



**GOA REAL ESTATE REGULATORY AUTHORITY
DEPARTMENT OF URBAN DEVELOPMENT
GOVERNMENT OF GOA**

101, 1st 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

No.3/RERA/Complaint (134)/2020/ 367

Date: 06/05/2022

Arman Bankley,
BH 9, Balama Heritage,
Opp Chinmaya mission,
Gogol, Margao Goa-403601.

.....

Complainant

V/s

1. M/s Umiya Holding Pvt. Ltd.
2. M/s Umiya Builders and Developers
29/3, HM Stafford, 2nd Floor,
7th Cross Road Vasant Nagar,
Bangalore-560 052

.....

Respondents

ORDER

Dated: 06/05/2022

This order disposes of the complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') filed against the respondents in respect of the project "UMIYA MERCADO" wherein the complainant has prayed the Authority to direct the respondents to execute sale deed and form a society. The supplementary complaint in this regard in which Mrs. Avani Arman Bankley is unilaterally added without the permission of this Authority is not signed or verified by the complainant or the other said party.

2. It is the case of the complainant that an agreement for construction and sale was entered into and executed on 13/03/2018 between the parties. By virtue of the said agreement dated 13/03/2018, the commercial shop bearing

No.105(B) admeasuring 31.3 sq. mtrs. of super built area along with outside seating area of 15.7 sq. mtrs, situated on the first floor in building block No.II of Umiya Mercado was agreed to be purchased by the complainant for a consideration of Rs. 23,72,500/- (Rupees Twenty Three Lakhs Seventy Two Thousand Five Hundred only).

3. It is stated by the complainant that he has fully paid the entire consideration amount to the respondents and have complied with all the terms and conditions of the said agreement.
4. It is further stated by the complainant that in the agreement it was agreed between the parties that the annual maintenance charges and other society expenses for the commercial shop would be Rs.50,565/-, however the respondents in breach of the said agreement has now demanded a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) without any reasonable basis.
5. According to the complainant, the respondents have failed and neglected to constitute a Cooperative society/ Association of Persons or such other entity despite handing over the possession of the units to the majority of the allottees. It is submitted that the formation of the said entity/society is specifically provided in clause 7 (W) (XVII) of the said Agreement for sale dated 13/03/2018 and as per clause 7 (E) of the Agreement the respective purchasers will be solely responsible and liable with respect to the common amenities of Umiya Mercado and further as per clause 7 (W) (II) it is the duty of the respondents to assist the purchasers in forming the Cooperative society or any other entity and therefore the respondents are not entitled to charge any amount from the complainant towards the maintenance fee and it is the duty

and liability of the respondents to form the society/ entity for the maintenance of the plot and common areas of Umiya Mercado.

6. The complainant has mentioned that as per clause 7 (W) (XVII), the respondents have already taken from the complainant the amount pertaining to the formation of the said society, the details of which are mentioned in the said Agreement dated 13/03/2018 and after receiving the said amount, the respondents cannot refuse to perform their part of the obligation under the said Agreement.

7. It is further stated by the complainant that the respondents have also taken from him the maintenance fees for the period prior to handing over the possession of the premises to the complainant but the respondents are claiming GST charges also on the amount of maintenance fees paid by the complainant on the ground that the respondents are carrying out the maintenance of the premises and not the society, however, according to the complainant the aforesaid cannot be a ground for the respondents to charge additional amount as it is solely on account of the inaction on the part of the respondents that the society is not formed and as such the complainant cannot be made liable to pay more than what was agreed at the time of the execution of the Agreement for sale.

8. It is further stated by the complainant that there is no provision in the Agreement for sale to increase the amount payable as maintenance and the increase if at all can be done only after the society is formed and all the members decide in favour of the same and therefore the respondents cannot burden the complainant with their unilateral decisions after the expiry of the

period for which the respondents were authorized to maintain the premises and hold the amount already paid to them in trust.

9. The complainant has stated that the respondents have failed to execute the sale deed of the commercial shop in favour of the complainant along with the undivided proportionate title in the common areas and therefore the respondents have violated Section 11 (4)(f) of the Act. According to the complainant, the respondents have also failed to hand over the necessary documents, plans including that of the common areas after handing over the possession of the commercial shop and other units to the allottees. Thus according to the complainant, the respondents are liable to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation to the complainants and further liable to execute the Conveyance Deed of the commercial shop in favour of the complainant, to form a society/ Association of Persons or any other entity and hand over all the documents including books of accounts/ electronic accounting formats related to the maintenance accounts, plans including that of the common areas to the society members and liable to pay interest @ 10% per annum for the delayed possession of the commercial premises. It is stated that the respondents are liable to pay penalty for violation of Section 11(4) (e), 11(4) (f) and Section 17(1) of the Act and further imposition of a penalty of 5% of the project cost as per Section 61 of the Act.
10. Reply has been filed by the respondents wherein it is stated that the complainant has approached this Authority with unclean hands and it was denied that the complainant has adhered to the terms and conditions of the agreement.



11. The respondents have stated that though the annual maintenance charges and other expenses of the commercial shop were initially decided as Rs. 50,565/-, however, subsequently the actual expenses for looking after the maintenance of the said building increased and even the Agreement speaks of the authority of the respondents to increase the same.
12. Regarding the formation of society, it is stated by the respondents that only four units are sold in the said building out of 35 units and therefore to keep the standard of maintenance and to avoid any risk to the life and property, the respondents are maintaining the said complex under their supervision, as for the formation of the society, 50% of the members are required to sign the bye laws and required documents.
13. Regarding the sale deed, the respondents have submitted that several drafts of the same have been exchanged but the complainant wants changes in the said draft and are not resolving the issue amicably.
14. Copies of documents were filed by the parties. Perused all the documents.
15. Written submissions were filed by Ld. Advocate S. Mordekar for the complainant and oral arguments were also advanced by the said Advocate, whereas the Advocate for the respondents did not appear to argue the matter.
16. In the Agreement for Construction and Sale dated 13/03/2018 it is mentioned in para 8(A) that "the BUILDER/ CONFIRMING PARTY shall complete the SAID SHOP within 24 months from the date of signing this agreement,

subject to an extension of further 6 months, and after obtaining the occupancy certificate from the competent authorities, handover its delivery to the PURCHASER; PROVIDED, all the amounts due and payable by the PURCHASER under this agreement are paid by the PURCHASER to the VENDOR/BUILDER”. **However, in the online complaint, the complainant has not prayed for any statutory interest on the delayed possession of the commercial shop to him** and further the supplementary complaint has no averments as to when the possession of the shop was given to the complainant and/or when the respondents obtained the occupancy certificate and further it is material to note that the said supplementary complaint in which the complainant has prayed for interest for the delayed possession is not signed or verified by the complainant and the said other party. Hence, the aforesaid interest on delayed possession cannot be granted.

17. Regarding the maintenance of the premises and the maintenance charges, there are specific terms in the said Agreement for Construction and Sale dated 13/03/2018 and **Para 8(E)** therein states as follows:-

“From the date of the occupancy certificate for the respective premises, the responsibility/liability for maintenance of the premises (including the said shop) in UMIYA MERCADO shall be of the respective Purchasers and the responsibility /liability with respect to the common amenities of UMIYA MERCADO and looking after the upkeep thereof shall be solely that of the respective purchasers”

From the aforesaid term of the agreement it is clear that after obtaining the occupancy certificate, the responsibility/ liability for maintenance of the

premises/ the said shop and also of the common amenities is solely on the complainant and the said responsibility/ liability is no more on the respondents. Thus, the stand taken by the respondents in the reply to the complaint to the effect that “to keep up the standard of maintenance and the building and to avoid any kind of risk to the life and property of the purchaser, the respondents are bound to maintain the said complex under their supervision and through professionals” is contrary to the said agreement.

- 18. Para 8(K)** of the said agreement also casts duty on the complainant to maintain the said shop and common areas from the date of possession. The said para 8(K) is reproduced hereunder:-

“The PURCHASER shall, from the date of possession, maintain the SAID COMMERCIAL SHOP, the walls, partition walls, sewers, drains, pipes and appurtenances thereto, at cost, in good and tenantable repair and condition and shall not do or suffer to be done anything in or to the SAID COMMERCIAL SHOP and/or common passage, or the compound or any other common areas, which may be against the conditions or rules or bye-laws of the Village Panchayat or any other Authority and shall attend to and answer and will be responsible for all actions for violation of any such conditions or rules or bye-laws.”

Thus the aforesaid para also clearly shows that from the date of possession, it is the duty and liability of the complainant to maintain the said shop and appurtenances thereto and also its common passages/common areas and in this regard it is not the duty of the respondents herein to maintain the same.

19. **Para 8(xxi)** of the Agreement for Construction and Sale dated 13/03/2018 states as follows:-

“It is clearly agreed and understood that the responsibility/liability with respect to the common amenities of UMIYA MERCADO is exclusively that of the purchasers (including the PURCHASERS herein) of various premises in UMIYA MERCADO and /or of the ENTITY.”

20. Thus, after the delivery of possession of said shop to the complainant, it is the duty and liability of the complainant to maintain the same and also the common areas. Para 8(xvii) of the Agreement for Construction and Sale dated 13/03/2018 gives details of the amount to be given by the complainant to the respondents including the maintenance charges before taking possession of the said commercial shop and the complainant has mentioned that all the charges mentioned therein have been given to the respondents. The complainant has stated that the respondents have charged him the maintenance fees for the period prior to handing over the possession of the premises to the complainant excluding Goods and Services tax as the amount of maintenance payable to his society is not subjected to tax.

21. Para 8 (xx) of the said agreement to the effect that “if the VENDOR/BUILDER and /or the ENTITY are of the opinion that the yield on amount as mentioned herein above is not going to be sufficient to meet the upkeep expenses, the VENDOR/BUILDER and/or the ENTITY are authorized to increase the aforesaid deposits with prior intimation to the PURCHASERS and the PURCHASERS shall pay the same within 15 days from the date of such intimation” has to be read in harmony with the other

paras mentioned above of the said agreement and therefore the inevitable conclusion is that after giving of possession of the commercial shop to the complainant, the duty and liability of maintaining the commercial shop and its common areas is no more with the vendor/builder/the respondents but the said duty and liability shifts to the complainant/the purchasers and thereafter the respondents have no scope for any increase in the maintenance amount as the respondents have no right over the same after the possession is given to the purchasers. Thus, the respondents cannot demand any further maintenance amount from the complainant who has already taken possession of the said commercial shop.

22. Regarding the formation of the society/entity, it is clearly mentioned in **para 8(v)** of the said agreement that **“it is agreed by and between the parties hereto that the VENDOR/BUILDER shall have the ENTITY formed of the premises holders of UMIYA MERCADO as a whole.** However, VENDOR/BUILDER shall have the option to have separate ENTITIES formed of any part of UMIYA MERCADO or along with the premises holders of any building schemes adjoining or in the vicinity of UMIYA MERCADO or in any other manner as the VENDOR/BUILDER may deem fit” (emphasis supplied). However, **para 8(iii)** states that it is entirely the discretion of the vendor/builder to decide the form of Entity i.e. whether to form a Cooperative society or a limited company or an Association of Persons or any other Entity and **para 8(ii)** states that the vendor/builder shall assist the purchaser in forming such Entity. **Para 8(xiv)** of the said agreement further states that **“upon completion of the UMIYA MERCADO, the VENDOR/BUILDER shall convey /get conveyed the said plot along with**

the buildings thereof and/or UMIYA MERCADO in the name of the ENTITY.” (Emphasis supplied).

23. From **para 8 (xxiii)** of the said agreement it is clear that pending formation of the Entity, the interim arrangement as mentioned in the said agreement was for a maximum period of one year from the date of occupancy certificates for all the building blocks of UMIYA MERCADO, unless extended by the vendor. The said interim arrangement period has already expired and as rightly argued by the Ld. Advocate for the complainant, the respondents have no authority to hold the funds collected from the complainant and other purchasers towards maintenance and keep delaying the formation of the society.
24. Even otherwise **Section 11 (4) (e)** casts the duty and the responsibility on the promoter regarding the formation of the society and the said Section is reproduced herein below:-

“11. Functions and duties of promoter.-

(4)The promoter shall-

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;”

Thus, even otherwise, it is the statutory duty of the respondents to form the society/ Association of allottees / Entity, as per law.

25. Regarding the execution of sale deed of the said commercial shop in favour of the complainant, it is again the statutory duty of the respondents to execute the same as is clear from **Section 11(4)(f)** of the Act which is reproduced herein below for ready reference:-

“(4) The promoter shall-

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under Section 17 of this Act.”

26. **Section 17** of the Act reads as follows:-

“**17. Transfer of Title.-** (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:



Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate.”

In the instant case, the possession of the shop was given to the complainant on 10/12/2019, as per the letter of possession produced on record but till date the sale deed is not executed regarding the said premises.

27. As stated above no issue of delay in giving possession to the complainant is raised in the online complaint filed before this Authority and the supplementary complaint filed before this Authority does not mention about the said delay in the facts of the case mentioned therein, though prayer is made to grant statutory interest on the said delay and further the said supplementary complaint even otherwise cannot be taken into consideration

since the same is not signed by the complainant nor it is verified by the complainant.

28. The complainant has also placed on record the amended supplementary complaint, which is also not signed or verified by the complainant. Even otherwise in the said amended supplementary complaint, the complainant has stated that the respondents through their advocate vide e-mail dated 27/05/2021 sent an invoice/calculation sheet of the amount due from the complainant and upon perusal of the said calculation, the complainant realized that the agreement for sale entered into with the respondents mentioned a rate of maintenance per sq. mtr. which was much higher than the rate of maintenance payable by the other owners of the building i.e. the other owners are liable to pay an amount of Rs.50 per sq. mtr. whereas the agreement executed with the complainant mentioned the rate as Rs. 115 per sq. mtr., though there is no difference in the amenities/facilities provided to the complainant and other owners of the building except the carpet area and the additional sitting area purchased by the complainant. Thus according to the complainant, he is not liable to pay any maintenance to the respondents which is not in uniformity/parity with the other owners of the building.
29. As stated above, the aforesaid amended supplementary complaint and even the supplementary complaint is neither signed nor verified by the complainant and secondly the rate of Rs. 115 per sq. mtr. is mentioned in the agreement executed between the complainant and the respondents and the parties are bound by the said agreement. Therefore no order can be passed contrary to the said agreement. The complainant is therefore indirectly challenging the aforesaid agreement for Construction and Sale dated 13/03/2018, however,

the said agreement cannot be challenged before this Authority as this Authority has no jurisdiction to set aside the said agreement and/or any of its terms and conditions. Granting the relief as prayed in the said amended supplementary complaint, amounts to setting aside the terms and conditions of the said agreement, regarding which as stated above, this Authority has no power and jurisdiction.

30. From the premises aforesaid, it is clear that the respondents have not discharged their statutory duties of forming the society/ association as per Section 11(4) (e) and of execution of sale deed in favour of the complainant as per Section 11 (4) (f) read with Section 17 of the Act. For the violation of the above provisions of the Act, **Section 61 of the Act** is attracted and is therefore reproduced herein below:-

“61. Penalty for contravention of other provisions of this Act.- If any promoter contravenes any other provisions of this 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 up to five per cent of the estimated cost of the real estate project as determined by the Authority.”

31. At the time of the registration of the concerned project, the respondents submitted before this Authority “Chartered Accountant certificate” given by Chartered Accountant’s A.D. Ashar and Co., wherein the total estimated cost of the instant Real Estate Project is mentioned as Rs.15,98,25,690/- (Rupees Fifteen Crores Ninety Eight Lakhs Twenty Five Thousand Six Hundred and Ninety only). The above figure of estimated cost of the project has to be taken into consideration while imposing the penalty on the respondents under

Section 61 of the Act, however taking into consideration the facts of the case, lenient view is taken in this regard.

Thus, I pass the following:

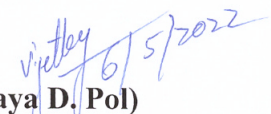
ORDER

The respondents are directed to form a society /Co-operative society/ an association of allottees in respect of the aforesaid project, without any additional charges from the complainant other than those mentioned in the Agreement for Construction and Sale dated 13/03/2018 within two months from the date of this order and handover to its members within the said period all the necessary documents including plans related to the common areas of the said building.

The respondents are further directed to execute a sale deed of the said commercial shop in favour of the complainant along with the undivided proportionate title in the common areas to the association of allottees within two months from the date of this order.

The respondents are further directed to pay a penalty of Rs. 1,00,000/- (Rupees One Lakh only) for violation of Section 11 (4) (e) of the Act within two months from the date of this order and also to pay a penalty of Rs. 1,00,000/- (Rupees One Lakh only) for violation of Section 11 (4) (f) of the Act within two months from the date of this order.

The instant matter is referred to the Adjudicating Officer for deciding compensation, if any.


(Vijaya D. Pol)
Member, Goa RERA