



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

F.No: 3/RERA/Complaint (50)/2019/227

02/03/2020

ORDER

Dated: - 12/2/2020

This Order shall dispose off the complaint received online from Mr. Rajesh Lobo against Nathan Construction Pvt. Ltd. regarding project 'Owner Pride'.

According to Complainant Shri. Rajesh lobo r/o Mahim, Bombay, he has booked a studio apartment in Owner's Pride project, Varca of Nathan Construction and as the project has been delayed due to demonetisation, GST, Government Regulation etc. and as Mr. Agnelo Cardozo, Chairman and Director of Nathan Construction, Navelim Goa cannot give a Tentative date sought relief from this authority to refund his amount of Rs. 25,000,00/- (Rupees Twenty five Lakhs only) till its realisation and also compensation totalling Rs. 40,00,000/- (Rs. Forty Lakhs only) along with interest at the rate of 18% per annum.

It is a further case of complainant is that he has lost and suffered because of incorrect statements made by the promoter contained in the notices, prospectus, allotment letter, failure to complete the project/ not receiving possession on the date specified, not receiving the amenities, not receiving the rental income and not being able to use the privilege to sell the studio directly to a third party at a premium. In pursuance of the same, notice was issued to Nathan Construction Pvt. Ltd. to submit his explanation by 19/8/2019.

Respondent file reply to the complaint.

In his reply the case of the respondent is that Respondent is not registered under Goa RERA and the project of the Respondent is not applicable under Goa RERA which came into force in the year October 2017. Secondly the project of the Respondent was construction of premises of building comprising of six units only. Further the Complainant herein is trying to recover the amount which was purportedly on 6th January 2016 and for all legal purpose such claim for recovery is barred by the Law of Limitation. That the Complainant is in a capacity/position of INVESTOR and not as a

Rajesh Lobo

Home buyer. Hence, for all the legal purposes the transaction entered between the Complainant and the Respondent herein is of civil nature. There is no Agreement for Sale executed between the Appellant and the Respondent as there was clear understanding between the parties thereto that the complainant are only investing as INVESTORS in the said project.

I have heard the Complainant in person and Adv. Miss P. Rajpurohit for the respondent.


Apart from arguing orally Advocate for the Respondent submitted that she would file written argument. However no written arguments are forth coming.

I have duly considered arguments advanced by both the parties and the material placed on records.

Based on the arguments advanced and material placed on record the only point for determination arises is as to whether the Complainant is entitled for the relief prayed for as per the complaint at page 8/c.

My answer to the above point is partly in the affirmative holding that Respondent is entitled to pay an amount of Rs. 25,00000/- (Rupees Twenty Five Lakhs only) to the complainant with interest at the rate of 10% per annum till its realisation and cost of Rs. 1,00,000/- (Rupees one lakh only) on account of following reasons.

First of all based on the reply of the respondent itself it is not disputed that complainant has paid to the respondent an amount of Rs. 25,000,00/- (Rupees Twenty Five Lakhs only) towards booking of studio A- 2F-101/01 at Owners Pride, Varca of Nathan Construction. The payment receipt on record dated 5/1/2026 shows that Complainant effected an amount of Rs. 25,000,00/- by RTGS under receipt no. 118. Email at page 60/c to 63/c dated 16/11/2017 dated 11th December 2018 shows that the project of the respondent has been delayed in view of modifying the plan and however respondent assured to the complainant to hand over a possession in a couple of months. Email dated 1/11/2017 send by the Respondent Shri. Agnelo Cardozo shows that he has admitted the delay in completion of the Project citing reasons of demonetisation, RERA and GST and cannot give tentative date of completion thereby giving options to the complainant either to decide to refund the booking amount along with the 6% rate of interest after doing the cancellation formalities and the monthly rentals of Rs. 30,000/- per unit until possession is handed over (monthly rental be paid on compensation of 5 months period circle).



Email send by Complainant at (pg. 66/c) further shows that Complainant reiterated for refund of money at the rate of 18% per annum.

Email dated 11/3/2018 at page 68/c send by the Complainant to the Respondent shows that despite payment made by him Rs. 25,000,00/- (Rupees Twenty Five Lakhs only) for studio block A2F-101 the possession was not given by May 2017 which includes furnishing of studio with amenities of Rs. 6,000,00/- (Rupees Six lakhs only) towards studio Apartment rental of Rs. 60,000/- (60 thousand) per month for each studio to commence from June 2017. Letter send by Respondent through speed post at page 70/c dated nil shows that a draft of the letter was presented to complainant to be typed on stamp paper and to be notarised and send to the complainant demonstrates that complainant requesting the Respondent to cancel his booking of the Studio apartment in 'Owners Pride' project, since the project has been delayed and that he would not hold Nathan Construction Pvt. Ltd./ Nathan Construction responsible for any claims made by him or any other person represented by him and requesting to refund his booking amount. This unsigned letter issued by Respondent which shows that Respondent shown the willingness to return the amount. However letter addressed by the complainant sworn before notary shows that Respondent is /was to refund the amount of Rs. 25,000,00/- towards booking along with simple interest at the rate of 18% per annum from 6th January 2016 to 5 April 2018 i.e 27 months.

In response to the same respondent issued email expressing his difficulty of completing the project and shown his willingness to return the amount however only with 6% interest.

Based on the above it is apparently clear that the Respondent has squarely admitted the receipt of Rs. 25,000,00/- (Rupees Twenty Five lakhs only). Even in reply dated 4/12/2019 st page 128/c Respondent did not dispute his liability to pay the amount of Rs. 25,000,00/- (Rupees Twenty Five lakhs only) with interest.

In reply respondent raised points of law.

According to respondent Goa RERA being came into force in the year October 2017 and that project of the respondent was of construction of premises of building comprising of six units, RERA act is not applicable in the facts of the present case.

Upon pursuing material on record, the project details shows that area of the Real Estate Project covers and area more than 500 sq. mts. and number of apartments proposed to be developed exceeds 8 inclusive of all phases. There are 16 Apartments in phase 1 + 4 Bungalow/ Villas + 24 Apartments in phase 2. Hence claim of the

respondent interalia that project is having only six units is contrary to the evidence on record.

In reply Adv. for the respondent Miss P. Rajpurohit placed on record the Authority of Punjab RERA in the case of Silver City Residents Welfare Association (Regd.) Vs. Silver City Housing & Infrastructure Limited Zirakpur. wherein it is held that if the project is not been registered under RERA the complaints against the unregistered projects are not maintainable. In that regard the Authority cited by the complainant of the Gurgaon Bench is quiet applicable to the case at hand. It is held therein that Real Estate project comes under the ambit of RERA (Real Estate Regulation and Development Act) regardless of whether they are registered under RERA or not. The bench, headed by Haryana RERA Chairman K.K. Khandelwal, thus expanded its scope of adjudication and announced RERA as the de facto regulator of the Real Estate Sector.

Even otherwise the RERA 2016 Act no where mention that (RERA Act) is applicable only for registered project. That being the position legal objections raised by the Respondent that RERA Authority has no jurisdiction is devoid of merits.

The RERA legislation is a welfare legislation and accordingly effect of the provision have to be given accordingly.

As per Clause (2) of Section 3, RERA is made applicable even to the projects that are on-going on the date of commencement of the RERA and for which, Completion Certificate has not been issued. In respect to such projects also, Promoters are required to register the projects with the Real Estate Regulatory Authority within three months from the commencement of RERA. The Respondent by his own admission has not followed the RERA guidelines and is using his omission to question the jurisdiction of the RERA authority. Thus on plain reading of the provision RERA Authority has jurisdiction to entertain the complaint.

Next submission of the Respondent that there exist no valid contract between complainant and the respondent is also without any basis. Though there is no register Agreement between the complainant and the respondent correspondence entered into between the parties herein clearly indicate that transaction between complainant nad respondent is in a capacity of home buyers and not the investor.

Next claim of the respondent is that the provisions of RERA, are required to be construed, having regard to its objects and reasons. When the very object of the RERA is to protect the consumers, the persons who have invested their hard earned

money by entering into an 'Agreement' which is in the nature of purchase of the apartment itself, mere nomenclature of the documents as 'Booking/Allotment' letter will not in any way take away the rights given to them by the statute. The Respondent has invested 70% of the consideration amount towards the said apartment/holiday home in the Real Estate Project of the Respondent. The Respondent has given alluring advertisement of his real estate project of 40% units obtained 70% of the consideration money from the Appellant for the said studio apartment issued booking/allotment letters with amenities, T&C, promised but not delivered possession of the constructed studio apartment within the stipulated time.

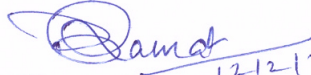
Since neither the studio apartment has been completed nor the Respondent refunded the money paid by the Complainant to the Respondent, the cause of action is subsisting, continuous and exists even today. The project is an incomplete one.

Section 18 of the RERA imposes the liability on the promoter to return the amount received by him in respect of the apartment of which he fails to give the possession in time. The stand adopted by the respondent is incongruous, self-defeating and impermissible in law. By virtue of email 14/5/2018 at page 78/c respondent admitted his inability to complete the project and agreed to refund the amount however with 6% interest . So also earlier two mails dated 16/11/2017 and 11/3/2018 at pages 62/c and 68/c respectively. Complainant claims interest at the rate of 18% per annum on the Principal amount of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only). Respondent agrees to pay interest at the rate of 6% per annum. The same is on the lower side, inequitable and unjust. If the complainant had to deposit the said amount of Rs. 25,00,000/-(Rupees Twenty Five Laks only) in any Bank Nationalised, Scheduled Bank or Co-operative Bank he would have fetched considerable interest and similarly in the event if he has to obtain the loan to purchase immovable property he has to pay interest on the same which would range from 11% to 15% of which one can take judicial note of the same. However having due regards to Rule 18 of the Goa Real Estate, Rules 2017 and considering the fact that there is slowdown in construction activities on account of various factors such as demonetization, recession in mining activities etc. it would be equitable, just, adequate and proper to impose interest at the rate of 10% per annum on the Principal amount of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) from 6/1/2016 till its realisation . The Complainant is also entitled for the cost of Rs. 1,00,000/- (Rupees One Lakh only) on account of considerable delay in the effecting payment and unnecessary litigation. In the results I pass the following

Order

Respondent is directed to pay an amount of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) to the complainant with interest at the rate of 10% per annum from 6/1/2016 till its realisation and in addition costs of Rs. 1,00,000/- (Rupees One Lakh only). The compensation sought by the complainant is to be adjudicated by the Adjudicating Officer after holding inquiry as per the Act.

Dated: 12/2/2020
Panaji


12/2/2020
(Pramod V. Kamat, Dist. Judge (Retd.))
Member, Goa RERA

To,
Mr. Agnelo Cardoso,
M/s Nathan Constructions Pvt. Ltd.,
Shop no. 3, Tolleband,
Davorlim, Navelim, Salcete Goa,

Copy to: -
Mr. Rajesh Lobo,
591A-2-3 Rajendra Apt,
Ground Floor L J Cross Road No. 1,
Mahim West, Maharashtra,
Mumbai 400016

Issued on 2/3/2020
Signature 