



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(341)/2023 /7HS

Date: 28/07/2023

Mr. Francy Agnelo Gonsalves,
Flat no. 503, Anand Towers-I,
Airport Road, Chicalim,
Goa, 403711.

.....Complainant

Versus

Civilco Engineers and Associates
represented herein by its partner
Mr. Gous Mohammed Shiraguppi,
SF-4, Block D, Qadria Plaza,
Haveli, Curti, Ponda,
Goa, 403401.

.....Respondent

ORDER **(Dated 27.07.2023)**

This order disposes of the complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') wherein the complainant has prayed this Authority to direct the respondent to give possession of the flat to the complainant as per the Agreement for Sale dated 12.11.2018, to impose penalty for violation and damages/ cost.

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2. It is the case of the complainant that since the complainant intended to purchase a residential premises being flat no. S-303, admeasuring 42.40 sq. mtrs. including car parking proposed to be constructed on the second floor of the building/ project known as 'Civilco Arcade-1' situated in survey nos. 45/1A and 45/2 at Cotwada, Curti, Ponda, Goa, he agreed to purchase the said flat for a total consideration of ₹39,45,375/- (Rupees Thirty Nine Lakhs Forty Five Thousand Three Hundred and Seventy Five only) and accordingly an Agreement for Sale date 12.11.2018 was executed between the complainant and the respondent and the same was registered on 12.11.2018.
3. According to the complainant, as per the said Agreement for Sale, the said flat was to be delivered within twelve months from the date of execution of the said Agreement for Sale i.e. on or before 12.11.2019, however till date the respondent has failed to deliver the said flat.
4. The complainant has submitted that on inspection of the said flat, he was shocked to see two doors, instead of one door and noticed that the said flat is divided by the respondent in two flats, in violation of the said Agreement for Sale and thus the respondent has changed the shape and structure of the said flat without the knowledge and consent of the complainant. Hence the prayers of the complainant as stated above.



5. Reply has been filed by the respondent wherein it is stated that this Authority has no jurisdiction to decide the instant complaint and that the matter is a civil dispute not maintainable under the RERA Act. The respondent has also raised the issue of non-joinder of necessary parties.
6. On merits, the respondent has stated that the complainant is an investor and he invests money in the building projects of the respondent and he is not a prospective buyer of any flat of the respondent. According to the respondent for the security purpose of the invested money in the building projects of the respondent, both the complainant and the respondent used to reserve constructed premises or under construction premises or proposed construction premises in the projects of the respondent by executing the agreements for sale of the flats/ villas/ shops in the building projects in which the complainant invested his money. Thus, it is the case of the respondent that the purpose of the said Agreement for Sale dated 12.11.2018 or other agreements for sale in the building projects of the respondent is to reserve the premises as a security for repayment of the said invested amount. In this regard, the respondent has referred to various agreements for sale/ Memorandum of Understanding/ Deeds of cancellation of the said agreements between the complainant and the respondent in respect of the other premises in the projects of the respondent.



7. According to the respondent, the complainant being investor invested his money in many projects of the respondent since long and there was never any relationship of buyer and seller between the complainant and the respondent and therefore the complainant has approached this Authority with unclean hands. The respondent has submitted that the Agreement for Sale dated 12.11.2018 was executed between the complainant and the respondent only to reserve the said flat as security towards the repayment of the principal investment amount and hence there is no question of delivering the said flat for the use and occupation of the complainant. It is stated that after repayment of the principal investment amount and profit/ commission on the same, it is the duty of the complainant to cancel the said Agreement for Sale dated 12.11.2018. Regarding the alleged change in the shape of the said flat, the respondent has stated that he obtained completion order dated 04.10.2022 and occupancy certificate dated 14.12.2022 and in the completion order it is mentioned that technical clearance was granted and there were some minor deviations. Rest of the allegations of the complainant are denied by the respondent.
8. Documents and affidavits were filed by both the parties. Oral arguments were heard from Ld. Advocate Shri R. S. Banerjee for the complainant and Ld. Advocate Ivan Santimano for the respondent filed written submissions.
9. After going through the entire records 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 this Authority has jurisdiction to decide the instant complaint?	In the affirmative.
2.	Whether the complaint is bad for non-joinder of necessary parties?	In the negative.
3.	Whether this Authority has jurisdiction to decide and declare that the Agreement for Sale dated 12.11.2018 executed between the complainant and the respondent was executed to reserve the said flat as security for repayment of the invested amount of the complainant and that the said agreement was not for selling/ buying the said flat?	In the negative.
4.	Whether the complainant is entitled for the possession of the said flat along with the statutory interest for the delayed possession?	In the affirmative.
5.	Whether the respondent is liable to pay penalty under Section 61 of the RERA Act?	In the affirmative.
6.	Whether the respondent is liable to pay compensation to the complainant as prayed in the complaint?	To be decided by the Adjudicating Officer under Section 71 of the RERA Act.

REASONS

Point no. 1

10. According to the complainant, he entered into an agreement for sale dated 12.11.2018 with the promoter/ the respondent herein and the said agreement was duly registered before the Sub-Registrar of Ponda. The complainant has stated the as per the said agreement for sale, the respondent was bound to handover the possession of the flat bearing no. S-303 on the second floor of the building project "Civilco Arcade-I" in the plot bearing survey no. 45/1A and 45/2 of Village Ponda within twelve months from the date of execution of the said agreement for sale i.e. on or before 12.11.201, however the respondent has failed to handover possession of the said flat till date. Hence, the prayers of the complainant to direct the respondent to hand over the possession of the said flat along with interest accrued as per the said agreement for sale, penalty for violation of the provisions of the RERA Act, damages and costs of the complaint.
11. The complainant is entitled for the possession of the said flat as per the aforesaid agreement for sale. **Section 19 (3)** lays down that "The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (c) of clause 1 of sub-section (2) of Section 4". Moreover, **Section 37** of the RERA Act which



gives power to this Authority to issue any direction to the party concerned is quoted below:-

“37. Powers of Authority to issue directions.- The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agent, as the case may be, as it may consider necessary and such direction shall be binding on all concerned”

Thus, this Authority has power to give direction to the respondent to deliver possession of the premises to the complainant within the specific period. Such a direction is warranted since the interest on delayed possession runs till the actual delivery of possession of the premises to the complainant since, under **Section 18 of the RERA Act**, the complainant is entitled to claim statutory interest from the due date of possession of the said flat as per the agreement for sale till the possession is actually handed over to the complainant.

12. Since, till date the possession of the said flat is not given to the complainant, Section 18 of the RERA Act is therefore, squarely applicable and is quoted below:-

“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.

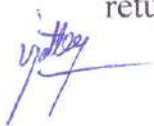
(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.



(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.” (emphasis supplied)

13. From the aforesaid section it is clear that the complainant has the choice of either withdrawing from the project and asking for refund of the consideration amount paid by the complainant to the respondent with interest including compensation **or not to withdraw from the project and ask from the respondent “interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”**. As stated above, Section 18 of the RERA Act clearly gives right to the complainant to ask for statutory interest on the consideration amount paid for every month of delay till the handing over of the possession. In this regard, the ruling of the Hon’ble Supreme Court in the case of **“Imperia Structures Ltd. Vs. Anil Patni and Another” 2020(10) SCC 783** is squarely attracted and hence the relevant part of the same is reproduced herein below:-

“25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that



apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. **The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In the case, he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)”** (emphasis supplied)

The instant case of the complainant comes under the latter category. The RERA Act thus provides a remedy to an allottee who does not wish to withdraw from the project to claim interest on the delayed possession till the handing over of possession to the allottee.

14. In this context it is relevant to quote **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:-**

“18. Rate of interest payable by the promoter and the allottee.— 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:

Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use it would be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

15. Thus, invoking Section 18 and Rule 18 of the RERA Act the benefit of the aforesaid statutory interest goes to the complainant, who has entered into agreement for sale with the respondent. As a consequence thereof Section 18 and Rule 18 of RERA Act are squarely attracted in the instant complaint.

16. Chapter III of the RERA Act gives details of the functions and duties of the promoter. Section 11 (4) (a) states as follows:-

“11(4) 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: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”(emphasis supplied)

From the aforesaid Section 11(4) (a) it is clear that the promoter is responsible for all obligations, responsibilities and functions under the provisions of the said Act/Rules/ Regulations or **to the allottees as per the agreement for sale**. Thus, the promoter is bound by the terms, recitals and conditions as mentioned in the agreement for sale.

17. Since the instant complaint comes within the purview of the RERA Act, especially within the purview of Sections 11(4)(a), 18, 19(3) and 37 of the RERA Act, this Authority has jurisdiction to decide the instant complaint. The instant point is therefore answered in the affirmative.



Point No. 2

18. The respondent in the reply has submitted that the instant complaint is bad for non joinder of necessary parties, however the respondent has not mentioned the names and the details of the parties who according to the respondent are the necessary parties. Even otherwise it is clear from the agreement for sale dated 12.11.2018 that the respondent is the promoter of the said project and the complainant is the prospective purchaser of the said flat in the said project and all the responsibilities, obligations and duties lie on the promoter/ the respondent herein to complete the said project and give possession of the said flat to the complainant within the stipulated period as mentioned in the said agreement for sale. Hence, even otherwise, the instant complaint does not suffer from non-joinder of necessary parties and an effective and valid order can be passed by this Authority in the instant complaint. The instant point is therefore answered in the negative.

Point no.3

19. From the reply of the respondent it is clear that according to the respondent the said agreement for sale dated 12.11.2018 is actually a fake agreement without the intention and obligation of the respondent to sell the said flat to the complainant and without the intention and entitlement of the complainant to purchase the said flat on paying any consideration amount as mentioned in the said agreement for



sale. According to the respondent, the said agreement for sale was never executed to create any relation of buyer and seller between the complainant and the respondent but the said agreement for sale was executed “only to reserve the said flat as a security towards the repayment / refund of the principal investment amount” and “for the security purpose of the invested money in the building projects of the respondent”, since the complainant and the respondent used to reserve constructed premises or under construction premises or proposed construction premises in the construction projects of the respondent by executing agreements for sale of the flats/ villas/ shops in the building projects in which the complainant invested his money. The respondent has submitted that the complainant is a mere investor and that the said agreement for sale was never intended by the parties to be acted upon.

20. The said agreement for sale dated 12.11.2018 is duly registered before the Sub Registrar of Ponda. This Authority has no power and jurisdiction to go beyond the façade of the said agreement to know whether it is a fake agreement or whether the terms, conditions and recitals therein contain false or incorrect statements and that the parties therein never had any intention to act upon the said agreement. The respondent has not brought before this Authority any declaration from the civil court to the effect that the said agreement for sale is not binding on the complainant and the respondent herein and/ or that the said agreement for sale is a



fake agreement and/ or that the said agreement for sale is actually a security for the money invested by the complainant in the building projects of the respondent. Thus, the documents produced by the respondent before this Authority regarding the other projects in the form of other agreements for sale etc. do not help the case of the respondent. Since, this Authority has no jurisdiction to decide and declare that the agreement for sale dated 12.11.2018 between the complainant and the respondent was executed to reserve the said flat as security for repayment of the amount invested by the complainant and that the said agreement was actually not for selling/ buying the said flat, the instant point is answered in the negative.

Point no. 4

21. Under **Section 18** of the RERA Act which is quoted above, the complainant is entitled for the possession of the said flat along with statutory interest for the delayed possession. The cause of action accrued in favour of the complainant and against the respondent on 12.11.2019 on which date the respondent was liable to give possession of the said flat to the complainant. Thus the date from which the interest on the consideration amount paid by the complainant is to be calculated is the date when the cause of action accrued in favour of the complainant. Therefore, the prescribed interest as per the aforesaid **Rule 18** starts running from 12.11.2019 on the consideration amount paid by the complainant to the respondent.



22. In the instant case the complainant has paid an amount of ₹39,45,375/- (Rupees Thirty Nine Lakhs Forty Five Thousand Three Hundred and Seventy Five only) to the respondent. Under Section 18(1) of the said Act the complainant is entitled and the respondent is liable to pay to the complainant 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. At present such Lending Rate of interest by SBI is 8.75% per annum. Adding two percent to the said interest as per Rule 18, it comes to 10.75% per annum. Hence, the respondent is liable to pay 10.75% per annum interest for every month of delay to complainant on the aforesaid amount paid by complainant from the date of delivery of possession i.e. 12.11.2019 as mentioned in the agreement for sale with the complainant, till the handing over of the possession to complainant.
23. According to the complainant, the respondent has changed the shape and structure of the said flat by dividing the same into two halves without knowledge and consent of the complainant. In this regard the respondent has submitted in the reply

that the respondent has already obtained completion order dated 04.10.2022 and occupancy certificate dated 14.12.2022 of the said project and that in the completion order dated 04.10.2022, it is clearly mentioned that technical clearance was granted and there were some minor deviations. In such a case, the complainant is at liberty to pray for compensation for changes made in the flat from the Adjudicating Officer of this Authority. The instant point is therefore answered in the affirmative.

Point no.5

24. Under Section 61 of the RERA Act, if any promoter contravenes any other provisions of the RERA 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 dated 12.11.2018 and hence is liable to penalty under Section 61 of the RERA Act. The instant point is therefore answered in the affirmative.

Point No. 6

25. Under Section 71 of the said Act, compensation under Sections 12, 14, 18 and 19 of the Act has to be adjudged only by the Adjudicating Officer. Accordingly, the



prayer for compensation has to be referred to the Adjudicating Officer for adjudging the compensation, if any.

In the premises aforesaid, I pass the following:-

ORDER

In the reply, the respondent has stated that the respondent has obtained occupancy certificate dated 14.12.2022 of the said project "Civilco Arcade-I". The respondent is therefore, directed to give possession of the said flat bearing no. S-303 on the second floor of the said building to the complainant as per the terms of the agreement for sale dated 12.11.2018, within two months from the date of this order.

Further the respondent is directed to pay 10.75 % per annum interest (present lending rate of interest by SBI which is 8.75 % per annum plus two percent) for every month of delay to the complainants on the aforesaid amount of ₹39,45,375/- (Rupees Thirty Nine Lakhs Forty Five Thousand Three Hundred and Seventy Five only) paid by the complainant from 12.11.2019 till the date of delivery of possession to the complainant.

Taking into consideration the facts and circumstances of the case, penalty of ₹1,00,000/- (Rupees One Lakh only) under Section 61 of the RERA Act will serve

the ends of justice. Hence the promoter/ the respondent herein is directed to pay the penalty of ₹1,00,000/- 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 in the form of an affidavit within two months failing which further legal action will be taken by this Authority under the RERA 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.

Vijaya D. Pol 27/7/2023
(Vijaya D. Pol)
Member, Goa RERA