GOA REAL ESTATE REGULATORY AUTHORITY
DEPARTMENT OF URBAN DEVELOPMENT
GOVERNMENT OF GOA
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F.No.3/RERA/Complaint(299)/2021/846 Date: 16/11/2022

Madanant Vithoba Prbhu and Anr.,
H.No. 873, Goankarwada,
Usgao, Ponda, Goa, 403406. **.....Complainants**

V/s

Uday Ghanshyam Naik,
Address 1: GNC Group, 12/G, Nirmal Nagar CHS,
Opp. IOC Petrol Pump,
Mira Bhayandar Road, Mira Road East, Thane-401107.

Address 2: r/o. B/1, 604, New Ashok Nagar,
Bapu Paranjape Marg., Near Vazira Naka,
Borivali(W), Mumbai 400092.

Address 3: Having its site office at GN Legacy I,
(Under construction), Survey No. 148/1F,
Durgabhat, Opp. Gurkul School,
Upper Bazar, Ponda, Goa-403401. **.....Respondent**

ORDER
(Dated 16/11/2022)

This order disposes of the complaint filed under section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter

referred to as 'the said Act') against the promoter/respondent in respect of the project 'G.N. Legacy I' situated in Ponda Taluka, North Goa. In the said complaint, the complainants have stated that the respondent is the owner of the property bearing survey no. 148/1-F admeasuring 3862 sq. mtrs. situated in Ponda Taluka, North Goa and that the complainants and the respondent executed an agreement for sale on 16.10.2017 and registered the same on 25.10.2017 for the purchase of flat No. 003, admeasuring 95.80 sq. mtrs. on the upper ground floor of A wing building known as G.N. Legacy-1 with one parking lot.

2. According to the complainants, in terms of the said agreement for sale, the total consideration payable by the complainants to the respondent for the aforesaid flat was ₹38,00,000/- (Rupees Thirty Eight Lakhs only) and that the complainants paid an amount of ₹34,67,500/- (Rupees Thirty Four Lakhs Sixty Seven Thousand Five Hundred only) towards the consideration of the said flat.

3. The complainants have submitted that in terms of the said agreement for sale the respondent was to handover the said flat to the complainants within a period of 18 months from the date of said agreement i.e. on or before 16.04.2019, however the respondent failed to handover the said flat till date, inspite of receiving timely payment from the complainants towards its construction .

4. According to the complainants, the respondent registered the project with Goa RERA under the said Act and in terms of the said registration dated 23.12.2019, the date for completion of the project was 31.12.2019 and subsequently it was revised till 31.12.2021 but the respondent failed to adhere to the completion date stipulated in the registration certificate. Hence, the prayers of the complainants :-

(a) to direct the respondent to pay interest at the rate of 18% per annum on the amount of ₹34,67,500/- paid by the complainants to the respondent from 16.04.2019 till the date of actual hand over of the flat by the respondent

(b) direct the respondent to pay compensation to the complainants towards the monthly rent of ₹10,000/- per month paid from 16.04.2019 till the date of actual hand over of the flat by the respondent and

(c) to direct the respondent to pay compensation of ₹50,000/- towards expenses of the present proceedings.

5. In the reply the respondent took preliminary objection to the effect that the prayer of the complainants regarding interest on the consideration amount paid does not come within the purview of the said Act as the complainants do not wish to withdraw from the said project and that there is no compliance of rule 6 or rule 7 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeals etc.) Rules, 2017 i.e. the

manner of filing complaint in the prescribed forms as laid down by this Authority.

6. On merits, the respondent has denied all the allegations of the complainants made in the complaint and has submitted that the delay was caused in handing over the said flat to the complainants because of covid 19 pandemic, nation wide lockdown, labour problem, non availability of construction material etc. and further pointed out that as per the agreement for sale, the possession of the flat was to be given to the complainants subject to the availability of cement, steel, water and other construction material.

7. The respondent has submitted that the complainants are not entitled for any interest on the amount of ₹34,67,500/- since the complainants do not wish to withdraw from the said project nor the complainants have prayed for the refund of the said amount from this Authority and hence this Authority has no jurisdiction to grant any interest on the said amount to the complainants. According to the respondent, 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 authorizes this Authority to grant interest on the deposited amount to the complainant only incase the complainant wishes to withdraw from the said project and not otherwise.

8. Regarding cancellation of the registration of the said project, the respondent submits that this Authority has no jurisdiction to set aside its own orders granting extension to the respondent and further that the complainants have not pleaded any illegalities in the project in order to cancel the registration.

9. The respondent has further submitted that the cause of action according to the complainants arose on 08.02.2019 but the present complaint was filed after 08.02.2022 i.e. after the period of three years and hence the complaint is barred by law of limitation.

10. Documents and affidavits in support of their cases have been filed by both the parties. Oral arguments were heard from Ld. Advocate G. Panandikar for the complainants and Ld. Advocate Shri B. Gawas for the respondent.

11. After going through the entire record of the case and after hearing the arguments, the following points come for my determination

Sr.No.	Points for determination	Findings
1.	Whether the complainants are entitled for possession of the subject flat in the aforesaid project?	In the affirmative.
2.	Whether the complainants are entitled for statutory interest on delayed possession of the said premises?	In the affirmative.

3.	Whether the instant complaint is barred by law of limitation?	In the negative.
4.	Whether the complaint is legally maintainable in its present form?	In the affirmative.
5.	Whether the complainants are entitled for the compensation?	To be decided by the Adjudicating Officer.

REASONS

Points no. 1 and 2

12. Both the points are taken up together as they are interconnected and the reasons for deciding the same over lap.

As per the agreement for sale dated 16.10.2017 and registered on 25.10.2017 as mentioned in para 5 on page 15, the vendor shall complete the construction of the said building and handover the possession of the said flat to the purchasers within 18 (eighteen) months from the date of agreement for sale, though subject to the availability of the construction material or any act of God or other causes beyond the control of the vendor.

13. Since, till date the possession of the said flat is not given to the complainants, Section 18 of the said 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)

14. From the aforesaid section it is clear that the complainants have the choice of either withdrawing from the project and asking for refund of the consideration amount paid by the complainants 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".** Thus, there is no merit in the argument of the Ld. Advocate for the respondent to the effect that the complainants cannot ask for the interest on the consideration amount since the complainants do not wish to withdraw from the project. As stated above, Section 18 of the said Act clearly gives right to the complainants 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 complainants come under the latter category. The RERA Act thus definitely 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.

15. 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."

16. Thus, invoking Section 18 and Rule 18 of the said Act the benefit of the aforesaid statutory interest goes to the complainants, who have entered into agreement for sale with the respondent. As a consequence thereof

Section 18 and Rule 18 of RERA are squarely attracted in the instant complaint.

17. The Ld. Advocate for the respondent has submitted that the agreement for sale mentions the date for possession to be given to the complainants subject to the availability of construction material, any act of God or other causes beyond the control of the vendor and hence the aforesaid provision of law is not applicable in the instant case. There is no merit in the aforesaid argument since it is held by the Apex court in the case of **"M/s Imperia Structures Ltd. (supra)**, that "non-availability of contractual labour, delay in notifying approvals cannot be construed to be force majeure events from any angle". In the case of **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Ors." in civil appeal no. (s) 6745-6749 and 6750-6757 of 2021**, the Hon'ble Supreme Court has clarified that "if the promoter fails to give possession of the apartments, plot or building within the time stipulated under the terms of the agreement, then allottee's right under the Act to seek refund/claim interest for delay **is unconditional and absolute, regardless of unforeseen events or stay orders of the court/Tribunal.**"(emphasis supplied). Thus, the aforesaid ground for delay in delivering of possession, as given by the respondent, will not come to the rescue of the respondent from legal liabilities under the said Act and corresponding legal rights accrued to the complainants under the said Act.

18. The complainants are also entitled for the possession of the said flat. **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 said 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 complete the project and the legal formalities and to deliver possession of the premises to the complainants 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 complainants.

19. In the instant case the complainants have paid an amount of ₹34,67,500/- (Rupees Thirty Four Lakhs Sixty Seven Thousand Five Hundred only) to the respondent. Under Section 18(1) of the said Act the complainants are entitled and the respondent is liable to pay to the complainants 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 8.35% per annum. Adding two percent to the said interest as per Rule 18, it comes to 10.35% per annum. Hence, the respondent is

liable to pay 10.35% per annum interest for every month of delay to complainants on the aforesaid amount paid by complainants from the date of delivery of possession i.e. 16.04.2019 as mentioned in the agreement for sale with the complainants, till the handing over of the possession to complainants.

Both the points are therefore answered in the affirmative.

Point No. 3

20. There is no merit in the argument advanced by the Ld. Advocate of the respondent to the effect that the present complaint is barred by law of limitation. In this regard, Section 89 of the said Act clearly states that the said Act has overriding effect on other laws. The said Section reads as follows:-

> "**89. Act have overriding effect.-** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

Hence, the instant point is answered in the negative.

Point No. 4

21. The complainants have filed online complaint under Section 31 of the said Act with proper and valid verification before the notary and the same is supported by an affidavit of the complainant, Mr. Madanant Vithoba Prabhu as well as offline complaint with proper verification and affidavit. No doubt in the same complaint, the complainants have prayed for interest on the delayed possession from this Authority as well as compensation which has to be decided by the Adjudicating Officer under Section 71 of the said Act, however clubbing of both the prayers in one

complaint does not make the complaint invalid or inadmissible, especially because of the observations of the Hon'ble Supreme Court in the case of **"M/s Newtech Promoters and Developers Pvt. Ltd." (supra)** wherein it is held that though after the rules have been framed, the aggrieved person has to file complaint in separate formats, however **"still if composite application is filed, can be segregated at the appropriate stage".** Hence, for deciding the compensation, as claimed by the complainants, matter will have to be referred to the Adjudicating Officer. The instant point is therefore answered in the affirmative.

Point No.5

22. Under **Section 71 of RERA 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 by the complainants has to be referred to the Adjudicating Officer for adjudging the compensation, if any.

In the premises aforesaid, I pass the following:-

ORDER

The respondent is directed to give possession of the flat No. 003 in the aforesaid project, G.N. Legacy-I situated in Ponda, North Goa to the complainants after obtaining occupancy certificate as per the terms of the Agreement for Sale dated 16.10.2017 and registered on 25.10.2017, within eight months from the date of this order, as the Ld. Advocate for the respondent has submitted that the respondent will be able to complete the project and handover its possession to the complainant within eight months.

Further, the respondent is directed to pay 10.35% per annum interest for every month of delay to complainants on the aforesaid amount

of ₹34,67,500/- (Rupees Thirty Four Lakhs Sixty Seven Thousand Five Hundred only) paid by complainants from the date of delivery of possession i.e. 16.04.2019 as mentioned in the agreement for sale with the complainants, till the handing over of the possession to 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 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 ₹50,000/- (Rupees Fifty Thousand only) will serve the ends of justice. Hence, the promoter/ the respondent is directed to pay the penalty of Rupees Fifty Thousand within a period of eight 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 eight 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.

vijetley 16/11/2022

(Vijaya D. Pol)
Member, Goa RERA