



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(290)/2021

1695

Date: 19/07/2023 .

Srinivasulu Vallapu

B 207, Aisshwarya Opulence,
Marathahalli, Outer Ring Road,
Bangalore Urban, Karnataka-560037.

.....Complainant

Versus

Zuari Global Limited

Registered office: Jaikisan Bhawan,
Zuarinagar, Goa-403726.

..... Respondent

ORDER **(Dated 19.07.2023)**

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 it is the case of the complainant that he purchased a 1 BHK unit bearing no. 343, fourth floor situated at Sancoale, Goa in the project Zuari Rain Forest, Goa for which initial booking was done on 04.02.2017, agreement for sale was executed on 21.06.2018 and sale deed was executed on 15.03.2021, pursuant to which the complainant is already in possession of the said flat.

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2. It is stated in the complaint that the builder has charged additional amount for the flat which is higher than the initially agreed cost. It is stated that just before the registration of the sale deed the respondent charged additional interest charges also. According to the complainant, while booking the flat, the builder promised some items but the promise was not fulfilled.
3. According to the complainant while booking the said flat, the legal fees of ₹25,000/- (Rupees Twenty Five Thousand only) was waived but before the registration, the marketing team of the respondent asked the complainant to pay the legal fees of ₹30,000/- (Rupees Thirty Thousand only) or else the registration will not be done.
4. The complainant submitted that as per the sale deed and initial discussions with the marketing team of the respondent, covered car parking area was allotted for the said flat of the complainant, however no such covered car parking space is given to the complainant.
5. The complainant further submitted that the respondent wrongly took from the complainant late payment interest charges of ₹1,31,929/- (Rupees One Lakh Thirty One Thousand Nine Hundred and Twenty Nine only) and also ₹14,925/- (Rupees Fourteen Thousand Nine Hundred and Twenty Five only) as extra cost and hence the complainant was forced to pay to the respondent an amount of ₹1,76,854/-

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(Rupees One Lakh Seventy Six Thousand Eight Hundred and Fifty Four only).

Thus, the complainant has prayed for the refund of the aforesaid amount and direction to the respondent to allot covered car parking space to the complainant.

6. Reply and additional reply have been filed by the respondent, wherein preliminary objections are taken to the effect that the complaint is not legally maintainable before this Authority and that the complainant has suppressed the material facts and has given false statements with malafide intention. According to the respondent, Zuari Infraworld India Ltd. to which the complainant has paid an amount of Rs. 30,000/- is a separate legal entity and that the said charges were collected as a matter of practice not only from the complainant but also from all the purchasers of the project as incidental and miscellaneous expenses for the execution and registration of the sale deed before the Sub-Registrar since such charges are usually borne and paid by the purchasers only. According to the respondent, no dispute or issue was raised by the complainant regarding the said amount of ₹30,000/- at the time of or prior to registration of the sale deed, as is clear from the e-mail of the complainant dated 13.03.2021.
7. The respondent has submitted that the claim of the complainant for the refund of ₹1,31,929/- is also not legally tenable before this Authority. It is stated that as per the Agreement for Construction and Sale and the provisional allotment letter, the complainant was bound to make payment within fifteen days from the date of the



invoice raised on him by the respondent and if the complainant fails to make such payment, he was liable to pay interest at the rate of 12% per annum on the amount in respect of which the delay had occurred and as such the complainant was liable to pay the amount of ₹1,31,929/- against the delayed payments and in this regard referred to clause 8 of the Agreement for Construction and Sale dated 22.06.2018.

8. Regarding the refund of amount of ₹14,925/- the respondent submitted that the said claim is also not legally maintainable before this Authority. It is further submitted that the said amount of ₹14,295/- and not ₹14,925/- was paid by the complainant since the same was due from him for the revised tax on the revised discounted sale consideration of the said flat, which amount inadvertently was not collected earlier from the complainant.
9. According to the respondent, the aforesaid amount as claimed by the complainant was given by the complainant voluntarily and without any demur. It is also stated that the present complaint filed almost after one year of the execution and registration of the sale deed is only an attempt to harass the respondent and hence it is prayed that the complaint be dismissed.
10. Regarding the covered parking space for the complainant, it is stated by the respondent that although the complainant did not have any legal right for the covered parking space, the respondent has already provided a covered parking



space as a permanent spot to the unit of the complainant and in support thereof placed on record photographs along with the affidavit of the respondent under Section 65-B of the Indian Evidence Act, 1872. In such circumstances, according to the respondent, the relief as regards allotment of covered car parking does not survive and same has become infructuous.

11. Oral arguments were heard from Ld. Advocate Y. B. Nadkarni for the respondent whereas neither the complainant nor his Advocate appeared to argue the matter inspite of many opportunities given to the complainant to argue the matter. It is worth mentioning that after many opportunities, last and final opportunity was given to the complainant on 07.06.2023 to argue the matter on 05.07.2023 and it was specifically mentioned in the roznama dated 07.06.2023 that “as a matter of last resort, one more opportunity is given-case to be decided in the next hearing even if complainant remains absent”. On the next date of hearing i.e. 05.07.2023 which was fixed for arguments, the complainant again remained absent and instead sent an e-mail to this Authority praying for adjournment to which opportunity was given to the complainant to file written submissions before 12.07.2023 and the matter was fixed for order today i.e. 19.07.2023, however the complainant failed even to file written submissions. Hence, taking into consideration the arguments advanced by the Ld. Advocate for the respondent as well as the entire records of the case, the instant matter is decided on merits.



12. After going through the entire records of the case, the points which come for my determination along with the reasons and findings thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the complainant is entitled for the relief of covered car parking space for the said flat?	In the negative.
2.	Whether the complainant is entitled for the refund of Rs. 1,76,854/- from the respondent?	In the negative.

REASONS

Point No. 1

13. In the additional reply, which is properly verified, the respondent has submitted as follows:-

“.....and although the complainant did not have any legal right for the covered parking space, the respondent has already provided a covered parking space as a permanent spot to the unit of the complainant and photographs thereof are placed on record as ANNEXURE R 7 to the earlier reply. In such circumstances, the relief as regards allotment of covered car parking does not survive and the same has become infructuous”

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14. There is no rebuttal on the part of the complainant to the aforesaid assertion of the respondent and the photographs at Annexure R7 are also not disputed by the complainant. Hence, it is clear that the respondents have already provided a covered parking space as a permanent place to the unit of the complainant. Thus, it is correctly submitted by the Ld. Advocate for the respondent that the instant relief prayed by the complainant for allotment of covered car parking space does not survive and has become infructuous. The instant point is therefore answered in the negative.

Point No.2

15. At the outset it is mentioned that the prayer of the complainant for the refund of ₹1,76,854/- which is bifurcated by the complainant as ₹30,000/- + ₹1,31,929/- + ₹14,925/- is not legally tenable as the same does not come within the purview of the RERA Act and hence this Authority has no jurisdiction to grant the same because of the reasons stated herein below.

16. It is significant to mention that the sale deed was executed between the parties and registered on 15.03.2021 and the complainant is in possession of the said flat since then. The instant complaint was received by this Authority on 03.03.2022 i.e. almost after one year of the registration of the sale deed. As admitted by the complainant the entire amount of ₹1,76,854/- was paid by the complainant to the



respondent before the execution and registration of the sale deed. Thus, almost after one year, the complainant has approached this Authority to submit that the aforesaid amount was wrongfully paid by the complainant and wrongfully taken by the respondent before the registration of the sale deed and has asked for the refund of the same. However, there is no provision in RERA Act under which the complainant after registration of the sale deed and becoming the owner of the premises can ask for the refund of any amount paid by the complainant to the respondent before the registration of the sale deed. **Section 18** of the RERA Act which deals with refund of the amount paid by the complainant to the respondent pertains to those cases where “the promoter fails to complete or is unable to give possession of an apartment, plot or building”. Moreover, the complainant can even ask from this Authority under **Section 18** of the RERA Act the interest on the principal amount for the delay in giving possession to the complainant even if the possession has been taken by the complainant. In the instant case, not only the project is complete and the possession of the said flat is handed over to the complainant but also the sale deed was executed on 15.03.2021. Hence, Section 18 of the RERA Act does not apply to the instant case.

17. Moreover, the amount claimed by the complainant from the respondent does not pertain 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;”

18. 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.
19. After the sale deed is executed and registered, right is given to the allottee to approach this Authority by invoking **Section 14(3)** of the RERA Act for compensation in case any structural defects are not rectified by the promoter inspite of giving notice to the promoter for such rectification. In this regard it is significant to refer to **Section 11 (4) (a)** of the RERA Act, which is reproduced hereunder for ready reference:-



“11. Functions and duties of promoter:-.....

(4) The promoter shall –

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of Section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed”

From the aforesaid Section 11(4)(a) of the RERA Act it is clear that all the obligations, responsibilities and functions of the promoter under the RERA Act/ its rules and regulations are only “till the conveyance of all the apartments, plots or buildings”, as the case may be, though the responsibility of the promoter with respect to the structural defect or any other defect as referred in section 14(3) shall continue even after the conveyance deed is executed and registered. In the instant case, the complainant in whose favour the sale deed is already executed and registered has not approached this Authority under Section 14(3) of the RERA Act



for any structural defect or any other defect and hence after the registration of the sale deed, the respondent has no further responsibility or obligation.

20. **Thus, there is no provision in the RERA Act under which the allottee after taking possession of the premises and after the registration of the sale deed and becoming the owner of the premises can demand the return of any amount paid by the allottee to the promoter before the registration of the sale deed, when there is no “real estate project” as per Section 2(zn) of the RERA Act in existence at the relevant time. In such a scenario, the only issue is of mere recovery of money by the owner from the erstwhile promoter 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 the owner of any flat/ apartment/ building constructed by the erstwhile builder and therefore the complainant has chosen a wrong forum in the instant case.**

21. As admitted by the complainant, ₹30,000/- was not given by the complainant to the promoter/ the respondent but the said amount was given by the complainant to Zuari Infraworld India Ltd. which is a separate legal entity and which is not made a party in the instant complaint. Though notice was issued to Zuari Infraworld India Ltd. by this Authority on the request of the complainant and reply was filed by



Zuari Infraworld India Ltd., however the complainant did not make Zuari Infraworld India Ltd. as party in the instant complaint. Thus, even otherwise no order can be passed by this Authority against any person/ institution / legal entity who/ which is not a party to the complaint and in the instant case the complainant has not made Zuari Infraworld India Ltd. as party therein.

22. According to the respondent, the aforesaid charges of ₹30,000/- were collected by Zuari Infraworld India Ltd. as miscellaneous expenses for the execution and registration of the sale deed before the Sub-Registrar, which expenses are usually borne and paid by the purchaser only. The respondent has submitted that such charges are collected for the expenses borne and services provided to ensure that the process of execution and registration of the sale deed before the Sub-Registrar is smoothly conducted without any inconvenience to the purchaser and further that all the necessary procedural aspects are completed including online uploading of the deed, removing objections if any notified by the Sub-Registrar, printing of deed on stamp paper, taking sufficient copies required for registration, fixing of date of appointment for registration before the Sub-Registrar etc.

23. Regarding the amount of ₹1,31,929/- as claimed by the complainant, the respondent has submitted that as per the agreement for construction and sale and the provisional allotment letter, the complainant was bound to make payment within 15 days from the date of the invoice raised on him by the respondent and as



the complainant failed to make such payment he was liable to pay interest at the rate of 12% per annum, on the amount in respect of which the delay had occurred and as such the complainant was liable to pay the amount of ₹1,31,929/- against the delayed payments, the details of which are given in annexure R-5. The respondent further submitted that clause 8 of the agreement for construction and sale dated 22.06.2018 stipulated payment of interest of 12% per annum on any delayed payments. Thus, it is clear that the aforesaid payment of ₹1,31,929/- demanded by the respondent was legal and within the purview of the said agreement for construction and sale.

24. Regarding the claim of refund of ₹14,925/- made by the complainant, it is stated by the respondent that the aforesaid amount was paid by the complainant as the same was due from him for the revised tax on the revised discounted sale consideration of the unit, which inadvertently was not collected earlier by the respondent.
25. Regarding all the aforesaid payments, there is no document/ correspondence placed on record by the complainant to show that the respondent threatened the complainant to pay the aforesaid charges or else the registration of the sale deed will not be done, as alleged by the complainant and it is worth mentioning that the same were paid by the complainant to the respondent without raising any dispute with the respondent at the time of such payments and without approaching this Authority with any grievance for the said payments, before making such payments

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to the respondent. On the contrary, the e-mail dated 13.03.2021 from the complainant, addressed to the respondent inter alia states as follows:-

“I have cleared the final balance amount Rs. 1,67,514/- towards final payment @ possession + 1 year advance maintenance. Attached transaction details for your reference.

As requested by you I will be bringing Rs. 30,000/- cash for the legal fee”

26. Thus, all the aforesaid amount, which according to the respondent is legal, was paid by the complainant to the respondent before the registration of the sale deed without raising any dispute with the respondent at the relevant time and without approaching this Authority at the relevant time before parting with the money. As stated above, the sale deed in favour of the complainant has been executed and registered on 15.03.2021 and consequently the complainant has become the owner of the said flat and because of the reason stated above, this Authority has no jurisdiction to decide a case of mere recovery of money filed by the owner of the premises against the erstwhile builder after the sale deed is registered in his favour, especially when the case does not come within the purview of Section 18 or



Section 14(3) of the RERA Act. Hence, the instant point is answered in the negative.

Accordingly, the complaint is dismissed and the proceedings are closed.

v. jettay
19/7/2023
(Vijaya D. Pol)
Member, Goa RERA