



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (62)/2022 /673

Date: 12/07/2023

BEFORE THE ADJUDICATING OFFICER

Prashant P. Desai,

Janki Niwas, H.No. 711, Borda,
Margao, Goa-403206.

.....Applicant/ complainant

Versus

Mr. Venkatesh Narayan Prabhu Moni,

Prabhu's Palace, House no. 371/2,
Umbra, Salvador Do Mundo,
Bardez, Goa, 403101.

.....Respondent

Ld. Advocate Shri Nilesh Takkekar for the Applicant/ Complainant.

Ld. Advocate Shri Ankur Kumar for the Respondent.

ORDER

(Delivered on this 12th day of the month of July, 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.

2. The above said complaint was disposed of by Order dated 25.08.2022 by the Goa Real Estate Regulatory Authority. The said Authority rejected the said

complaint holding that the complainant is not entitled to the reliefs as prayed. However, for deciding compensation, if any, the instant complaint is referred to the Adjudicating Officer under Section 71 of the RERA Act.

3. Thereafter the matter was taken up before this Forum under Section 71 of the RERA Act.
4. The applicant/ complainant filed his claim for compensation in Form 'B'. It is the case of the applicant/ complainant that he along with several others are the purchasers of respective office premises in the building complex known as 'Prabhu Chambers' which is constructed in the property known as 'Passal' under chalta no. 71 (part) of P. T. sheet no 148, having an area of 701 sq. mtr. totally admeasuring an area of 1575 sq. mtrs. situated within the limits of Mapusa Municipal Council.
5. The construction of the said building had commenced in the year 2012 which in normal circumstances had to be completed within a span of two-three years. The respondent/ developer has however delayed the completion of the project on one count or the other.
6. The respondent upon completion of the said structure had obtained partial occupancy certificate for the first four floors of the said building from the Mapusa Municipal Council which was later revoked by its Order dated 12.09.2019 due to certain irregularities.

7. That apart, the setback area which is occupied by a kiosk has not been cleared as directed by the Mapusa Municipal Council.
8. The respondent had also failed to register the subject building under the provisions of the Goa Real Estate Regulatory Rules. The respondent belatedly filed an application for registration of his project under the RERA Act with the Goa RERA which has been disposed by imposing a fine of ₹5,00,000/- (Rupees Five Lakhs only) due to unjustifiable delay.
9. The respondent accepted a substantial sale consideration with respect to the unit identified as no. 2 SF-15 located on the second floor of the said building. The respondent has been paid the part consideration amounting to ₹20,00,000/- (Rupees Twenty Lakhs only) paid through banking channel.
10. Although substantial amount has been received the respondent has however failed to execute a registered agreement in favour of the applicant/ complainant due to which the applicant/ complainant has suffered legal injury and is also unable to take the benefits of a registered agreement.
11. The reliefs of statutory interest having being denied by the Goa RERA, an appeal has been already filed before the Appellate Tribunal at Mumbai which is pending hearing and adjudication on merits.



12. The applicant/ complainant is entitled for interest on the part sale consideration amount paid of ₹20,00,000/- (Rupees Twenty Lakhs only) till actual delivery of the premises bearing no. 2 SF-15 with further compensation.
13. The applicant/ complainant has therefore sought compensation of ₹33,60,000/- (Rupees Thirty Three Lakhs Sixty Thousand only) for loss of business and damages suffered on account of non-availability of premises to work for his gain and livelihood for five years and in addition a sum of ₹50,000/- (Rupees Fifty Thousand only) towards costs of litigation.
14. The respondent filed reply opposing the claim for compensation. In short, it is the case of the respondent that the applicant/ complainant was given possession of the office bearing no. 2 SF-15 located on the second floor of the building complex but did not take possession of the same. The applicant/ complainant also failed to pay the remaining amount for possession of the said office. The applicant/ complainant with malafide intention just to harass and extort money from the respondent filed forged complaint and revoked the part occupancy of the building.
15. It is contended that the applicant/ complainant has claimed himself to be a businessman. There is no material on record as regards the business of the applicant/ complainant. It is not possible for a businessman to earn ₹40,000/- (Rupees Forty Thousand only) per month in the beginning of his business. The claim of loss of money made by the applicant/ complainant is absurd. The



applicant/ complainant has attempted to base his claim for compensation on irrelevant and unacceptable presumptions without any basis. Hence the claim of loss of ₹4,80,000/- (Rupees Four Lakhs Eighty Thousand only) per year and ₹33,60,000/- (Rupees Thirty Three Lakhs Sixty Thousand only) for the delay of five years as claimed is liable to be rejected. The claim of ₹50,000/- (Rupees Fifty Thousand only) towards costs of litigation is also liable to be rejected.

16. Both the parties filed their affidavits in evidence and written arguments in support of their respective cases. Ld. Advocate Nilesh Takkekar argued for the applicant/ complainant. Ld. Advocate Shri Ankur Kumar argued for the respondent.
17. The point for determination and my finding to the same is as follows:-

Point for determination	Finding
<i>Whether the applicant/ complainant is entitled to compensation as prayed from the respondent?</i>	<i>In the negative.</i>

18. Admittedly, there is no registered agreement for sale executed between the parties in the present case under the RERA Act. Section 13 of the RERA Act provides as under:-

“13. No deposit or advance to be taken by promoter without first entering into agreement for sale.- (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may

be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.”

19. Rule 10 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 provides as under:-

“10. Agreement for Sale.— (1) For the purpose of sub-section (2) of section 13, the agreement for sale shall be in conformity with the law in force, and shall be in accordance with the form of agreement at Annexure ‘A’ hereto. Nothing in this sub-rule shall be deemed to prevent the promoter to modify the model form of Agreement for sale at Annexure

‘A’ provided that such modification is in conformity with the provisions of sub-section (2) of section 13 of the Act and the rules and regulations made thereunder.

(2) Any application, allotment letter or any other document signed by the allottee, in respect of the apartment, plot or building, prior to the execution and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale or the Act or the rules or the regulations made thereunder.”

20. Therefore in the said Rule 10 not only the agreement for sale has to be in conformity with the law in force but also the said registered agreement for sale shall prevail over any application, allotment letter or any other document signed by the allottee and such other document signed by the allottee prior to the execution and registration of the agreement for sale.
21. Under Section 13 of the RERA Act the respondent/ promoter is barred from accepting any sum more than 10% of the cost of the premises without first executing a registered agreement for sale.
22. Section 13 necessarily implies that the applicant/ complainant is not entitled to advance a sum more than 10% of the cost of the premises to the respondent without first executing a registered agreement of sale.

23. In the present case not only the respondent but also the applicant/ complainant has acted illegally by advancing part sale consideration as claimed by the applicant/ complainant prior to and without executing a registered agreement for sale.
24. It is not the case of the applicant/ complainant that the part consideration amount was paid to the respondent as a result of any misrepresentation or coercion on the part of the respondent. Therefore it has to be concluded that the applicant/ complainant of his own free will knowingly failed to get executed a registered agreement for sale as required under Section 13 of the RERA Act and further parted with the part consideration amount to the respondent without executing and registering an agreement for sale.
25. Infact, right from the year 2014 when the alleged transaction took place till the time of filing the complaint no steps were taken by the applicant/ complainant to request the respondent to execute a registered agreement for sale or that any such request was made at the instance of the applicant/ complainant to the respondent who refused to or failed and neglected to comply with such request.
26. Section 19 of the RERA Act prescribes the rights and duties of allottees. The relevant part of Section 19(4) is reproduced herein below:-

“19. Rights and duties of allottees.- (1) ...

(2)...

(3)...

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.”

27. Section 18 deals with the return of amount and compensation. The relevant provision of Section 18(3) reads as follows:-

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

(2) ...

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the 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.”

28. From the above provisions, it is evident that agreement for sale referred to under Section 18(3) and under Section 19(4) of the RERA Act means a registered agreement for sale as mentioned in Section 13 of the RERA Act. In the present case the agreement for sale dated 30.07.2014 is not registered and in this

context the applicant/ complainant is an accomplice to the aforesaid illegal act as the applicant/ complainant has paid the part sale consideration amount to the respondent without registering the said agreement for sale and having taken no steps since 30.07.2014 to get the said agreement for sale duly registered.

29. As the prayer for interest sought by the applicant/ complainant was outside the purview of the RERA Act consequently the same was rejected by the Regulatory Authority by its Order dated 25.08.2022. Similarly, the prayer for compensation sought by the applicant/ complainant is also outside the purview of the RERA Act and consequently the applicant/ complainant is not entitled to any relief of compensation as prayed.

30. The point for determination, is therefore, answered in the negative.

31. 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 31.10.2022. Reply was filed by the respondent on 03.11.2022. On 24.11.2022 oral arguments were partly heard. Both Ld. Counsels by consent agreed to defer the matter for further arguments subject to the outcome of the appeal against Order dated 25.08.2022 with respect to unregistered agreement in the present case. On 21.12.2022 Ld. Advocate for applicant/ complainant informed that no clear date has been fixed by the Appellate Tribunal as respondent has not been served. On 31.01.2023 Ld. Advocate for the applicant/ complainant placed on record the tracking report of the appeal. On 15.03.2023 Ld. Advocate for



applicant/ complainant submitted that the respondent sought time to file reply. On 03.04.2023 Ld. Advocate for applicant/ complainant submitted that last opportunity has been given by the Appellate Tribunal to the respondent. As there was no progress in hearing and deciding the appeal, the present matter was taken up and on 21.06.2023 oral arguments were heard. Matter stands disposed off on 12.07.2023.

In the result, I pass the following:-

ORDER

The claim for compensation filed by the applicant/ complainant in Form 'B' stands dismissed.


12/07/2023

(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA