



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (113)/2023/306

Dated: 21/02/2024

BEFORE THE ADJUDICATING OFFICER

Mr. Sunny Kalidas Vernekar,
aged about 32 years, r/o H. No. 476,
Oxel Bhatti, Siolim, Bardez, Goa-403507.

.....Applicant

Versus

1. **Mr. Suresh R. Gawandalkar and his wife Mrs.Sushma Suresh Gawandalkar,**
both since deceased, represented through their legal heirs,
 - (i) **Mr. Sudesh Suresh Gawandalkar,**
son of late Mr. Suresh Gawandalkar, aged 46 years,
r/o E-5/32, Ward No.9, Mapusa, Goa, 403507.
 - (ii) **Mrs. Swati Sudesh Gawandalkar,**
wife of Mr. Sudesh Suresh Gawandalkar,
aged 40 years, r/o E-5/32,
Ward No. 9, Mapusa, Goa, 403507.
 - (iii) **Mr. Swapnil Suresh Gawandalkar,**
son of Mr. Suresh Gawandalkar,
Aged 43 years, r/o E-5/32,
ward no. 9, Mapusa, Goa, 403507.
 - (iv) **Mrs. Siya Swapnil Gawandalkar,**
wife of Mr. Swapnil Gawandalkar,

aged 40 years, r/o E-5/32,
Ward No. 9, Mapusa, Goa, 403507.

(v) **Mr. Vinit Gurunath Swar,**
son of Mr. Ghanashyam Swar, aged 51 years,
R/o H.No.114/BAR/64/1036, Mapusa, Goa, 403507.

(vi) **Mrs. Poonam Vinit Swar,**
wife of Mr, Vinit Swar, aged 39 years,
r/o H.No. 114/BAR/64/1036,
Mapusa, Goa, 403507.

2. M/s S.V. Developers Partnership Firm,

Mr. Kiran Dabolkar, r/o Shree Samrudhi 95 c/5 Alto Guimaies,
Altinho, Panaji-Goa, 403001.

.....Respondents

Ld. Advocate Shri Saish Mandrekar for the applicant.

Ld. Advocate Shri Narcinha A. S. Verenkar for the respondent.

ORDER

(Delivered on this 21st day of the month of February, 2024)

The present proceedings have arisen as a corollary to the complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') filed by the applicant against the respondents bearing complaint no. 3/RERA/ Complaint(326)/2022.

2. The above said complaint was disposed of vide Order dated 14.09.2023 by the Hon'ble Goa Real Estate Regulatory Authority. The said Authority directed as follows:-

“In view of the undertaking dated 23.08.2023 given by the respondent no. 2, the promoter/ the respondent no. 2 is directed to obtain occupancy certificate and give a valid and legal possession of flat no. S-3 located on the second floor of the building in the complex ‘Shree Vastu Residency’ Mapusa, Bardez, Goa with all the amenities and facilities as mentioned in the agreement for sale dated 14.09.2015 to the complainant within four months from the date of this order upon taking the balance consideration amount of ₹2,00,000/- (Rupees Two Lakhs only) from the complainant. Thereafter, the respondent shall comply the other mandatory provisions of the RERA Act.

The complainant is directed to pay the aforesaid balance consideration amount to the respondent on the day of and before taking possession of the said flat.

Further, the respondent no. 2 is directed to pay 10.75% per annum interest (present lending rate of interest by SBI which is 8.75 % per annum plus two percent) for every month of delay to the complainant on the aforesaid amount of ₹18,00,000/- (Rupees Eighteen Lakhs only) paid by the complainant from 14.03.2016 till the date of delivery of possession to the complainant.

In view of the undertaking dated 23.08.2023 given by the respondent no. 2 before this Authority, the promoter/ the respondent no. 2 is directed to rectify all the defects as mentioned in the instant complaint, install the lift and construct a compound wall for the said building, within four months from the date of the instant order.

Since for violation of interim order dated 25.04.2023 regarding non registration of the project, further penalty is already imposed on the respondent no. 2 and further order is passed in complaint bearing no. 3/RERA/ Complaint (321)/2022 “Mr. Heramb Raghunath Watve vs. Mr. Suresh R. Gawandalkar and others” to file complaint against the respondent no. 2 before the Ld. JMFC of the concerned jurisdiction under Section 59(2) read with Section 80 of the RERA Act no further penalty/ order against the respondent no. 2 is imposed in the instant complaint for violation of the said interim order dated 25.04.2023 (the said complaint filed by Mr. Heramb Raghunath Watve is clubbed with the instant complaint). Similarly, in view of the penalty imposed

by this Authority under Section 63 of the RERA Act in the aforesaid complaint filed by Mr. Heramb Raghunath Watve for violation of the interim order dated 01.06.2023 passed by this Authority, no further penalty in the instant complaint is warranted.

The respondent no. 2 is directed to file compliance report of this order within four months failing which further legal action will be taken by this Authority under the RERA Act for execution of this order.”

3. The applicant filed a claim in Form “B” against the respondents inter-alia contending that he is the purchaser of the flat No. S-3 located on 2nd floor of the building complex known as ‘Shree Vastu Residency’ at Khorlim, Mapusa along with other individual purchasers of other flats and have registered agreement for construction and sale with the respondents dated 14.09.2015. However, due to various defects in the building, incomplete work with regards to the construction of the building and failure in providing the other facilities which the respondents have agreed to comply with in terms of the said agreement, the applicant along with other flat holders had pursued the completion of the pending works with a request to expedite the process of obtaining occupancy certificate for the building.

4. However, the developer completely neglected the request and instead of completing the pending works delayed the said works on flimsy grounds and carried out sub-standard construction work with regards to the said building/flats. The Developer failed to install a lift for the said building and obtain regular electricity and water connections. The developer was required to deliver the

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possession of the flat within a period of 06 months from the period of execution of the agreement. There is a delay of more than 06 years and till date no legal possession of the flat has been handed over. The applicant therefore is entitled for compensation referred in Para-5 of the application.

5. The respondents filed a reply inter-alia claiming that he is a reputed builder and has undertaken many projects. The work of the project was completed well on time and the applicant was given the physical delivery of the flat. The delay in completing the project was beyond the control of the respondents as a civil suit bearing RCS No. 70/15 was filed before the Civil Court at Mapusa so also complaint to NGPDA and a stop work order issued by Mapusa Municipality, which fact the applicant was aware of. The respondents have already started the work of rectification of defects and have made several applications for renewal of construction license and occupancy certificate without any reply from the Authority. The work of the project whatsoever left to rectify will be done shortly. The project was completed and received completion certificate from NGPDA. The transformer for the electricity has already been installed. The applicant has not paid the balance amount even after taking the possession of the flat and therefore, the applicant is not entitled for any compensation.

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6. The parties have filed the respective affidavit in evidence at exhibit 180/c and exhibit 188/c respectively.

7. Both the parties have filed written arguments at exhibit 390/c and 400/c. Oral Arguments were also heard.

8. It is matter of record that the respondents have filed an application at exhibit 372/c for production of the documents. The said documents are required for just and proper decision of the case and hence, the application for production of the documents could be safely granted.

9. The point springing for the determination and the findings to the same are as follows:-

Sr. No.	Point for determination	Findings
(a)	Whether the applicant is entitled to receive compensation from the respondents in terms of prayer 5 (a) to 5(f) of the complaint, if so the quantum thereof?	Partly in the affirmative.

REASONS

Points (a)

10. There is no dispute that the applicant and the respondents entered into an Agreement for construction and sale dated 14.09.2015 for purchase of the

flat for total consideration of ₹20,00,000/- (Rupees Twenty Lakhs only) and in terms of Para 4(a) of the said Agreement, the developers/respondents were required to deliver the said flat to the purchaser/applicant within 06 months from the date of Agreement dated 14.09.2015 which is on 14.03.2016.

11. Discernibly, the provisions under which the complaint has been filed by the applicant has not been specified, however, it appears from the pleadings that it is filed under Sections 14, and 18 of the RERA Act and has claimed an amount of ₹12,25,000/- (Rupees Twelve Lakhs Twenty Five Thousand only) for alleged breach of obligations by the respondents in terms of the agreement for construction and sale dated 14.09.2015.

12. Ld. Advocate Shri Saish Mandrekar for the applicant has submitted that the present dispute emanates from the negligent acts on the part of the developer while handling the construction/development with respect to the flat agreed to be purchased by the applicant and to hand over a valid and legal possession of the said flat within a period of 06 months from the date of execution and complete all pending construction works, obtain a valid occupancy certificate and to execute the sale deed in favour of the purchaser, which they have failed to handover and therefore, entitled for the reliefs claimed.

13. Per contra, Ld. Advocate Shri Narcinha A. S. Verenkar for the respondents have submitted that the possession of the said flat has been already delivered to the applicant and he without any permission has given the flat on rent and enjoying the rents for last five years as evident from the photographs produced on record. The delay in completing the work of the project was neither intentional nor with malafide intention in causing any kind of damage to the applicant. The applicant in fact was well aware of the reasons behind the delay since as soon as the work of the project started after obtaining construction license, the Mapusa Municipality issued a stop work order against the respondents and similarly a civil suit was filed against the owner of the land. Pending works such as lift and other work are in progress. The respondents have taken steps for the renewal of construction license, installation of transformer for electricity, providing water tanks and have also paid fees for occupancy certificate. The delay was due to dispute of land and not for negligence of the respondents and therefore, the applicant is not entitled for any compensation.

14. Chapter III of the RERA Act gives details of the functions and duties of the promoter. Section 11 (4)(a) states as follows:-

“11. Functions and duties of promoter.-(1)..

(2)..

(3)..

(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.”

From the aforesaid Section 11(4) (a) of the RERA Act, 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 said agreement for sale.

15. The broad factors to be considered while adjudging compensation have been provided under Section 72 which reads as under:-

“72. Factors to be taken into account by the adjudicating officer.-While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default:
- (b) the amount of loss caused as a result of the default;

- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.”

16. The Hon’ble Apex Court in the case of **“M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and Ors. 2021 SCC, Online SC 1044** has clarified that if the adjudicating officer on enquiry is satisfied that the promoter has failed to comply with the provisions of any of the Sections 12, 14, 18 and 19, he may direct to pay such compensation or interest as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

17. There is no dispute that the Hon’ble Regulatory Authority has directed the respondents to obtain occupancy certificate and give a valid and legal possession of the flat to the applicant with all the amenities and facilities as mentioned in the Agreement for construction and sale dated 14.09.2015 within four months from the date of the order and also to rectify all the defects and install the lift and construct the compound wall for the said building within four months from the date of the said order. The respondents have failed to hand over a valid and legal possession of the flat to the purchaser. The respondents have not produced any document including a possession letter or agreement indicating that they had

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delivered a valid and legal possession to the applicant nor he has complied with the order of the Hon'ble Regulatory Authority.

18. The non delivery of the flat to the applicant has resulted in a disproportionate gain whereby funds were accepted but possession was delayed even as on date when in fact the respondents were required to deliver the valid and legal possession of the unit in terms of the order of the Hon'ble Regulatory Authority dated 14.09.2023 within four months. There is thus unfair advantage derived by the developer and disadvantage is incurred by the purchaser as rightly submitted by the Ld. Advocate Shri Saish Mandrekar for the applicant as the applicant had not received the advantage of utilising the flat for the purpose for which he had purchased it. It is therefore the grounds for delay in delivering possession of the apartment to the applicant as enumerated by the respondents/promoter, will not exonerate them from legal liabilities under the said Act and corresponding legal rights accrued to the applicant under the RERA Act.

19. Moreover, it is an admitted fact that the project commenced somewhere in the year 2014 but even after a period of ten years, there is no occupancy certificate obtained by the developers nor the order of the Hon'ble Regulatory Authority has been fully complied as seen from the defense taken by the respondents. No doubt, the respondents have applied for issuance of occupancy certificate and have installed a transformer however, the fact remains that the legal

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and valid delivery of the flat have not been given to the applicant as per the order of the Hon'ble Regulatory Authority with all the amenities. The respondent have thus committed defaults namely with respect to undertaking given before the Authority in the complaint filed by the applicant that they would be complying by completing all the required works with respect to the said unit and project.

20. The respondents have also failed to register the project in terms of section 3 of the RERA Act and was imposed a penalty of ₹5,00,000/- (Rupees Five Lakhs only) which has not been paid till date leading to the breach of the same. The respondents have also not admittedly completed all the pending works with respect to the building and handover the said unit after obtaining the occupancy certificate. The conduct on the part of the respondents clearly indicate that due to such defaults, the interest and right of the applicant to hold, enjoy, occupy, possess and utilize the said apartment for gain have been put to serious jeopardy.

21. The respondents therefore cannot be heard in saying that the project could not be completed due to circumstances beyond his control including the civil suit or the stop work order issued by the Municipality. The respondents were duty bound to make a clear representation about stage-wise time schedule of completion of the project and bring it to the notice of the purchasers about such hindrances as set out by them with proper correspondence or consent of the allottees. The submissions of the respondents that the applicant has rented the premises is

without any basis, so also the photographs produced are not supported by a certificate under Section 65- B of the Evidence Act. The applicant had purchased the flat for his residence and due to the delay in completing the work and handing over legal and valid possession to the applicant including water, sanitation and electricity in terms of the said Agreement dated 14.09.2015, the applicant suffered severe hardship and inconvenience as seen from the records.

22. The Hon'ble Apex Court in **ONGC LTD. v. SAW PIPES LTD. (2003) 5 Supreme Court Cases 705** 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."

23. It is well settled in the case of **ONGC**, supra that in matters related to compensation, a reasonable amount of guess work and speculation of loss is permissible and such jurisdiction is available with the Authority for adjudging compensation as per law. Moreover, in terms of section 73 of the Indian Contract Act, 1872 when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract a reasonable compensation for any loss or damage caused to him thereby, which naturally arose during the usual course of things from breach or which the parties knew, when they made the contract, to be likely to result from the breach of it.

24. Needless to mention, the respondents are in direct breach of obligations in terms of the agreement for construction and sale dated 14.09.2015 as well as the order passed by the Hon'ble Regulatory Authority dated 14.09.2023. The respondents have failed to rectify the defects as well as to comply with the

obligations as per the Agreement for sale including obtaining occupancy certificate, installation of lift and construction of compound wall and therefore, failure on the part of the respondents to rectify the defects and other obligations within time would render the respondents to pay to the aggrieved allottee/applicant appropriate compensation, which would work out to be ₹3,00,000/ (Rupees Three Lakhs only) for violation of Section 14(3) of the RERA Act.

25. Further, The respondents have failed to deliver a valid and legal possession of Flat no. S-3, located on the second floor of the building in the complex 'Shree Vastu Residency', Mapusa , Bardez-Goa with all the amenities and facilities as mentioned in the Agreement for Sale dated 14.09.2015 within time and therefore, failure on the part of the respondents to deliver the above flat in time as per the Agreement would render the respondents to pay to the aggrieved allottee/applicant appropriate compensation, which would work out to be ₹2,00,000/- (Rupees Two Lakhs only) for violation of Section 18(1) (a) and (3) of the RERA Act.

26. The respondents in committing a direct breach of obligations in terms of the agreement for construction and sale dated 14.09.2015 as well as the order passed by the Hon'ble Regulatory Authority dated 14.09.2023 exposes themselves for payment of appropriate compensation for causing he applicant financial losses, inconvenience, mental torture and agony and for costs towards the present

proceedings under Section 71 of the RERA Act amounting to ₹1,00,000/- (Rupees One Lakh only). The above amounts awarded to the applicant shall carry interest as applicable by law.

27. There cannot be any dispute that 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 is 8.85% per annum. Hence, the respondents are liable to pay interest at the rate of 10.85% p.a. for every month of delay to the applicant by way of compensation on the aforesaid total amount of ₹6,00,000/- (Rupees Six Lakhs only). Hence, the above point (a) is answered partly in the affirmative.

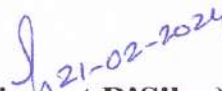
28. In the result, I pass the following:-

ORDER

- a) The respondents are jointly and severally directed to pay to the applicant compensation of ₹3,00,000/- (Rupees Three Lakhs only) for violation of Section 14(3) read with Section 71 of the RERA Act, within thirty days of this order.
- b) The respondents are also jointly and severally directed to pay to the applicant an amount of ₹2,00,000/- (Rupees Two Lakhs only) for violation

of Section 18 (1) (a) and (3) read with Section 71 of the RERA Act, within thirty days of this order.

- c) The respondents are also jointly and severally directed to pay to the applicant an amount of ₹1,00,000/- (Rupees One Lakh only) for causing him financial losses, inconvenience, mental torture and agony and for costs towards the present proceedings under Section 71 of the RERA Act, within thirty days of this order.
- d) In default of payment of ₹6,00,000/- (Rupees Six Lakh only) as stated above, the respondents shall be further liable to pay to the applicant interest at the rate of 10.85% p.a. till the date of realisation.


(Vincent D'Silva)
Adjudicating Officer,
Goa RERA

Panaji, Goa.

Date: 21.02.2024.