



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

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F.No.3/RERA/Complaint(257)/2021/ 795

Date: 31/10/2022

Mubina Bi Aziz Shaikh,

406, Kamat Towers.

EDC Complex, Patto,

North Goa, 403001.

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Complainant

V/s

1.M/s Expat Projects & Development Pvt. Ltd.,

With its Registered office at Carlton Towers No. 1, A wing,

3rd Floor, Unit No. 301-314,

No. 1 Old Airport Road, Bangalore Karnataka-560008

2. M/s Expat Projects and Development Private limited

VIDA Phase 2 located at Survey No. 20/1-L (PART),

Opp. Shiva Temple, Bainguinnim,

Tiswadi, North Goa-403107.

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Respondents

ORDER

(Dated 31.10.2022)

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

- i) Direction to the respondents to refund to the complainant an amount of ₹34,07,197/- (Rupees Thirty Four Lakhs Seven Thousand One Hundred and Ninety Seven only) which was paid by the complainant as consideration for the apartment no. E 07-103 in the project of the respondents VIDA Phase II at Bainguinnim, Tiswadi, Goa along with interest equivalent to SBI base lending rate plus two percent per annum as contracted by the respondents under clause 3(d) of the agreement to sell and further interest from the date of filing of the complaint till its realization.
 - ii) Compensation in the amount of ₹3,00,00,000/- to the complainant towards the heads of compensation/ damages with interest thereon.
2. It is the case of the complainant that she booked a two bedrooms, hall, kitchen unit by signing an Option Letter dated 17.11.2016 and that the complainant along with her husband also signed a Product Application Form dated 22.11.2016 and she was allotted apartment no. B 23-103 on the first floor in Block B 23 in the project but the respondents without her consent and knowledge changed the apartment no. to E 07-103 with different area as stated in the registered agreement to sell dated 29.12.2017.
3. It is the case of the complainant that she has paid to the respondents an amount of ₹34,07,197/- (Rupees Thirty Four Lakhs Seven Thousand One Hundred and Ninety Seven only) towards the consideration for the said apartment. It is further stated that the complainant and the respondents executed and registered an agreement to sell on 29.12.2017. The complainant has pointed out various misrepresentation made by the respondents.



4. According to the complainant, the project of the respondents was granted registration number by this Authority under certificate of registration of project which was valid till 30.06.2021, the date by which the respondents were required to hand over possession of the completed apartment/project with occupancy certificate etc. According to the complainant contrary to the mandate of Section 13 of the said Act, the respondents received from the complainant the aforesaid consideration for the said apartment.
5. It is the case of the complainant that she was not informed about the stages of the construction of the project inspite of her several requests to the respondents nor the respondents uploaded the said information on the website. According to the complainant, by email dated 06.04.2021, the respondents informed the complainant that the project will be handed over to her by 12 to 18 months from the said e-mail but this also was in violation of the respondents time limit to hand over the entire project by 30.06.2021 as mandated in the agreement for sale and ratified by Goa RERA.
6. According to the complainant, as per the schedule of payment in the agreement to sell dated 29.12.2017, the complainant has paid a total amount of ₹ 34,07,197/- for the said apartment and the respondents ought to have completed all 35 blocks of the project with all the amenities including the apartment of the complainant but the photographs taken at site reveal that the respondents have only completed the complainant's apartment block upto slab 4. It is further stated that in August 2018 the respondents sent to the complainant a cost sheet for her apartment wherein it is showed the GST calculated at 12%, which is illegal. The complainant has also raised the issue of the address of the respondents which is uploaded in RERA website.



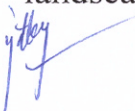
7. According to the complainant, on or about 03.02.2021 the respondents sent to the complainant a “Request to Consent and Consent Letter” under which the complainant was asked to give her consent to transfer the project to a third party promoter but the complainant declined to give the said consent as no detailed contract between the respondents and the third party was forwarded to the complainant.
8. According to the complainant, she sent a legal notice dated 14.05.2021 claiming compensation of ₹3,00,00,000/- from the respondents with 12% interest thereon, however in the reply the respondents disputed all the contentions, allegations and claims made in the said legal notice.
9. According to the complainant, since the respondents failed to complete the project by 30.06.2021, the complainant is entitled to the refund of the amount along with interest thereon along with compensation under Section 18 of the said Act. Hence, the prayers of the complainant as stated above.
10. In the reply, the respondents have submitted that the respondents have been given extension to complete the project by 31.12.2023 by this Authority and it is largely in the interest of the complainant as well as other customers that the respondents are not made to refund the consideration amount and the respondents be allowed to complete the project within the aforesaid time limit with the help of the development partner.
11. The respondents have submitted that there were various circumstances beyond the control of the respondents like covid 19 pandemic, slump in the



real estate market, delayed payments by the customers, which delayed the completion of the project and accordingly the respondents sought extensions from this Authority for completion of the project. It is therefore stated that the respondents be allowed to complete the project within the time limit given by this Authority and that refund order from this Authority will only financially burden the respondents, putting the entire project in jeopardy.

12. According to the respondents, they have already carried out work of more than ₹16 Crores out of which payment of about ₹7 Crores is yet to be received from the defaulting customers, which are about 370 in numbers. It is stated that the respondents have bonafide intentions to complete the project and therefore even after approaching this Authority, some customers have agreed for extension of 24 months to deliver the project, though the consent of the complainant/allottees to take development partner is necessary to complete the project.

13. The respondents have stated that the project being affordable cannot be construed as per government definition of “Affordable Housing Project” as such housing projects will not entail state of the art amenities and high quality of construction, which included a club house, swimming pool, landscape gardens etc. It is stated that the respondents made the said

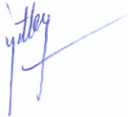


amenities available in the project and yet made the project affordable to benefit the customers. It is stated that the project is not approved as Affordable Housing Project as per government definition under Affordable Housing.

14. It is stated by the respondents that the area mentioned in the Option Letter dated 17.11.2016 was tentative and was subject to change as per the approved plans from the concerned authorities and the same was conveyed to the complainant during the booking process. It is stated that the total consideration of the flat includes consideration plus other charges under various heads and the same has been mentioned in the agreement for sale registered on 29.12.2017. According to the respondents, the complainant agreed to pay the total consideration as mentioned in schedule V of the agreement to sell subject to tax deductions and the same is reflected in the receipts received by the complainant. It is stated that an amount of ₹12,61,500/- is still outstanding with applicable penalties. It is further stated that the said agreement to sell supersedes the Option Letter dated 17.11.2016 or the letters signed between the parties. According to the respondents, when the purchase offer was floated, the said RERA Act was not in effect and a payment of 20% as initial payment was made, however, post enforcement of RERA Act, the payment schedule was revised to align with the said Act and accordingly all the payments comply with the said Act.



15. According to the respondents, the progress of the work can be ascertained at the site and also on the RERA website. It is stated that the current construction stage has been completed upto the brick work and plastering and the same has been conveyed to the complainant from time to time and further by e-mail dated 02.07.2019, all necessary information was shared with the complainant along with the architect's certificate and photographs.
16. It is stated by the respondents that the development partner is required to infuse funds to complete the project and the same will not amount to any risk to the complainant and the same is allowed under Section 15 (1) of the said Act.
17. The respondents have submitted that it is of paramount importance to the respondents that the project is completed in all aspects and delivered to the complainants and other customers.
18. According to the respondents, the complainant has paid INR 32,16,095/- towards the consideration and that the amount of ₹50,000/- was a service fee.



19. The respondents have submitted that they have recently shifted their office since the lease had ended and are in the process of updating the address on RERA website, however the respondents informed on their website as well as through e-mail to the customers, the change of address and a notice was also put up outside the previous office announcing shifting of the office with new address.
20. Written submissions were filed by Ld. Advocate A. Shirodkar for the complainant and Ld. Advocate A. Palekar for the respondents. Oral arguments were also heard.
21. 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:-

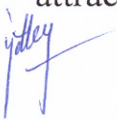
Sr.No.	Points for determination	Findings
1.	Whether the complainant is entitled for refund of the consideration amount along with the interest thereon under Section 18 of the said Act?	In the affirmative.
2.	Whether the complainant is entitled for compensation as prayed in the complaint?	To be decided by the Adjudicating Officer under Section 71 of the said Act.



REASONS

Point No. 1

22. The agreement for sale between the complainant and respondents which was duly registered on 29.12.2017 prevails over all the previous documents executed between the parties. 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.”
23. Thus, the date of possession of the said unit as mentioned in the agreement for sale is on or before 30th June 2021.
24. 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.
25. The respondents have failed to give possession of the said unit 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.”

26. Thus, the respondents are liable to return the amount received by the respondents from the complainant 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 complainant wishes 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.”

27. In the reply the respondents have stated that the delay in the completion of the project was due to circumstances beyond the control of the respondents



and that the respondents 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 complainant, the respondents 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 respondents since Section 18 of the said Act gives right to the complainant to ask for return of the amount from the respondent in case the complainant wishes 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 respondents, will not come to the rescue of the respondents from legal liabilities under the said Act and corresponding legal rights accrued to the complainant under the said Act.

28. The complainant has stated in the complaint supported by verification and affidavit that she has paid a total amount of ₹34,07,197/- (Rupees Thirty Four Lakhs Seven Thousand One Hundred and Ninety Seven only) to the respondents in respect of the said unit and the same is supported with the receipts/ documents. The respondents are liable to return the aforesaid amount along with the interest in the instant case.



29. 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**



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

30. 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.
31. **The cause of action accrued in favour of the complainant and against the respondents on 30th June 2021 on which date the respondents were liable to give possession of the apartment to the complainant.** Thus the date from which the interest on the consideration amount paid by the complainant is to be calculated is the date when the cause of action accrued in favour of the complainant. Therefore the prescribed interest as per the aforesaid Rule 18 starts running from 30th June 2021 on the consideration amount paid by the complainant to the respondents. 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 8.25% per annum. Adding two percent to the said interest as per Rule 18 comes to 10.25% per annum. Hence, the respondents are liable to pay to the complainant 10.25% per annum interest for every month of delay to the complainant on the total amount of ₹34,07,197/- (Rupees Thirty Four Lakhs



Seven Thousand One Hundred and Ninety Seven only) paid by the complainant 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 complainant. Thus the instant point is answered in the affirmative.

Point No. 2

32. 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 respondents are directed to refund the amount of ₹34,07,197/- (Rupees Thirty Four Lakhs Seven Thousand One Hundred and Ninety Seven only) to the complainant within two months from the date of this order.

Further the respondents are directed to pay 10.25 % per annum interest (present lending rate of interest by SBI which is 8.25 % per annum plus two percent) for every month of delay to the complainant on the aforesaid amount paid by the complainant 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 29.12.2017 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 respondents are 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
31/10/2022
(Vijaya D. Pol)
Member, Goa RERA