



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

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No.3/RERA/Complaint (183)/2021 / 287

Date: 19/04/2022

Gopal Toraskar

56 Parabwada, Cansarwornem

Pernem-Goa, 403512.

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Complainant

V/s

Sudin Naik

Shri Ganesh Steel, Om Chambers,

Near Laxmi Narayan temple,

Old Mapusa Clinic Road,

Mapusa-Goa, 403507.


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Respondent

ORDER

Dated 19/04/2022

This order disposes of the online complaint filed by the complainant against the respondent praying this Authority to “take necessary steps to recover the amount from the builder with interest”. The respondent remained absent in this proceedings and was set exparte. The complainant produced on record part payment receipt of Rs. 2,00,000/- (Rupees Two Lakhs only), bank’s statement of account of the complainant showing the said amount given to the respondent and the legal notice dated 30/11/2018. Affidavit was also filed by the complainant.

2. Perused the entire record of the case including the written submissions filed by the complainant. Heard oral arguments of the complainant. It is necessary to reproduce hereunder the facts as mentioned by the complainant in his online complaint:- 

“I have paid booking amount of Rs. 2,00,000/- towards purchase of 1 BHK Flat no. TF4 measuring 65 sq mtrs at Chintamani Plaza II at Khorlim Near Sateri Ganesh Temple Mapusa Goa. Amount was paid by cheque which got cleared on 18/02/2018. Later, **due to certain unavoidable reason I cancelled the booking** and demanded the booking amount back. Builder turned down the requests till now. Requesting you to take necessary steps to recover the amount from builder with interest” (emphasis supplied).

Thus, the complainant has prayed for recovery of the said booking amount from the respondent on the ground that the complainant has cancelled the booking “due to certain unavoidable reason”.

3. At the outset, it is significant to reproduce hereunder Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act):-

“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 there under 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.”

4. From the aforesaid Section it is clear that the essential conditions/ingredients of the said Section to claim refund from the promoter are:-

(i) There should be an agreement for sale between the claimant/ complainant and the promoter/respondent.



(ii) That the promoter fails to complete the project or is unable to give possession of the same in accordance with the terms of the agreement for sale or duly completed by the date specified in the agreement for sale.

(iii) That if the allottee wishes to withdraw from the project because of non-completion of the project by the promoter or inability to give possession of the same in accordance with the terms of the agreement for sale or by the date specified in the said agreement, then in that case the promoter will be liable on demand to return the amount received by him from the allottee with interest including compensation.

5. It is material to note that in the instant case the aforesaid essential ingredients of Section 18 to claim refund of amount from the promoter are missing. **Firstly**, as admitted by the complainant there is no agreement for sale between the complainant and the respondent specifying the terms of the agreement for sale including the sale consideration and the specific date of completion of project/ delivery of project; **secondly**, in the online complaint, the complainant has never stated that he wants refund from the respondent because the respondent has not completed the project or he is unable to deliver the possession of the same as agreed between the parties but merely states that “due to certain unavoidable reason” the complainant cancelled the booking but the above ground does not come within the purview of Section 18 of RERA Act; **Thirdly**, in the legal notice dated 30/11/2018 though it is mentioned that the promoter failed to enter into any agreement for sale with the complainant and did not start the project, yet even the conditions orally agreed between the complainant and the respondent are not mentioned therein nor in the said legal notice the date of completion of the project or date of delivery of possession to the complainant, if any, promised by the respondent is mentioned; **Fourthly**, Section 13 of RERA Act mandates the entering of



written and duly registered agreement for sale between the promoter and the allottee and even the terms and conditions to be specified/ incorporated in such agreement for sale are mentioned therein thus making any oral agreement for sale out of the purview of RERA Act; **Fifthly**, not only the amount of sale consideration and other fees/expenses as mentioned by the complainant in his Affidavit are missing in the online complaint or the legal notice but also the reasons given in the Affidavit, which are reproduced herein below, do not come within the scope of Section 18 of RERA Act:-

“That later allottee from real estate market news from Goa and from some reliable sources came to know about the bad track record of the proposer and his false promise to deliver the flat on time and hence decided to cancel the flat booking and thus approached the proposer and informed about decision of cancelling the flat booking and asked him to refund the booking amount which the proposer turned down and tried to convince the allottee not to cancel the booking”

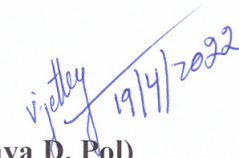
Sixthly, though it is mentioned in the written submissions of the complainant that the “allottee booked flat in Feb 18 with confirmation from the proposer that the possession will be given by March 2021” however no document is produced on record to support the aforesaid date of delivery of possession and the further submission of the complainant therein to the effect that “That later allottee from real estate market news from Goa and from some reliable sources came to know about the bad track record of the proposer and his false promise to deliver the flat on time and hence decided to cancel the flat booking and thus approached the proposer and informed about decision of cancelling the flat booking and asked him to refund the booking amount which the proposer turned down and tried to convince the allottee not to



cancel the booking” does not come within the scope of Section 18 of RERA Act, as stated above.

6. Thus, suo motu cancellation of booking of flat by the complainant without having any written and registered agreement for sale with the respondent and thus without making out a case that the promoter did not complete the project or is unable to give possession of the same as per the date specified in any agreement for sale does not attract Section 18 of RERA Act and accordingly the prayer of the complainant to direct the respondent to refund the amount to the complainant is not legally tenable. The orders of this Authority in other cases relied upon by the complainant in his written submissions are therefore, not applicable to the instant case.

Since this Authority has no jurisdiction to decide cases of mere recovery of money outside the purview of RERA Act/Section 18 of RERA Act, the instant complaint is not legally tenable and hence dismissed.


(Vijaya D. Pol)
Member, Goa RERA