



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (382)/2023 / 1086

Date: 13 /08/2024

Mr. Nikhil G. Dhumatkar

Radhabai H.No. 1820 2

Porvorim, Bardez, Goa, 403521.

.....Complainant

Versus

Comunidade of Serula Through its managing committee

West Coast Residency

Alto-Porvorim, Bardez, Goa, 403521.

.....Respondent

Ld. Advocate Shri J. Mulgaonkar for the complainant.

Ld. Advocate Shri S. Kamat for the respondent.

ORDER

(Dated 13.08.2024)

This order shall dispose of complaint filed under section 31 of RERA Act seeking: (a) to hold respondent guilty for contravention of section 3 of the RERA Act (b) to direct respondent to deliver the possession of shop/ office and (c) to direct respondent to pay compensation with interest.

Brief facts of complainant's case:-

2. The complainant is an allottee and respondent is promoter of "Serula Comunidade Community Complex".

3. Pursuant to the advertisement given on the local newspaper by the respondent inviting public for booking shops/ offices in Serula Comunidade Community complex” proposed to be constructed by respondent in plot no. 4 of property survey no. 129/1 (part) admeasuring 2700 sq. mts. situated at Village of Penha de France, Bardez Goa, the complainant entered into an agreement dated 10.12.2012 to finance office premises bearing no. 4/16 having a super built up area of 25.96 sq. mts., situated on the second floor of the said complex for total consideration of ₹15,57,000/-.

4. The respondent undertook to construct premises within a period of 24 months and deliver premises for the use and occupation of the complainant from the date of signing of the agreement and in case of the respondent is unable to deliver possession due to war, act of God, any order notice or stay from the court etc., within another six months extended period.

5. The complainant paid substantial amount of Rs.5,54,780/- towards purchase price of the said premises to the respondent. The respondent failed to deliver possession of the premises, although 24 months stipulated in the agreement so also reasonable extended time of six months have expired. The work of construction of project is standstill for last many years.

6. As on the date of coming into force of RERA Act 2016, the project was not complete. The respondent did not register the project with RERA. The respondent has violated Section 3 of RERA Act 2016.

7. In the circumstances the complainant filed present complaint seeking the reliefs stated hereinabove.

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8. Upon filing complaint the respondent was duly served. The respondent filed a reply dated 03.04.2024.

Brief facts of respondent case are:-

9. The agreement for sale dated 10.12.2012 was executed between complainant and the respondent in respect of office premises bearing no. 4/16 admeasuring 25.96 sq. mtrs., situated on the second floor of the said complex.

10. A separate account no. 197101000000970 was opened in Indian Overseas Bank Socorro branch with respect to the transaction related to the said project. This account was to be jointly operated by the president and treasurer of comunidade.

11. An FIR no. 13/2014 dated 22.03.2014 came to be registered at Porvorim Police Station on alleged illegalities by the respondent comunidade and one of the allegations was with respect to the said project. Said FIR ultimately culminated into filing of charge sheet against the culprits before CBI court.

12. In connection with said FIR, by communication dated 03.07.2014 account no. 197101000000970 in IOB came to be freezed, which freezing continued till the date. In view of freezing the said account the construction of the project is stopped/ suspended by respondent in the month of July 2014.

13. The respondent is a body constituted, governed and regulated by the code of comunidades. The respondent cannot be said to be promoter as defined under RERA Act. The provisions of RERA Act are not applicable to the respondent and the complainant filed under Section 31 of the Act is not maintainable in law. The said project is not required to be registered under RERA Act.

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14. The code of comunidade does not contemplate the sale of its property to any person by executing agreement for sale. The agreement for sale dated 10.12.2012 is a nullity in law. It cannot be enforced.

15. The instant complaint is filed in the month of January 2024, in respect of an agreement which was executed in the December of the year 2012 and as such hopelessly barred by limitation. The complainant is not entitled for any reliefs. The respondent prayed to dismiss the complaint.

16. Ld. Advocate shri J. Mulgaonkar argued on behalf of complainant and Ld. Advocate shri S. Kamat on behalf of the respondent.

17. Short points that arise for my determination are:-

1. Whether respondent violated Section 3 of RERA?

Ans: Yes.

2. Whether complainant is entitled for possession of the suit premises along with interest?

Ans: Yes.

3. Whether complainant is entitled for compensation?

Ans: To be decided by the Adjudicating Officer.

Point No. 1

18. Ld. Advocate S. Kamat submitted that a separate account bearing no. 197101000000970 was opened in Indian Overseas Bank at Socorro Branch to deposit the amount received from allottees with respect to the said project. There was FIR no. 43/2014 registered at Porvorim Police Station on allegation of illegalities in the respondent comunidade and by communication dated 03.07.2014 the said account has been freezed in the said FIR. Since the date of freezing an account the construction of the project has been stopped. The RERA

Act came into effect from 1st May 2016 as on this date the project was not ongoing. The respondent is a body constituted, governed and regulated by the code of comunidades. The respondent cannot be said to be promoter as defined under RERA Act, and therefore section 3 of RERA does not apply to this project.

19. Ld. Advocate J. Mulgaokar submitted that under Section 3 of the Act the projects that are ongoing on the date of commencement of the Act and for which completion certificate has not been issued is required to be registered under section 3 of the RERA Act. The respondent project as on the date of coming into force of the RERA Act did not receive completion certificate and as such it was incumbent upon the respondent to register their project. The respondent however did not register the project, being so there is violation of section 3 of the Act.

20. Section-3 of the RERA Act provides for the registration of the projects. The relevant part of it is reproduced herein below:-

Section-3(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.”

21. It can be seen from above that the projects that were ongoing on the date of commencement of the Act, the promoter is duty bound to make an application within three months from the date of commencement of the Act to register the project.

22. By vide notification no. S.O.1544(A) dated 26.04.2016, the central Government appointed 1st day of May, 2016 as the date of coming into force of sections 2, sections 22 to 39, Sections 41 to 58, Sections 71 to 78 and Sections 81 to 92.

23. By vide notification no. S.O.1216(E) dated 19.04.2017, the central Government appointed 1st day of May 2017 as the date of coming into force Sections 3 to 19, Section 40, Sections 59 to 70 and Sections 79 to 80.

24. Therefore, in terms of notification no. S.O.1216(E) dated 19.04.2017, section 3 came into force on 1st May 2017. It is admitted by the respondent that as on the above date their project was incomplete. It has not received completion certificate till the date. Rather the respondent has stated that the further work of the project has been stopped/ suspended since July 2014 i.e. from the date the Porvorim Police freezed their account in IOB which continues till the date. Above admissions clearly proves that as on the date of coming into force of the RERA Act the respondent project was ongoing and has not received completion certificate. Being so, it was incumbent upon respondent to make an application to the Authority for registration of the said project within period prescribed. It is admitted that the respondent did not make any application for registration nor got its project registered. Hence contravention of section-3 of the Act stand proved.

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25. The arguments that since the account in IOB was freezed by the police the respondent had to stop the project work is not an answer for not registering the project. The registration of the project does not put much financial burden on the promoter. The respondents have invited said trouble by committing penal offenses. The complainant cannot be blamed for the same. The act of freezing account does not absolve respondent from honouring its obligation under the agreement.

26. The expression “Promoter” as defined under Act among other things also means and includes any development authority or any other public body in respect of allottees of building or apartment constructed by such authority or body on land owned by them or placed at their disposal by the government. In this case the commuidade/respondent is a public body who has constructed building/apartment/office spaces on its own land. Viewed thus respondent satisfies all the characteristic of a “ptomotor’ as defined in the Act. In light of above the contention of learned Advocate S. Kamat that respondent is not promoter as envisage under the Act is misplaced. In the circumstances I conclude that there is clear violation of section 3 of the RERA Act by the respondent and accordingly I answer point no. 1 is in affirmative as proved by complainant.

Point No. 2

27. The agreement for sale is dated 10.12.2012. In Para 1 read with Para 4 of the agreement it is stipulated that the seller shall under normal conditions, construct the office premises within a period of 24 months from the date of signing of the agreement and shall deliver the said premises for the use and occupation of the purchaser in terms of the agreement. In Para 9 of the agreement it is stipulated that the seller shall not incur any liability if they are unable to deliver the said premises within specified period of 24 months due to (a) war, civil commotion or any act of God (b) non availability of building

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materials and/ or non availability of water or electricity (c) any notice, order, rule, notification of the Government or other competent authorities (d) any order passed by any court, civil, revenue or administrative restraining the construction being carried out (e) any other reasons or reasons beyond the control of the sellers. It is further stipulated that “AND in case of any of the aforesaid events taking place, the seller shall be entitled to reasonable extension of time of at least six months for the delivery of the said premises.”

28. It can be seen from above recitals that in the normal situation the respondent was duty bound to hand over possession of the premises within 24 months from the date of signing of the agreement and in the event of happening any of the events mentioned therein within additional period of six months. The 24 months has expired on 09.12.2014 and further six months on 09.06.2015. It is admitted by the respondent that they did not deliver the possession of the premises to the complainant within 24 months and also within extended six months and hence non delivery of the possession in terms of agreement stands proved.

29. It is argued by Ld. Advocate S. Kamat that the agreement dated 10.12.2012 is for the sale of the office premises by the respondent to the complainant. The respondent is comunidade of Serula, a body constituted, governed and regulated by the code of comunidades (Legislative diploma 2070 dated 15.04.1961). Under the code of comunidade, the respondent cannot sell its property to any person. There is a complete bar to the sale of the comunidade property under the code. The comunidade can only lease its properties to the Gaonkars. The agreement for sale dated 10.12.2012 is against the provisions of the code of comunidade. The agreement is nullity and as such cannot be enforced. The complainant cannot enforce his right which he claims to have derived under the void agreement.

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30. In case of **Goa Industrial Development Corporation Panaji, Goa vs. Comunidade of Marcaim and another Goa (2005) 1 Goa Law Reports 25**, the Division Bench of Honourable Bombay High Court at Goa observed:

“Firstly, we are dealing with the submissions based on restrictions on transfer of a land vesting in Comunidade. A reference will have to be made to relevant provisions of Code of Comunidade (Legislative Diploma No. 2070). Article 30 thereof lays down the powers of the Comunidade. Sub-clause (f) of clause (4) of Article 30 gives power to Comunidade to decide over long leases, sale or exchange of lands. Article 31 provides that the decision taken by a Comunidade as per the said sub-clause (f) of creation of long leases or sale or exchange of lands is to be implemented only after the sanction of the Governor General. Thus, what is provided is that the land owned by the Comunidade can be sold or exchanged by Comunidade after obtaining sanctions as aforesaid. Article 317 of the Code of Comunidade provides that the Comunidade can lease for long term the uncultivated properties. It is provided that the area of each lease shall not be more than 20 Hectares and the period of lease will be from 9 to 18 years. Article 324 confers powers on Comunidade to give a permanent lease of uncultivated land subject to exceptions provided by Article 325 in case of land of common usage, land indispensable for cattle grazing, land used as coast of neighbour etc. Article 334 provides that the lease will be auctioned publicly. Article 334-A provides the subject to guidelines issued by the Government, without holding auction, a Comunidade can grant lease of area not exceeding 10000 square meters of land to educational societies for construction of playgrounds. The said Article provides that without holding auction, a Comunidade can grant lease of land admeasuring

not more than 400 square meters for construction of houses or buildings for the purpose specified thereunder. Essentially Article 30 read with Article 31 provides that a Comunidade has power to lease, sale or exchange lands vesting in it after obtaining prior sanction.”

31. It can be seen from above that there is no absolute bar under the code of Comunidade for the sale of its property. If the comunidade want to sell the property the condition is that it should obtain prior permission of the governor General. In light of this the submission of Ld. Advocate Shri S. Kamat that the agreement for sale is nullity and is not enforceable cannot be accepted.

32. Section 18 of the RERA Act provide that if the promoter fail to complete or is unable to give possession of the apartment in accordance with the terms of agreement of sale or, as the case may be, duly communicate by the date specified therein and 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.

33. It is proved that the respondent has failed to deliver the possession of the premises in terms of the agreement and the complainant having not withdrawn from the project is entitled for the possession of the office premises.

34. The payment receipts are on record. It proves that the complainant has paid total amount of ₹5,54,780/- to the respondent. Proviso to Section 18 of the Act provides 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. The complainant was supposed to get the possession of the office premises on or before 09.12.2014. It is proved that the respondent did not deliver the possession as agreed in the

agreement. Being so, the complainant^f is entitled for interest for every month from 10th of December 2014 onwards on the amount paid by the complainant. However for the purpose of calculation I hold that respondent shall pay interest starting from 1st of January 2015.

35. The agreement for sale was entered on 10.12.2012, present complaint is filed on 03.01.2024. It is argued by Ld. Advocate S. Kamat for the respondent that the complaint is hopelessly barred by limitation. Ld. Advocate J. Mulgaonkar submitted that present complaint is filed under RERA Act for which there is no limitation. Moreover the respondent has not given possession of the office premises to the complainant in terms of the agreement for sale till the date of filing the complaint and even thereafter. Therefore the cause of action has to be treated as continuous cause of action. The complaint therefore is not barred. In support Ld. Advocate relied on decision of the Supreme court in case of **Lata Constructions and others vs. Dr. Rameshchandra Ramniklal Shah and another (2000) 1 SCC 586.**

36. In the above case the respondent entered into agreement with the appellant builder dated 27.01.1987 for developing, constructing and handing over possession of a flat. The respondent made a payment of ₹5,70,000/- but on demand the appellant did not give the possession of the flat. Instead the appellant agreed to pay ₹9,51,000/- in three instalments to the respondent in lieu of the flat. Respondent entered into the second agreement dated 23.02.1991 with the appellant with specific stipulations that their rights under the first agreement would remain unaffected, that the first agreement would be treated as terminated only on full payment of ₹9,51,000/-, that if the full payment not made by 30.05.1991 the whole amount with interest would become payable on claim after giving seven days notice and that in case of default the amount already paid by appellant shall stand forfeited the appellant failed to honour commitments under both agreements. The respondent therefore filed claim petition before National

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Commission in July 1993 for enforcement of their rights under the two agreements on the ground that the appellant was guilty deficiency in service. The appellant took a plea that the claim was time barred. The Apex court held, since the rights under the first agreement had not been given up the appellant was constantly under an obligation to provide a flat to the respondents and deliver possession thereof to them, the cause of action has to be treated as a continuing cause of action and therefore, the claim was not beyond time.

37. The facts of the above case are akin to the facts of the present case. In case in hand the respondent was under obligation to deliver the possession of the office premises to the complainant on or before 09.12.2014. The respondent did not honour their commitment till the date of filing a complaint on 03.01.2024. The cause of action therefore has to be taken as continuing cause of action and that the claim of the complainant is therefore not barred by limitation.

38. In view of above my answer to the point no. 2 is in the affirmative.

Point no. 3

39. This point relates to the determination of compensation. Under section 71 of the Act the jurisdiction to determine compensation vests in the Adjudicating Officer. The matter shall be referred to the Adjudicating Officer for the purpose of deciding the appropriate compensation in terms of law. This point accordingly stands answered in above terms.

40. It can be seen from above that complainant has proved point no. 1 and 2 in his favour. In view of above I pass following:-

ORDER

The respondent is ordered to pay penalty of ₹5,00,000/-(Rupees Five Lakhs only) for the contravention of Section 3 of RERA Act 2016.

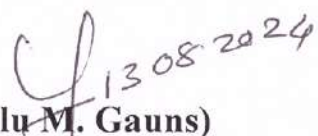
The respondent is ordered to deliver the possession of the office premises identified as office no 4/16 having super build up area of 25.96 sq. mts. situated on the second floor of the complex known as “Serula Comunidade Community complex” completed on all respect in terms of the agreement and upon payment of balance consideration by the complainant to the respondent within six months from the date of this order.

The respondent shall pay to the complainant interest for every month of delay at the rate of 10% per annum on the amount of ₹5,54,780/- (Rupees Five Lakhs Fifty Four Thousand Seven Hundred and Eighty only) starting from the 1st of January 2015 till the handing over of the possession of the office premises to the complainant.

The matter shall be referred to the Adjudicating Officer for the purpose of deciding the appropriate compensation in terms of law under Section 71 of the Act.

The respondent shall file compliance report within six months from the date of this order before this Authority.

Proceedings closed.


(Cholu M. Gauns)
Member, Goa RERA