



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA

www.rera.goa.gov.in

Tel: 0832-2437655; e-mail: goa-rera@gov.in

F.No.3/RERA/Complaint(274)/2021/ 701

Date: 28/09/2022

Mr. Paul Navel Remigio Fernandes and

Rushila Maria Fatima Fernandes,

H.No. 948, Tarchi Bhatt,

Siolim, Bardez Goa-403517.

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Complainants

V/s

Expat Projects and Development Pvt Ltd

Represented through its Managing Director Mr Santosh Shetty,

Address 1: Carlton Towers No. 1, A wing ,

3rd Floor, Unit No. 301-314,

No. 1 Old Airport Road, Bangalore Karnataka-403107

Address 2: VIDA Phase 2, Survey No. 20

sub division no.1, L PART,

Opp. Shiva Temple, Bainguinnim,

Tiswadi, North Goa-403107.

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Respondent

ORDER

(Dated 28.09.2022)

This order disposes of the complaint filed under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act'), wherein the complainants have prayed for the following reliefs:-

- i) Refund of all the amounts paid till date and calculated as per the current value of the amount (inflation loss) with 12% plus 2% interest under signed Option Letter in 2016 under the provision of Section 13(1)(2) of the said Act read with Rule 10(1) (2) 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.
 - ii) Compensation
 - iii) Revocation of all the three extensions granted to the respondent, which according to the complainants are unlawful and in contravention of Section 6 of the said Act.
2. It is the case of the complainants that the complainants executed agreement for sale registered on 22.12.2017 for the purchase of an apartment bearing no. B 23-203 in the project Expat Vida Phase two at Bainguinnim, Tiswadi North Goa for the total consideration of ₹37,90,000/- (Rupees Thirty Seven Lakhs Ninety Thousand only), out of which according to the complainants they have paid an amount of ₹30,85,240/- (Rupees Thirty Lakhs Eighty Five Thousand Two Hundred Forty only). The complainants in the complaint as well as in the rejoinder have given in detail various acts of fraud and cheating on the part of the respondent. According to the complainants the agreement for sale registered on 22.12.2017 is a one sided draconian agreement and in violation of the provisions of the said Act. According to the complainants the three extensions for registration of the project granted by this Authority to the respondent for the project are illegal and liable to be revoked/ cancelled. The complainants have given in detail various unlawful activities of the respondent and have submitted that various material documents of the respondent are forged. It is also stated that no regular



progress reports have been uploaded on the website of the Authority. Various case laws have been relied upon by the complainants for the aforesaid reliefs.

3. In the reply, the respondent has submitted that there is neither any deliberate default nor any criminal intent of defrauding any of the customers; that the respondent has given bonafide reasons for the delay in completion of the project in the application for extension of registration; that the respondent is continuing with the work at site inspite of the defaults of payments by the customers and shall complete the project within the time limit and that any adverse order will put all the customers in jeopardy as the project will face financial constraints.

4. According to the respondent, all the necessary details of the project and the concerned persons are uploaded on the RERA website; that the format of the agreement is uploaded on the RERA site and it is in consonance with the said Act; that as per the RERA requirements and as per the project policy, the respondent has given detailed inspection of all the documents to the allottees/complainants before executing the agreement for sale and banks have disbursed loans to the customers based on the authenticity of the project documents and that the complainants took a detailed inspection of the title/ plans and project documents from time to time for the purchase of flat no. B 23-203. It is stated that as per clause 9 of the agreement for sale under the heading "Allottees Declarations" it is mentioned that the owner has made full and true disclosure to the allottees about the title and the use of TDR and that it is accepted and declared by the allottees/ the complainants herein that the owner /developer called upon the complainants to take detailed search about the project. According to the respondent, the



complainants took a detailed inspection of all the documents before executing the agreement for sale including approved plans.

5. According to the respondent, there are no issues about the title of the property. It is stated that the option letter clearly states that the respondent is planning to develop property comprising of the land, totally admeasuring 37.500 sq. mts. in the proposed project and when the respondent registered the project in RERA the final area of 28.423 sq. mts. was uploaded on RERA website and the said area was also mentioned in the agreement for sale pertaining to the said unit as follows:-

“An area admeasuring 37.500 sq. mts. of a larger property was sold by Melba Lima Britto and Jose Filipe Pegado Braganza and his wife Wilma Jaques Branganza sold to Prithvi vide sale deed dated 20-Oct-1994 and sold on 19-Apr-1996.

Agreement to sale dated 18-Aug-2015 Prithvi consultant Pvt. Ltd. and M/s Unicorn Owners agreed to sell, transfer, convey and assign the said land to the respondents.

The said agreement of sale was followed by supplementary agreement dated 7th Feb 2017 and agreed to sell an area admeasuring about 28.423 sq. mts. to the respondents.”

6. According to the respondent, it has engaged qualified experts like Architect and Structural consultants and therefore deny the allegations of the complainant regarding them. It is stated that there is no merit in the



allegations and even otherwise the said experts are not made party in the present proceedings.

7. Regarding the issue of third party rights, the respondent submitted that under Section 15(1) of the said Act the respondent is entitled to create third party rights subject to the written consent from the two-third allottees except the developer/ promoter and under clause 8 heading "loan" of the said agreement for sale it is mentioned that the allottees will give consent to such an arrangement and under clause 8 (d) the developer shall keep the allottees indemnified under such arrangement and further in clause 8 (e) it is mentioned that such arrangement shall not impact the title of the allottees concerning the purchased apartment/ flat.
8. The respondent states that the project cannot be construed as per the Government definition of the "Affordable Housing Project", especially when such project includes art amenities and high quality construction like club house, swimming pool, landscape gardens etc. and when the project is not approved as an affordable housing project under the concerned scheme.
9. According to the respondent, when the project offer was floated, RERA Act was not in effect and a down payment of 20% was part of the initial payment schedule, however post enforcement of the RERA Act, the payment schedule was revised to align with the said Act regarding the norms of the payment schedule and that all the payment schedule comply with the said Act. It is further stated that the amount paid by the complainant stage wise is not more than 25% of the total consideration of the apartment and that all the payments are as per the payment schedule attached to the payment plan of



the registered agreement for sale. The respondent has denied that the agreement for sale is not in conformity with the said Act.

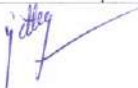
10. It is stated by the respondent that the Project Application Form duly signed by the complainant provided a thirty days window to the customers to evaluate the project and cancel with a full refund.
11. According to the respondent the project got delayed for the circumstances beyond its control like lockdowns, persistent defaults of payments by many customers, delay in giving consent by the customers to bring in a development partner. It is stated that the intention of the respondent to complete the project within the extended time is bonafide.
12. Regarding refund of the amount it is stated that if the same is allowed, it will only over burden the respondent who is already "cash strapped" putting the whole project in jeopardy and that therefore any order of refund will have adverse effect on the existing customers. It is stated that the respondents have carried out work of more than ₹16 crores and out of which payment of about ₹7 crores is yet to be received from the defaulting customers. It is stated that any order of refund and/or revocation of registration will have adverse effect on 370 customers of the said project. It is stated that extension is granted by this Authority for completion of project by 31st December, 2023 and that the respondent is doing the construction with bonafide intention to meet the target.
13. Rejoinder has been filed by the complainants to the said reply of the respondent and in the said rejoinder, the complainants have reiterated various violations of the provisions of RERA Act, misrepresentation, fraud



and cheating done by the respondent and that the respondent is not the owner of the land on which the development is being claimed by the respondent. According to the complainants the construction of the project will never be completed.

14. Documents have been filed by the parties. Written submissions have been filed by both the parties. The Ld. Advocate for the complainant relied upon various rulings i.e. case of DLF Gurgaon home Developers bearing no. 13 and 21 of 2010 and case no. 55 of 2012; “pioneerer Urban Land and Infrastructure Ltd. and another vs. Union of India and others” WP (C) No. 43/2019; case reported in 2(1994) 1SCC 243 and 3 (2018) 5 SCC 442; “M/s Newtech Promoters vs. The State of Uttar Pradesh” decided on 11.11.2021; “Ms. Monica Agarwal and another vs. Forum Homes Pvt. Ltd.” decided by the Maharashtra Real Estate Appellate Tribunal on 04.05.2022; PSA Impex Pvt. Ltd. vs. Real Estate decided on 09.03.2021 and the ruling of the apex court in “Amrapali-Bikram Chatterjee and others vs. Union of India and others” WP (C) 940 of 2017. Oral arguments were heard from Ld. Advocate A. Tirodkar for the complainants and Ld. Advocate Shri Amit Palekar for the respondent.
15. After going through the entire records 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 complainants are entitled for the refund of the amount as per Section 18	In the Affirmative.



	of the said Act?	
2.	Whether this Authority can declare the three extensions for registration granted to the respondent as illegal?	In the negative.
3.	Whether the complainants are entitled to have the registration of the project revoked in the instant case?	In the negative.
4.	Whether the complainants are entitled for the compensation in the instant case?	To be decided by the Adjudicating Officer under Section 71 of the said Act.

REASONS

Point No. 1

16. The agreement for sale between the complainants and respondents which were duly registered on 22.12.2017 prevails over all the previous documents executed between the parties. Though in the complaint, the complainants have mentioned that the complainants were “induced and forced” to sign the said agreement, the manner of forcing the complainants to sign the same is not established in the instant case and secondly the said agreement for sale is never challenged by the complainants before the Civil or Criminal Court. Moreover, though the complainants have mentioned that false information has been given in the said agreement for sale regarding ownership of land etc. this Authority has no jurisdiction to decide the ownership of land and/or to declare the said agreement for sale as illegal and therefore null and void. Thus the complainants cannot challenge the legality of the said agreement for sale before this Authority. Before this Authority, both the parties are

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bound by the said agreement for sale which is duly registered before the Sub Registrar on 22.12.2017.

17. In the said agreement for sale it is clearly mentioned in para 4 (j) that “The owner shall complete the construction of this project comprising of the said unit as agreed to herein and shall deliver possession thereof, to the purchaser, on or before June 2021, after the issuance of completion certificate by the architect of the project and/or from local authority. In case of delay in the above mentioned date, the developer shall be liable to pay the penalty to the purchaser @ SBI base lending rate plus 2% per annum from the date of default till the date of actual hand over.”
18. Thus, the date of possession of the said unit as mentioned in the agreement for sale is on or before 30th June 2021.
19. It is also material to note that any term/ recital/ condition mentioned in the said agreement for sale which is contrary to the provisions of the said Act and therefore not in consonance with the statute cannot be taken into consideration.
20. The respondent has failed to give possession of the said units as per the due date of possession mentioned in the said agreement for sale. Therefore Section 18 of the said Act which is reproduced herein below is squarely attracted in the instant case:-

“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.”

21. Thus the respondent is liable to return the amount received by the respondent from the complainants along with the interest as prescribed under Rule 18 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017 as the complainants wish to withdraw from the said project. The aforesaid Rule 18 is reproduced hereunder:-

“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.”

22. In the reply the respondent has stated that the delay in the completion of the project was due to circumstances beyond the control of the respondent and that the respondent will complete the project before the extended period of registration granted by this Authority. It is also stated that in case the refund



is given to the complainants, the respondent will suffer financial strain and it will have adverse effect on the project and also on other customers who are about 370 in number. There is no merit in the aforesaid argument of the respondent since Section 18 of the said Act gives rights to the complainants to ask for return of the amount from the respondent in case the complainants wish to withdraw from the project. In this regard the Hon'ble Supreme Court in the case of "**M/s Newtech Promoters and Developers Pvt Ltd. vs. State of UP and others**" in civil appeal no.(s) 6745-6749 and 6750-6757 of 2021 has clarified that "**if the promoter fails to give possession of the apartment, 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 grounds 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 complainants under the said Act.

23. The complainants have stated in their complaint that they have paid a total amount of ₹30,85,240/- (Rupees Thirty Lakhs Eighty Five Thousand Two Hundred Forty only) to the respondent in respect of the unit B 23-203 against the total consideration of ₹37,90,000/- (Rupees Thirty Seven Lakhs Ninety Thousand only). **It is very material to note that in the reply to the instant complaint, nowhere the respondent has denied the aforesaid amount of ₹30,85,240/- which the complainants claimed to have paid to the respondent by mentioning any different specific amount therein.** The respondent is liable to return the aforesaid amount along with the interest in the instant case.

24. Chapter III of the said Act gives details of the functions and duties of the promoter. Section 11 (4)(a) states as follows:-

“11(4) The Promoter shall-

- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder **or to the allottees as per the agreement for sale,** or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”(emphasis supplied)

From the aforesaid Section 11(4) (a) it is clear that the promoter is responsible for all obligations, responsibilities and functions under the provisions of the said Act/Rules/ Regulations or **to the allottees as per the**

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agreement for sale. Thus, the promoter is bound by the terms, recitals and conditions as mentioned in the agreement for sale.

25. Even under Section 18 of the said Act (supra), the complainant is entitled for the return of amount and compensation only if the promoter fails to complete or is unable to give possession of an apartment, plot or building “in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified in the said agreement for sale.” Thus, if the promoter does not give possession of an apartment, plot or building, as per the terms of the agreement for sale or as per the date specified therein, the cause of action accrues in favour of the complainant for the return of amount and compensation.
26. **The cause of action accrued in favour of the complainants and against the respondent on 30th June 2021 on which date the respondent was liable to give possession of the apartment to the complainants.** Thus the date from which the interest on the consideration amount paid by the complainants is to be calculated is the date when the cause of action accrued in favour of the complainants. Therefore the prescribed interest as per the aforesaid Rule 18 starts running from 30th June 2021 on the consideration amount paid by the complainants to the respondent. As stated above, as per the aforesaid Rule 18, 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 comes to 10.00% per annum. Hence, the respondent is liable to pay to the complainants 10.00% per annum interest for every month of delay to the complainants on the total amount of ₹30,85,240/- (Rupees Thirty Lakhs



Eighty Five Thousand Two Hundred Forty only) paid by the complainants from the date of delivery of possession i.e. from 30th June 2021 as mentioned in the agreement for sale till the actual return of the said amount to the complainants. Thus the instant point is answered in the affirmative.

Point No. 2

27. According to the complainants the three extensions for registration granted by this Authority to the respondent are in contravention of Section 6 of the said Act and hence are illegal. However it is material to note that this Authority cannot set aside its own orders granting extensions to the respondent. The complainants have not challenged the said extensions before the higher authorities/ Appellate Tribunal. This Authority has no jurisdiction to declare its own orders as illegal nor can set aside its own orders and therefore, the rulings relied upon by the complainants are not attracted before this Authority. Hence, the instant point is answered in the negative.

Point No. 3

28. Various grounds have been given in detail by the complainants to revoke the registration of the project under Section 7 of the said Act. In this regard it is material to note that there are various other complaints filed by the allottees against the respondent herein in respect of the same project where the allottees have not prayed for the revocation of the registration of the project but have prayed for other reliefs. In some of the complaints against the respondent herein for the same project, the parties have arrived at amicable settlement. According to the respondent, there are about 370 allottees and that the respondent has carried out work of more than Rs.16 crores. Thus taking into consideration the fact that there are many other allottees in the



said project, any order of revocation of registration of the said project will have direct bearing/ impact on the rights and interests of the other allottees. Hence, for the relief of revocation of registration of the project, it was incumbent on the part of complainants to make all other allottees of the said project as parties in the instant complaint. In the absence of the other allottees of the project in the instant complaint, the aforesaid relief of revocation of registration of the said project cannot be considered by this Authority. Hence, the rulings relied upon by the complainants are not attracted in the instant complaint. Therefore, the instant point is answered in the negative.

Point no.4

29. Under Section 71 of the said 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 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 refund the amount of ₹30,85,240/- (Rupees Thirty Lakhs Eighty Five Thousand Two Hundred Forty only) to the complainants within two months from the date of this order.

Further the respondent is directed to pay 10.00 % per annum interest (present lending rate of interest by SBI which is 8.00 % per annum plus two percent) for every month of delay to the complainants on the aforesaid



amount paid by the complainants from 30th June 2021 till the date of actual payment of the aforesaid refund.

Under Section 61 of the said Act, if any promoter contravenes any other provisions of the said Act, other than that provided under Section 3 or Section 4, or the Rules or Regulations made thereunder, he shall be liable to a penalty which may extend upto five percent of the estimated cost of the real estate project as determined by the Authority. In the instant case, the promoter has not discharged his obligations, responsibilities and functions as per the agreement for sale registered on 22.12.2017 and hence is liable to penalty under Section 61 of the said Act. Taking into consideration the facts and circumstances of the case, penalty of ₹1,00,000/- (Rupees One Lakh only) will serve the ends of justice. Hence, the promoter/ the respondent is directed to pay the penalty of Rupees One Lakh 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 said 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.

Vijaya D. Pol
28/7/2022
(Vijaya D. Pol)
Member, Goa RERA