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F.No:4/RERA/Adj. Matters (128)/2024/1307

Date: 01/09/2026

BEFORE THE ADJUDICATING OFFICER

Mr. Nikhil G. Dhumatkar,

Radhabai H.No. 18202,

Porvorim, Bardez, Goa, 403521

.....Applicant

Versus

Comunidade of Serula,

Through its Managing Committee,

West Coast Residency,

Alto-Porvorim, Bardez, Goa, 403521

.....Respondent

Ld. Advocate Mrs. Asmita Tirodkar representing the Applicant.

Ld. Advocate Mr. Nilay Naik representing the Respondent.



ORDER

(Delivered on this the 31st day of the month of August, 2026)

The applicant have filed the present application in Form 'B' for compensation on the reference of the Member , Goa Rera vide Order dated 13/08/2024, claiming that it is the case of the Complainant that he entered into an Agreement for Sale dated 10th December 2012 with the Respondent to buy a premises identified as Office No.4/16 having super built up area of 25.96 sq. mts. Situated on the Second Floor of the complex known as "Serula Comunidade Community Complex" for a total consideration of Rs.15,57,000/- (Rupees Fifteen Lakhs Fifty Seven Thousand Only) pursuant to the aforementioned newspaper advertisement, in good faith, as unsuspecting member of the public relying upon the Managing Committee and the General Body resolution of the Respondent Comunidade and the State Government approval thereto. However till date the respondent has failed to hand over the possession of the office premises to the complainant.

2. Hence, in view of the facts as mentioned the applicant prays for the following compensation:-

That as per proviso of section 18(1) of The Real Estate (Regulation and Development) Act, 2016, compensation for the total period of

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That as per proviso of section 18(1) of The Real Estate (Regulation and Development) Act, 2016, compensation for the total period of delay caused in completion of the construction of the “Serula Comunidade Community Complex” from the date of entering into the agreement i.e. 10-12-2012 till the present date along with the monthly compensation, i.e. Rs.30,000/- (Rupees Thirty Thousand Only) per month alongwith interest till the possession is delivered. The complainant has produced the following documents:-

1. Order dated 13.08.2024
2. Agreement for Sale dated 10th December 2012
3. Receipts:

- I. Receipt No.0301 dated 15/10/2012
- II. Receipt No.0298 dated 15/10/2012
- III. Receipt No.0300 dated 15/10/2012
- IV. Receipt No.0299 dated 15/10/2012
- V. Receipt No.0382 dated 14/12/2012
- VI. Receipt No.0381 dated 14/12/2012
- VII. Receipt No.0446 dated 11/03/2013

3. By way of reply, the Respondent has stated that the present reply is filed on the basis of the documentation available in the



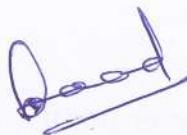
records of the Comunidade in respect of the Serula Comunidade Community Complex, as most of the original records are in possession of either the Police or the Court in relation to the FIR No. 43/2014 and Chargesheet No. 55/2020. That, the Comunidade of Serula is a Comunidade governed and regulated by the Code of Comunidades viz. Legislative Diploma 2070 dated 15.04.1961. That the facts as regards the Complex known as Serula Comunidade Community Complex are set out as follows.

- (i) Vide Communication dated 24th October 2011, a true copy whereof is hereto annexed and marked **"EXHIBIT R1"**, the Under Secretary, Revenue Department conveyed Government approval for construction of complex for the Comunidade of Serula in Plot No. 4 under Survey No. 129 (Part) in Village Penha de Franca of Serula Comunidade admeasuring an area of 2700 sq. mts. in terms of Article 153(6) of the Code of Comunidades;
- (ii) The Managing Committee of the Comunidade in its Meeting held on 21st March 2012 resolved that the Bank Account of Serula Comunidade Community Complex in Indian Overseas Bank bearing A/c. No. 970 is to be operated by the President

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and Treasurer jointly. It was further resolved that the President and the Treasurer are authorized to sign the Cheques as well as withdrawal slips jointly in respect of the said Bank Account and that the said Resolution shall supersede all the earlier Resolutions passed in respect of operation of the said Account. A true copy of the Resolution of the Managing Committee dated 21st March 2012 is hereto annexed and marked **"EXHIBIT R2"**;

- (iii) As seen from the General Body Meeting of the Comunidade held on 15th April 2012, a true copy whereof is hereto annexed and marked **"EXHIBIT R3"**, discussions and decisions were taken in respect of the said Community Complex;
- (iv) The Managing Committee of the Comunidade at its Meeting held on 30th September 2012 resolved that the President and the Treasurer of the Comunidade are authorised to sign jointly any Agreement for Sale and / or a Deed of Sale in respect of any Shop / Office in Serula Comunidade Community Complex which is under construction. A true copy of the Minutes of the Meeting held on 30th September 2012 is hereto annexed and marked **"EXHIBIT R4"**;



(v) An Advertisement was issued by the Comunidade in the Newspaper 'O Herald' on 26th April 2012 informing that bookings are open for booking of prime shops / offices in proposed Serula Comunidade Community Complex. A true copy of the said Advertisement is hereto annexed and marked **"EXHIBIT R5"**;

(vi) It appears that pursuant to the said Advertisement, Agreements of Sale came to be executed between the Comunidade and various persons in respect of Shops / Offices in the said Community Complex;

(vii) One such Agreement for Sale dated 10th December 2012 is executed between the Comunidade of Serula and the Applicant herein in respect of Office bearing No. 4/16 having a super built-up area of 25.96 sq. mts. situated on the 2nd Floor of the said Complex. The said Agreement is registered in the Office of the Sub-Registrar, Bardez on 10th December 2012;

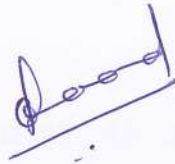
(viii) A separate Bank A/c. No. 197101000000970 in the Indian Overseas Bank at Socorro Branch was opened and all transactions related to the Serula Comunidade Community Complex were operated and managed through this Bank

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Account. All the amounts received by allottees / agreement holders were deposited in this Bank Account and the expenditure incurred on the work of the said Complex were also made from the said Bank Account. That, as per the earlier Resolution passed, the said separate Bank Account was operated by the then President and Treasurer of the Comunidade;

- (ix) An FIR No. 43/2014 dated 22nd March 2014 was registered at the Porvorim Police Station on allegation of alleged illegalities in the Comunidade of Serula and one such allegation / issue was also as regards the construction of the subject Serula Comunidade Community Complex at Porvorim;
- (x) After investigation, a Chargesheet No. 55/2020 dated 25th June 2020 is filed before the Special Judge, CBI Court, Goa and the said case is still pending. The allegations, in the said Chargesheet, as regards the Community Complex are as follows:

“Further the accused persons conspired with each other and opened an illegal Account No. 197101000970 in the name of Serula Comunidade Community complex in the Indian



Overseas Bank Porvorim without the approval of the Administrator of Comunidade, North Zone, Mapusa – Goa. Thereafter accused persons has withdraw the amount from the legal Account of Comunidade of Serula and further transferred into the illegal account in Indian Overseas Bank at Porvorim having Account No. 197101000970 for construction of Serula Comunidade Community Complex at Porvorim. The accused persons have allotted shops and offices to them and their family members. Thus accused persons have cheated the Gaonkar and Comunidade of Serula for an amount of Rs. 3,018,5000/-".

- (xi) In connection with the said FIR No. 43/2014, vide Communication dated 03rd July 2014, the PI, CID / CBPS, Ribandar – Goa directed the Branch Manager, Indian Overseas Bank at Socorro Branch to freeze the Bank A/c. No. 197101000970 of the Comunidade. This is the same Bank Account which is related to the Serula Comunidade Community Complex. This Order of Freezing of the Account continues till date and since 03rd July 2014, the said Bank Account continues to be frozen and the Comunidade cannot

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operate the said Bank Account. The Authorities will be in possession of a copy of the said letter, as no copy is available in the records of the Comunidade;

(xii) It is seen from the records that the construction of Serula Comunidade Community Complex was suspended in July 2014 in view of freezing of the said Bank Account as further expenditure on the Complex could not be undertaken. As such further work on the Community Complex was stopped / suspended by the Comunidade in July 2014;

(xiii) The issue about the Comunidade Community Complex in Survey No. 129/1 in Village Penha de Franca came up for discussion in the General Body Meeting of the Comunidade held on 19th May 2019. A true copy of the discussion and resolution passed at the said Meeting is hereto annexed and marked **“EXHIBIT R6”**;

(xiv) The issue about the Comunidade Complex again came up at the General Body Meeting of the Comunidade on 13th November 2022. A true copy of the discussion and resolution passed at the said Meeting is hereto annexed and marked **“EXHIBIT R7”**;



(xv) The issue about the Comunidade Complex again came up at the General Body Meeting of the Comunidade 06th August 2023. A true copy of the discussion and resolution passed at the said Meeting is hereto annexed and marked **“EXHIBIT R8”**.

4. Preliminary submissions were raised as under:-

A. The Comunidade of Serula is a body constituted and governed and regulated by the Code of Comunidades viz. Legislative Diploma 2070 dated 15.04.1961. In respect of the subject Serula Comunidade Community Complex, the Comunidade of Serula cannot be said to be a ‘Promoter’ as defined in Section 2(zk) of the RERA, 2016. As such, the provisions of the RERA, 2016 are not applicable and the present Application filed purportedly under Section 71 of the Act is not maintainable in law and liable to be dismissed in limine;

“5AA: As seen from Paragraph 5 of the Application, Applicant in the present proceeding is seeking purported compensation as per proviso of section 18(1) of the RERA, 2016.

”“5AAA : As held by the Hon’ble Supreme Court in the case of ***NEWTECH PROMOTERS AND DEVELOPERS PRIVATE***

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reported in (2021) 18 SCC 1 , “a conjoint reading of Section 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and its interest thereon, it is the Regulatory Authority which has the power to examine and determine the outcome of a complaint.”

“5AAAA: As such, it is respectfully submitted that only the RERA Authority would have jurisdiction to adjudicate and decide on a claim filed under the proviso of Section 18(1) of the RERA, 2016 and the Adjudicating officer would have no jurisdiction to hear and decide such a claim”

“5AAAAA: As such, the Adjudicating officer has no jurisdiction to entertain and decide the present Application and the Application deserves to be dismissed in limine”

B. It is respectfully submitted that the Project ‘Serula Comunidade Community Complex’ was / is not required to be registered under Section 3 of the RERA, 2016 and, as such, the provisions of the RERA, 2016 are not applicable to the said Project;



The proviso to Section 3 of the RERA Act 2016 only provides that the projects that are ongoing on the date of commencement of the Act shall require registration under the said Act. The RERA, 2016 has come into force on 26th March 2016.

As stated hereinbefore, the construction of the subject Project was stopped / suspended since July 2014 till date on account of the freezing of the Bank Account of the Comunidade pursuant to which no expenditure could be made on the said Project.

As such, it is respectfully submitted that the Project 'Serula Comunidade Community Complex' was not a Project that was ongoing on the date of commencement of the RERA, 2016 viz. on 26th March 2016.

The Project, as such, did not require any registration under the RERA, 2016 and consequently the present Application purportedly filed under Section 71 of the RERA, 2016 is not maintainable in law and deserves to be dismissed;

C. The Applicant seeks to enforce a right on the basis of an Agreement for Sale dated 10th December 2012 executed between the Comunidade and the Applicant. It is respectfully submitted that such an Agreement is a nullity in law and the Applicant cannot

derive any right and enforce such an agreement which is ab-initio null and void and a nullity in the eyes of law.

That the Code of Comunidades does not anywhere contemplate sale by the Comunidade of any of its property / premises to any person (including its components) by executing such Agreements for Sale or otherwise. Grant of lands of the Comunidade are strictly governed by the provisions of the Code of Comunidades, which does not envisage any sale of land of the Comunidade by executing such Agreements for Sale or otherwise. As such, Agreements for Sale, which are contrary to and in violation of the Code of Comunidades, are a nullity in the eyes of law and no person can claim any right on the basis of such Agreement. It is also pertinent to note that there is no approval of the State Government for entering into any Agreements for Sale by the Comunidade disposing off its property by way of Sale to a third person. That the purported Application filed in respect of such an Agreement for Sale, which is a nullity in law, deserves to be dismissed in limine.

D. The present Application is purportedly filed in respect of the Agreement for Sale dated 10th December 2012. The said



Agreement, in its Clause 36, stipulates that the possession of the said Shop shall be handed over to the Purchaser on the date of execution of the Deed of Sale which shall be executed within a period of 24 months from the date of execution of the Agreement. The said period of 24 months for execution of Deed of Sale is 10th December 2014. That, The present Application, filed purportedly under Section 71 of the RERA, 2016, on or about 24th September, 2024 is hopelessly barred by limitation and deserves to be dismissed in limine.

5. Further the Applicant has relied on the Order dated 13.08.2024 passed in the Complaint filed by the Applicant herein under section 31 of the RERA, 2016 before the Real Estate Regulatory Authority against the Respondent herein. It is pertinent to note that the Respondent herein has filed an Appeal challenging the said order dated 13.08.2024 before the Maharashtra Real Estate Appellate Tribunal, Mumbai on 11.10.2024 and the same is pending for adjudication.

6. It is denied that the Applicant is entitled for compensation for the total period of Delay caused in completion of the construction of the "Serula Comunidade Community Complex" from the date

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of entering into the agreement i.e. 10.12.2012 till the present date. It is respectfully submitted that the provisions of Section 18(1) of the RERA, 2016 are not applicable to the Project. It is denied that the Respondent is liable to pay any monthly compensation of Rs. 30,000/- as claimed or otherwise.

7. Affidavit in evidence has been filed by both the parties. Opportunity was also afforded to the parties to look towards a settlement. However, they could not arrive at any settlement. Arguments were heard on behalf of the Applicant as well as on behalf of the Respondent. Written synopsis has also been filed on record by the Respondent. I have gone through the records and considered the arguments before me. On behalf of the Applicant reliance was placed in the following cases:

- 1. Code of Comunidades & Order dated 23rd June 1925 of Maharashtra Real Estate Appellate Tribunal, Mumbai.**
- 2. "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**

3. Michael Charles D'Souza v/s Ganesh V.V. Gaonkar and others

1991 Mh.L.J.

8. On behalf of the Respondent reliance was placed in the following case:

1. Wadhwa Group Housing Private Limited V/S Vijay Chowksi and Another 2024 SCC Online Bom 660

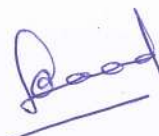
9. The points for determination and my findings to the same are as under:-

Sr. No.	Points for determination	Findings
(a)	<i>Whether the Respondent is liable to pay compensation to the Applicant?</i>	<i>In the affirmative.</i>

REASONS

Point (a)

10. At the outset let make it clear that as an Adjudicating Officer as defined under Section 2 and Section 71 of the Act, is empowered to adjudicate the compensation. Therefore the allegations and grievances as stated in the reply of the Respondent cannot be looked into by me.

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11. It is submitted by the Respondent the Adjudicating Officer has no jurisdiction to entertain and decide the present Application as the Application is not maintainable in law and deserves to be dismissed in limine. Reliance was place in the case of "***Newtech Promoters and Developers Pvt. Ltd. v/s State of Uttar Pradesh reported in (2021) 18 SCC***" more particularly in paragraph 85 which has held that "a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the Regulatory Authority which has power to examine and determine the outcome of a complaint".

12. 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.



13. 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.”*

14. It is true that only the RERA Authority would have jurisdiction to adjudicate and decide on a claim filed under the proviso of Section 18(1) of the RERA, 2016 in respect to refund of the amount, and

interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon.

15. The Applicant has not withdrawn from the project . Hence as per Section 18 of The RERA Act, he would not be entitled to the compensation but would be entitled only to the interest. The Adjudicating Officer would have no jurisdiction to hear and decide such a claim. In the case of *Brahmanand Kadam Vs. G.T. Developers* Appeal No. AT005000000052390 in Complaint No. CC00500000011089, decided on 20.08.2021, The Maharashtra Real Estate Appellate Tribunal has held that as the allottee is staying in the project, in such cases, no compensation is envisaged under Section 18 of the Act. Hence, the relief for compensation cannot be granted and is therefore rejected.

16. Vide Order dated 13/08/2024, of Goa Real Estate Regulatory Authority in Case No F.N0:3/RERA/Complaint(382)2023/1086, the Respondent has been directed to deliver the possession of the office premises identified as Office No 4/16 completed on all respect in terms of the Agreement, and the Respondent was also directed to pay to the Complainant interest for every month of delay at the rate of 10% per annum on the amount of ₹5,54,780/- starting from the 1st of



January 2015 till handing over the possession of the office premises to the complainant. The Applicant has been granted interest as relief as can be seen in the Directions. Therefore, no compensation can be awarded to the Applicant as he has already been given the relief by directing the Respondent to pay him the interest.

17. Besides seeking for the compensation of delay in the construction of the Complex, the Applicant has not sought for any other sort of compensation. However, under Section 72 of the Act, it is provided for that while adjudging compensation the adjudicating officer can consider other factors which the adjudicating officer considers necessary to the case in furtherance of justice for awarding the compensation. My view finds harmony with citation relied upon by the Applicant as held 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*** at para 85.

18. As such, I am of the opinion that the Respondent need to compensate the Applicant for causing stress, monetary loss by way of expenses towards filing the present application, which fees are ₹5,000/-, fees of the legal Counsel, follow up of the matter and other miscellaneous expenses like taking out copies etc in the present



proceedings, due to the default in handing over the possession of the said office premises to the Applicant . Further also, due to the default in handing over the possession, there is disproportionate gain or unfair advantage as the payment of ₹ 5,54,780/- has already been paid to the Respondent. Surely the Applicant has been put through stress and trauma for all these years since the possession has not been handed to him till date. Therefore, I am of the view that the Respondent is required to compensate the Applicant a sum of ₹6,00,000/-(Six Laths only). On behalf of the Respondent reliance was placed in the case of *Wadhwa Group Housing Private Limited V/S Vijay Chowksi and Another 2024 SCC Online Bom 660*, the said citation is not well suited in the face of the facts and circumstances discussed herein above.

In view of my discussions herein above hence, I pass the following:-

ORDER

The Respondent is directed to pay the Applicant compensation of ₹6,00,000/-(Six Lakhs only) for violation under Section 18 read with Sections 71 and 72 of the Real Estate (Regulation and Development) Act 2016 within 30 days from the date of this Order.

Further, in default to pay the said amount, the Respondent shall be further liable to pay the Applicant interest on the said amount of ₹6,00,000/-(Six Laths only) @8.80% p.a. (which is applicable on this day) till date of payment/realization.

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31/08/2026

Sayonara Telles-Laad
Adjudicatng Officer,
Goa RERA