



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

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No.3/RERA/Complaint (316)/2022/595

Date: 24/08/2022

Mrs. Mary A. Custodio D'Souza,

H.No. 916, Pequeno Peddem,

Anjuna, Bardez, Goa-403509.

..... **Complainant**

V/s

M/s Joma Builders

Mr. Joaquim Mariano D'Souza,

Flat No.G/1, Ground Floor,

'MARYLAND APARTMENT',


Abbaxio Vaddo, Verla, Canca,

Bardez-Goa, 403510.

..... **Respondent**

ORDER

(Dated 23/08/2022)

 This is to dispose of the complaint dated 27.05.2022 filed under Section 31 of The Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act'). Complainant is allottee in the project name '**JOMA'S MARTIN NEST**' which is being constructed by the respondent/promoter through its proprietorship concern 'M/s Joma Builders'. An agreement dated 17.03.2015 was executed between the complainant and respondent where respondent agreed to construct an apartment no. F/3 on First Floor in Block A of the project 'Joma's Martin

Nest' for a consideration of Rs. 31,92,750/- (Rupees Thirty One Lakhs Ninety Two Thousand Seven Hundred Fifty only) . The suit property is situated in the land bearing Survey no. 21/7 of Village Canca, Bardez Taluka. An amount of Rs. 10,00,000/- (Rupees Ten lakhs only) was paid by the complainant to the respondent as booking amount. As per this 'sale agreement', the possession of the property was to be delivered to the complainant before November, 2015. Since the project was not likely to be completed within the initial period of November, 2015, a second agreement dated 27.10.2015 was executed between the complainant and respondent where it was agreed that delivery of the possession of the said apartment would be handed over to the complainant before May 2016. However, the possession of the apartment has not been delivered to the complainant till date. The complainant so far has paid Rs. 28,00,000/- (Rupees Twenty Eight Lakhs only) out of total sum of Rs. 31,92,750/- (Rupees Thirty One Lakhs Ninety Two Thousand Seven Hundred Fifty only). Hence, complainant has requested for refund with interest and compensation.

2. Respondent has filed reply dated 29.06.2022 before this Authority wherein he has denied the claim of the complainant. Again, complainant has filed affidavit in rejoinder dated 29.07.2022 before this Authority. Both the reply of the respondent as well as affidavit in rejoinder on behalf of the complainant has been taken on record. Both the parties were heard

on 12.08.2022 and Ld. Advocates for the parties argued the case at length.

3. The complainant has claimed the refund of the amount with interest and compensation on various grounds. The Ld. Advocate for the complainant pleaded that respondent has misguided the complainant in respect of title of the land where the project is being constructed. He submitted that the Land Development Agreement agreed between the respondent and owners of the land is not proper as in Form no. I and XIV of the land records, names of different owners are shown. He pleaded that as per Section 18(2) of the said Act, allottees are entitled to claim the compensation at any stage and the claim for compensation shall not be barred by the limitation provided under any law. The Ld. Advocate for complainant further pleaded that though the apartment was to be delivered by May 2016 in terms of second agreement, the same has not been delivered so far. Hence on this ground, the complainant is entitled for refund of entire amount with the interest. In addition to this, complainant has claimed various other compensation on different grounds. It was also pointed out by Ld. Advocate for complainant that respondent has not registered the project under the Act. According to him, at the time of commencement of the Act, the said project was ongoing project as completion certificate was not obtained by the respondent and hence it was his duty to register the said project under the

said Act in terms of Section 3 of the Act. Since the respondent has not registered the project with the RERA Authority, he is liable for penalty under Section 59(1) of the Act.

4. The Ld. Advocate for the respondent contested the claims made by complainant. He reiterated that respondent has obtained all the clearances from various authorities and the issue raised by Ld. Advocate of the complainant regarding title of land is without any base. He pointed out that project could not be completed with the given scheduled as the situation were beyond the control and on account of restrictions from the concerned local and government authorities and more particularly on account of the on-going covid-19 pandemic, the project could not reach to its completion. In respect of registration of the project under RERA Act, the Ld. Advocate for respondent submitted that respondent is taking steps for registration of the project under the Act.

5. I have gone through the records and proceedings of the case. There are 3 issues to be determined in this case:-

a) Refund of the principal amount of Rs.28,00,000/- along with the interest.

b) compensation on different grounds including the ground of defective title of the land and

c) Non- registration of the project under RERA.

Refund along with interest

6. Admittedly, the possession of the apartment was to be delivered on or before May, 2016 as per the second agreement dated 27.10.2015 executed between complainant and respondent. Respondent has failed to do so. The ground taken by respondent of corona virus is not tenable as the corona virus came in February-March, 2020 whereas apartment was to be delivered to the complainant four years earlier before May 2016. It is clear violation of the terms of the agreement which is dealt under Section 18(1) of the said Act. For the convenience, the provision of Section 18(1) is transcribed below:-


“18. Return of a 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.”



From above provision, it is clear that complainant is entitled for refund along with interest. As per Rule 18 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate agent, Rates of interest and Disclosures on website) Rules, 2017, the rate of interest payable by the promoter shall be State Bank of India highest marginal cost of lending rates plus 2%. At present the said lending rate of SBI is 8% per annum. Hence, the applicable rate of interest in this case will be 10% per annum.

7. The complainant have paid the amount of Rs.28,00,000/- in 17 installments which has been duly acknowledged by the builder/promoter. The amounts have been received by the promoter on the following dates as per receipts issued by him to the complainant:-


Sr.No.	Date	Amount
1.	04.03.2015	Rs. 1,00,000/-
2.	09.03.2015	Rs.5,00,000/-
3.	17.03.2015	Rs.4,00,000/-
4.	16.04.2015	Rs.75,000/-
5.	18.05.2015	Rs.75,000/-
6.	16.06.2015	Rs.75,000/-
7.	17.07.2015	Rs.75,000/-
8.	25.08.2015	Rs.75,000/-
9.	01.10.2015	Rs.75,000/-
10.	27.10.2015	Rs.6,00,000/-
11.	06.11.2015	Rs.4,00,000/-
12.	17.12.2015	Rs.50,000/-
13.	23.01.2016	Rs.50,000/-
14.	18.02.2016	Rs.50,000/-
15.	15.03.2016	Rs.50,000/-
16.	26.04.2016	Rs.50,000/-
17.	06.10.2016	Rs.1,00,000/

Hence, the promoter/respondent is liable to pay the refund of Rs. 28,00,000/- along with the interest @10%per annum to the complainant.

Interest will be calculated from the date of receipt of amount by the builder/promoter till the date of payment to the complainant.

compensation on different grounds including the ground of defective title of the land

8. Ld. Advocate for the complainant raised the issue of compensation. He narrated the compensation on the ground of defective title of the land. He pointed out that his case is coming under the provision of Section 18(2) of the Act. The Section 18(2) of the Act is as follows:-



“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.”

The Ld. Advocate for the respondent objected of this issue. I will not like to go on merit in respect of defective title of the land as issue of the determination of compensation itself is outside the purview of this Authority. Similarly, compensation other than defective title of the land

is also outside the purview of this Authority. Under the Act as per Section 71, power to adjudicate the cases of compensation is vested in Adjudicating Officer appointed under the Act. Section 71(1) of the Act which is as below:-

“71. Power to adjudicate.- (1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard:”

The above provision of the said Act clarifies the position of determination of compensation under the Act. Any compensation under Sections 12, 14, 18 and 19 is to be adjudicated by the Adjudicating Officer appointed under the Act,

9. The position of determination of compensation under the Act by Adjudicating Officer is further confirmed by Hon'ble Supreme Court in the recent judgement of M/s. Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Ors. Etc. in civil appeal no(s). 6745-6749 of 2021. Para 86 of the said judgement is reproduced below:-

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Section 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Section 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and

functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

Hence, the issue of compensation of all kinds raised by Ld. Advocate for the complainant is referred to Adjudicating Officer under Section 71 of the said Act for determination.

Non- registration of the project under RERA.


10. Ld. Advocate for the complainant has raised the issue of non registration of project under Section 3 of the said Act. The position was confirmed by respondent who has submitted that promoter is in the process of getting the project registered. It is mentioned that as per Section 3 of the said Act all the ongoing project at the time of commencement of the Act where completion certificate was not obtained was supposed to obtain registration under the Act after making applications to the Authority within 3 months. In this case, it is admitted position that completion certificate has not been obtained so far. The Section 3(1) of the said Act is as below:-

“3. Prior registration of real estate project with Real Estate Regulatory Authority.-

(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may

be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.”

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11. From the above observations, it is clear that respondent/promoter has violated the provisions of Section 3(1) of the Act. The punishment for non registration under Section 3 is dealt under Section 59(1) of the said Act which is as follows:-

“59. Punishment for non-registration under section3.-

(1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten percent of the estimated cost of the real estate project as determined by the Authority.”

12. Hence, as per this Section, promoter can be penalized upto 10% of the cost of the project. However, considering the submission made by the Ld.

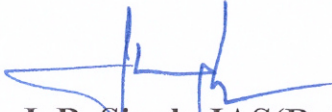
Advocate for respondent/promoter, considering the facts and circumstances of the case and considering the precedence of past cases of similar nature, I feel, a lenient view should be taken in this case as far as determination of penalty is concerned. Accordingly, I feel the penalty of Rs. 5,00,000/- to be imposed on promoter in this case.

13. In view of the discussions held in preceding paras, the following directions are issued:-

- a) Respondent is directed to refund the entire amount of Rs. 28,00,000/- paid by the complainant along with interest @10% per annum within 60 days. The interest payable will be from the date of deposit of each installment by complainant to the respondent as shown in the para 7 of this order till the date of payment by respondent or till it is recovered as per law.
- b) For the purpose of determination of compensation, the matter is referred to the Adjudicating Officer under Section 71 of the said Act as discussed in para 9 of this order.
- c) For non registration of the project within stipulated time, the penalty of Rs. 5,00,000/- is imposed on promoter/respondent which should be paid by promoter/respondent within 60 days. The promoter is also directed to obtain the registration under the Act by submitting all the relevant documents to the Authority simultaneously.

The amount of refund along with interest will be payable by promoter/respondent to complainant directly while amount of penalty shall be deposited with the Authority within stipulated time.

Order accordingly,



J. B. Singh, IAS(Retd.)
Member, Goa RERA.

To,

1. Mrs. Mary A. Custodio D'Souza,

H.No. 916, Pequeno Peddem,

Anjuna, Bardez, Goa-403509.

2. M/s Joma Builders

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