



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(325)/2022 /537

Date: 14 /06/2023

1. Talak Homes and Estates

A partnership firm duly constituted
Under the Partnership Act, 1932
Having its office at Ground Floor
Roshan Building,
Behind Don Bosco Engineering college
Murida, Fatorda, Salcete-Goa,
Represented herein by its partners

1a. Mr. Madhav Vishnu Talak

Son of Mr. Vishnu Talak
Aged about 64 years, married,
Business, Indian National
Resident of H.No. 254, Comba,
Margao, Salcete-Goa.

1b. Mrs. Sheela Madhav Talak

Wife of Mr. Madhav Vishnu Talak
Aged about 55 years, married, business
Indian National, resident of H. No. 254,
Comba, Margao, Salcete-Goa,
Represented by her duly constituted
Attorney Mr. Madhav Vishnu Talak,
As above, and

1c. Mr. Arun Vishnu Talak

Son of Mr. Vishnu Talak
Aged about 60 years, Married, Business

Vishnu

Indian National, resident of H.No. 254,
Comba, Margao, Salcete-Goa.
Represented by her duly constituted
Attorney Mr. Madhav Vishnu Talak,
as above.

.....Complainant

Versus

1. Shripad Ramnath Shetkar,
Son of Mr. Ramnath Shetkar
Aged about 47 years, married
Service, Indian National
And his wife

2. Mrs. Dixil Eulalia Rodrigues,
Daughter of Mr. Piedade Rodrigues
Aged about 46 years, married
Housewife, India National
Both residents of H.No. 5, Katta Amona,
Quepem-Goa, 403705.

.....Respondents


ORDER
(Dated 14.06.2023)

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 respondents to jointly and severally pay to the complainant a sum of ₹ 7,12,145/- (Rupees Seven Lakhs Twelve Thousand One Hundred and Forty Five only) being the amount due and payable by the respondents to the complainant firm; to direct the respondents to jointly and severally pay to the complainant statutory interest on the aforesaid amount from the date of filing of



the complaint till its realization; to direct the respondents to jointly and severally pay to the complainant a sum of ₹20,00,000/- towards penalty/ fine for the delay in the aforesaid payment and to order payment of ₹50,00,000/- towards cost of the present complaint.

2. It is the case of the complainant that the project known as "Shivam", a residential cum commercial complex situated in Quepem has been registered under the provisions of the RERA Act and the respondents approached the complainant for the allotment and purchase of three shops i.e. SH-5, SH-6 and SH-7 on the ground floor in the front wing of the said project for the purpose of establishing a bar and restaurant and requested the complainant to carry out certain changes and modifications in the said shops by obtaining the necessary revised approvals/ permissions for the same and the complainant agreed to carry out the changes as demanded by the respondents, however the complainant informed the respondents that as the said changes were not in consonance with the approved plans and permissions, the stipulated date for handing over possession of the shops might get extended to which the respondents agreed.
3. According to the complainant, vide three Agreements of Sale dated 17.09.2018 executed between the complainant and the respondents and duly registered before the Sub-Registrar, the respondents agreed to purchase the said shops upon the terms and conditions as mentioned therein for the total consideration of ₹75,00,000/- out of which a part payment of ₹60,00,000/- was made by the



respondents to the complainant. It is stated in the complaint that the balance amount including the amount towards the goods and service tax, infrastructure tax, house tax and other taxes/ charges/ fees and also the contributions towards the proposed society were to be paid by the respondents to the complainant as per the terms of the Agreements.

4. According to the complainant, the respondents owed an amount of ₹15,00,000/- towards the balance consideration for the purchase of the said shops along with other amounts due and contractually agreed upon vide the said Agreements. It is stated that on 25.09.2018 the respondents paid to the complainant a further sum of ₹14,25,000/- towards the part payment of balance consideration for the purchase of the said shops and as such an amount of ₹75,000/- along with other amount was due and payable by the respondents to the complainant.
5. According to the complaint, the respondents had requested for the changes to the said shop and hence the complainant applied for and obtained necessary revised approvals and licenses from the statutory authorities before obtaining the necessary occupancy certificate in respect of the said shops. It is further stated that upon obtaining the necessary occupancy certificate, the complainant called upon the respondents to pay the balance amount due and payable to the complainant and to take possession of the same to which the respondents requested the complainant to hand over possession of the shops immediately since the respondents had to complete the interiors and furnishing of the shops



for the purpose of opening the proposed bar and restaurant and assured the complainant that upon opening the bar and restaurant and upon commencing business therein, they would make the payment of the balance amount due and payable to the complainant firm. According to the complainant, upon such assurance of the respondents, possession of the said shops was given to the respondents.

6. According to the complainant, in the month of April 2019, the complainant again requested the respondents to make payment of the balance amount but the respondents informed the complainant that they were unable to commence the business in the said shops in the absence of sale deed as the respondents were unable to obtain various statutory permissions such as excise license, food and drugs approvals etc. and as such the respondents requested the complainant to execute the sale deed in respect of the said shops. It is stated that the respondents assured the complainant that on opening of the bar and restaurant and upon commencing business therein, the respondents would make the payment of balance amount to the complainant and on such assurance the complainant executed the sale deeds dated 25.06.2019 in respect of the said shops.

7. According to the complainant inspite of various reminders and demand letters to the respondents to make the payment of the balance amount due to the complainant, the respondents failed and neglected to make the payment of the



said amount and on the contrary the respondent no. 1 filed a false online complaint against the complainant before this Authority alleging loss due to purported delay in handing over possession of the shops and malafidely seeking compensation on that account and the said complaint was first registered as case no. 3/RERA/Complaint(57)/2019, however as the issue of compensation was not within the jurisdiction of this Authority, the respondent no. 1 was given liberty to file fresh complaint seeking compensation before the Adjudicating Officer RERA Goa and accordingly fresh complaint was filed by respondent no. 1 which was bearing case no. 4/RERA/Adj.Matters(8)/2021. It is stated that in the said complaint the respondents denied being in default of any sums or amount payable to the complainant.

8. According to the complainant, during the pendency of the complaint filed by the respondent no. 1, the complainant issued a fresh demand letter dated 27.05.2022 to the respondents calling upon them to make payment of the amount of ₹6,62,832/-, however upon receiving the said letter the respondent no. 1 intimidated and threatened the complainant firm and its employees and committed various offences against them. It is submitted that the aforesaid complaint filed by respondent no. 1 was dismissed by the Adjudicating Officer and while dismissing the said complaint, the Adjudicating Officer observed that the respondent no.1 is in default of payment of the balance amount of ₹6,62,832/- to the complainant and that the respondent no. 1 herein has falsely



stated that all the payments have been made in terms of the said Agreements of Sale.

9. It is stated that the complainant firm issued further demand letter dated 17.08.2022 calling upon the respondents to pay to the complainant a sum of ₹ 7,10,628/- which is due and payable to the complainant however, the respondents have not paid the said amount to the complainant inspite of repeated requests and reminders.
10. The respondents filed the reply to the said complaints wherein preliminary objections are taken to the effect that the complainant has no locus standi to file the present complaint and that the complaint is barred by the law of limitation. It is submitted by the respondents that as per the Agreement for sale dated 19.09.2018, the complainant had to hand over the possession of the said shops on or before 31.01.2019 however the complainant failed to hand over the same within the said time period and further since the complainant failed to complete the work the occupancy certificate was not issued.
11. According to the respondents, they have paid to the complainant an amount of ₹74,25,000/- (Rupees Seventy Four Lakhs Twenty Five Thousand only) i.e. 99% of the total consideration with a hope that the complainant would hand over the possession of the said shops on or before 31.01.2019.



12. It is stated by the respondents that on the request of respondent no. 1, Quepem Municipal Council issued a part occupancy dated 21.02.2019 and the NOC from PHC Quepem dated 23.11.2018. According to the respondents, the delay in handing over the possession of the three shops was only because of the failure on the part of the complainant to complete the project as agreed and to obtain the occupancy certificate.
13. It is the case of the respondents that they do not owe any amount to the complainant towards any services rendered by the complainant and that the complainant has filed a false complaint for extracting money from the respondents. The rest of the allegations of the complainant in the complaint are all denied by the respondents. It is further stated that upon execution of the Agreements for Sale, the respondents paid 99% of the total consideration and also in addition, other amounts to the complainant. According to the respondents, water connection and electricity connection have been taken by the respondent no. 1 who paid the amount towards the same. It is further stated that various other works in the said shops like floor tiles, internal painting, electrical and plumbing fittings have been done by the respondent no. 1 at his own cost and the complainant informed the respondent no. 1 that the exceeded amount incurred by the respondent no. 1 will be reimbursed to the respondents and the complainant while signing the sale deed acknowledged the receipt of the balance payment of ₹25,000/- individually in all the three sale deeds. Thus, it is



the case of the respondents that no amount towards the balance consideration amount is due to the complainant and that the complainant acknowledged in the sale deeds that the complainant has received total consideration from the respondents. According to the respondents, till date the complainant has not reimbursed the extra amount incurred by the respondents.

14. Thus, the respondents have stated that they are not liable to pay any amount to the complainant as alleged by the complainant and therefore the instant complaint should be dismissed.
15. Documents were filed by both the parties in support of their cases along with the affidavits. Written submissions were filed by Ld. Adcovate D. Arolkar for the complainant and Ld. Advocate Shri S. Lavande for the respondents. Oral arguments were also heard from Ld. Advocate J. Costa for the complainant and Ld. Advocate S. Lavande for the respondents.
16. After going through the entire records of the case, the point which comes for my determination along with the reasons and finding thereon is as follows:-

Point for determination	Finding
Whether this Authority should direct the respondents to jointly and severally pay to the complainant a sum of ₹7,12,145/- along with statutory interest thereon and to pay the penalty and costs?	In the negative.

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REASONS

17. At the outset it is worth mentioning that in the instant case after completing the project and after obtaining the occupancy certificate, not only possession of all the three shops bearing nos. SH-5, SH-6 and SH-7 has been given to the complainant but also sale deeds dated 25.06.2019 have been executed between the complainant and the respondents and duly registered before the Sub-Registrar. The complainant has further submitted that the respondents are even running a bar and restaurant in the said shops under the name and style of "A Vontade". Hence the prayers of the complainant have to be considered against the backdrop of the aforesaid facts.
18. **Firstly**, there is a dispute between the complainant and the respondents regarding the amount/ balance consideration amount paid/ to be paid by the respondents to the complainant. According to the complainant, at the time of filing of the complaint, the respondents were liable and continue to be liable to pay to the complainant an amount of ₹7,12,145/- (Rupees Seven Lakhs Twelve Thousand One Hundred and Forty Five only) towards balance consideration amount relating to the said shops. In the complaint therefore the complainant has inter alia prayed this Authority to direct the respondents to pay the aforesaid amount along with interest thereon from the date of filing of the complaint till its actual payment.



19. On the other hand, it is the case of the respondents that entire consideration amount has been paid to the complainant and no amount is due to the complainant. It is the case of the respondents that they are not liable to pay any amount to the complainant. According to the respondents, the complainant has failed to prove his claim towards the alleged claim of ₹7,12,145/-. The Ld. Advocate for the respondents pointed out the following recitals in the sale deeds dated 25.06.2019:-

“AND WHEREAS the **ALLOTTEE has paid the entire consideration amount** due to THE PROMOTER for the purchase of the said unit and has now requested THE PROMOTER to execute the present deed of sale conveying the said unit to the ALLOTTEE (emphasis supplied)”

The Ld. Advocate further pointed out to the following paragraph in the said sale deeds:-

“NOW THEREFORE THIS DEED OF SALE
WITNESSETH AS UNDER-

1. That in pursuant of the above said agreement dated 17.09.2018 duly registered**and in consideration of the amount of Rs. 30,00,000/-**



(Rupees Thirty Lakhs only) paid in full by the ALLOTTEE to the PROMOTER, the receipt of which full consideration of sale the PROMOTER does hereby acknowledge and give its full discharge to the ALLOTTEES, the PROMOTER does hereby sell, convey, transfer and assign unto and to the use of the ALLOTTEE”(emphasis supplied).

20. Vis-à-vis the aforesaid clear recitals in the sale deeds wherein it is clearly mentioned that the respondents have paid the entire and full consideration amount to the complainant and the promoter acknowledges the same and gives “its full discharge to the allottees”, the complainant’s Advocate gives emphasis to the following observations of the Adjudicating Officer of this Authority in the order dated 29.07.2022:-

“18. From the material placed on record, it is not in dispute that the respondent has already handed over the possession of the said shops agreed to be purchased to the complainant within the time period as prescribed in the said agreements. Moreover, the complainant is still admittedly in default of payments of the balance amount of ₹



6,62,832/- (Rupees Six Lakhs Sixty Two Thousand Eight Hundred and Thirty Two only) due and payable to the respondents under the terms of the said agreement. The complainant has falsely stated that all the payments have been made in terms of said agreements for sale, which falsity is borne out from the records itself.”

21. Thus, the clear recitals in the sale deeds dated 25.06.2019 to the effect that the respondents have paid the entire and full consideration amount to the complainant and the complainant/ the promoter acknowledges the same and gives “its full discharge to the allottees” are pitted against the aforesaid observations of the Adjudicating Officer of this Authority in the order dated 29.07.2022. As rightly submitted by the Ld. Advocate of the respondents, it is not the case of the promoter/ the complainant that the aforesaid sale deeds were fraudulently registered and moreover the complainant has not taken any steps to get an order from the competent court to declare the said sale deeds as null and void.
22. **Firstly**, as rightly pointed out by the Ld. Advocate for the respondents, **the adjudication procedure under RERA Act is a summary procedure which is not applicable for any dispute that would involve complex issues requiring elaborate evidence, especially when the strict rules of evidence are not followed in such summary procedure. Thus, the issue whether the**

respondents have paid the entire consideration amount to the complainant or not cannot be decided by this Authority behind the façade of the aforesaid facts and circumstances.

23. **Secondly**, as stated above the project is complete and after obtaining the occupancy certificate, the complainant has not only handed over the possession of the said three shops to the respondents, who have started running a bar and restaurant therein but also sale deeds have been executed between the parties and duly registered before the Sub-Registrar. After handing over the possession of the said shops to the respondents and after executing the sale deeds dated 25.06.2019 in favour of the respondents, the complainant filed the instant complaint on 15.10.2022 for recovery of balance consideration amount/ amount due from the respondents along with ancillary reliefs.
24. The first question which arises in the context of the instant facts is whether the amount claimed by the complainant from the respondents pertains to the real estate project within the purview of section 2(zn) of the RERA Act, which is reproduced hereunder for ready reference:-

“2.....

(zn)"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or



apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;”

25. From the aforesaid definition of the “real estate project” it is clear that it pertains to those projects which are under development for the purpose of selling the same and not those projects which are completed, the possession of which is given to the allottees and which are already sold to the allottees by executing and registering the sale deeds, as is the case in the instant complaint. Thus, under RERA Act, as per section 11(4)(a), the promoter is responsible for all obligations, responsibilities and functions under the RERA Act/ Rules and Regulations to the allottees/ association of allottees only “till the conveyance of all the apartments, plots or buildings, as the case may be”. However, it is specifically provided in the said section 11(4) (a) that the responsibility of the promoter shall continue even after the conveyance deed in favour of the allottees only in case where there is structural defect or any other defect as referred to in sub-section (3) of section 14 of the RERA Act. It is also material to note that in case the allottee has not paid the consideration amount as per the agreement for sale, section 11(5) gives right to the promoter to cancel the



allotment in terms of the agreement for sale and such cancellation obviously has to be before giving possession to the allottee.

26. Besides giving right to the allottee under section 14(3) of the RERA Act i.e. in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such developments is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge within thirty days and in the event of failure to rectify such defects within such time, the aggrieved allottee shall be entitled to receive appropriate compensation, the Ld. Advocate for the respondents also brought to the notice of this Authority judgement dated 12.01.2021 passed by Maharashtra Real Estate Appellate Tribunal in the case of “Mr. Suryakant Yashwant Jadhav and other vs. Bellissimo Hi-Rise Builders Pvt. Ltd. and others” (Appeal no. AT00600000021407 in Complaint no. CC00600000056404) wherein the Appellate Tribunal held that an allottee continues to possess his rights under Section 18(1) of the RERA Act even after the construction is complete or possession is given. It is material to note that no such corresponding right is either given in the RERA Act or interpreted so by Hon’ble Supreme Court/ any High Court in favour of the promoter whose responsibilities, obligations and functions as per section 11(4)(a) are limited **“till the conveyance of all the apartments, plots or buildings, as the case may be to the allottees”** / the

association of allottees with the exception of section 14 (3) as per which even after possession is given to the allottees/ association of allottees and the conveyance deed is executed, the promoter is still liable to rectify the structural defects/ any other defects.

27. Thus, there is no provision in the RERA Act under which the promoter can ask for any amount due from the allottee after the project is completed and possession is given to the allottee and also the sale deed is executed in favour of the allottee and consequently the allottee has already become the owner of any flat/ apartment/ building/ plot and when there is no “real estate project” as per section 2 (zn) in existence at the relevant time. In such a scenario, the only issue is mere recovery of money from the owner towards the sales transaction and in such civil dispute, RERA Act is not attracted. Hence, this Authority even otherwise, has no jurisdiction to decide a case of mere recovery of money by a builder from the owner of any flat/ apartment/ building constructed by the said builder and therefore the complainant has chosen a wrong forum in the instant case.

Because of the reasons stated above, the instant point is answered in the negative. Accordingly, the complaint is dismissed. The proceedings are closed.

V. Jetley
14/6/23
(Vijaya D. Pol)
Member, Goa RERA