



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

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Case no.4/RERA/Adj. Matters (37)/2022/912

Date: 30/11/2022

BEFORE THE ADJUDICATING OFFICER

Mr. Mahesh Mohan Shetty,

H.No. 1503/1 (1), Shantace, Mangirish Colony,
Madel, Tivim, Bardez, Goa, 403502.

..... **Applicant/Complainant**

Versus

Mr. Venkatesh Narayan Prabhu Moni,

505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji.

.....

Respondent

Learned Advocate Shri Neelesh Takkekar for the Applicant/Complainant.

Learned Advocate Shri Ankur Kumar for the Respondent.

ORDER

(Delivered on this 30th day of the 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 a common order dated

17.03.2022 of the Goa RERA (for short GRERA). The said Authority GRERA directed as follows:-

“The respondent is directed to obtain occupancy certificate and give possession of the respective units to the respective complainants as per the chart given above in para 83 and as per the area/ revised area given in the respective agreements for sale/ addendums/ 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.

Further, under Section 18(1) of RERA Act, the complainants are entitled and the respondent is liable to pay to the complainants 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. On enquiry from the State Bank of India, it is revealed that at present such Lending Rate of interest by SBI is 7.30% per annum. Adding two percent to the said interest as per Rule 18, it comes to 9.30% per annum. Hence, the respondent is directed to pay 9.30% per annum interest for every month of delay to each complainant on the



amount paid by each complainant as mentioned in the chart above in para 83 from the date of delivery of possession including extended date as mentioned in the respective agreements for sale with the complainants and also as mentioned in the above chart, till the handing over of the possession to each complainant. However, no such interest to be paid to the complainants who have not paid any amount to the respondent towards sale consideration—the details of such complainants are mentioned in the above chart in para 83.

Further, though for violation of Section 63 of RERA Act, the respondent is liable to a penalty for every day during which such default continues, which may cumulatively extend up to five percent of the estimated cost of the real estate project as determined by the Authority, and as stated above, the estimated cost of the project, as per Chartered Accountant's Certificate submitted by the respondent for registration of the instant project is Rs. 142,502,973.00/- however, for violating this Authority's order dated 07/02/2020, order dated 25/11/2019 and order dated 24/09/2021, the ends of justice will be met if the respondent pays the penalty of Rs. 30,00,000/-. The respondent is, therefore, further directed to deposit in this Authority, penalty of Rs. 30,00,000/- (Rupees Thirty Lakhs only) under Section 63 of RERA Act within two months from the date of this order.

Further, though for violation of Section 61 of RERA Act, the respondent is liable to a penalty which may extend to



five percent of the estimated cost of the real estate project as determined by the Authority, however, for violating Sections 11(4) (a), 11 (4) (b) and Section 14 (1) of RERA Act, the ends of justice will be met if the respondent pays the penalty of Rs.20,00,000/- (Rupees Twenty Lakhs only). The respondent is, therefore, further directed to deposit penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs only) in this Authority under Section 61 of RERA Act within two months from the date of this order.

All the instant complaints are now referred to the Adjudicating Officer to adjudge compensation, if any, as per Section 71 of RERA Act.

Corrigendum

In the above order, the estimated cost of the project as submitted by the respondent in the Chartered Accountant's Certificate while applying for registration of the project be read as Rs. 14,77,03,143/- (i.e Rupees fourteen crores, seventy seven lakhs, three thousand one hundred and forty three only) instead of Rs. 14,25,02,973/- which was typographical error."

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 ₹33,60,000/- (Rupees Thirty Three Lakhs Sixty



Thousand only) for loss of business and damages suffered on account of non-availability of the premises to work for his gain and livelihood and in addition a sum of ₹50,000/- towards costs of litigation.

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 Shri N. Takkekar 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?</i>	<i>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 28.11.2012 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 an office unit no. 3 TF-8 admeasuring 36.14 sq. mtrs. of super built up area on the 3rd floor of the project Prabhu Chambers for a sum of ₹16,26,300/- (Rupees Sixteen Lakhs Twenty Six Thousand Three



Hundred only). It is also not in dispute that the amount paid by the applicant/complainant to respondent is ₹13,99,209/- and the balance amount to be paid at the time of actual possession is ₹2,27,091/-. The possession as agreed was to be handed over in 24 months subject to extension of 09 months from the date of the agreement dated 28.11.2012.

8. It is the applicant's case that:

a) The applicant has been denied the use and occupation of the office premises since 2015 when the respondent was supposed to handover its possession duly completed in all respects;

b) The respondent has committed irregularities by carrying out defective construction leading to accumulation of water which has rendered the parking allotted to the applicant/complainant unusable;

c) The water accumulation in the basement and lift duct area prompted the applicant/complainant and the other allottees to make a grievance about the malpractice and sub-standard work of the building complex to the Mapusa Municipality which resulted in revoking of the occupancy certificate thereby causing immense hardship and delay to operate the office premises;

d) 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 own enterprise or would have given the premises on rental basis, thereby fetching approximately ₹40,000/- income per month which works out to ₹4,80,000/- per year;



e) The applicant has till date been unable to operate the said premises since the year 2015 and has therefore suffered a loss of ₹33,60,000/- as a result of incomplete work and non-availability of occupancy certificate ;

f) This loss is solely attributable to the respondent for having not completed the project within the time agreed upon and for defaults in meeting the requests and conditions imposed by the Authority;

g) The applicant/ complainant had also to avail of professional legal services to appear in various courts namely the Hon'ble High Court, RERA Authority, Administrative Tribunal and Adjudicating Authority for such services for which a sum of ₹50,000/- has been accrued till date.

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 28.11.2012 the possession of the office premises was agreed to be handed over to the applicant/complainant by the respondent in 24 months with extended period of 09 months from 28.11.2012 i.e. by 28.08.2015.
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 Mr.Sanjay Raut 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 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.
18. 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.
19. 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.



20. 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.
21. 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 executed for delivery of the office premises duly completed in all respects and is thereby liable to pay damages under the provisions of law.
22. It can be noticed that the very same defences taken by the respondent herein were similarly taken by the respondent in the complaint by 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.

23. 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 28.08.2015 and the pandemic scenario commenced only in March 2020.
24. 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.
25. Ld. Advocate Shri N. Takkekar for the applicant/complainant has placed reliance 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.”

26. 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.



27. In the present case, the applicant has failed to establish that he intended to operate his own enterprise in the said office premises. No documentary evidence has been produced on record in support thereof. 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 fetched an approximate rental amount of ₹12,000/- per month. Considering that the said office premises ought to have been handed over not later than 28.08.2015, the cause of action for claim for compensation shall be taken as on 01.09.2015. Thus, the approximate reasonable rental income shall be calculated effective from 01.09.2015 till the date of this Order.

28. The applicant has also claimed for compensation of ₹50,000/- towards costs of litigation for having been dragged into litigation by the respondent before various Courts/Forums. 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.

29. The point for determination, accordingly, is answered in the affirmative.



30. Before parting with this Order it is necessary to mention that the claim for compensation was filed on 11.05.2022. The respondent sought time to reply on 31.05.2022 and filed the same on 06.06.2022. The complainant filed affidavit in evidence and written arguments on 14.06.2022. The respondent sought time on 21.06.2022 and filed affidavit in evidence and written arguments on 28.06.2022. Oral arguments were advanced on 12.07.2022. On 23.08.2022 additional information was sought which was given on 29.08.2022. On 09.09.2022 reply was filed by the applicant. On 15.09.2022 respondent filed rejoinder. Time was sought for further oral arguments on 22.09.2022 by Ld. Advocate for the applicant. Clarification /oral arguments were heard on 12.10.2022. Meanwhile additional five cases have been filed in respect of the very same project. Accordingly after hearing the parties in the five additional cases all the matters in the same project have 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 ₹10,44,000/- (Rupees Ten Lakhs Forty Four Thousand only) 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 01.09.2015 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