



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (368)/2023/127

Date: 30/01/2025

(BEFORE THE MEMBER SHRI VINCENT D'SILVA)

1. **Mr. Rajendra R. Shirodkar,**
2. **Mrs. Sangeeta R. Shirodkar,**
Both r/o H.No. 105/C, Xell Bastora,
Bardez, Goa-403507.

.....Complainants

Versus

M/s Prabhu Constructions,
Rep. by Mr. Venkatesh Narayan Prabhu Moni,
r/o Villa No. G-4, La Ocean Mist,
Near Amar Hotel, Dona Paula-Goa, 403004.

.....Respondent

Ld. Advocate Shri Neelesh Takkekar along with Advocate Saish Mandrekar for the complainants.

Ld. Advocate Shri Suhas M. Walawaikar for the respondent.

ORDER

(Delivered on this 30th day of the month of January, 2025)

This is a complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016.

2. Briefly stated, the case of the complainants is as follows:-

The complainants and the respondent have entered into an agreement dated 08.04.2013 with respect to office no. 4-FF-12 admeasuring 21.26 sq. mts located

on the fourth floor of the building known as 'Prabhu Chamber' at Mapusa. The respondent however has not executed a deed of sale in favour of the complainants with respect to the said unit nor there is any valid occupancy certificate in place to occupy the said building, although the total consideration of ₹12,11,542/- has been paid to the respondent. The respondent also failed to register the project and provide other amenities like lift, obtain renewal with respect to NOC to Fire with respect to subject building. The complainants therefore be granted the reliefs prayed.

3. The respondent filed a reply inter-alia contending that the complaint is not maintainable. The agreement executed by the complainants for sale in respect of subject premises has still not been registered under the RERA Act neither the complainants can be treated as allottee nor the respondent as promoter within the meaning of the Act. The complainants have got possession after obtaining occupancy certificate and hence, he becomes the exclusive owner of the premises. The agreement for sale has not been registered in accordance with the RERA Act and the rules. The complainants received the possession of the subject premises after the issue of occupancy certificate and as such never raised any grievance as to the alleged defect or damages prior to filing of the complaint and therefore, the complaint be dismissed.

4. Argument heard. Notes of written arguments came to be placed on record by the parties.

5. It is a matter of record that my Ld. Predecessor vide its order dated 17.03.2022 between *Mr. Kishor Uttam Bhaidkar and 35 others vs. Mr. Venkatesh Narayan Prabhu Moni in case no. 3/ RERA/ complaint (comb, Prabhu Chambers)/ 2019/186* directed the respondent to carry out all the pending works and had

imposed a fine of ₹50,00,000/- for not registering the project as well as to make the lift functional; obtain renewal of NOC for fire of the said building and other reliefs.

6. The operative part of the order dated 17.03.2022 reads 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 ₹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 ₹30,00,000/-. The respondent is, therefore, further directed to deposit in this Authority, penalty of ₹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 ₹20,00,000/- (Rupees Twenty Lakhs only). The respondent is, therefore, further directed to deposit penalty of ₹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."

7. Admittedly, the above common order was passed with respect to the 36 allottees and the said matter is pending for execution before various authorities. The complainants are one of the allottees in the same project and sought the reliefs, some of which have been already granted by my predecessor in the earlier order, namely for obtaining occupancy certificate and giving possession, providing essential facilities/supplies/connections and the quality of work in terms of the agreement for sale, etc.

8. The complainants in the present case have sought for following reliefs:-

- A. This Hon'ble Authority be pleased to pass appropriate order directing the developer to pay compensation in terms of section 18(3) of the Act by granting interest on the amount paid of ₹12,11,542/- from the stipulated date for handing over possession till obtaining occupancy certificate.
- B. This Hon'ble Authority be pleased to refer the said matter for adjudicating compensation in terms of Section 71 of the Act for loss of income, mental agony and litigation cost suffered by the complainant by invoking the provisions of RERA Act, 2016.
- C. This Hon'ble Authority be pleased to direct the developer to rectify all defects mentioned in complaint.
- D. This Hon'ble Authority be pleased to direct the Developer to obtain occupancy certificate by complying the requirements under the Building Regulation Act.
- E. This Hon'ble Court be pleased to direct the Developer to remove the defects in the lifts and make them fully functional and operational in all respects.
- F. This Hon'ble Court be pleased to direct the Developer to execute a deed of conveyance with respect to the subject premises after obtaining a valid occupancy certificate from the MMC and after removing all defects in the said building.
- G. This Hon'ble Court be pleased to direct the developer to renew the Fire NOC by taking such steps as may be necessary in terms of law.
- H. Any other order that this Hon'ble Authority may deem fit proper in the nature and circumstances of the case.

9. Discernibly, the reliefs prayed for by the complainants at serial no. 9 A for directing the developer to pay compensation in terms of section 18(3) of the Act;

prayer B for referring the matter for adjudicating compensation under section 71 have to be decided by the Adjudicating officer and therefore, no relief could be granted by this Authority. The prayer 9(C) pertaining to rectification of all defects mentioned in the complaint; prayer (D) directing the developer to obtain occupancy certificate; prayer (E) directing the develop to remove defects in lift; prayer (G) directing the develop to renew NOC of fire have already been granted in case *Mr. Kishor Uttam Bhaidkar and 35 others*, supra and therefore, it would be iniquitous to dilate on the said issues or grant the same.

10. The points for my determination along with the reasons and findings thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the complainants are entitled to direct the respondent to execute a deed of conveyance with respect to the office premises along with delayed interest on the same?	In the affirmative.
2.	What order? What reliefs?	As per final order.

REASONS

Point no. 1 and 2

11. There is no dispute that the complainants and the respondent entered into an agreement for office premises bearing no. 4-FF-12 admeasuring 21.26 sq. mts. located on the fourth floor of the building known as "Prabhu chambers" situated at Angod, Mapusa, Goa and that till date, no sale deed has been executed nor any possession has been delivered.

12. Ld. Advocate Shri Saish Mandrekar for the complainants has submitted that the respondent has consistently adopted dilatory tactics to defeat the proceedings thereby denying justice being done to the complainants as seen from the checkered history, where the respondent has failed to comply with the direction given by the Authority from time to time in the earlier 36 complainants, which were initially filed before this Authority by the other purchasers and has failed to register the project and complete the essential and pending work related to the building. He further submitted that the respondent has agreed to complete the above said office within 24 months from the date of signing the agreement subject to extension of further period of nine months and after obtaining the occupancy certificate from the competent authority and handover possession of the office to the complainants. The respondent has failed to execute the sale deed in favour of the complainants and handover the possession of the unit since 27.08.2015 and therefore, committed breach of the agreement.

13. Per Contra, Ld. Advocate Shri S. Walawaikar for the respondent has submitted that the complaint is not maintainable as the complainants have received possession after obtaining occupancy certificate and therefore, became the exclusive owners of the said premises and hence, it is not open for the complainants who are not allottees to maintain the present complaint. The agreement for sale have not been registered in accordance with the Act and that the complaint is false and fabricated, which is ill motivated and filed at the instance of the complainants in the previous case and therefore, no reliefs ought to be granted.

14. The moot question therefore is whether the complainants are entitled for execution of conveyance deed in respect to office premises after obtaining necessary documents and interest for delayed possession.

15. The functions and the duties of the promoter/respondent as per Section 11(4) of the Act are reproduced here-in-below:-

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;
- (b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;
- (c) ...
- (d) ...
- (e) ...
- (f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;"

16. Under Section 18 of the Act, If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

17. The Hon'ble Supreme Court in case '**Pioneer Urban Land and Infrastructure Ltd. versus Govindan Raghavan**', 2019 SCC Online SC 458, has held that the inordinate delay in handing of the flat clearly amounts to deficiency of service. The Apex Court further held that a person cannot be made to wait indefinitely for possession of the flat allotted to him and is entitled to seek refund of the amount paid by him. It was further held that the flat buyer cannot be compelled to take possession of the flat even if it is offered, if the builder fails to fulfill their contractual obligation of obtaining the Occupancy Certificate and handing over possession within the stipulated time or a reasonable time thereafter.

The flat buyer is entitled to seek a refund of the amount paid, along with appropriate compensation.

18. The Hon'ble Supreme Court dated November 11, 2021 in the case of **M/s. Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Ors** in Civil Appeal No(s). 6745-6749 and 6750-6757 of 2021 has clarified that if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement, then allottee's right under the Act to seek refund/claim interest for delay is unconditional & absolute, regardless of unforeseen events or stay orders of the Court/Tribunal.

19. The agreement for construction-cum-sale was executed on 08.04.2013 between the respondent and the complainants and in terms of clause 3(a) of the agreement, the Builder/Vendors shall complete the said office unit within 24 months from the date of signing the Agreement, subject to an extension of further period on 9 months, and after obtaining the Occupancy Certificate from the competent Authorities, hand over its delivery, to the Purchasers, provided all the amount due and payable by the Purchasers under the Agreement are paid by the Purchasers to the Builder/Vendor. In terms of Clause 3(b)(i), of the Agreement, the Builder/Vendor shall upon receipt of the requisite Occupancy Certificate, intimate the same to the Purchasers and the Purchasers shall, within fifteen days from the receipt of the notice, take delivery of the said office. Failure to take delivery of the said office, will not exonerate the Purchasers from their liability to pay the outgoings such as the Municipal Taxes etc. from the date of the Occupancy Certificate.

20. It is therefore manifestly clear that the obligation and responsibility of the promoter/respondent is to act as per the agreement for sale and shall complete the said office unit within 24 months from the date of signing the Agreement after

obtaining the Occupancy Certificate from the competent Authorities, and hand over its delivery, to the complainants and also execute a registered conveyance deed in respect of the office in favour of the allottees/complainants. The respondent has not produced anything on record that he has obtained completion certificate or the occupancy certificate from the competent authority, although the respondent has claimed so nor there is anything on record that they had offered to execute the conveyance deed in respect of the apartment after obtaining the relevant documents in terms of above clause 3(b)(i) of the agreement. There is no dispute that the entire payment towards sale consideration have been effected by the complainants and inspite of that, the respondent has failed to give possession of office premises to the complainants as per the schedule specified in the agreement of sale. The submissions of Ld. Adv. Shri Walawaikar that the complaint is not maintainable as the complainants have received possession after obtaining occupancy certificate and that it is false and fabricated cannot be accepted having any merits.

21. It is a matter of record that in terms of Para 3(a), Page 8 of the Agreement of sale, the delivery of the possession was to be effected after completing the said office unit within 24 months from the date of signing of the agreement after obtaining the occupancy certificate. The possession therefore should have been delivered as on 08.04.2015 after obtaining the required documents. The complainants therefore are entitled for execution of the valid conveyance deed along with delayed interest on the same from the date fixed for delivery of possession till date of delivery under 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 websites) Rules, 2017.

22. The respondent has neither tendered possession of the office unit within due date after obtaining permission from the relevant authorities nor executed sale deed in respect of the said office premises in terms of the agreement. The respondent therefore has violated Sections 11(4) (a) (b) and (f) as well as Section 18 of the RERA Act and therefore made himself liable for penalty under section 61 of the RERA Act, which reads as follows:

61. Penalty for contravention of other provisions of this Act.-

“If any promoter contravenes any other provisions of this 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 up to five per cent of the estimated cost of real estate project as determined by the Authority.”

23. Under Section 71 of RERA Act, compensation under Sections 12, 14, 18 and 19 of the Act has to be adjudged only by the Adjudicating Officer. Accordingly, the prayers for compensation by the complainants have to be determined by the Adjudicating Officer for adjudging the compensation, if any.

24. The complainants have sufficiently proved that they are entitled for execution of the valid conveyance deed along with delayed interest on the same as the respondent has violated provision of Sections 11 (4) (a) (b) and (f) as well as Section 18 punishable under Section 61 of the Real Estate (Regulation and Development) Act, 2016.

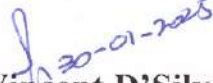
25. In the circumstances, I pass the following:-

ORDER

- i. The respondent is directed to execute a deed of conveyance with respect to office no. 4-FF-12 admeasuring 21.26 sq. mts located on the fourth floor of

the building known as “Prabhu chambers” after obtaining valid occupancy certificate from the concerned authorities within 60 days from the date of this order.

- ii. The respondent shall pay interest @ 11.10% (9.10% plus 2%) to the complainants in terms of 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 Websites) Rules, 2017 for every month of delay on the amount paid to the respondent namely ₹12,11,542/- (Rupees Twelve Lakhs Eleven Thousand Five Hundred and Forty Two Only) from 08.04.2015 till handing over of valid possession to the complainants.
- iii. The respondent is liable to pay penalty of ₹5,00,000/- (Rupees Five Lakhs only) for violating Sections 11(4)(a)(b) and (f) read with Section 18, under Section 61 of the RERA Act. The respondent is directed to deposit penalty of ₹5,00,000/- (Rupees Five Lakhs only) before the Authority within two months from the date of this order failing which, necessary proceedings will be initiated against the respondent.
- iv. The respondent is directed to file compliance report of the order in the form of an affidavit within 60 days of this order, failing which further legal action will be initiated by the Authority under the RERA Act, for execution of the order.


(Vincent D'Silva)
Member, Goa RERA

Panaji, Goa.

Date: 30.01.2025.