



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (20)/2021/509

Date: 09/06/2023

BEFORE THE ADJUDICATING OFFICER

Ms. Lavina E Gauri Sitaram Palyekar

UG-4, Varadhraj Greens,
Near HP Gas Godown,
Matve, Dabolim, South Goa-403801.

..... Applicant/Complainant

Versus

1.Mr. Sandeep Shirodkar,

C-1, Tilak Commercial Complex,
Vasco Da Gama, Goa-403802.

.....Respondent no. 1

2. Mrs. Siddhi S. Shirodkar,

Resident of Radha Krishna Niwas,
Near 1st PWD Water Tank,
New Vaddem Vasco-Da-Gama, Goa-403802.

.....Respondent no. 2

Ld. Advocate Shri V. Gadnis for the Applicant/Complainant.

Ld. Advocate Shri W. Rodrigues for the Respondent no. 1.

Learned Advocate Shri S. Chodankar for the Respondent no.2.

(added as party respondent no. 2 on 27.12.2022 in view of Order dated 22.12.2022).

ORDER
(Delivered on this 9th day of the month of June, 2023)

The present claim for compensation in Form 'B' has been filed under Section 12, 14, 18 and 19 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') initially only against the respondent no. 1 seeking compensation in pursuance to the Order dated 11.10.2021 passed by the Goa Real Estate Regulatory Authority (for short 'Goa RERA') in complaint bearing no. 3/RERA/Complaint(118)/2020 which is in respect of the same project Varadhraj Greens.

2. The Hon'ble Authority in the said Order held that as per respondent, he has already completed the work but as per complainant, there are many defects pointed out in the complaint. Complainant has prayed for completion of work as well as compensation. Since, possession of the flat is already with complainant, I feel determining compensation under the Act is vested in Adjudicating Officer under Section 71 of the Real Estate (Regulation and Development) Act, 2016.

Therefore, the case is referred to the Adjudicating Officer for determination of compensation, if any, under Section 71 of the Act.

3. In response to the claim for compensation in Form 'B' the respondent no. 1 on being noticed filed reply. It is the case of the respondent no. 1 that the applicant/



complainant was not the complainant before the Goa RERA and never filed a single complaint against this respondent.

4. However, the applicant/ complainant herein is instigated by one Vanshika Rane to file the present application for compensation and to harass and defend this respondent. It is submitted that the application is bad in law and has to be dismissed at the threshold.
5. The applicant/ complainant filed rejoinder to the objections of the respondent no. 1.
6. By Order dated 22.12.2022, the applicant/ complainant was granted an opportunity to amend the cause title of the present proceedings and to add Ms. Siddhi S. Shirodkar as party respondent no. 2. The applicant/ complainant complied with the said Order and the cause title was accordingly amended adding respondent no. 2 to the present proceedings.
7. Upon being noticed, the respondent no. 2 filed her reply objecting to the claim for compensation. It is the case of respondent no. 2 that there is no Order passed against the respondent no. 2 who is the owner/proprietor of Varadhraj Greens project. The Interim Order passed on 26.03.2021 and the final Order dated 03.11.2022 was passed against Mr. Sandeep Shirodkar (respondent no. 1 herein). The respondent no. 2 states that all the necessary licenses, completion certificate, occupancy certificate, ownership documents, the permission for

construction, development permission from the planning authority of Mormugao, the construction licenses from the Panchayat are all in the name of respondent no. 2. Initially, the power of attorney was given to respondent no. 1 which was subsequently revoked on 17.07.2018. As the project was occupied and enjoyed peacefully by the occupants, the respondent no. 2 was not aware about the RERA registration. However, upon enquiry by the Chartered Accountant of the respondent no. 2 without prejudice, the respondent no. 2 moved for registration of the project under RERA. The registration charges were also paid towards the same. Since 2017 the respondents no. 1 and 2 though residing in the same residence have no cordial relationship and do not interact at all for personal reasons. The respondent no. 1 never informed or intimated the respondent no. 2 about the proceedings before the RERA by any third person. No claim of grievance has ever been addressed by the complainant as a proprietor/owner of the project Varadhraj Greens. In view of the above it is submitted that the respondent no. 2 be dropped as party to the proceedings and the proceedings towards the project Varadhraj Greens be withdrawn.

8. The applicant/complainant filed rejoinder to the reply of the respondent no. 2.
9. The applicant/ complainant filed affidavit in evidence. The respondent no.1 and respondent no. 2 both filed their respective affidavits in evidence. Attempts to resolve the matter in settlement did not succeed. Oral arguments were heard.

Written submissions have been placed on record by the applicant/ complainant and by the respondents 1 and 2 respectively.

10. The points for determination and my findings to the same are as follows:-

| Sr. No. | Points for determination | Findings |
|----------------|--|--|
| (a) | <i>Whether the provisions of the RERA Act are not applicable and the claim for compensation is not maintainable as against the respondents??</i> | <i>In the negative.</i> |
| (b) | <i>Whether the respondents no. 1 and 2 are liable to compensate the applicant/ complainant?</i> | <i>Partly in the affirmative as per order.</i> |

REASONS

Point (a)

11. The issue of non-registration of the project Varadhraj Greens was considered by the Hon'ble Goa RERA in the complaint bearing no. 3/RERA/Complaint (118)/2020. By Interim Order dated 26.03.2021 the Hon'ble Goa RERA held that the promoter has violated the provisions of the RERA Act by not registering it. Accordingly, a penalty of ₹5,00,000/- (Rupees Five Lakhs only) was imposed and the promoter (the respondent no. 1 herein) was directed to pay the same and make application with all required documents and fees within 15 days failing which he will be liable for further action and penalty under Section 59(2) of the RERA Act.

12. By Order dated 03.11.2022 the promoter Ms. Siddhi S. Shirodkar (the respondent no. 2 herein) who has applied for registration of the project Varadhraj Greens under Section 3 of the RERA Act was heard and was directed to pay the penalty of ₹5,00,000/- (Rupees Five Lakhs only) imposed vide Order dated 26.03.2021 before granting registration. The certificate of registration of the said project Varadhraj Greens has since been granted.
13. Taking into consideration above said Orders of the Goa RERA which have not been challenged by either of the respondents, the respondents have admitted to the jurisdiction of the Goa RERA and consequently the provisions of the RERA Act are applicable to the said project Varadhraj Greens.
14. The Respondent no. 1 has sought to contend that he is not liable to pay any compensation in view of the revocation of the power of attorney issued in his favour by the respondent no. 2.
15. The respondent no. 2 has sought to contend that the respondent no. 1 never informed or intimated her about the proceeding before the RERA by any third person. No claim of grievance was ever addressed to her as proprietor/ owner of the project Varadhraj Greens. Hence the respondent no. 2 be dropped and the proceedings towards the said project be withdrawn.

16. It is not in dispute that the project Varadhraj Greens received completion certificate on 17.072018 and on the same day the said power of attorney issued by respondent no. 2 in favour of respondent no. 1 was allegedly revoked.
17. It is also not in dispute that respondent no. 1 erected the building in the project Varadhraj Greens on the basis of the said power of attorney executed by respondent no.2.
18. Section 208 of the Contract Act, 1872 provides for when termination of agents authority takes effect as to agent, and as to third persons:- The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.
19. Even assuming that the liability of the respondent no. 1 extinguished upon termination of power of attorney even then the liability of respondent no. 2 would continue being the promoter of the project Varadhraj Greens.
20. Section 2 (zk) reads as under:-
- “(zk) "promoter" means,—
- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
- (iii)
- (iv)
- (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or
- (vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;”

21. In the reply of respondent no. 2, the respondent no.2 has claimed that the construction is erected at her instance and all the necessary permissions and statutory approvals are in her name. This being the position the respondent no. 2 is squarely covered within the definition of the word promoter and consequently is fastened with liability under the RERA Act.

22. In view of the above definition under the RERA Act it is not only the builder or developer or person who constructs who is liable under the RERA Act but even the person who causes to construct a building or apartment. Therefore, the respondent no. 2 as promoter and respondent no. 1 who has caused to construct the building on behalf of the respondent no. 2 are both liable to compensate the applicant/ complainant.
23. Therefore the claim for compensation under the RERA Act is maintainable against both the respondents jointly and severally. Hence point (a) is answered in the negative.

Point (b)

24. The applicant/ complainant in the application for compensation in Form 'B' has set out several instances of defaults and deficiencies on the part of the respondents and has prayed for compensation as set out in Annexure 'A' annexed to the Form 'B'.
25. In the reply filed by the respondent no.1 there is no denial to the claim for compensation in Form 'B' filed by the applicant/ complainant except the contention that the applicant/ complainant was not the complainant before the Goa RERA and never filed a single complaint against respondent no. 1/. It is also contended that the applicant/ complainant herein is instigated by one Mrs. Vanshika Rane to file the application for compensation and harass and defend

the respondent no. 1 and lastly that the application is bad in law and has to be dismissed at the threshold and the proceedings be dropped.

26. The respondent no. 2 was added subsequently as party respondent no. 2 and has also nowhere denied the claim for compensation in Form 'B' filed by the applicant/ complainant. The case of the respondent no. 2 in her reply is that since 2017 the respondents no. 1 and 2 though residing in the same residence have no cordial relationship and do not interact at all for personal reasons. It is submitted that respondent no. 1 never informed or intimated the respondent no. 2 about the proceedings before RERA by any third party. It is contended that no claim of grievance was ever addressed by the complainant to the respondent no. 2 as proprietor of the project Varadhraj Greens.
27. Significantly as rightly submitted by Ld. Advocate Shri V. Gadnis for the applicant/ complainant the reply has not been signed and verified by respondent no. 1. There is no affidavit filed in support of the same which has been signed and filed by the Advocate for respondent no. 1 himself. Therefore there is no reply on record denying the case of the applicant.
28. Section 11 of the RERA Act deals with functions and duties of promoter. Sub-Section 4 of Section 11 states that the promoter shall-

“(a)....

(b).....

(c).....

(d).....

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(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;”

29. In the present case the respondents jointly and severally are in violation of Section 11(4) (e) and (f) for having not formed an association or society or co-operative society under the applicable laws. It is the contention of the respondents that the applicant/ complainant has not co-operated in the formation of such society. On the other hand it is the contention of the applicant/ complainant that no steps have been taken for the formation of society.
30. The applicant/ complainant has produced on record certificate dated 28.06.2022 issued by Assistant registrar of co-operative societies, South Zone, Margao-Goa stating that no proposal of registration of Varadhraj Greens Housing Co-

operative Society has been received nor any society in the aforesaid name is registered under the jurisdiction of this Zone/ office.

31. The respondents on the other hand have not produced any documentary evidence to establish that such a housing society has been formed/ registered as was required to be done by the developer/ promoter (respondent no. 1 and 2 herein) in terms of clause 21 of the Agreement for Sale and as mandated under Section 11(4) (e) of the RERA Act.
32. The promoter/ developer is also required under Section 11(4) (f) to execute and register the conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authorities, as the case may be as provided under section 17 of the RERA Act. No such sale deed has been executed as required under the law. The respondents have not produced any evidence of having executed any such sale deed nor any correspondence addressed to the applicant/ complainant requiring the applicant/ complainant to execute such a sale deed to which the applicant/ complainant has failed to respond/comply. Therefore, the respondents jointly and severally are in violation of Section 11(4) (f) and Section 17 of the RERA Act.
33. Section 18 of the RERA Act provides for return of amount and compensation. Section 18(3) provides that if the promoter fails to discharge any other obligations imposed on him under this Act or Rules or 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.

34. 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.”

35. 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.”

36. The applicant/ complainant has sought compensation with respect to various issues in the construction and defaults as promised in the brochure namely:- (1) (1) Anti-Termite & Pest control in Foundation; (2) Anti Skid Pavers; (3) Lights and Telephone wiring; (4) 100% Stilt Reserved Parking; (5) Water proofing; (6) Compost Pit; (7) Formation of Co-Operative Housing Society and Conveyance Deed; (8) Water seepage and slab leakage; (9) Painting; (10) Road to building premises; (11) Delayed Possession; (12) Deviation in actual construction vis-a-viz approved plans and/ or brochure; (13) Housing Loan Interest; and (14) Loss of Interest. Admittedly, the applicant/ complainant has not produced on record

any technical experts report in support of the issues raised with respect to the defects in constructions and other technical issues.

37. However, in the light of the above ruling and the provisions of law under the RERA and as a result of defaults on the part of the respondents of failing to handover the said apartment UG-4 in the project Varadhraj Greens within the time line as agreed without defects and with all the necessary facilities as promised to the said applicant/ complainant under the said agreement between the parties, the said applicant/ complainant has been subjected to considerable mental stress, worry and financial loss. Hence, the said applicant/ complainant is entitled to be compensated for such mental stress, worry and financial loss caused due to the default of the respondents and deficiencies in the necessary facilities as promised which in the circumstances is conservatively quantified in the amount of ₹5,00,000/- (Rupees Five Lakhs only).
38. Point (b), is therefore, answered partly in the affirmative in the amount of ₹5,00,000/- (Rupees Five Lakhs only).
39. Before parting with this Order, it is necessary to mention that the claim for compensation in Form 'B' was filed by the applicant/ complainant on 04.03.2022. The respondent no. 1 filed reply only on 20.04.2022 after seeking time for the same on 29.03.2022 and 07.04.2022. On 10.05.2022 the applicant/ complainant filed reply. On 14.06.2022 written arguments were filed by the applicant/ complainant. On 23.06.2022 written arguments were filed by


respondent. Oral proposal for settlement was submitted by the respondent for consideration. On 14.07.2022 applicant/ complainant filed counter proposal for settlement in writing. On 28.07.2022 Advocate for respondent was unable to attend as his child had suddenly taken ill. On 02.08.2022 Advocate for respondent filed memo of letter addressed to the applicant/ complainant. On 05.08.2022 the applicant/ complainant filed reply to the said memo. On 26.08.2022 both the parties and their Advocates remained absent. On 14.09.2022 applicant/ complainant filed written arguments in rebuttal. On 15.09.2022 notice was issued to both the parties to file their respective affidavit in evidence. On 23.09.2022 applicant/ complainant filed affidavit in evidence. On 09.11.2022 respondent filed affidavit in evidence. On 22.12.2022 Order was passed to add additional party as respondent no. 2 within 07 days. On 27.12.2022 amendment was carried out to add the newly added respondent no. 2. Notice was issued to respondent no. 2 by registered A.D for appearance on 30.01.2023, on which date Advocate S. Chodankar remained present for respondent no. 2 and sought time to file Vakalatnama. On 15.02.2023 Vakalatnama for respondent no. 2 was filed along with reply of respondent no. 2. On 24.02.2023 applicant/ complainant filed rejoinder to reply of respondent no. 2. On 23.03.2023 respondent no. 2 filed affidavit in evidence. On 19.04.2023 applicant filed additional written arguments. On 12.05.2023 respondent no. 2 filed written arguments. The matter stands disposed off on 09.06.2023.

In the result, I pass the following:-

ORDER

The respondents 1 and 2 are jointly and severally directed to pay the applicant/ complainant compensation of ₹5,00,000/- (Rupees Five Lakhs only) for violation under Section 18(3) read with Section 71 and 72 of the Real Estate (Regulation and Development) Act, 2016 within 30 days of this Order.

In default the respondents jointly and severally shall be liable to pay interest on the said amount at the present MCLR rate of 8.70% plus 2 per cent i.e 10.70% per annum till the date of realisation/payment.


09/06/2023
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA