



## GOA REAL ESTATE REGULATORY AUTHORITY

101, 1<sup>st</sup> Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 Goa  
www.rera.goa.gov.in

Tel: 0832-2437655; e-mail: goa-rera@gov.in

F.No:4/RERA/Adj. Matters (93)/2022 /618

Date: 30/06/2023

### BEFORE THE ADJUDICATING OFFICER

1. (a) **Mr. Joseph Mendonsa and**

(b) **Mrs. Mabel Mendosa**

3C 13 Kalpataru Estate JVLR,  
Chakala MIDC, (Sub Urban),  
Mumbai City, Maharashtra-400093.

.....Applicant/Complainant

*Versus*

**Expat Projects and Development Pvt. Ltd.**

A2-213, 2<sup>nd</sup> floor,  
EXPAT UPTOWN COMMERCIAL,  
Kadamba Plateau,  
Tiswadi, Goa-403402.

.....Respondent

Ld. Advocate C. Fonseca for the Applicant/ Complainant.

Ld. Advocate P. Shetty for the Respondent.

### ORDER

**(Delivered on this 30<sup>th</sup> day of the month of June, 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(153)/2020.

2. The above said complaint was disposed off vide Order dated 20.12.2022 by the Goa Real Estate Regulatory Authority (for short 'Goa RERA'). The said Authority has ordered as follows:-

“In the reply, the respondent has stated that the project is 80% complete. The extension for the construction work in the registration certificate is given till December, 2022. The respondent is therefore, directed to give possession of the residential unit/row house bearing unit no. R-039 to the complainants after obtaining occupancy certificate as per the terms of the Agreement for Sale executed and registered on 23.06.2017, within two months from the date of this order.

Further the respondent is directed to pay 10.60% per annum interest (present lending rate of interest by SBI which is 8.60% per annum plus two percent) for every month of delay to the complainants on the aforesaid amount of ₹77,18,700/- (Rupees Seventy Seven Lakhs Eighteen Thousand Seven Hundred only) paid by the complainants from 31<sup>st</sup> August 2018 till the date of delivery of possession to the complainants.

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 23.06.2017 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 respondent is 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 thereafter filed claim for compensation in Form ‘B’ under Section 31 read with Section 71 of the RERA Act seeking:-
  - (a) an order directing the respondent to comply with the Order dated 20.12.2022;
  - (b) an order directing the respondent to pay compensation of ₹10,00,000/- (Rupees Ten Lakhs only) towards breach of agreement dated 23.06.2017 caused by the respondent by not adhering to the date of delivery of possession and
  - (c) an order directing the respondent to pay a sum of ₹1,00,000/- (Rupees One Lakh only) towards litigation costs.
  
4. The case of the applicant/ complainant is that the applicant/ complainant and the respondent executed an Agreement for Sale dated 23.06.2017 registered on the same day for the purchase of a residential unit/ row house no. R-039 together



with exclusive rights to use upper space/ garden space for a total consideration of ₹75,00,000/- (Rupees Seventy Five Lakhs only) in the housing complex named as 'Expat Vida Uptown Goa' (row houses) in the property bearing survey no. 13/1 C of the Village Panelim, Tiswadi North, Goa.

5. The total consideration payment for the said row house is ₹75,00,000/- (Rupees Seventy Five Lakhs only) which the applicant/ complainant has paid to the respondent.
6. The respondent was required to complete and hand over the possession of the said row house to the applicant/ complainant by February 2018. However, there has been a total failure on the part of the respondent to do so. The applicant/ complainant has addressed e-mail dated 12.06.2018 pursuant to telephonic conversations. Despite assurances given the respondent has failed to hand over possession of the said row house.
7. The applicant/ complainant also visited the site and was shocked and disappointed to see that the said row house under no. R-039 was far from complete.
8. The applicant/ complainant thereafter approached the Goa RERA and filed complaint. Vide Order dated 20.12.2022, the respondent was directed as stated above and to file compliance report within a period of 02 months. The respondent till date has not endeavored to comply with the said directions of the said Order dated 20.12.2022.
9. The applicant/ complainant is therefore entitled for compensation as prayed.
10. The respondent filed reply opposing the said claim for compensation.

11. It is the case of the respondent in the reply that the complaint cannot be entertained since it was mutually agreed to extend the time limit for delivery of the said unit to December 2022.
12. The respondent states that the complaint under Section 31 read with Section 71 is not maintainable since the applicant/ complainant is staying invested in the project and is provided month to month interest by the Goa RERA Order dated 20.12.2022. Therefore the option of compensation would not be open for the applicant/ complainant as the same is provided to the cases of refund only.
13. The respondent has not obtained any unfair advantage but is saddled with interest month to month to be paid to the applicant/ complainant.
14. The respondent states that applicant/ complainant has filed an execution proceeding of the Order dated 20.12.2022 which powers are not vested with this Hon'ble Court.
15. The respondent states that the delay in the project was not due to the fault of the respondent. 80% of the work of the row house has been done and the rest 20% would be complete by December 2022.
16. As the applicant/ complainant is already receiving the benefits of month to month interest based on the Order dated 20.12.2022, compensation cannot be granted.
17. The respondent states that the applicant/ complainant is not entitled to receive any compensation of ₹10,00,000/- (Rupees Ten Lakhs only) as there is no

breach committed by the respondent pertaining to the agreement dated 23.06.2017.

18. The applicant/ complainant is also not entitled for relief of ₹1,00,000/- (Rupees One Lakh only) towards litigation costs. Hence the claim for compensation be rejected.
19. Both the parties have filed their affidavits in evidence. Written submissions have also been placed on record by both the parties respectively. Oral arguments were also heard.
20. The points for determination and my findings to the same are as under:-

<b>Sr. No.</b>	<b>Points for determination</b>	<b>Findings</b>
(a)	<i>Whether the applicant/ complainant is entitled to an order directing the respondent to comply with the Order dated 20.12.2022?</i>	<i>In the negative.</i>
(b)	<i>Whether the applicant/ complainant who has opted not to withdraw from the project is entitled to claim compensation as sought?</i>	<i>In the negative.</i>

## **REASONS**

### **Point (a)**

21. The applicant/ complainant in the claim for compensation in Form 'B' has sought (a) an order directing the respondent to comply with the Order dated 20.12.2022.



22. In the reply, the respondent has stated that the complainant has filed an execution proceeding of the Order dated 20.12.2022 which powers are not vested with this Hon'ble court.
23. Section 71 of the RERA Act deals with the powers to adjudicate by the Adjudicating Officer. There is no power given to the Adjudicating Officer to execute proceedings of any order passed by the Regulatory Authority.
24. Section 40 of the RERA Act provides as under :-

**“40. Recovery of interest or penalty or compensation and enforcement of order, etc.-**

(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.”

25. Rule 4 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017 provides as under:-

**“4. Manner of enforcement of the order, direction or decision of the Adjudicating Officer or Authority.—**

Every order passed by the Adjudicating Officer, Authority or Appellate Tribunal which it is empowered to do under the Act or the rules and regulations made thereunder, shall be enforced by the Adjudicating Officer or Authority in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court. In the event such Adjudicating Officer or Authority is unable to execute the order, it shall send a copy of such order to the principal civil court, to execute such order either within the local limits of whose jurisdiction the real estate project is located or in the principal civil court of original jurisdiction within the local limits of whose jurisdiction the person against whom the order is being issued, resides, or carries on business, or personally works for gain alongwith a certificate stating that such an order has not been executed by it.”

26. In view of the above, this Forum has no power to direct the respondent to comply with the Order dated 20.12.2022 passed by the Regulatory Authority which can be enforced as prescribed above.
27. Point (a), is therefore, answered in the negative.



**Point (b)**

28. Ld. Advocate Shri C. Fonseca for the applicant/ complainant submitted that the respondent has not complied with the Order dated 20.12.2022 passed by the Regulatory Authority. Shri C. Fonseca submitted that in terms of Section 71(3) of the RERA Act the Adjudicating Officer on being satisfied that the respondent has failed to comply with the provisions of any of the sections specified in sub-section (1), 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.
29. Ld. Advocate Shri C. Fonseca for the applicant/ complainant further submitted that the respondent has shown no intention of complying with the said Order dated 20.12.2022. He submitted that there is repetitive defaults on the part of the respondent and therefore exemplary costs be granted.
30. Ld. Advocate Shri P. Shetty for the respondent on the other hand submitted that the Order dated 20.12.2022 is being complied with and the respondent is in process of handing over possession to the applicant/ complainant as the said unit is completed 100%. It is denied that the respondent has not complied with the Order dated 20.12.2022.
31. Ld. Advocate Shri P. Shetty also submitted that this Hon'ble Court cannot entertain the petition where the applicant/ complainant is receiving benefit of month to month interest based on the Order dated 20.12.2022. Shri P. Shetty further submitted that the applicant/complainant is not entitled to any compensation of ₹10,00,000/- (Rupees Ten Lakhs only) as there is no breach committed by the respondent to the agreement dated 23.06.2017. The applicant/complainant is also not entitled to litigation costs of ₹1,00,000/- (Rupees One Lakh only). In support of the respondent's case reliance has been placed in the case of "Krishna D. Singh vs. Pavan T. Punjab and another, 2004(1) Bom. C.R. 551 of the Bombay High Court.

32. It is not in dispute that the Goa RERA in the said complaint by its Order dated 20.12.2022 has directed the respondent to pay interest @10.60% p.a. for every month of delay to the complainant on the aforesaid amount of ₹77,18,700/- (Rupees Seventy Seven Lakhs Eighteen Thousand Seven Hundred only) paid by the complainant from 31.08.2018 till the date of delivery of possession to the complainant.
33. Section 18 of the RERA Act provides as under:-

**“18. Return of amount and compensation.-** (1) 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.”*

34. In the case of Brahmanand Kadam Vs. G.T. Developers Appeal No. AT005000000052390 in Complaint No. CC005000000011089, 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. Hence the relief for compensation cannot be granted and is therefore rejected.
35. In the case of Anant Mahadev Joshi and Ors. Vs. Vijaygroup Housing Private Limited and Ors. in Compliant nos. CC006000000195758, CC006000000195861, CC006000000195997, CC006000000196092, CC006000000196094, CC006000000196245, CC006000000196247 and CC006000000196281, decided on 16.06.2021 The Real Estate Regulatory Authority Maharashtra has held that with regards to the claim of compensation raised by the complainants at sr. nos. 1, 3 to 7 under Section 18 of the RERA, the Maha RERA is of the view that since the complainants want to continue in the project, they are not entitled to seek compensation under section 18 of the RERA. Hence their claim for compensation stands rejected.
36. In the case of Imperia Structures Ltd. V. Anil Patni (2020) 10 SCC 783 Civil appeal No. 3581-3590 of 2020 it was held that the proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1).
37. In the case of Meenu Wadhwa and ors. Vs. Conwood Realty Pvt. Ltd. And ors., Appeal no. AT006000000052211 in Complaint No. CC006000000055555





before The Maharashtra Real Estate Appellate Tribunal, Mumbai it was held that:-

“13. It is prerogative of flat takers to choose whether to stay in the project or to withdraw from the project as stipulated in the MOFA or under the RERA. However, the allottees have decided to stay in the project. They did not wish to withdraw from the project.

14. It is significant to note that allottees instead of claiming interest as per proviso of Section 18(1) of RERA had sought relief of compensation on account of delayed possession in the complaint, which is not permissible, because the allottees have decided to stay in the project. Therefore, we are of the view that the authority has rightly denied the relief of compensation on account of delayed possession. ....”

38. From the plain reading of Section 18, it is evident that if the promoter fails to hand over possession as per the terms of the Agreement for Sale or as the case may be, by the stipulated date therein, the applicant has a choice either to withdraw from the said project or to stay with the project. Further, in case the allottee chooses to stay in the project and take possession, he is entitled to claim interest for the same for the delayed period of possession on the actual amount paid by him for every month of delay.
39. It is not in dispute that in the present case the applicant/ complainant has chosen to continue in the project. Hence, in view of the aforesaid explicit proviso to Section 18 of the RERA Act, the applicant/ complainant can only claim interest for every month of delay, till the handing over of possession of the said flat to the applicant/ complainant.




40. In view of the above and in the light of the rulings cited above (supra) which supports the respondent's case, the claim for compensation by the applicant/ complainant pending the handing over of the said row house as well as for litigation costs has no substance in law as the aforesaid proviso to Section 18 of the RERA Act does not provide for any compensation and/ or for litigation costs in case of delay in handing over of possession of the said row house to the applicant/ complainant.
41. Point (b), is therefore, answered in the negative.
42. 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 14.02.2023. As copies of the said complaint were illegible, legible copies were filed on record only on 20.03.2023. The respondent filed reply on 10.04.2023. On 24.04.2023 affidavit in evidence and written submissions were filed by the applicant/ complainant. On 04.05.2023 time was granted for settlement. On 17.05.2023 respondent filed affidavit in evidence. On 19.05.2023 written arguments of respondent were filed. On 14.06.2023 oral arguments were heard. The matter stands disposed of on 30.06.2023.

In the result, I pass the following:-

**ORDER**

The claim for compensation filed by the applicant/ complainant in Form 'B' under Section 31 read with Section 71 of the RERA Act stands dismissed.

  
30/06/2023  
**(Ashley L.C. Noronha)**  
**Adjudicating Officer,**  
**Goa RERA**