



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

F.No. 3/RERA/Complaint(14)/2018 / 500

Date: 31/01/2018

ORDER

Online complaint dated 28/5/2018 was filed before the Interim Authority, Goa RERA by Smt. Gita Madhok, 19 Rose Avenue, Aldeia de Goa, PO Goa University, North Goa. It has been stated that during December 2011, the complainant and her husband Shri. Raman Madhok booked a flat in Aldeia de Goa Phase V sector II M104. A sum of Rs. 20,05,992/- was paid at the time of booking and the flat has not been delivered till date. They are retired people and requested RERA to help them to obtain a refund of their deposit with interest.

Notice for reply on the above mentioned was addressed to Goa Real Estate and Construction Pvt. Ltd. vide no. 3/RERA/Complaint (14)/2018/177 dated 10/8/2018. Vide no. GRECP/L/RERA/2018/1999 dated 20/08/2018 the respondent stated that the complaint filed by Smt. Gita Madhok is not in accordance with form A as per 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 and hence the complaint filed cannot be considered as complaint under section 31 of the Real Estate (Regulation and Development) Act, 2016 and requested that no cognizance be taken in respect of the complaint filed by Smt. Gita Madhok.

Notice of Hearing was given to both the parties to remain present before the Interim Authority, Goa RERA on 31/10/2018 with the relevant documents for hearing of the compliant. Accordingly Hearing was held on 20/11/2018, 7/12/2018, 14/12/2018, 21/12/2018 and 15/1/2019. Adv. Shivam Dessai appeared for the Complainant and Adv. Jeetedar Supekar appeared for the respondent.

During the hearing the following facts were submitted before the Interim Authority:

It was stated that the complainant had not pleaded the correct facts before the Authority and incomplete documents have been attached. The Respondent stated that the

complainant is a defaulter who has not made the payment on time to the respondent. During 2011, the complainant approached the respondent to purchase an apartment being constructed there of and opted to purchase apartment bearing no. Sector 2/M104/1BHK at Aldeia de Goa for a total consideration of Rs. 66, 86,640/- The Complainant made an initial payment of Rs. 10, 00,000/- on 23/12/2011 and Rs. 10, 05,992/- on 2/2/2012. The Complainant was issued an Allotment Order. .

The Complainant also agreed to make further payment in terms of the payment schedule as agreed.

The Complainant was offered an apartment at a concessional rate being a resident of Aldeia de Goa. No Completion dates were stated as this was a pre planning stage. After the initial payment of Rs. 20,05,992/- no further payments has been made by the Complainant to the respondent as per the payment schedule inspite of reminders and demand notices send by the respondent. A final notice dated 4/7/2017 was issued to the complainant in which it was stated that an overdue instalment of Rs. 27,25,858/-

has not been made by the complainant, thereby committing breach of the provisions of the Booking Form dated 19/12/2011 executed between the complainant and respondent. It was also stated to make the overdue payments along with 18% interest from the due date till the date of payment within 15 days failing which the Booking Form will be terminated and respondent will be at liberty to dispose off and sell the flat to any other person at prices per the discretion of the Respondent. The earnest money paid by the complainant shall also stand forfeited as per the provisions of the Booking Form.

After the issuance of Final Notice, the complainant disputed the outstanding payment on the ground of delay, and disputed penal interest and also insisted refund of advances. In order to settle the dispute the complainant was given an option to change the apartment from M104 to J101. It was specifically agreed that the terms will remain the same and that the advances received shall be shown against the newly opted apartment J101.

The complainant was required to make the payment by December 2017. The said payment was not made and refund of the advance is now being sought.

The Respondent further stated that the Complainant has not only failed to pay the instalments on time but also failed to pay the penal interest. As per the clause 5 of the

allotment letter, it is agreed by the complainant that in case of cancellation or booking allotment, the booking amount would get forfeited in favour of the company. Therefore, the question of the refund of the money to the complainant does not arise. The apartment M104 has been completed in May 2018. An application has been made to GPPDA for issuance of Completion Certificate.

The Completion Certificate has not been issued so far due to lack of clarity in the jurisdiction of NGPDA and GPPDA. It was submitted by the respondent that the complainant be directed to make the payment of Rs. 43,27,335/- along with the penal interest of Rs. 9,44,872/- and Rs. 3,34,332/- at the time of taking possession of the flat M104.

In response the complainant stated that after making the initial payment of more than 20 lakhs during February 2012 and no progress in work was noticed the question of making any further payment did not arise.

In the draft offer letter it was mentioned that the project would be completed in 30 months commencing from the date of launch.

The company's representative vide email dated 23/10/2017 requested the complainant to make payment by December 2017 and balance amount on demand/or possession as convenient. The possession of the apartment was confirmed to be given latest by March/April 2018.

The change of flat from M104 to J101 was an option that the complainant considered in view of compelling circumstances and obstinate stand of the Respondent in respect of non-refund.

The Complainant is not duty bound to make payments to the respondent when there is a complete failure on part of the Respondent to adhere to stipulated time frame for completion of the project.

The Complainant prayed that the Authority takes cognizance of the complaint and directs the Respondent to pay a sum of Rs. 20,05,992/- along with the applicable interest.

Both sides were heard and documents produced taken on record and perused. The complainant has paid Rs. 20,05,992/- for the allotment of the flat in the year 2011. A payment schedule was also agreed by the complainant and the respondent. Construction

license for the project was received on 15/1/2012. The project continued with the construction and received completion Certificate December 2017. Since the construction was taking place at a very slow pace the complainant did not make any further payments and asked for cancellation of the booking along with refund of advance with interest. The submission of the respondent that the construction was undertaken on the basis of the agreement between the complainant and the respondent and that the respondent has invested substantial amount of money in going ahead with the construction on the firm belief that complainant would pay as per the payment schedule has been taken note of.

The order is pronounced based on the above facts.

There is a delay in completion of the project for 7 years from 2011 to 2018. . The Complainant shall be allowed to withdraw the booking due to this delay. The advanced paid along with the interest as defined in the clause 18 chapter IV The rate of interest payable by the promoter and Allotee- 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 payment shall be made by the Respondent to the complainant within a period of 3 months. Since no reasons for delay in completion has been cited by the Respondent a Penalty of Rs. 2 lakhs is imposed on the Respondent which shall be paid to the complainant over and above the refund.


(Sudhir Mahajan)

Secretary (UD)/Interim Authority,
Goa RERA

To: Goa Real Estate and Construction Private Limited,
Aldeia de Goa,
PO Goa University,
North Goa

Copy for information to
Gita Madhok,
19 Rose Avenue,
Aldei de Goa,
PO Goa University, North Goa

Issued on 31/01/2019

Signature 