



GOA REAL ESTATE REGULATORY AUTHORITY
DEPARTMENT OF URBAN DEVELOPMENT
GOVERNMENT OF GOA

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F.No.3/RERA/Complaint(265)/2021/611

Date: 25/08/2022

Sanjay Laxman Raut,
172 Bagbandirwada Tuem,
Pernem, Goa-403512.

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Complainant

V/s

Prabhu Constructions
Proprietor Shri Venkatesh Narayan Prabhu Moni,
705 B Dempo Trade Centre,
EDC complex, Patto Panaji-403001.

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Respondent

ORDER
(Dated 25.08.2022)

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') against the promoter/respondent in respect of the project Prabhu Chamber in Mapusa. In the said complaint, the complainant has stated that he entered into an Agreement for Construction cum Sale with the project developer on 07/06/2013 and subsequently an addendum was executed on 22/12/2014 but the project is still not completed and the promoter has not handed over the same after 8 years and therefore the complainant has prayed this Authority to direct

the respondent to pay compensation and to hand over the possession of the premises. In the supplementary complaint, the complainant also prayed for interest for delayed possession.

2. The complainant has produced on record Agreement for Construction cum Sale dated 07/06/2013 and registered on 18.06.2013 referring to sale consideration of Rs.23,61,770/- towards office no. 5-FF-11/12 admeasuring 40.03 sq. mtrs. and agreeing to deliver possession within 24 months from the date of signing the agreement with further extension of 09 months. The complainant also produced on record Addendum to Agreement for Construction cum Sale executed on 23.12.2014 for increase in area of the office to 42.81 sq. mtrs. for total sale consideration of Rs. 25,25,790/- and change in office No. 5-SF/17 and 5-SF/18 on account of revision of plan. The complainant further produced on record various letters, receipts and order dated 03/09/2019 of this Authority directing the respondent to register the project under RERA. According to the complainant, the above payment includes Rs.1,24,506/- towards service tax and infrastructure tax and Rs.23,99,505/- towards principal amount of consideration.
3. Reply has been filed by the respondent wherein it is stated that the issues of water logging in the basement, non working of the lift, submerging of parking area under water, absence of electricity connection etc. have already been resolved during the pendency of the other proceedings before this Authority concerning the said project. The respondent has referred to the water proofing treatment done by the expert at the basement and further submitted that regarding the issue of removal of kiosk and provision for parking, litigation regarding the said illegal kiosk is pending before the Municipal Appellate Tribunal and on conclusion of



the said proceedings, the said illegal kiosk would be removed. According to the respondent the municipality has withheld the occupancy certificate only on the ground that the illegal kiosk is not removed, however the respondent is pursuing the matter before the Municipal Appellate Tribunal and once the occupancy is granted, the respondent would obtain the electricity connection and the transformer would be made functional.

4. Affidavits in support of their cases have been filed by both the parties. Written submissions have been filed by both the parties. Oral arguments were heard from Ld. Adv. Ms. Shilpa Raut for the complainant and Ld. Adv. Shri Ankur Kumar for the respondent.
5. After going through the entire record of the case and after hearing the arguments, the following points come for my determination

Sr.No.	Points for determination	Findings
1.	Whether the complainant is entitled for possession of the premises i.e office No. 5-SF/17 and 5-SF/18 in the aforesaid project?	In the affirmative.
2.	Whether the complainant is entitled for statutory interest on delayed possession of the said premises?	In the affirmative.
3.	Whether the complainant is entitled for the compensation?	To be decided by the Adjudicating Officer.



REASONS

Points no. 1 and 2

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

In his affidavit, the complainant has stated in para 41 that “that deliberate failure of the respondent in handing over the possession of the said units in time stipulated under the agreements makes the respondent liable not only to hand over possession of the units in the completed fashion as contained in the agreements but also fastens upon the respondent the liability to pay ongoing interest as specified under the RERA Act on the consideration paid to the respondent for the delay caused by the respondent till the actual delivery of possession thereof

7. Section 18 of the said Act is therefore, squarely applicable and is quoted below:-

“18. Return of amount and compensation.- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other



remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

8. The date of delivery of possession of the said unit is given in the agreement for construction cum sale executed on 18.06.2013 as follows:-

“3. DELIVERY, USE AND MAINTENANCE OF THE said office units:



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

9. From the aforesaid it is clear that the date of delivery of the said office units is within 24 months from the signing of the said Agreement subject to an extension of further period of 9 months and after obtaining the occupancy certificate from the Competent Authorities. In the instant case the complainant is not praying for refund of his amount and hence he is entitled for statutory interest on his paid amount from the date fixed for delivery of possession.
10. In this context it is relevant to quote **Rule 18 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosures on websites) Rules, 2017:-**

“18. Rate of interest payable by the promoter and the allottee.— The rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent:
Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use it would be replaced by such benchmark lending rates which the State Bank of



India may fix from time to time for lending to the general public.”

11. Thus, invoking Section 18 and Rule 18 of the said Act the benefit of the aforesaid statutory interest goes to the complainant, who has entered into agreement for sale with the respondent. As a consequence thereof Section 18 and Rule 18 of RERA are squarely attracted in the instant complaint.

12. The Ld. Advocate for the respondent in his written submissions as well as in oral arguments has invoked the doctrine of *force majeure* and has submitted that because of force majeure due to covid-19 pandemic, the time for handing over the possession of the said unit will have to be extended. In this regard **it is pertinent to mention that the Act takes into consideration force majeure under Section 6 only for extension of registration.** Section 6 dealing with extension of registration inter alia states that **“The registration granted under Section 5 may be extended by the Authority** on an application made by the promoter due to *force majeure*, in such form and on payment of such fee as may be prescribed.” **Thus it is clear that force majeure is only a ground for extension of registration under section 6 of the said Act.** It is significant to note that the said benefit is not available to the respondent in the instant case since in spite of the order dated 17.03.2020 passed by this Authority in the complaint filed by Mr. Sanjay Raut bearing no. 3/RERA/Completed Project (533)/2019, the respondent did not get the instant project registered and the execution proceedings for the same are pending. Moreover as held by the Apex court in the case of **“M/s Imperia Structures Ltd. Vs. Anil Patni and another” (Civil appeal no. 3581-3590 of 2020)**, “non-availability of contractual labour, delay in notifying

approvals cannot be construed to be force majeure events from any angle". In the case of **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors."** in civil appeal no. (s) 6745-6749 and 6750-6757 of 2021, the Hon'ble Supreme Court has clarified that "if the promoter fails to give possession of the apartments, plot or building within the time stipulated under the terms of the agreement, then allottee's right under the Act to seek refund/claim interest for delay is **unconditional and absolute, regardless of unforeseen events or stay orders of the court/Tribunal.**"(emphasis supplied). Thus, the aforesaid ground for delay in delivering of possession, as given by the respondent, will not come to the rescue of the respondent from legal liabilities under the said Act and corresponding legal rights accrued to the complainant under the said Act.

13. Similarly the argument of Ld. Advocate for respondent referring to the doctrine of frustration (Section 56 of the Indian Contract Act, 1872) and his submission regarding impossibility of performance of the contract is without any merit since nowhere it is the case of the respondent that the said agreement for sale is impossible to be enforced. On the contrary in the case bearing no. 3/RERA/Complaint (Comb.Prabhu Chambers)/2019, this Authority took into consideration the undertaking given by the Ld. Advocate for the respondent before the Hon'ble Bombay High Court in writ petition no. 1156 of 2021 to the effect that the respondent herein will rectify all the deficiencies in the project in question as pointed out by the Statutory Authorities in order to get the occupancy certificate which had been revoked. Moreover, in the reply the respondent has submitted that the Municipality has withheld the occupancy certificate only on the ground that the illegal kiosk of Shri Jeevan Mayekar is not removed but in this regard according to the respondent, he is pursuing the matter



before the Municipal Appellate Tribunal and once the occupancy is granted, further action will be taken by the respondent in respect of the premises in question. Thus, the doctrine of frustration of contract is not applicable in the instant case, as the defence raised by the respondent is not covered by the test of impossibility or illegality which are the pre conditions to invoke the doctrine of frustration under the Contract law. Hence, both the instant points are answered in the affirmative.

14. Regarding the issue of non registration of the project, the same is not considered in the instant complaint since in the complaint filed by Mr. Sanjay Raut bearing no.3/RERA/Completed Project (533)/2019 by order dated 17.03.2020 the respondent herein was ordered to pay penalty of Rs. 5,00,000/- and get the instant project registered and the execution proceedings regarding the same are pending. Similarly, the criminal cases pending between the parties are not relevant in the instant complaint and this Authority has no jurisdiction to deliberate on the said criminal disputes. The rulings and the other notifications relied upon by the Ld. Advocate for the respondent are also not applicable in the instant complaint, because of the reasons stated above. Further for contravention of the provisions of this Act, penalty has already been imposed on the respondent in the aforesaid complaint bearing no.3 / RERA/Complaint(Comb.Prabhu Chambers)/2019 regarding which execution proceedings are pending and hence no further penalty is imposed on the respondent in the instant case. Suffice that the direction is given to the respondent to give possession of the said units to the complainant along with statutory interest on the payment made by the complainant to the respondent. In the instant case, the complainant has paid an amount of Rs. 25,24,011/- (Rupees Twenty Five Lakhs Twenty Four Thousand Eleven only) towards sale consideration.

Point No. 3

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

In the premises aforesaid, I pass the following:-

ORDER

The respondent is directed to give possession of the office units bearing no. 5-SF/17 and 5-SF/18 to the complainant after obtaining occupancy certificate as per the terms of the Agreement for Construction cum Sale executed on 18.06.2013 and addendum thereto executed on 23.12.2014 and as per the area/ revised area mentioned in the same and with all the essentials facilities/supplies/connection and the quality of work as mentioned in the said Agreement, within two months from the date of this order.

Further, under Section 18(1) of RERA Act, the complainant is entitled and the respondent is liable to pay to the complainant interest for every month of delay till the handing over of the possession, at such rate as may be prescribed. As per Rule 18 of "The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017, the rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent. At present such Lending Rate of interest by SBI is 8.00% per annum. Adding two percent to the said interest as per Rule 18,



it comes to 10.00% per annum. Hence, the respondent is directed to pay 10.00% per annum interest for every month of delay to complainant on the aforesaid amount paid by complainant from the date of delivery of possession including extended date as mentioned in the agreement for sale with the complainant, till the handing over of the possession to complainant.

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

Vijaya
25/8/2022

(Vijaya D. Pol)
Member, Goa RERA