respondent 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 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 applicants/ complainants thereafter filed their 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) ₹7,99,000/- for delayed possession under Section 18 (3) of the RERA Act at the rate of ₹17,000/- per month for 47 months of delay;
 - b) ₹3,00,000/- under Section 12 of the RERA Act for incorrect and false statement of amenities;



c) ₹5,00,000/- for alteration of sanctioned building plan and construction of two additional floors under Section 14 of the RERA Act;

d) ₹5,00,000/- for lowering the super built up area under Section 4(2)(h) of the RERA Act and

e) ₹75,000/- towards legal costs.

4. The case of the applicants/ complainants is that the applicants/ complainants have paid an amount of ₹41,00,000/- (Rupees Forty One Lakhs only) (95.35%) to the respondent/ promoter out of the agreed consideration of ₹43.00 Lakhs as the promised date of delivery as per agreement for sale i.e 1st week of May, 2019 had already lapsed and the respondent/ promoter had not created the promised infrastructure and amenities and had been sending letters to the applicants/ complainants to take possession by paying balance amount and other amounts not in terms of the agreement for sale dated 14.05.2019, the applicants/ complainants lost trust in the respondent/ promoter. The respondent/ promoter failed to update the project completion stage on the website of Goa RERA and also other certificates from the Architect and Engineer regarding quarterly updates as per Section 11(1) of the RERA Act. Part occupancy certificate is received by the respondent/ promoter without completion of external development works and amenities at the site. It only takes into consideration fitness of the property for occupancy without committed amenities. Due to the above consideration, the applicants/ complainants had approached the Hon'ble



RERA Authority for seeking reliefs on various grounds. By order dated 13.02.2023, the Hon'ble Authority has referred the matter to the Adjudicating Officer for ascertaining the compensation, if any, to be granted.

a) Delayed completion of project from the committed date of completion.

5. The respondent/promoter has declared date of completion of project as 30th September, 2019. However, in the agreement for sale date of completion is mentioned as 1st week of May, 2019. The respondent/ promoter has failed to provide possession of the said flat till date and has contravened the provisions of the RERA Act. The applicants / complainants have taken loan to purchase the flat, the purpose of which is defeated due to the delayed possession. The applicants/ complainants were compelled to make arrangements for alternate accommodation. Hence, the applicants/ complainants need to be compensated for loss of rent. The applicants/ complainants in support of the applicants/ complainants case have annexed the rental prices offered in the same project with the same flat specifications by other project owners on the website. The applicants/ complainants are therefore claiming compensation under Section 18(3) of the RERA Act as loss for opportunity rental income of the flat @ ₹17,000/- per month (May 2019 to March 2023) i.e. 47 months amounting to ₹7,99,000/- (Rupees Seven Lakhs Ninety Nine Thousand only).



b) Incorrect and false statement in an advertisement brochure and on project RERA web page:

6. As per the brochure following amenities are committed:- (i) Lift access to all floors; (ii) Solar water heating plant; (iii) 1200 sq. mtrs. of landscape garden with children play area and (iv) Gated community. Based on the site visit conducted by the applicants/ complainants, most of the external development works i.e. amenities as above are incomplete. The Respondent/ promoter has not at all provided solar water heating plant and fire protection and safety requirements for the project. The same is also not specifically mentioned in the agreement for sale though mentioned in the project brochure produced at the time of booking of the flat.
7. Due to non-provision of these amenities of solar water heating plant and fire protection and fire safety requirements, the applicants/ complainants have suffered loss and have thus claimed compensation of ₹3,00,000/- (Rupees Three Lakhs only) under Section 12 of the RERA Act.

c) Construction of additional two floors in the building without consent of the existing allottees.

8. As per Section 14(2)(ii) of the RERA Act, any alteration/ additions in sanctioned plans needs consent of 2/3rd allottees of the project. The respondent/



promoter has constructed additional two floors in the building without consent of the allottees.

Due to creation of additional floors, additional interests of new allottees are created in the project, thereby lowering the share of ownership in the project property of the applicants/ complainants, due to which the applicants/ complainants have suffered loss in the share of ownership in the project and enjoyment of the property due to over-crowding of allottees.

Hence, the applicants/ complainants seek compensation of ₹5,00,000/- under Section 18(3) for violation of Section 14 of the RERA Act.

d) Lowering of super built up area.

9. As per the agreement for sale, the respondent/ promoter has agreed to provide a flat admeasuring 96 sq. mtrs. super built up area. The respondent/ promoter has failed to disclose the carpet area as per Section 4(2) (h) of the RERA Act in the agreement for sale.

Since additional interests are created by constructing two additional floors in the project, loading factor of the common areas and open terrace areas which are apportioned on the built up area of the applicants/ complainants flat for deriving the super built up area of the flat i.e. 96 sq. mtrs. has been lowered. Hence, the area of 96 sq. mtrs. is now reduced to sharing of common areas and open terraces by the allottees of the additional two floors. Hence the applicants/



complainants seek compensation of ₹5,00,000/- (Rupees Five Lakhs only) under Section 18(3) for violation of Section 4 (2)(h) of the RERA Act for lesser area being received than as mentioned in the agreement for sale.

e) Legal costs incurred in the complaint proceedings and adjudicating proceedings.

10. The applicants/ complainants have filed complaint under Section 31 before the Hon'ble Authority and claim for compensation before Adjudicating Officer. The applicants/ complainants had to avail professional legal services to appear before the Hon'ble Authority and the Adjudicating Officer. The applicants/ complainants have incurred legal costs of professional fees, documentation and gatherings of information for filing the complaint and claim for compensation. Hence, the applicants/ complainants seek compensation of ₹75,000/- (Rupees Seventy Five Thousand only).
11. The respondent/ promoter filed reply/ written statement opposing the claim for compensation. It is the case of the respondent/ promoter that the application is liable to be dismissed on the following preliminary ground namely viz. that the Hon'ble Authority proceeding with the matter of claim of the applicants/ complainants is bad in law, barred and suffers from lack of jurisdiction based on the impugned order dated 13.02.2023 being under challenge vide Appeal no. G-4/2023 along with application for stay of the operation of the impugned order and the proceedings before the Adjudicating Authority.

12. After the enactment of the RERA Act, 2016 and the same being extended to the State of Goa, the respondent/ promoter has registered its project under RERA on 21.06.2019 and obtained registration no. PRGO06190732. The respondent/ promoter had applied for completion certificate with the NGPDA, Panaji, Goa on 10.01.2020. The said completion certificate remained pending to be issued due to covid-19 pandemic situation. As soon as the respondent/ promoter received the completion certificate, the respondent/ promoter had applied for the occupancy certificate. Part occupancy certificate was issued to the respondent/ promoter by the Mapusa Municipal Council to the project for the stilt plus 4 floors only i.e. first floor, second floor, third floor and fourth floor of the building. The applicants/ complainants premises were within the 4 floors of the building and was therefore ready for occupancy on issuance of the part occupancy certificate. On receipt of the occupancy certificate the respondent/ promoter contacted the applicants/ complainants and asked them to make the payment towards transformer, infrastructural charges, maintenance, society formation, house tax etc. to enable the respondent/ promoter to issue the possession letter. The applicants/ complainants refused to make payment and thereafter the respondent/ promoter issued them the possession letter dated 22.12.2021 stating to them that the possession of the apartment would be given to them subject to balance payment mentioned in the possession letter dated 22.12.2021. On issuance of the possession letter dated 22.12.2021 requesting for additional expenses other than the balance consideration, the applicants/

complainants refused to make the payment and without disputing the additional expenses preferred to file complaint before the Regulatory Authority. Since, the applicants/ complainants failed to make the payments, the respondent/ promoter issued them letter of termination dated 06.04.2022 intimating them about the termination of the agreement. The applicants/ complainants did not heed to the said notice. The respondent/ promoter thereafter issued final notice of termination dated 04.05.2022 terminating the said agreement dated 25.02.2020. Since the said agreement dated 25.02.2020 is terminated, the Hon'ble Regulatory Authority had no jurisdiction to decide the complaint.

13. The Respondent/ promoter has raised a counter claim stating the respondent/ promoter is entitled to recover the loss as compensation from the applicants/ complainants for delayed payment of pending dues and consideration along with statutory interest from the date it was due. The respondent/ promoter submits that the reliefs sought by the applicants/ complainants are denied being non-maintainable.

14. The respondent/ promoter has filed a separate application raising preliminary objections stating that the Hon'ble Authority proceeding with the matter of claim of the applicants/ complainants is bad in law, barred and suffers from lack of jurisdiction, based on the impugned order dated 13.02.2023 being under challenge vide appeal bearing no.G-4/2023 along with application for stay of

the operation of the impugned order and the proceedings before the Adjudicating Authority.

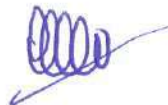
15. Before expiry of the appeal period to challenge the impugned order dated 13.02.2023, the Hon'ble Authority has initiated the Adjudicating proceedings as per the impugned order dated 13.02.2023. The respondent/ promoter submits that when the proprietary of the order is under challenge and the same being sub-judice before the Appellate Authority, this Hon'ble Authority ought not to proceed with the adjudication of the very same order which is under challenge and follow the directions mentioned in the impugned order.
16. The respondent/ promoter submits that he has a good case to succeed in the appeal filed and proceeding with the adjudication of the under challenge order would only prejudice the respondent/ promoter defeating the object of filing the appeal and stay application against the impugned order.
17. Since the said preliminary objection goes to the very root of the jurisdiction of the Hon'ble Authority to adjudicate and decide the application of the applicants/ complainants, therefore request this Authority to decide the preliminary objection.
18. The applicants/ complainants filed reply to the preliminary objection of the respondent/ promoter. It is the case of the applicants/ complainants that mere filing of appeal and stay application, without stay order granted by the

Appellate Tribunal cannot be a ground for considering proceedings before the Hon'ble Adjudicating Officer as bad in law, barred and without jurisdiction.

19. Section 31(1) provides for complaints to be filed with the Authority for any non-compliance of any objection or any violation of the provisions of the RERA Act for granting any reliefs except compensation. As compared to these functions and powers vested with the Authority, the Adjudicating Officer is appointed under section 71 for the sole purpose of adjudging compensation for any non-compliance of provisions of Sections 12, 14, 18 and 19 of the RERA Act.
20. The proceedings conducted before the Hon'ble Adjudicating Officer are independent of the impugned order passed by the Hon'ble Authority. The Hon'ble Authority has referred the compensation to the Adjudicating Officer to adjudge compensation as per section 71 of the RERA Act. The Hon'ble Adjudicating Officer after deciding on the non-compliance of sections 12, 14, 18 and 19 will determine and quantify the compensation, if any. The impugned order passed by the Hon'ble Authority is on different grounds than the proceedings to be conducted before the Hon'ble Adjudicating Officer. Hence, filing of Appeal before the Appellate Tribunal against the impugned order cannot be the ground for raising preliminary objections for barring of proceedings before the Adjudicating Officer. Hence, in the interest and spirit of the RERA Act, it is prayed to set aside the preliminary objections.



21. The applicants/ complainants thereafter filed amendment application seeking to correct the facts as set out in the claim for compensation. The applicants/ complainants have sought to amend the claim for compensation from construction of additional two floors on the building to construction of additional one floor only. The applicants/ complainants have submitted that subsequently it came to their knowledge that fire protection and fire safety requirements have been complied by the respondent/ promoter. Hence the applicants/ complainants by the present amendment are seeking to claim compensation only for non-provision of solar water heating plant and do not desire to claim for compensation in respect of provision for fire safety requirements.
22. The respondent/ promoter thereafter filed his affidavit in evidence and written arguments. The respondent/ promoter filed reply to the amendment application opposing the same stating that the amendment application is not maintainable in law and there is no provision of amendment under the RERA act. The respondent/ promoter submits that the grounds mentioned in the amendment application are not tenable and great inconvenience and prejudice will be caused to the respondent/ promoter as the applicants/ complainants are trying to make out a fresh case after filing of reply by the respondent/ promoter. Hence the application for amendment be dismissed.



23. The applicants/ complainants thereafter filed application submitting their verification to the amendment application. No reply has been filed by the respondent/ promoter opposing the same.
24. Heard oral arguments.
25. The points for determination and my findings to the same are as under:-

Sr. No.	Points for determination	Findings
(a)	<i>Whether the preliminary objections raised by the respondent/ promoter are to be allowed?</i>	<i>In the negative.</i>
(b)	<i>Whether the amendment application filed by the applicants/ complainants is to be allowed?</i>	<i>In the affirmative.</i>
(c)	<i>Whether the applicants/ complainants are entitled to compensation of ₹7,99,000/- for delayed possession of the flat?</i>	<i>In the negative.</i>
(d)	<i>Whether the applicants/ complainants are entitled to compensation of ₹3.00 Lakhs for incorrect and false statement of amenities?</i>	<i>Partly in the affirmative as per the order.</i>
(e)	<i>Whether the applicants/ complainants are entitled to claim compensation of ₹5,00,000/- for alteration of sanctioned building plan and construction of one additional floor without consent of 2/3rd allottees of the project?</i>	<i>Partly in the affirmative as per the order.</i>
(f)	<i>Whether the applicants/ complainants are entitled to the claim for compensation of ₹ 5,00,000/- for lowering of super built area?</i>	<i>Partly in the affirmative as per the order.</i>

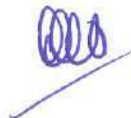


(g)	<i>Whether the applicants/ complainants are entitled to the claim for compensation of ₹75,000/- towards legal costs incurred?</i>	<i>Partly in the affirmative as per the order.</i>
(h)	<i>Whether the respondent/ promoter is entitled to recover the loss as compensation from the applicants/ complainants for delayed payment of pending dues and consideration along with statutory interest from the date it was due?</i>	<i>In the negative.</i>

REASONS

Point (a)

26. Ld. Advocate P. Agrawal for the respondent/ promoter submitted that the respondent/ promoter has challenged the impugned order dated 13.02.2023 passed by the Hon'ble Regulatory Authority vide appeal bearing no. G-4/2023 along with application for stay of the operation of the impugned order and the proceedings before the Adjudicating Authority.
27. Shri P. Agrawal submitted that this Hon'ble Authority lacks jurisdiction of deciding adjudication of compensation based on the erroneous order which is under challenge before the Appellate Authority. Shri P. Agrawal submitted that when the proprietary of the order is under-challenge and the same being subjudice before the Appellate Authority, this Hon'ble Authority ought not to proceed with the adjudication of the very same order which is under-challenge and follow the direction mentioned in the impugned order.





28. Shri P. Agrawal submitted that the preliminary objections raised goes to the very root of the jurisdiction of the Hon'ble Authority to adjudicate and decide the application of the applicants/ complainants. Shri P. Agrawal therefore submitted that the preliminary objections be upheld and the application be allowed.
29. The learned representative of the applicants/ complainants on the other hand submitted that merely filing of appeal and stay application without stay order granted by the Appellate Tribunal cannot be a ground for considering proceedings before the Hon'ble Adjudicating officer as bad in law, barred and without jurisdiction.
30. The learned representative of the applicants/ complainants submitted that Section 31(1) of the RERA Act provides for complaints to be filed with the Regulatory Authority for non-compliance of any obligations or any violation of the provisions of the RERA Act for granting any reliefs except compensation. On the other hand the Adjudicating Officer is appointed under Section 71 for the sole purpose of adjudging compensation for any non-compliance of provisions of Sections 12, 14, 18 and 19 of the RERA Act. It is also submitted that the proceedings before the Hon'ble Adjudicating Officer are independent of the impugned order passed by the Regulatory Authority who has referred the matter to the Adjudicating Officer who has the sole power to adjudge compensation in terms of Section 71 of the RERA Act. Lastly, it was also



submitted that the impugned order passed by the Regulatory Authority is on different grounds than the proceedings before the Adjudicating Officer.

31. There is considerable merit in the submissions made by the learned representative of the applicants/ complainants. Filing of the appeal before the Appellate Tribunal against impugned order passed by the Regulatory Authority cannot be a ground for raising preliminary objections to bar proceedings before the Adjudicating Officer. Under Section 71(2) of the RERA Act the application for adjudging compensation under sub-Section (1) shall be dealt with by the Adjudicating Officer as expeditiously as possible and dispose off the same within a period of 60 days for the date of receipt of the application. Provided that where such application could not be disposed of within the said period of 60 days, the Adjudicating Officer shall record his reasons in writing for not disposing the application within that period.
32. Taking into consideration the above said mandate of the RERA Act under Section 71(2), there is no scope to delay in deciding any application for adjudging compensation from the date of receipt of such application.
33. Moreover, the respondent/ promoter has not even produced the copy of the appeal and the application for stay filed before the Appellate Tribunal on record nor has obtained and submitted any stay order from the Appellate Tribunal so has to enable this Authority to stop dealing with the present application for adjudging compensation filed by the applicants/ complainants. For the reasons

set out above, there is no merit in the preliminary objections raised by the respondent/ promoter which appears to be only a dilly-dallying exercise. Point (a), is accordingly, answered in the negative.

Point (b)

34. By the present amendment application, the applicants/ complainants are infact seeking to reduce the parameters of the claim for compensation by correcting their claim from additional two floors to additional one floor only. Similarly, the applicants/ complainants are seeking to reduce their original claim by desiring to not claiming compensation with respect to provisions for fire safety requirements as subsequently it came to the knowledge of the applicants/ complainants that the fire protection and fire safety requirements have been complied with by the respondent/ promoter.
35. The respondent/ promoter in the reply has denied the contentions of the applicants/ complainants that the respondent/ promoter has mentioned incorrect and false statement in the advertisement brochure and on the project RERA web page. No prejudice can be caused to the respondent/ promoter if the application for amendment filed by the applicants/ complainants is allowed whereby the applicants/ complainants are merely seeking to correct their claim for compensation by correcting the incorrect facts in the claim for compensation. Point (b), is therefore, answered in the affirmative.

Point (c)

36. The applicants/ complainants have claimed compensation of ₹7,99,000/- (Rupees Seven Lakhs Ninety Nine Thousand only) as loss for opportunity of rental income of the flat in the project at the rate of ₹17,000/- per month from May 2019 to March 2023.

37. 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.”

38. 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.

39. 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.
40. 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.
41. 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.

42. It is not in dispute that the Regulatory Authority in the said complaint no. 3/RERA/Complaint (303)/2022 by its Order dated 13.02.2023 has directed the respondent to pay interest @10.60% p.a. for every month of delay to the applicants/ complainants on the aforesaid amount of ₹36,92,000/- (Rupees Thirty Six Lakhs Ninety Two Thousand only) paid by the applicants/ complainants from 07.05.2020 till the date of delivery of possession to the complainants.
43. It is not in dispute that in the present case, the applicants/ complainants have chosen to continue in the project. Hence, in view of the aforesaid explicit proviso to Section 18 of the RERA Act, the applicants/ complainants can only claim interest for every month of delay, till the handing over of possession of the said flat to the applicants/ complainants.
44. In view of the above, applicants/ complainants are not entitled to claim compensation of ₹7,99,000/- (Rupees Seven Lakhs Ninety Nine Thousand only) for delayed possession of the said flat. Point (c), is therefore, answered in the negative.



Point (d)

45. In the brochure of the project uploaded on the RERA web page by the respondent/ promoter which was also produced to the applicants/ complainants at the time of booking indicates the amenities to be provided. It is the case of the applicants/ complainants that the respondent/ promoter has not at all provided solar water heater plant as mentioned in the brochure of the project uploaded on the RERA web page. It is the case of the applicants/ complainants based on the above brochure and other considerations the applicants/ complainants had decided to purchase the said flat in the project. No doubt in the agreement for sale the amenities as shown in the brochure and uploaded web page namely the provisions for solar water heater plant has not been mentioned. The fact remains that the provisions of water heating plant was clearly mentioned in the brochure which has not been provided to the allottees at the site which amounts to an incorrect and false statement in the advertisement brochure and on the project RERA web page, thereby causing loss to the applicants/ complainants. The applicants/ complainants have claimed compensation of ₹3,00,000/- (Rupees Three Lakhs only) under Section 12 of the RERA Act. Section 12 provides as under:-

“12. Obligations of promoter regarding veracity of the advertisement or prospectus.- Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of



any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.”

46. 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.”

47. 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.”

48. 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.”

49. In the present case as the applicants/ complainants have not withdrawn from the project but have been affected by the incorrect false statement of providing solar water heater plant which brochure has been included on the RERA webpage, thereby inducing the applicants/ complainants to make an advance or deposit. On the basis of such incorrect information the applicants/ complainants are entitled to be compensated. Accordingly, the applicants/ complainants shall be compensated in the amount of ₹1,00,000/- (Rupees One Lakh only) under Section 12 read with Sections 19(4), 71 and 72 of the RERA Act. Point (d) is therefore answered partly in the affirmative.

Point (e)

50. In terms of Section 14(2) (ii) of the RERA Act, any alteration/ additions in sanctioned plans needs consent of 2/3rd allottees of the project. Admittedly, the respondent/ promoter constructed an additional floor in the building without



taking consent of the 2/3rd allottees. In addition, the building permission and sanctioned layout with respect to construction of the additional floor has not been updated on the project web page on the website.

51. In terms of Rule 3(2) (f) (iv) and (v) of the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosure on Website) Rules, 2017, it was the duty of the respondent/ promoter to disclose the proposed additional floor to the sanctioned layouts at the time of registration of project with Goa RERA which the respondent/ promoter has failed to do so.
52. The number of flats in the project has increased from 40 nos. to 48 nos. i.e. eight more allottees will now be sharing the common land, common amenities and common areas in the project. Due to such increase in the number of flats, the project has become more crowded than earlier envisaged. The common facilities which were to be enjoyed between 40 flat residents will now be shared between 48 flat residents.
53. In this changed scenario, the applicants/ complainants for violation of Section 14 (2) (ii) of the RERA Act have sought compensation of ₹5.00 Lakhs for additional ownership interests being created and lowering of ownership share in the property developed by the respondent/ promoter. For this violation under Section 14(2)(ii) of the RERA Act, the applicants/ complainants shall be entitled to compensation of ₹2,00,000/- (Rupees Two Lakhs only) under

Sections 19(4) read with Sections 71 and 72 of the RERA Act. Point (e), is therefore, answered partly in the affirmative.

Point (f)

54. Section 4 (2) (h) states as under:-

“4. Application for registration of real estate projects.-

(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority. (2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

(a)..

(b)..

(c)..

(d)..

(e)..

(f)..

(g)..

(h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any;

55. In terms of the above section of the RERA Act and the Model Form of Agreement, it is the duty of the respondent/ promoter to mention the carpet area of the flat in the agreement for sale which is as mentioned at the time of the



project registration. The respondent/ promoter is also duty bound to provide information about the carpet area to the applicants/ complainants at a time of booking of the flat. The carpet area of the unit is required to be mentioned on the Goa RERA project web page even if the agreement for sale was executed before the applicability of the RERA Act. The said disclosures are required in terms of the Goa RERA Registration Rules. In the present case, the agreement for sale between the applicants/ complainants and the respondent/ promoter has been entered into after the applicability of the RERA Act in the State of Goa.

56. It can be noticed that the respondent/ promoter has disclosed only the super built up area in the agreement for sale and has also not provided this information on the Goa RERA project web page.
57. As additional flats has been created on the additional floor by the respondent/ promoter in the said project, the loading factor of the common areas and open terraces which are apportioned on the built up areas of the applicants/ complainants flat, for deriving the super built up area of the flat i.e. 96 sq. mtrs., has been lowered. The applicants/ complainants have thus sought compensation of ₹5,00,000/- (Rupees Five Lakhs only) for violation of Section 4(2)(h) for lesser area now being received than as mentioned in the agreement for sale. The applicants/ complainants in the circumstances would be entitled to compensation of ₹1,00,000/- (Rupees One Lakh only) under Section 19(4) read

and filed affidavit in evidence and written arguments on 05.06.2023 as well as application for amendment of the claim for compensation. On 16.06.2023, respondent/ promoter filed reply to the application for amendment. On 05.07.2023 respondent/ promoter filed affidavit in evidence. On 25.07.2023 and 02.08.2023 respondent/ promoter sought time and filed written arguments on 11.08.2023. On 28.08.2023, opportunity was given for settlement between the parties. On 13.09.2023, oral arguments were heard. On 18.09.2023, the applicants/ complainants filed application furnishing verification to the amendment application. The matter stands disposed of on 29.09.2023.

In the result, I pass the following:-


ORDER

- a) The claim for compensation filed by the applicants/ complainants in Form 'B' under Sections 12, 14, 18 and 19 read with Section 71 of the RERA Act is partly allowed.
- b) The respondent/ promoter is liable to pay to the applicants/ complainants compensation of ₹1,00,000/- (Rupees One Lakh only) for incorrect and false statement of amenities under Section 12 read with Sections 19(4), 71 and 72 of the RERA Act within 60 (sixty) days from the date of this Order.
- c) The respondent/ promoter is directed to pay to the applicants/ complainants compensation in the amount of ₹2,00,000/- (Rupees Two Lakhs only) under Section 19(4) read with Sections 71 and 72 for violation of Section 14 (2)



- (ii) of the RERA Act for alteration of the sanctioned building plan and construction of one additional floor without consent of the 2/3rd allottees of the project within 60 (sixty) days from the date of this Order.
- d) The respondent/ promoter is directed to pay to the applicants/ complainants compensation in the amount of ₹1,00,000/- (Rupees One Lakh only) under Section 19(4) read with Sections 71 and 72 for violation of Section 4 (2) (h) of the RERA Act within 60 (sixty) days from the date of this Order.
- e) The respondent/ promoter is directed to pay to the applicants/ complainants compensation amounting to ₹30,000/- (Rupees Thirty Thousand only) under Section 19(4) read with Sections 71 and 72 of the RERA Act towards legal costs within 60 (sixty) days from the date of this Order.
- f) The counter claim of the respondent/ promoter to recover the loss as compensation from the applicants/ complainants for delayed payment of pending dues and consideration along with statutory interest from the date it was due stands dismissed.
- g) In default, the respondent/ promoter shall be liable to pay to the applicants/ complainants the said amounts of compensation under clauses (b) to (e) 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 applicants/ complainants on the aforesaid compensatory amounts under clauses (b) to (e).


29/9/2023
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA