



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (81)/2022/1192

Date: 23/11/2023

BEFORE THE ADJUDICATING OFFICER

Mubina Bi Aziz Shaikh,

H.No. 257, Islampura, Baina,

Vasco Da Gama, Mormugao, Goa.

.....Applicant/ Complainant

Versus

M/s Expat Projects & Developments Pvt. Ltd.,

Carlton Towers, A Wing, 3rd Floor,

Unit No. 301-314, No. 1 old Airport Road, Bangalore.

.....Respondent

Ld. Advocate Ketan Morajkar for the Applicant/ Complainant.

Ms. Malvina Franco representative for the Respondent.

ORDER

(Delivered on this 23rd day of the month of November, 2023)

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/complainant against the respondent bearing complaint no. 3/RERA/Complaint(257)/2021.

2. The above said complaint was disposed off vide Order dated 31.10.2022 by the Goa Real Estate Regulatory Authority (for short 'Goa RERA'). The said Authority has directed as follows:-

“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.”

3. The applicant/ complainant filed her claim for compensation in Form ‘B’ seeking compensation in the amount of ₹3,00,00,000/- (Rupees Three Crores only) and for costs and legal fees of ₹60,000/- (Rupees Sixty Thousand only).
4. It is the case of the applicant/ complainant that she along with her husband Mr. Abdul Aziz Shaikh booked a two bedrooms, hall, kitchen unit/ apartment by signing an Option Letter dated 17.11.2016 and also signed a Product Application Form dated 22.11.2016 and was allotted apartment no. B 23-103 on the first floor in Block B 23 in the project but the respondent unilaterally and without prior intimation to the applicant/ complainant and her husband changed the apartment block and unit to apartment no. E 07-103 with a different area as stated in the registered Agreement to Sell dated 29.12.2017.
5. The applicant/ complainant and her husband have paid to the respondent a total amount of ₹34,07,197/- (Rupees Thirty Four Lakhs Seven Thousand One Hundred and Ninety Seven only) towards consideration for the said apartment. The applicant/ complainant and the respondent executed and registered an Agreement to Sell on 29.12.2017 before the Sub-Registrar at Panaji.

6. The applicant/ complainant has set out various misrepresentations made by the respondent. The applicant/ complainant states that on or about 21.01.2021 the respondent sent to the applicant/ complainant a "Request to Consent and Consent Letter" soliciting the applicant's/ complainant's consent and NOC to transfer the project to a third party promoter namely one M/s Adish Developers Pvt. Ltd. on the representation that the respondent was unable to complete the project on its own and planned to induct a new promoter in place to carry out the terms of the Agreement. The applicant/ complainant was constrained to decline giving consent as no detailed contact between the respondent and the third party was forwarded to the applicant/ complainant.
7. As the respondent failed to inform the applicant/ complainant the exact stage of construction of the entire project, the applicant/ complainant sent a legal notice dated 14.05.2021 to the respondent claiming compensation of ₹3,00,00,000/- (Rupees Three Crores only) with 12% interest thereon. The respondent however in the reply disputed all the contentions and claims made in the said legal notice.
8. As the respondent failed to complete the project by 30.06.2021 and had not handed over possession of the apartment by the due date, the applicant/ complainant by her email dated 16.09.2021 informed the respondent that she was withdrawing from the project and terminating her Agreement with the respondent. The applicant/ complainant called upon the respondent to refund the



amount of ₹25,05,890/- (Rupees Twenty Five Lakhs Five Thousand Eight Hundred and Ninety only) paid as consideration to the respondent for the apartment along with interest amounting to ₹46,62,422/- (Rupees Forty Six Lakhs Sixty Two Thousand Four Hundred and Twenty Two only) till the date of termination of the Agreement to Sell with further interest till final payment.

9. By the same notice, the applicant/ complainant also called upon the respondent to pay compensation of ₹3,00,00,000/- as claimed earlier in the legal notice and legal fees of ₹60,000/- (Rupees Sixty Thousand only).
10. The respondent in the reply has contested the claim of the applicant/ complainant and raised preliminary objections. The applicant/ complainant has approached the court with unclean hands and has not given particulars of claim which is a mandate for granting compensation. The applicant/ complainant has not been able to demonstrate the said breach under the Contract Act. The case of the applicant/ complainant is based on misconception of facts and also law.
11. On merits the respondent has stated that there were various circumstances beyond the control of the respondent due to covid-19 pandemic consequent to the nationwide lockdown with effect from March 2020, slump in the real estate construction activity across the country which delayed the completion of the project.



12. The respondent states 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 applicant/ complainant during the booking process.
13. The respondent states that the total consideration of the flat includes consideration plus other charges under the various heads as mentioned in the Agreement to Sell registered on 29.12.2017. The respondent states that the said Agreement to Sell supersedes the Option Letter dated 17.11.2016 or any other letters signed between the parties.
14. The respondent states that the project does not fall under the category of Affordable Housing Project nor have they mentioned or projected to the allottees the same. The applicable taxes are as per Government norms and regulations. The respondent states that the consent was sought from the allottees however, the allottee did not revert back and therefore the same did not materialise.
15. The claim for compensation has to be in consonance with sections 12, 14, 18 and/ or 19 read with Section 71 of the RERA Act. The applicant/ complainant having withdrawn from the project and having been granted refund with interest is not entitled for compensation as claimed.



16. The applicant/ complainant and the respondent filed their respective affidavits in evidence. Written arguments were filed by the respective parties. Oral arguments were also heard.
17. The points for determination and my findings to the same are as under:-

Sr. No.	Points for determination	Findings
(a)	<i>Whether the respondent is liable to pay compensation of ₹3,00,00,000/- to the applicant/ complainant as claimed?</i>	<i>Partly in the affirmative as per order.</i>
(b)	<i>Whether the respondent is liable to pay costs and legal fees of ₹60,000/- to the applicant/ complainant as claimed?</i>	<i>Partly in the affirmative as per order.</i>

REASONS

Point (a)

18. The Agreement to Sell between the parties was duly registered on 29.12.2017. Consequently, all the previous documents executed between the parties do not prevail upon execution of the said Agreement to Sell. Therefore, the submission of Ld. Advocate of the applicant/ complainant that the respondent has unilaterally and without prior intimation changed the apartment no. and the block no. including the carpet area as indicated in the Product Application Form at the time of executing the Agreement to Sell cannot be looked into.



19. It is the contention of the respondent that the project got delayed for circumstances beyond the control of the respondent. The respondent is trying to complete the said project within the extension date granted by the Regulatory Authority. The project extension date is already mentioned on the Goa RERA website. It is also contended that if the applicant/ complainant is granted compensation the respondent will suffer financial constraints and it will adversely affect the completion of the project and also the other customers in the said project.
20. Chapter III of the RERA Act gives details of the functions and duties of the promoter. Section 11 (4) (a) states as follows:-
- “11(4) The Promoter shall 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.”

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 said agreement for sale.



21. Even under Section 18 of the said Act (supra), the complainant is entitled to 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.
22. In this context, in the case of **“M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors. dated 11.11.2021” in civil appeal no.(s) 6745-6749 of 2021**, the Apex court 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 Section 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. Therefore the grounds for delay in delivering possession of the apartment to the applicant/ complainant as given by the respondent/ promoter, will not exonerate the respondent from legal liabilities under the said Act and corresponding legal rights accrued to the applicant/ complainant under the said Act.
23. Thus, there is no merit in this contention of the respondent. The extension granted by the Goa RERA does not bar the present case which pertains to compensation an account of default of handing over possession of the apartment

under the said Agreement to Sell and also failure on the part of the respondent/ promoter to return the money advanced with applicable interest.

24. Therefore, the aforesaid contention of the respondent cannot be accepted in the light of Section 18 of the RERA Act which gives right to the applicant/ complainant to ask for return of the amount and **compensation** from the respondent in case the applicant/ complainant wishes to withdraw from the project.
25. The broad factors to be considered while adjudging compensation have been provided under Section 72 which reads as under:-

“72. 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.”

26. In the case of 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. In the case of **Ghaziabad Development Authority versus Balbir Singh (2004)**

5 Supreme Court Cases 65 it was held that in cases where monies are being simply returned then the party is suffering a loss in as much as he had deposited the money in the hope of getting a flat/plot. He is being deprived of that flat/plot. He has been deprived of the benefit of escalation of the price of that flat/plot. Therefore the compensation in such cases should necessarily be higher.

28. It is the applicant's/ complainant's case that the respondent has delayed in the handing over the possession of the said flat as per the Agreement to Sell dated 29.12.2017 and has thus contravened the provisions of the RERA Act. It is the case of the applicant/ complainant that she has been put to a lot of hardships, mental agony and has further been deprived from occupation of the said flat.
29. It is the case of the applicant/ complainant that in addition she would also be entitled to lost opportunity cost on the current Real Estate Value and loss of rental income for the said flat had she received its possession by 30.06.2021 as agreed.
30. Admittedly, by Order dated 31.10.2022 the Regulatory Authority in the complaint bearing no. 3/RERA/ Complaint (257)/ 2021 had directed the respondent to refund the amount of ₹34,07,197/- (Rupees Thirty Four Lakhs Seven Thousand One Hundred and Ninety Seven only) to the applicant/ complainant within 02 months from the date of the said Order.
31. It is not in dispute that till date the respondent has failed to comply with the said direction, nor has challenged the same in appeal or obtained any stay of the said order, thus, causing further mental agony, hardship to the applicant/complainant.
32. In the light of the above rulings and provisions of the RERA Act and as a result of the default on the part of the respondent of failing to handover possession of

the said flat to the applicant/ complainant as well as return of the said amount advanced with interest as directed by the Regulatory Authority despite the Order dated 31.10.2022, the applicant/ complainant has suffered financial losses which she would have earned by way of monthly rent for the said flat which would have accrued if it was given on rent by the applicant/ complainant.

33. In the claim for compensation, the applicant/ complainant has stated that she has suffered mental agony, hardship and financial losses and has claimed a sum of ₹3,00,00,000/- (Rupees Three Crores only). No documentary evidence to substantiate the said claim has been produced on record.

34. Be that as it may, the respondent has caused sustained mental agony and anguish to the applicant/ complainant for having not handed over possession of the said flat and further for not having return the money advanced by the applicant/ complainant which was returnable with interest as agreed and as directed by the Regulatory Authority till date. The applicant/ complainant is therefore entitled to be compensated for such mental stress, anguish and financial losses caused due to the default by the respondent for which the respondent is liable to pay the applicant/ complainant compensation quantified at ₹1,00,000/- (Rupees One Lakh only).

35. In order to secure another flat of the same area in and around the same vicinity, the applicant/ complainant will have to invest a much higher amount per sq. ft. on account of the escalation in cost of real estate from the time of her

investment till date. For the undue advantage to the respondent corresponding to the disadvantage to the applicant/ complainant, the respondent is liable to pay compensation which is quantified at ₹3,00,000/- (Rupees Three Lakhs only).

36. Point (a), is accordingly, answered partly in the affirmative in the amount of ₹4,00,000/- (Rupees Four Lakhs only).

Point (b)

37. The respondent has failed to refund the money advanced with interest upon the withdrawal from the project by the applicant/ complainant. The applicant/ complainant was compelled to initiate litigations by way of the said complaint before the Regulatory Authority and the present application for compensation for which the applicant/ complainant had to bear the litigation fees of engaging legal counsel for the same due to the default of the respondent. The applicant/ complainant has claimed litigation costs of ₹60,000/- (Rupees Sixty Thousand only). Therefore, the respondent shall be liable to pay compensation to the applicant/ complainant towards legal fees and costs which are quantified at ₹30,000/- (Rupees Thirty Thousand only).
38. Point (b), is accordingly, answered partly in the affirmative in the amount of ₹30,000/- (Rupees Thirty Thousand only).
39. 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 8.75% per annum. Hence, the respondent is liable to pay interest at the rate of 10.75 p.a. for every month of delay to the applicant/ complainant by way of compensation on the aforesaid total amount of ₹4,30,000/- (Rupees Four Lakhs Thirty Thousand only).

40. Before parting with this order, it is necessary to mention that the applicant/ complainant filed her claim for compensation in Form 'B' on 14.06.2023. The respondent sought time on 30.06.2023 and 06.07.2023 and filed reply only on 20.07.2023. The applicant/ complainant sought time to file affidavit in evidence on 31.07.2023, 18.08.2023, 30.08.2023, 14.09.2023, 25.09.2023 and filed the same only on 05.10.2023. The applicant/ complainant thereafter filed written arguments on 16.10.2023. On 26.10.2023 the respondent sought time and filed affidavit in evidence on 03.11.2023 and written arguments on 09.11.2023. Oral arguments were heard on 13.11.2023. Matter stands disposed off on 23.11.2023.


In the result, I pass the following:-

ORDER

The respondent is directed to pay the applicant/ complainant compensation of ₹4,30,000/- (Rupees Four Lakhs Thirty Thousand only) for violation under Section 18 read with Sections 71 and 72 of the Real Estate

(Regulation and Development) Act, 2016 within 60 (sixty) days from the date of this Order.

In default, the respondent shall be further liable to pay the applicant/ complainant interest on the said amount of ₹4,30,000/- (Rupees Four Lakhs Thirty Thousand only) @ 10.75% p.a. till the date of payment/ realization.


23/11/2023
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA