



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

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Case no.4/RERA/Adj. Matters (66)/2022/ 894

Date: 30/11/2022

BEFORE THE ADJUDICATING OFFICER

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

..... Applicant/Complainant

Versus

Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji.

.....

Respondent

Learned Advocate Ms. Shilpa Raut for the Applicant/Complainant.

Learned Advocate Shri Ankur Kumar for the Respondent.

ORDER

(Delivered on this 30th day of month of November, 2022)

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. The above said complaint was disposed off in favour of the applicant/complainant by order dated 25.08.2022

of the Goa RERA (for short GRERA). The said Authority GRERA directed as follows:-

“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.”

2. Thereafter, the matter was taken up before this Forum under Section 71 of the Real Estate (Regulation and Development) Act, 2016.
3. The applicant/complainant has filed his claim for compensation in Form “B” seeking compensation of:-
 - (a) Loss of income/opportunity earnings ₹43,44,500/-;
 - (b) Breach of contractual obligation, hardships, inconvenience, failure to deliver the possession further causing harassment and mental agony of ₹1,00,000/- per year totalling ₹6,00,000/-;
 - (c) Discrepancies in area of units-Amount to be quantified;
 - (d) Compensation for inferior quality of materials utilized in construction-Amount to be quantified;
 - (e) Cost of this complaint ₹2,50,000/-.
4. The respondent filed his reply to Form “B”, denying the case of the applicant.



5. Both the parties filed their affidavit in evidence and written arguments in support of their respective cases. The Ld. Advocate Ms. Shilpa Raut argued for the applicant/complainant. Ld. Advocate Shri Ankur Kumar argued for the respondent.
6. The point for determination and my finding to the same is as under:-

Point for determination	Finding
<i>Whether the respondent is liable to pay compensation to the applicant/complainant as prayed?</i>	<i>Partly in the affirmative as per the order.</i>

REASONS

7. Briefly stated the facts not in dispute are that by Agreement For Construction Cum Sale dated 07.06.2013 executed between the parties and duly registered in the office of the Sub Registrar of Bardez at Mapusa it was agreed that the respondent would construct office units no. 5 FF-11 and 5 FF-12 admeasuring 40.03 sq. mtrs. of super built up area on the 5th floor of the project Prabhu Chambers for a sum of ₹23,61,770/- (Rupees Twenty Three Lakhs Sixty One Thousand Seven Hundred and Seventy only). By Addendum To Agreement For Construction Cum Sale dated 22.12.2014 the office units were changed to 5 FF-17 and 5 FF-18; the super built up area was revised to 42.81 sq. mtrs. and the amount was increased to ₹25,25,790/- (Rupees Twenty Five Lakhs Twenty Five



Thousand Seven Hundred and Ninety only). It is also not in dispute that the amount paid by the applicant/complainant to respondent is ₹23,99,505/- towards sale consideration and ₹1,24,506/- towards taxes. The possession as agreed was to be handed over in 24 months subject to extension of 09 months from the date of the first agreement dated 07.06.2013.

8. It is the applicant's case that:

a) In terms of clause 3(a) of the said Agreement For Construction Cum Sale dated 07.06.2013, it was incumbent and binding upon the respondent to complete the said office units within 24 months from the date of the Agreements subject to an extension of further 09 months with consent of the complainant. The period for handing over possession expired on 6th March 2016;

b) The respondent was bound by his commitments to handover physical possession of the said units to the applicant/complainant in terms of the said Agreements. However, the respondent inspite of several reminders personal meetings miserably failed in handing over the possession of the said units till date;

c) By Order dated 13.09.2019 in the applicants complaint no. 3/RERA/Complaint(29)/2018 before the RERA Authority, the RERA Authority directed the respondent to register the project before 30.09.2019 and levied penalty of ₹3,00,000/-. The penalty was enhanced to ₹5,00,000/- by the RERA



Authority vide Order dated 18.03.2020. The respondent has till date not registered the project;

d) The Mapusa Municipal Council issued Show Cause Notice to the respondent and after hearing issued an Order dated 12.09.2019 to the respondent on following counts directing the respondent to initiate action within 48 hours:-

- i) Water logging in the basement and in the lift in duct to be abated;
- ii) Shifting of electrical panels and installation of transformer should be done in coordination with Electricity Department;
- iii) The setback area should be cleared by demolishing the kiosk as per NGPDA approved plan;
- iv) The parking area should be made functional;
- v) Submission of final NOC from Fire Department.

e) The respondent in writ petition no. 1156 of (2021) gave an undertaking before the Hon'ble High Court of Bombay to rectify all deficiencies. The Order in the matter was passed by Hon'ble High Court on 28.06.2021

f) The Hon'ble RERA Authority passed an order dated 24.09.2021 directing the respondent to rectify the deficiencies as observed by the Mapusa Municipal Council on the direction issued by Hon'ble High Court vide order dated 14.07.2021 in writ petition no. 4/2021 in M.C.A. No. 1386 of 2021, the respondent violated the said order of the RERA and has not taken any step towards completing the same till date.



g) The Directorate of Fire and Emergency observed in its communication dated 31.08.2021 discrepancy in the area of fifth and sixth floor. The Hon'ble RERA Authority in its common order dated 17.03.2022 in the matter of 36 units holder of project has observed this as violation of Section 11(4) (a) of RERA Act.

h) In view of this delay the applicant has suffered loss of business and income as he was unable to operate the same by starting his branch office of Chartered Accountancy for serving his clients in Bardez, Pernem and Bicholim Talukas, thereby suffering loss of income/opportunity average for last 06 years amounting to ₹43,44,500/- for the period from April 2016 to March 2022 i.e. previous 06 financial years.

i) The applicant/complainant has also spent his valuable time and money in representing himself in two complaints since 2018 besides meeting with the project promoters time to time since 2016. The applicant/complainant is therefore entitled to be compensated in the sum of ₹2,50,000/-.

9. The respondent in his reply has listed out certain facts/developments beyond his control on account of which, the interests of the purchasers as well as the developers also suffered. Certain Authorities of the State in connivance with over ambitious purchaser Mr. Imran Sayed, abused the process of law, forcing the respondent to knock the doors of the higher Constitutional Authorities and Constitutional Court so as to ensure Rule of law. It is also contented by the respondent that the orders by the Collector as regard conversion, registration of



F.I.R by the police, revocation of occupancy certificate by the Mapusa Municipal Council, frustrating the builder in restoration of occupancy certificate by seeking compliances in violation of the regulatory provisions; delay by the Municipal Council in removal of Kiosk, facilitation by the Municipal Council in construction of illegal kiosk blocking access to the parking of an ongoing construction (Prabhu Chambers) are all the examples demonstrating the arm twisting methods used by the Authorities and Mr. Imran Sayed to harass the builder and frustrate his efforts in resolving the problems of the genuine customers.

10. In the affidavit in evidence and in the written arguments placed on record, the respondent has taken a defence of the pandemic of Covid-19 which has gripped the nation since March 2020 and has categorized the same as a 'Force Majeure' event which automatically extends the timeline for handing over possession of the office premises.
11. In terms of the Agreement For Construction Cum Sale dated 07.06.2013 and the Addendum To Agreement For Construction Cum Sale dated 22.12.2014 the possession of the office premises was agreed to be handed over to the applicant/complainant by the respondent in 24 month with extended period of 09 months from 07.06.2013 i.e. by 07.03.2016.



12. It cannot be disputed that the respondent had commenced the construction of the building Prabhu chambers somewhere in the year 2011 and till date the respondent has failed to complete the project in all respects and obtain the occupancy certificate by complying with the directions of the Mapusa Municipal Council and the GRERA Order dated 17.03.2022.
13. The applicant has placed on record the last Order of the Mapusa Municipal Council dated 22.08.2022 wherein the Chief Officer of Mapusa Municipal Council has declined the grant of Occupancy Certificate for the said construction as the respondent has failed to comply with six discrepancies listed out in the inspection report.
14. Ld. Advocate for the applicant/complainant has enumerated the defaults committed by the respondent namely the Order dated 25.11.2019 of the GRERA directing the respondent/developer to comply within the directions passed by Mapusa Municipal Council.
15. Ld. Advocate for the complainant also submitted that the respondent was directed to register the project in terms of Section 3 of the Real Estate (Regulation and Development) Act, 2016 before the RERA Authority in the complaint filed by the applicant/complainant bearing no. 3/RERA/COMPL (29)/2018/143. However, the said Order was never complied with.



16. Ld. Advocate for the applicant/ complainant referred to the common Order dated 17.03.2022 read with corrigendum dated 21.03.2022, whereby the respondent/developer was directed to obtain occupancy certificate and give possession of the respective units to the respective complainants as per the chart given in para 83 and as per the area/revised area given in the respective agreements for sale/addendum/demand letters etc. and with all the essential facilities/supplies/connections and the quality of work as mentioned in the agreements for sale executed with the complainants within two months from the date of this Order. The respondent has failed to comply with this Order too.

17. Ld. Advocate for the applicant/complainant has referred to the GRERA Order dated 25.08.2022 wherein the respondent was 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. The respondent has failed to comply with this order too.

18. Ld. Advocate for the applicant/complainant has submitted that, the conduct on the part of the respondent and the consequent imposition of penalty leads to the



indisputable conclusion that the respondent is in default and due to such defaults the interest and right to hold, enjoy, occupy, possess and utilize for gain at the instance of the applicant/purchaser has been seriously jeopardised.

19. Ld. Advocate for the applicant/complainant submitted that in normal circumstances, any building project should have been completed in all respects in about 03 years or so. However, in the present case on account of the defaults of the respondent the said completion of said project has been delayed considerably for which the respondent is duty bound and liable to compensate the applicant.
20. Ld. Advocate for the applicant/complainant submitted that the present building though constructed and standing does not have the required facilities which are contemplated under the law. Therefore, the respondent who is bound by the terms of the agreement has failed on all grounds and caused severe hardship and inconvenience to the applicant/purchaser.
21. Ld. Advocate for the applicant/complainant also submitted that the applicant/complainant has invested his hard earned savings for the office premises to meet his livelihood. However, the respondent has utilised the funds of the applicant/purchaser but has left the applicant/purchaser in distress.
22. Ld. Advocate for the applicant/complainant further submitted that the respondent is in direct breach of his obligations in terms of the agreement for



construction cum sale and the addendum agreement executed for delivery of the office premises duly completed in all respects and is thereby liable to pay damages under the provisions of law.

23. It can be noticed that the very same defences taken by the respondent herein were similarly taken by the respondent in the complaints before the GRERA. The GRERA after pains taking note of and considering the very same defence and also the orders of the various Authorities and judgement of Hon'ble High Court concluded that the contentions of the respondent herein are untenable and accordingly held in the said common order dated 17.03.2022 that the respondent has failed to give possession of the said premises to the applicant/complainant as per the dates specified in the respective agreement for sale and therefore Section 18 of the RERA Act was squarely applicable. The GRERA also directed the respondent to obtain occupancy certificate and give possession of the respective units to the respective complainants with all essential facilities/supplies/connections and quality of work as mentioned in the agreement for sale executed with the complainants within two months from the date of this Order. The respondent has till date not complied with this Order. The said Order still stands and is yet to be set aside.
24. The defence of the pandemic of Covid-19 raised by the respondent cannot be accepted as possession of the office premises in the present case was extendable



not later than 07.03.2016 and the pandemic scenario commenced only in March 2020.

25. Taking into consideration all the above factors, there is no substance in the submissions advanced by Ld. Advocate for the respondent. On the contrary, there is considerable merit in the arguments advanced by Ld. Advocate for the applicant/complainant.
26. In the case **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.”

27. Section 18 of the Real Estate (Regulation and Development) Act, 2016 provides for return of amount and compensation. Section 18(3) provides that if the promoter fails to discharge any other obligation imposed on him under this Act or the rules and 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.
28. In the present case, the applicant has failed to establish that he intended having his Chartered Accountancy branch office for serving his clients in the said office premises. However, it cannot be disputed that the applicant could have obtained rental income had he given the office premises on rent. The said office premises being at a prime location in the City of Mapusa, would have easily



fetches rental amount of ₹12,000/- per month. Considering that the said office premises ought to have been handed over not later than 07.03.2016, the cause of action for claim for compensation could be taken as on 01.04.2016 and the approximate reasonable rental income could be calculated effective from 01.04.2016 till the date of this Order.

29. The applicant has also claimed for compensation of ₹2,50,000/- towards costs of litigation for having been dragged into litigation by the respondent before the RERA. The respondent has not denied this claim. In the circumstances, the respondent shall be liable to pay ₹25,000/- (Rupees Twenty Five Thousand only) to the applicant towards costs of litigation.

30. The applicant/complainant has claimed compensation towards loss of income/opportunity average for last 06 years amounting to ₹43,44,500/- from April, 2016 to March, 2022 i.e. previous 06 financial years. However, this forum is not inclined to grant any such loss of income as approximate reasonable rental income effective from 01.04.2016 till the date of this Order has already been considered as mentioned above.

31. The applicant/complainant has also sought compensation towards mental agony of ₹1,00,000/- per year totalling ₹6,00,000/-. However, as the RERA Authority



has already granted interest @ 10% per annum for every month of delay under Section 18(1) of RERA Act, this forum is not inclined to consider the same.

32. The point for determination, accordingly, is answered partly in the affirmative.
33. Before parting with this Order it is necessary to mention that the claim for compensation was filed on 12.10.2022. The respondent sought time to reply on 26.10.2022 and filed the same on 03.11.2022. The complainant filed affidavit in evidence and written arguments on 12.11.2022. The respondent filed affidavit in evidence and written arguments on 17.11.2022. Oral arguments were advanced on 24.11.2022. The matter has been disposed off by Order dated 30.11.2022.

In the result, I pass the following:-


ORDER

The respondent shall be liable to pay:-

- (a) Compensation quantified in the amount of ₹9,60,000/- (Rupees Nine Lakhs Sixty Thousand only) for violation under Section 18(3) read with Sections 71 and 72 of The Real Estate (Regulation and Development) Act, 2016 to the applicant/complainant towards notional loss of rental income which the applicant/complainant would have reasonably earned conservatively per month from 01.04.2016 till date.



- (b) Compensation of ₹25,000/- (Rupees Twenty Five Thousand only) under Section 71 read with Section 72 of The Real Estate (Regulation and Development) Act, 2016 to the applicant/ complainant towards costs of litigation.
- (c) Both the above amounts shall be paid by the respondent to the applicant/complainant within one month from the date of this Order. In default, the respondent shall be liable to pay to the applicant/complainant the said amounts with interest at the rate 10.35% per annum till the date of realisation.


30/11/2022
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA