



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 (132)/2020 / 779

Date: 29/12/2021

Conrad Ferninand,
Adv. Vivian Braganza, G-15,
Bhavarth Apts., Behind Canara Bank,
Pintos Vaddo, Candolim,
Bardez-Goa 403515.

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Complainant

V/s

Anup Vishram Prabhu Walavalkar,
H.No. 20, Khorlim, Mapusa, Bardez,
North Goa, Goa-403507.

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Respondent

ORDER

This is to dispose of the application dated 07/12/2021 filed by respondent in the above mentioned case. In this case, hearing was fixed on 12/10/2021. On the day fixed for hearing, complainant was present through his advocate while respondent was absent. The case was adjourned for 02/11/2021. Again, respondent was absent though duly served. The case was argued by complainant on merit and order dated 05/11/2021 was issued granting the prayer of the complainant. Now, by this application dated 07/12/2021, respondent has requested to recall the order dated 05/11/2021. It has been mentioned in their application that respondent has not received any notice for hearing fixed on 12/10/2021. Now, on checking the records, it was found that notice dated 28/09/2021 fixing the date of hearing on 12/10/2021 was duly served to the respondent and acknowledgment is received. In view of this, it is not proper to say notice was not served to the respondent for hearing fixed on 12/10/2021. Accordingly, the order dated 05/11/2021 was issued on merit considering the arguments of the complainant as well as earlier reply filed by respondent.

2. Apart from the issue of notice, the respondent was also given an opportunity to make the case on merit. The respondent was heard on 14/12/2021 and again on 21/12/2021 on merit. The Ld. Advocate for respondent argued the case on merit and also filed written synopsis in the case. The Ld. Adv. for the respondent pleaded

that as per Agreement dated 08/07/2019 entered between the parties, respondent was supposed to tender the delivery of the said premises in the first week of August, 2019. As per Respondent, project was completed before the first week of August, 2019 and in support of his claim he has submitted completion certificate dated 25/07/2019 issued by the Architect.

3. The respondent has submitted that the Application for completion certificate with complete documents was submitted on 28/08/2019, but it remained pending with the NGPDA. It was only on 14/05/2020 that NGPDA issued letter to the respondent for joint inspection. Soon after receiving the completion certificate, respondent applied for occupancy certificate with Mapusa Municipal Council and MMC issued the occupancy certificate on 15/11/2021. Hence, the delay in delivery of possession of the flat to complainant was due to delay in issuing the completion certificate and occupancy certificate by the concerned authorities.
4. Respondent has submitted that clause 20 of the Agreement dated 08/07/2019 read as “the builders shall not incur any liability if they are unable to complete the construction and / or deliver the said premises within the period stipulated herein, if the completion of the scheme is delayed by reason of non-availability of steel and / or cement or other building materials or water supply or electric power or by reason or war, civil commotion or any act of God or as a result of any other notice, order, rule or notification of the Government and / or any other public or competent authority or on account of any court order or for any other reason or unforeseen circumstances beyond the control of the Builders, including with holding of completion certificate and / or occupancy certificate by the concerned authorities. In any of the aforesaid events the Builders shall be entitled to reasonable extension of time for completion and delivery of the said premises as may be certified by the Architect or agreed mutually between the parties hereto”

In view of the above clause in the Agreement, the respondent is entitled for extension of time if there is delay in issuing the occupancy certificate or completion certificate by the authorities.

5. After coming into force the Real Estate (Regulation and Development) Act, 2016 and Rules made there under, the Agreement between promoter and allottee has to be entered as per proforma prescribed for Model Agreement. As per annexure A 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, Model Form of Agreement to be entered into between promoter and allottees has been prescribed. As per this model Agreement, promoter is entitled for reasonable extension of time for giving delivery of apartment due to war, civil commotion or act of God or any notice, order, rule or notification of the Government. The provisio of the clause 6 of the said Model Form of Agreement is as follows:

“Provided that the Promoter shall be entitled to reasonable extension of time for giving delivery of Apartment on the aforesaid date, if the completion of building in which the Apartment is to be situated is delayed on account of

- (i) war, civil commotion or act of God;
- (ii) any notice, order, rule, notification of Government and / or other public or competent authority/court.”

Delay in issuing the completion certificate by NGPDA and occupancy certificate by MMC is not covered in terms of this Agreement. After registering the project, the promoter is bound to enter into Agreement with the allottees only in terms of Model Form of Agreement. Any deviations from the Model Form of Agreement will not be allowed. In view of this, the respondent is not eligible for any extension of time and delivery of the flat to complainant.

6. Apart from the above clause mentioned in the Model Agreement, there is a statutory provision also to support the case of complainant. As per Real Estate (Regulation and Development) Act, 2016, it is the responsibility of the promoter to obtain completion certificate and occupancy certificate. The clause B of sub Section 4 of Section 11 is transcribed below:

“11(4) – The Promoter shall –


- (b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;”

Therefore, as per above statutory provisions, it is the responsibility of the respondent to apply and obtain the completion certificate and occupancy certificate in time and within the time limit of delivery of apartment to the complainant/ allottee. Covid-19 has come into picture only in the year 2020 and as per agreement the respondent was to handover the possession to complainant in August, 2019 which is much before the spread of covid-19. Therefore, in my opinion, respondent has not made a case for relaxation in the time limit provided for delivery of flat to the complainant. Hence, he will be liable to pay the penalty as per order dated 05/11/2021.

7. Therefore, there is no merit in the present application dated 07/10/2021 filed by respondent and the same is rejected.

A copy of this Order will be served to the Complainant for information.

Order accordingly,


J. B. Singh, IAS(Retd.)
Member, Goa RERA.

To,
1. Conrad Ferninand,
Adv. Vivian Braganza, G-15,
Bhavarth Apts., Behind Canara Bank,
Pintos Vaddo, Candolim,
Bardez-Goa 403515.

2. Anup Vishram Prabhu Walavalkar,
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