



## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (78)/2022 / 242

Date: 30/03/2023

### BEFORE THE ADJUDICATING OFFICER

**Archana Ashok Amshekar,**

H.No. 10/A Ashray Ward No. 8,

Opp. Maruti Temple, Valpoi,

North Goa, 403506.

.....Applicant/Complainant

*Versus*

**M/s Rehan construction, Builder and Developers**

**(A Partnership firm of Mr. Khaja Shaikh and Ms. Sharifa Shaikh)**

Flat no. S-1, 2<sup>nd</sup> Floor, D'Souza Apartment,

Nagamasjid, Curti, Ponda, Goa, 403401.

.....Respondent

Learned Advocate C. Velingkar for the Applicant.

Learned Advocate Vandana Jog for the Respondent.

### ORDER

(Delivered on this 30<sup>th</sup> day of month of March, 2023)

The present proceedings have arisen as a corollary to the complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 filed by the applicant/complainant against the respondent bearing complaint no. 3/RERA/Complaint(254)/2021.

  
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2. The above said complaint was disposed off in favour of the applicant/complainant vide Order dated 21.10.2022 of the Goa Real Estate Regulatory Authority for short 'Goa RERA'. The said Authority directed the respondent as under:-

“ a) Respondent is directed to complete the project within 04 months and deliver the possession of the flat to the complainant accordingly.

b) For the purpose of determining the compensation, as requested by the complainant, the matter is referred to Adjudicating Officer under Section 71 of the said Act.”

3. The applicant/ complainant has filed her claim for compensation in Form 'B' at exhibit 126/c.

4. The respondent filed reply to the claim for compensation at exhibit 256/c.

5. Heard arguments. Ld. Advocate C. Velingkar argued for the applicant/complainant and filed written submissions on behalf of the applicant/complainant at exhibit 270/c. Ld. Advocate Vandana Jog argued for the respondent and filed written submissions on behalf of the respondent at exhibit 280/c.

6. The point for determination and my finding to the same is as under:-

<b>Point for determination</b>	<b>Finding</b>
<i>Whether the applicant/ complainant is entitled to be compensated by the respondent?</i>	<i>In the affirmative as per order.</i>





## REASONS

7. The case of the applicant/complainant is that by an Agreement for Construction Cum Sale dated 21.09.2016 the applicant had agreed to purchase a flat being flat no. F-101, admeasuring 119.08 sq. mtrs. situated on the first floor of the building 'Anwar Residency', being constructed by the respondent on the plot of land admeasuring 837 sq. mtrs. surveyed under survey no. 7/4 of the Village of Valpoi, situated at ward Masordem in Sattari Taluka along with undivided proportionate right to the land beneath the building.
8. Out of the total consideration amount of ₹20,00,000/- (Rupees Twenty Lakhs only), the applicant/complainant has paid the respondent a sum of ₹15,00,000/- (Rupees Fifteen Lakhs only) which works out to 75% of the total consideration amount. In terms of the said agreement the respondent was required to hand over the possession of the said flat on or before 21.09.2019. The respondent has completed only the outer structure of the building. No internal work has been done. The completed work is just about 40%. The respondent started the work at a slow pace after the applicant/ complainant approached the Goa RERA. However, the respondent has abandoned the same once again after two months. The site is lying unattended for the last more than six months.
9. In the reply, the respondent has attempted to justify the delay by blaming the Valpoi Municipal Council for not having renewed the construction license, due to which the construction could not be completed.
10. In terms of the said Agreement, the possession of the said flat was to be handed over on or before 21.09.2019. Despite the said Order dated 21.10.2022 passed by the Hon'ble Goa RERA directing the respondent to complete the project and deliver possession of the said flat to the applicant/complainant, the respondent has failed to do so till date and therefore the applicant/complainant is entitled to be suitably compensated for the same.



11. Ld. Advocate C. Velingkar for the applicant/ complainant in support of the applicant's case has placed reliance in the case of Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors. decided on 11.11.2021 (MANU/SC/1056/2021 and in the case of Pankaj Indradev Yadav Vs. Uday Ghanshyam Naik decided on 16.11.2022(MANU/RR/1235/2022).
12. Section 18(3) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act') states that wherein the promoter fails to discharge any obligation under the Act or the Rule or Regulation framed thereunder or in accordance with the terms and conditions of the Agreement for Sale, the Promoter shall be liable to pay "such compensation" to the allottees, in the manner as prescribed under the Act.
13. The Ld. Advocate for the respondent has submitted that the delay in handing over possession was on account of non-renewal of construction license by the Valpoi Municipal Council. In the case of "**M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors. dated 11.11.2021**" in civil appeal no.(s) 6745-6749 and 6750-6757 of 2021, the Apex 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).
14. Thus, the aforesaid ground for delay in delivery of possession as given by the respondent, will not come to the rescue of the respondent for legal liabilities under the said Act and corresponding legal rights accrued to the complainant under the said Act.
15. In the present case, it is not disputed by the respondent that applicant has paid an amount of ₹15,00,000/- (Rupees Fifteen Lakhs only) to the respondent. As





stated earlier, despite directions by the Hon'ble Goa RERA to hand over possession of the said flat to the applicant/ complainant within four (04) months of Order dated 21.10.2022, the respondent has failed to do so.

16. The broad factors to be considered while adjudging compensation have been provided under Section 72 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, whenever 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.”

17. 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.”

18. In the light of the above rulings and as a result of the default on part of the respondent of failing to hand over possession of the said flat to the applicant/complainant, despite the said Order dated 21.10.2022, the applicant/complainant has sustained financial losses and is entitled to be suitably compensated by way of interest, compensatory cost towards inconvenience, mental torture and agony caused to the applicant/ complainant and for costs towards the present proceedings.
19. Accordingly, the applicant/complainant is entitled to and the respondent is liable to pay the applicant/ complainant interest for every month of delay till the handing over of the possession of the said flat. 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 is 8.70 per annum. Hence, the respondent is liable to pay interest at the rate of 10.70% p.a. for every month of delay to the applicant/ complainant by way of compensation on the aforesaid amount of ₹15,00,000/- (Rupees Fifteen Lakhs only) paid by the applicant/ complainant from the date of delivery of possession i.e. 21.09.2019 as mentioned in the said agreement for sale with the applicant/ complainant, till the date of handing over of the possession of the said flat to the applicant/ complainant.


20. The respondent is further liable to pay compensation to the applicant/ complainant of ₹50,000/- (Rupees Fifty Thousand only) towards inconvenience, mental torture and agony caused to the applicant/ complainant for the delay in handing over possession of the said flat.
21. The applicant/ complainant is also entitled to be paid cost of ₹50,000/- (Rupees Fifty Thousand only) by the respondent towards the present proceedings.
22. The point for determination, is accordingly, answered in the affirmative.
23. Before parting with this Order, it is necessary to mention that the claim for compensation in Form 'B' was filed by the applicant/ complainant on 09.01.2023. The respondent filed reply on 07.02.2023. The applicant/ complainant filed written submissions on 17.02.2023. The respondent filed written submissions of 23.02.2023. Oral arguments were advanced on 09.03.2023 and the matter has been disposed off on 30.03.2023.



In the result, I pass the following:-

**ORDER**

- a) The respondent is directed to pay the applicant/ complainant compensation by way of interest on the amount advanced of ₹15,00,000/- (Rupees Fifteen Lakhs only) at the rate of 10.70 % p.a. from 21.09.2019 till the date of handing over of possession of the flat to the applicant/ complainant for violation under Section 18(3) read with Section 71 of the Real Estate (Regulation and Development) Act, 2016.
- b) The respondent is also liable to pay compensation of ₹50,000/- (Rupees Fifty Thousand only) towards inconvenience, mental torture and agony caused to the applicant/ complainant under Section 71 of the Real Estate (Regulation and Development) Act, 2016 within 30 days of this Order. In default, the respondent shall be further liable to pay the applicant interest on the said amount at the rate of 10.70 % p.a. till the date of realisation.
- c) The respondent is also liable to pay costs quantified at ₹50,000/- (Rupees Fifty Thousand only) to the applicant/ complainant for the present proceedings under Section 71 of the Real Estate (Regulation and Development) Act, 2016 within 30 days of this Order. In default, the respondent shall be further liable to pay the applicant interest on the said amount at the rate of 10.70 % p.a. till the date of realisation.

  
30/03/2023  
(Ashley L.C. Noronha)  
Adjudicating Officer,  
Goa RERA