



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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No.3/RERA/Complaint (264)/2021/606

Date: 25/08/2022

Mackenno Cardoz,
Succomadem, Assolna,
Ambelim, Banda,
Salcete, Goa-403601.

..... **Complainant**

V/s

Venkatesh Prabhu Moni,
Prabhu Construction, 7th Floor,
Dempo Trade Center, Patto,
Panjim, Goa-403001.

..... **Respondent**




ORDER

(Dated 25/08/2022)

This order disposes of the instant complaint filed under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act') in respect of the project "Prabhu Chambers" situated in the city of Mapusa Goa. In the said complaint, the complainant has alleged that there is water logging in the basement, lift is not working, kiosk in front of the main entrance has not been removed, parking area is

submerged under water, there is no electricity connection, no occupancy is given and therefore the relief sought from this Authority are “PROJ. TAKEOVER, COMPENSATION EXECUTION REG AGREEMENT”.

2. In the supplementary complaint, it is stated inter alia that this Authority vide its Order dated 17.03.2022 in complaint bearing no.3/RERA/Complaint (COMB. Prabhu Chambers)/2019/186 directed the developer to carry out all the pending works within a period of two months from the date of order and in addition also imposed a fine of Rs.50,00,000/- for violating the directions passed by this Authority and that a similar order may also be passed in the instant case. It is further stated in the supplementary complaint that the developer was required to deliver the possession of units bearing no. 6-SF-2, 6-SF-3, 6-SF-4, 6-SF-5, 6-SF-6 and 6-SF-16 on or before 23.11.2017 and therefore the respondent is liable to pay the statutory interest for delayed possession from 23.11.2017 “till actual handing over of possession”. It is also stated that the developer has failed to register his project and is defying the order passed by this Authority in another complaint to register the project. In the supplementary complaint therefore, the complainant has also prayed for grant of interest for delayed possession in addition to the prayers mentioned in the online complaint. 

3. In the additional pleadings in support of complaint, the complainant has submitted that the respondent by notice dated 22.04.2022 has terminated the agreement in the instant case and that the said termination is contrary to the agreement terms and is therefore bad in law.
4. The respondent filed the reply, wherein it is stated that the respondent has already served the complainant with a legal notice for termination of Agreements for Construction cum Sale dated 07.11.2016 with respect to the aforesaid units and therefore the instant complaint is liable to be dismissed.
5. The respondent has further stated in the reply that all the issues like water logging in the basement, non working of the lift, parking area being submerged under water and absence of electricity connection have already been resolved during the pendency of the other proceedings before this Authority. It is stated that the respondent has carried out fresh water proofing by engaging Nitin Jain, Proprietor of Naman Contractors who is a known expert in this field and at present the said issue is resolved. The respondent has also referred to the scientific study and report on structural stability obtained from Goa Engineering College. According to the respondent, as regard the issue of removal of kiosk and provision for parking, since the said kiosk is illegal, Mapusa Municipal



Council passed an Order dated 11.01.2021 for its removal against which the owner Jeevan Mayekar filed an appeal before Municipal Appellate Tribunal, which appeal is still pending and therefore on conclusion of the said proceedings, the illegal kiosk would be removed. It is stated that the Municipality has withheld occupancy certificate only on the ground that the illegal kiosk is not removed and the respondent is pursuing the matter before the Municipal Appellate Tribunal. It is further stated that once the occupancy is granted, the respondent would obtain electricity connection along with independent meters for each of the allottees and the transformer would also be made functional, though at present all the units are supplied electricity by the respondent through a temporary connection obtained by him for the project.

6. According to the respondent the prayer of the complainant for takeover of the project is an abuse of process of law. Hence, the prayer of the respondent to dismiss the instant complaint.

7. Documents were placed on record and affidavits were filed by both the parties. Written submissions were filed by both the parties. In the written submissions, besides pointing to the aforesaid defects and deficiencies in the constructions, the complainant has also alleged that there is shortfall in area with respect to the units agreed to be sold by the developer and the




said shortfall is also given in tabular form. It is further alleged that there is also shortfall in parking spaces also and that the material used by the complainant is of sub standard quality. It is stated therein that the complainant is unnecessarily blaming the Statutory Authorities including Mapusa Municipal Council in order to wriggle out of the lapses committed by the respondent. Regarding the termination of subject agreement by the respondent, it is submitted that the complainant has not breached any terms of the agreement and that the termination is sought out of malice and fraudulent intention on the part of the developer. The complainant relied upon the judgements of the Hon'ble Supreme Court in the case of "Bikram Chatterjee and Others v/s Union of India" (2019) 19 SCC 161 and "Eminent Infra Developers Pvt. Ltd. v/s Vivek Radhu" (2019 SCC online Utt 1676).

8. The respondent, in his written submissions has stated as to how due to the arbitrary approach of the Collector, the occupancy certificate got delayed. It is stated that after the construction was completed, the respondent handed over their individual premises to the purchasers and therefore most of the purchasers have already taken their possession and even started their business operations in the premises after obtaining the required licenses and doing the legal formalities and also have started paying municipal taxes. According to the respondent, excessive rainfall in



Goa in the year 2019 and cloud burst created water logging in the basement and in this regard about 35 occupants out of about 120 occupants filed a false complaint dated 11.07.2019 before Mapusa Police Station under Sections 120, 336 of IPC and Section 73 of Contract Act due to which the respondent was restrained from interfering at the site and accordingly he could not take corrective steps at that time to prevent water logging in the basement. It is further stated that on the basis of the information given by the complainants including that of the aforesaid FIR, a Show Cause Notice dated 05.08.2019 was issued to the respondent by Mapusa Municipality to which the respondent filed reply, however, the Chief Officer by Order dated 30.08.2019 directed the respondent to comply with the directions given by him within 48 hours and since the same could not be complied within the said period, the occupancy certificate dated 29.05.2019 was revoked by order dated 12.09.2019. According to the respondent, the said problem of water logging is now solved through expert ShriNitin Jain but Mapusa Municipal Council is withholding the restoration of occupancy certificate only on the ground that the kiosk has not been removed from the site, regarding which, the respondent submitted that the case is pending before Municipal Appellate Tribunal. The respondent in his written submissions has also referred to the FIR registered against all the accused who are some of the allottees including allottee Imran Sayyed in respect of the incident of abduction of

the son of the respondent on 23.03.2022, assaulting him and attempting to kill him and regarding which the matter was pending before District and Session Court. According to the respondent, the delay in construction/possession, if any, is attributable to reasons beyond the control of the respondent and such extraneous circumstances would be categorized as 'Force Majeure' and would extend the time line of handing over the possession of the unit and completion of the project. The respondent submitted that the Hon'ble Supreme Court in the case of 'Gajendra Sharma v. UOI & Ors' as well as "Credai MCHI & Anr. V. UOI & Ors." has taken cognizance of the devastating condition of the real estate sector and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. According to the respondent, instead of abiding by all the terms and conditions of the agreement, the complainant carried out illegal construction in the office premises, passages and in common areas of the building without any approval or permission of the respondent due to which the respondent terminated the said agreement.

9. Oral arguments were heard from Ld. Advocate Shri N. Takkekar for the complainant and Ld. Advocate Shri Ankur Kumar for the respondent.
10. After going through the entire record of the case, the points which come for my determination along with the reasons and findings thereon are as follows:- 

Sr. No.	Points for determination	Findings
1.	Whether the complainant is entitled for project takeover?	In the negative.
2.	Whether the complainant is entitled for statutory interest on delayed possession as prayed in the supplementary complaint?	In the negative.
3.	Whether the complainant is entitled for possession of the said units?	In the negative.
4.	Whether the notice of termination of Agreement for Construction cum Sale dated 07.11.2016 is bad in law?	In the affirmative.
5.	Whether the complainant is entitled for the compensation?	To be decided by the Adjudicating Officer.

REASONS

Point No.1

11. **Section 8 of RERA Act** dealing with obligation of Authority consequent upon lapse of or on revocation of registration states inter-alia that **“upon lapse of the registration or on revocation of the registration** under this Act, the Authority may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority”.

12. Hence, once the decision to revoke the registration of the Real Estate project has been taken by the RERA **or the registration of the Real Estate project has expired as per the time limit mentioned in Section 5(3) of the Act**, the RERA may consult the appropriate Government to take such action, as it may deem fit, for carrying out the remaining development works.
13. **In the instant case, the project in question is not registered** inspite of the order dated 17.03.2020 for registration of the project passed by this Authority in the complaint filed by Sanjay Raut in complaint No.3/RERA/Completed project(533)/2019 and hence there is neither any scope for revocation of registration nor for the expiry of the registration of Real Estate project as per the time limit mentioned in **Section 5(3) of the Act** as under the said Section **“the registration granted under this Section shall be valid for a period declared by the promoter under sub-clause (c) of Clause (1) of sub-Section (2) of Section 4 for completion of the project or phase thereof, as the case may be”**.
14. As the instant project is unregistered and as Section 8 of the Act applies only either upon lapse of the registration or on revocation of the registration, the aforesaid Section is not applicable to the instant project and hence cannot be invoked to take over the project.



15. Even otherwise, the respondent has already obtained completion certificate dated 27/08/2018. The respondent now has only to remove/rectify the deficiencies as pointed out by North Goa Planning and Development Authority (NGPDA) and Mapusa Municipal Council.
16. Further, in this context, it is necessary to reproduce here under the relevant portion of the order dated 28/06/2021 passed by the Hon'ble Bombay High Court in Writ petition No. 1156 of 2021 moved by the respondent herein against the complainants in complaint No.3/RERA/Complaint(Comb. Prabhu Chambers)/2019:-

“3. With respect to the aforesaid submission we direct the Authorities of Mapusa Municipal Council, North Goa Planning and Development Authority and Directorate of Fire and Emergency Services to inspect the petitioner's site within a period of six weeks from today and certify whether there are any deficiencies in the construction put up by the petitioner comprising the Ground plus five floors. The Authorities should then furnish the petitioner with the list of deficiencies, if any. **Mr. Joshi, Learned Counsel states that the petitioner will then rectify the deficiencies, if any and once again apply to the Authorities for fresh**



inspection to ascertain whether such deficiencies are indeed rectified.” (emphasis supplied)

17. From the aforesaid order it is clear that undertaking is given by the respondent's Advocate before the Hon'ble Bombay High Court in the aforesaid Writ petition that the respondent herein will rectify all the deficiencies in the construction as and when pointed out by the aforesaid Statutory Authorities. In view of the aforesaid undertaking of the respondent before the Hon'ble Bombay High Court, even otherwise there is no issue left of takeover of the project. Moreover, there are many other unit holders in the said building who are not complainants in the instant case. **The instant point is, therefore, answered in the negative.**

Points No. 2& 3

18. Both the points are taken up together as they are inter connected and the reasons for their decisions overlap. In para 4 of the supplementary complaint, it is stated by the complainant as follows:-

“The developer in the present case was required to deliver the possession of units bearing no. 6-SF-2, 6-SF-3, 6-SF-4, 6-SF-5, 6-SF-6 and 6-SF-16 located on second floor of the subject building within a period as stipulated in the respective agreements. The units were



therefore required to be delivered on or before 23.11.2017 but in the instant case there is a delay of more than 4 years despite receipt of entire sale consideration and in such circumstances the statutory interest for delayed possession ought to be granted in the present case from 23.11.2017 till actual handing over of possession”

19. Similarly in para 5 of his affidavit in evidence, the complainant states as follows:-

“I say that the developer in the present case was required to deliver the possession of units bearing no. 6-SF-2, 6-SF-3, 6-SF-4, 6-SF-5, 6-SF-6 and 6-SF-16 located on second floor of the subject building within a period as stipulated in the respective agreements by complying all the requirements of law. The units were therefore required to be delivered on or before 23.11.2017 but in the instant case there is a delay of more than 4 years despite receipt of entire sale consideration and in such circumstances the statutory interest for delayed possession ought to be granted in

the present case from 23.11.2017 till actual handing over of possession.”

20. Thus, in the supplementary complaint, the complainant has prayed for grant of interest on delayed possession from 23.11.2017 till actual handing over of possession. Thus the tenor and the language used in the supplementary complaint as well as in the affidavit in evidence points out that the respondent has till date not given possession of the said units to the complainant and therefore the complainant is praying for the interest on delayed possession till “actual handing over of possession”.
21. However, the legal notice dated 22.04.2022 given by the Advocate for the respondent to the complainant as well as the reply dated 11.05.2022 given by the Advocate for the complainant to the aforesaid legal notice of the respondent make the picture clear and from the said legal notice and the reply to the same, **it is clear that the complainant is already in possession of the aforesaid units.** In this regard, it is necessary to reproduce hereunder some of the statements made by the Advocate for the respondent in the legal notice as well as the admissions made by the complainant in the reply to the said legal notice of the respondent.
22. In the legal notice dated 22.04.2022 by the Advocate for the respondent to the complainant it is mentioned that the complainant “started doing illegal construction in the office premises” as well as alterations in the




same, regarding which the respondent filed various complaints against the complainant. The following statements of the respondent in the said legal notice are relevant and hence reproduced hereunder:-

“10. That you noticee is hereby called upon **to collect all your belongings** if there is anything from the office premises pertaining to office nos. 6-SF-02, 6-SF-03,

6-SF-04, 6-SF-05, 6-SF-06, and 6-SF-16 (including the incidence of common areas such as staircases and lifts) **and quit and vacate the said property**, hereinafter you noticee held no legal title of this property.

11. **That you noticee are requested to deliver vacant possession** of the said premises unto my client within 7 days from issuing of this legal notice.

12. **In case of your failure to quit the premises as desired**, you noticee will be considered as trespasser and criminal and civil case will be registered against you noticee.” (emphasis supplied) 

23. In the reply dated 11.05.2022 by the complainant to the aforesaid legal notice, the following statements/admissions made by the complainant are significant:-

“5. My clients reiterate that **they are in lawful occupation and possession of the subject premises and any attempt on your part to dispossess him or interfere with the said possession shall be viewed seriously and stringent action shall be taken as per law.**

10.You are required to take notice that **in the event you resort to any illegal act of entering or interfering with my clients’ lawful and peaceful possession then my client shall show equal resistance to restrain you from disturbing his possession.”** (emphasis supplied)

24. **Firstly**, from the aforesaid legal notice and reply thereto it is clear that the complainant is already in possession of the aforesaid units and **secondly**, it is material to note that neither in the online complaint nor in the supplementary complaint nor in his affidavit, the complainant has stated the date on which he took the possession of the said units and on the contrary nowhere in the complaints/ affidavit, the complainant



mentioned that he is already in possession of the said units and the said fact of possession has been suppressed by the complainant.

25. Since the complainant is already in possession of the said units and it is not disclosed as to when the complainant took possession of the said units, the statutory interest on delayed possession cannot be calculated nor in view of the above, any direction can be issued to the respondent to deliver the possession of the units to the complainant. The instant points are therefore answered in the negative.

Point No. 4

26. The respondent has produced on record the legal notice dated 22.04.2022 given by the Ld. Advocate for the respondent to the complainant wherein it is mentioned that the complainant has done illegal construction and alterations in the office premises without permission from and knowledge of the respondent and the said act is against the agreement for sale, regarding which complaints were filed by the respondent before the police and further states that because of the illegal activities of the complainant the agreement for construction cum sale dated 07.11.2016 is terminated and the complainant was called upon to vacate the said premises. In the reply dated 11.05.2022 by the Ld. Advocate for the complainant to the aforesaid legal notice, the complainant has denied having done any illegal construction and alterations.

27. According to the complainant the said notice of termination of agreement is an afterthought and is given only due to malice and fraudulent intention on the part of the respondent and is contrary to the agreement terms and therefore, the said termination is bad in law.

28. **Section 11 (5) of the said Act**, reads as follows:-

“The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause”

29. Since the complainant has challenged the said termination of the agreement for sale in the instant complaint, **the onus lies on the respondent to show to this Authority that the complainant had done or has been doing any illegal construction/ alteration without the permission of the respondent however, no document is produced on record before this Authority by the respondent to show that the complainant has done any illegal construction/alteration.** Moreover neither in the legal notice nor in the affidavit of the respondent, the nature of the alleged illegal construction/ alteration is mentioned or in other words the respondent has not disclosed before this Authority as to what



exactly are the said alleged illegal constructions/ alterations done by the complainant in the aforesaid units. It is not known whether the alleged illegal constructions /alterations are major or minor in nature.

30. Thus inspite of the clear challenge by the complainant to the said termination of agreements for sale, the respondent failed to establish by means of any document that the said termination is legal in view of any illegal construction by the complainant in the said units. Therefore, under Section 11(5) of the said Act, it is held by this Authority that the aforesaid legal notice dated 22.04.2022 terminating the agreements for construction cum sale dated 07.11.2016 pertaining to the aforesaid units is bad in law.

Point No. 5

31. The instant point has to be decided by the Adjudicating Officer under Section 71 of the said Act.
32. Regarding the issue of non registration of the project, the same is not considered in the instant complaint since in the complaint filed by Mr. Sanjay Raut bearing no.3/RERA/Completed Project (533)/2019 by order dated 17.03.2020 the respondent herein was ordered to pay penalty of Rs. 5,00,000/- and get the instant project registered and the execution

proceedings regarding the same are pending. Similarly, in the complaint bearing no.3/RERA/Complaint (Comb. Prabhu Chambers)/2019 filed by 36 allottees against the instant respondent in respect of the aforesaid project, order dated 17.03.2022 was passed by this Authority inter alia directing the respondent to obtain the occupancy certificate and give possession of the respective units to the respective complainants as per the area/revised area given in the agreement for sale etc. with all the essential facilities/supplies/connections and the quality of work as mentioned in the agreement for sale with the complainants and the execution proceedings pertaining to the same are pending. Hence, because of the aforesaid orders already passed no new direction is given to the respondent herein either for registration of the project or for getting the occupancy certificate regarding the same project.

In the premises aforesaid, the prayers of the complainant for project takeover, statutory interest on delayed possession and delivery of possession are rejected, however the notice dated 22.04.2022 of termination of agreements for construction cum sale dated 07.11.2016 is held to be bad in law. Moreover, the respondent is directed to give all the essential facilities/ supplies/connections and the quality of work as mentioned in the agreement for sale executed with the complainant before



executing the sale deed/ deed of conveyance and doing other legal formalities.

The instant complaint is referred to the Adjudicating Officer for deciding compensation, if any, under Section 71 of the said Act.

Vijaya D. Pol
25/8/2022

(Vijaya D. Pol)
Member, Goa RERA