



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(323)/2022 | 615

Date: 28/06/2023

Naiknavare Constructions Pvt. Ltd.,

A private limited company, registered under
The Indian Companies Act, 1956, having its registered office at 1204/4,
Shivaji Nagar, Ghole Road, Pune, Maharashtra, 411004
Through its authorized representative
Mr. Satyawan Ghadge, aged 43 years,
r/o Residing at D-207, Swapnapurti Society,
Sasane Nagar, Kalepadal road,
Sasane Nagar, Hadapsar, Pune-411028.

.....Complainant

Versus

Pradeep S. Sharma,

Major of age,
Resident of GF-9,
Preeti Aashiyana,
Sirur Park Hubli-580021.

.....Respondent

ORDER **(Dated 28.06.2023)**

This order disposes of the aforesaid complaint filed under Section 31 read with Section 19 (6) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') wherein the complainant has prayed this Authority for the following reliefs:-

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“a) The respondent be directed to pay the sum of ₹26,13,632/- (Rupees Twenty Six Lakhs Thirteen Thousand Six Hundred and Thirty Two only) with interest at the rate of 9% p.a. and payment of ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand only) for club house charges and upon payment of the said amount the respondent to execute the sale deed of complainant’s plot;

b) Or in the alternate an order passed directing Sub-Registrar that Agreement dated 15.06.2017 registered in the office of Sub-Registrar Ilhas Tiswadi, Goa at Book-1 Document, registration number PNJ-BK-1-01431-2017, CD No. PNJD 57 dated 22.06.2017 is cancelled;

c) An order be passed to allow the complainant to make a deduction of 50% as cancelation charges from the total amount paid till date and the balance be refunded to the respondent;

d) Direct the respondent to pay compensation of ₹5,00,000/- (Rupees Five Lakhs only) to the complainant for mental trauma;

e) Pass such other or further order(s) as this Hon’ble Court may deem fit in the facts and circumstances of the case.”

2. It is the case of the complainant that the complainant is the owner in possession of the property known as “ANEIXO DO OITEIRO” or “GAUCHEM XIR E FUXAL GALE” situated at Panelim, Sao Pedro, Taluka Tiswadi, Sub-District of Ilhas,



North Goa surveyed under survey nos.14/1-B and 15/1-B of Village Panelim admeasuring 40,109 sq. mtrs., referred in the complaint as “the said property”. According to the complainant, the said property was purchased by the complainant by sale deed dated 26.09.2007 which was duly registered in the office of Sub-Registrar, Ilhas, Tiswadi Goa.

3. According to the complainant, it had decided to develop the said property by subdividing the same into plots by getting all approvals by the necessary authorities and to set up on the said property a complex known as “Esmeralda”. It is stated that the respondent approached the complainant and showed interest in purchasing a plot in the said complex and accordingly entered into an agreement dated 15.06.2017 which was duly registered in the office of the Sub-Registrar and in the said Agreement the complainant agreed to sell to the respondent plot no. 8 admeasuring 250.50 sq. mtrs. which is forming part of the said property for a total consideration of ₹35,70,126/- (Rupees Thirty Five Lakhs Seventy Thousand One Hundred and Twenty Six only) and additionally a sum of ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand only) as one time entrance fee for club house and the aforesaid amount was agreed by the respondent.
4. According to the complainant, after registration of the agreement the respondent had made payment of ₹10,70,000/- (Rupees Ten Lakhs Seventy Thousand only) and that as per the agreement, the respondent was to pay an amount of

v. jetley

₹17,85,063/- (Rupees Seventeen Lakhs Eighty Five Thousand and Sixty Three only) within one month from the date of agreement but the respondent did not make payment of the aforesaid amount as agreed, though the respondent on meeting the representative of the complainant expressed his financial difficulty and requested for time to make payments.

5. According to the complainant, necessary demand letter and other updates were provided to the respondent but since the respondent was unable to pay 50% of the amount as per schedule IV of the agreement the complainant and the respondent mutually decided to extend the time period for performance of agreement as provided in RERA certificate.
6. The complainant has stated that the project "Esmeralda" on the said property is registered with this Authority. It is stated that inspite of receiving part payment, the complainant has been providing regular updates pertaining necessary permission obtained from various departments and after receiving the final NOC from the Panchayat which was pending for long time, called upon the respondent to come forward to take possession and execute the necessary sale deed by clearing the balance amount and in this regard sent numerous e-mails to the respondent. According to the complainant, it received a legal notice dated 26.04.2022 from the respondent wherein false plea was raised contrary to actual facts and what was agreed by the parties and accordingly the complainant vide reply dated 20.06.2022



refuted the allegations of the respondent and also demanded from the respondent the balance amount of ₹25,00,126/- (Rupees Twenty Five Lakhs One Hundred and Twenty Six only) along with nine percent interest and ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand only) informing the respondent that failing which, the complainant is at liberty to cancel the said agreement. It is further stated by the complainant that the demand notice dated 26.04.2022 did not include maintenance charges, CGST and SGST charges totaling ₹1,13,506/- (Rupees One Lakhs Thirteen Thousand Five Hundred and Six only).

7. According to the complainant, it is ready and willing to perform its part of the agreement and accordingly the respondent was called upon to take possession of the said plot no.8 by clearing the balance amount along with other fees which is applicable and execute the necessary sale deed. The complainant has stated that the respondent has avoided and failed in making the payment till date. It is further stated that the process of formation of the Housing Society of the building is in process and nearing completion but the non-payment of the outstanding amount by the respondent is creating a major obstacle in the formation of the society and further that the act of non co-operation on the part of the respondent is also creating interference in the rights of the other flat owners/ allottees of the building/ plots. Hence the prayer of the complainant as stated above.

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8. Reply has been filed by the respondent wherein it is stated that the reliefs prayed by the complainant are in the nature of compelling specific performance of a contract which may be availed only under the Specific Relief Act by approaching the Civil Court and this Authority has no jurisdiction to decide the same.
9. According to the respondent, for the purpose of sub-division of plots, there is a requirement of a specific sanction under Section 49 of the Goa, Daman and Diu Town & Country Planning Act, 1974, referred as "TCP Act" and that this sanction has not been obtained by the complainant and hence the respondent cannot risk purchasing the said plot. It is further stated that the agreement is a contingent contract and is governed by Section 32 of the Indian Contract Act, 1872 and therefore it cannot be enforced till the time all sanctions, especially sanction under 49 of the TCP Act is obtained by the complainant. It is also stated that the project is far from completion and in this regard the respondent placed on record the photographs of the site.
10. The respondent has further stated that he intended to purchase the said plot with the hope of getting its delivery by September 2017 but the developer time and again delayed its completion. According to him, he visited the office of the developer several times to inquire about the progress of the project but most of times, either the staff was absent or he was told that the work would be completed

soon.



11. The respondent referred to clause 2 on page 4 of the agreement dated 15.06.2017 which states that “the said plot shall be sold as an approved plot and as forming a part of the finally approved sub-division of the said property after obtaining the necessary final NOC for the sub-divisions” and submitted that further payment was agreed on the condition that the developer would obtain the requisite NOC and the additional amount of ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand only) would be paid at the time of actual possession. Thus, according to the respondent, his liability for payment of balance amount arises only after the developer gives a written notice to the purchaser intimating the purchaser that the final NOC/ sanction under section 49 of the TCP Act is obtained.
12. According to the respondent, the said terms of the agreement cannot be enforced as the developer/ the complainant and the respondent had mutually agreed that the said amount would be paid after completion of the project and under clause 11 of the agreement, the developer had an option of serving the respondent a thirty days legal notice of termination of the contract in case the payment of any installment was delayed beyond a period of six weeks after the same had fallen due and payable but the developer did not opt for the same and chose to go ahead with the agreement and therefore the complaint itself is not maintainable and is liable to be dismissed.



13. In the reply, the respondent “admitted that the complainant and respondent mutually decided to extend the time period for the performance of the agreement” and therefore, according to the respondent the present complaint is premature in time. According to the respondent, even along with the e-mails, the complainant sent the NOC from the Panchayat and not NOC under Section 49 of the TCP Act.
14. According to the respondent, the payment of maintenance charges, CGST and SGST will come into picture only after the project is ready and not before that. The rest of the allegations in the complaint are denied by the respondent.
15. Documents have been produced by both the parties along with the affidavits. Written submissions have also been filed by Ld. Advocate P. Shetty for the complainant and by Ld. Advocate P. Sirvoicar for the respondent. Oral arguments were also heard from the Advocates.
16. 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 this Authority has power and jurisdiction to cancel the agreement for sale dated 15.06.2017?	In the negative.

P. Shetty

2.	Whether the complainant is entitled for compensation as prayed in the complaint?	To be decided by the Adjudicating Officer under Section 71 of the RERA Act.
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REASONS

Point no. 1

17. Though in the complaint, the complainant prayed this Authority to direct the respondent to pay the sum of ₹26,13,632/- (Rupees Twenty Six Lakhs Thirteen Thousand Six Hundred and Thirty Two only) along with interest at the rate of 9% per annum and payment of ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand only) for club house charges and upon payment of the said amount the respondent to execute the sale deed of the said plot or in the alternate direct the Sub-Registrar to cancel the agreement dated 15.06.2017 registered in the office of the Sub-Registrar, Ilhas, Tiswadi, Goa and allow the complainant to make a deduction of 50% as cancellation charges from the total amount paid till date and the balance be refunded to the respondent, however in the affidavit in evidence at para 34 and 35, the complainant states as follows:-



“34. I say that the complainant is entitled to get relief **if the Hon’ble Court feels the respondent is not willing to pay balance amount then in the alternative** an order be passed directing Sub-Registrar that agreement dated 15.06.2017 registered in the office of Sub-Registrar Ilhas, Tiswadi, Goa at Book-1 Document, registration no. PNJ-BK-1-01431-2017, CD no. PNJD57 dated 22.06.2017 is cancelled with immediate effects from the date of any such order and a reasonable time to repay past payments within 12 months of such cancellation effected by the Sub-Registrar.

35. I say that the complainant is also entitled to receive an order to be passed to allow the complainant to make a deduction of 10% as cancellation charges as prescribed in the RERA Act from the total amount paid till date and the balance be refunded to the respondent.”
(emphasis supplied)

18. Similarly, the complainant’s Advocate in the written submissions filed before this Authority states as follows:-

“It is stated that the complainant has sought the relief of specific performance **but since the respondent is found not ready and willing to perform his part of the contract and therefore this**

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complainant has sought relief that agreement be allowed to be declared as terminated and no refund be allowed to be made as per Apex Court judgment considering the conduct of the respondent and the facts of the case.” (emphasis supplied)

19. From the reply of the respondent it is clear that the respondent is not willing to pay any balance amount to the complainant, as the respondent has clearly stated therein that “the complainant is not entitled to recover any amount from the respondent”, “that no cause of action has arisen in favour of the complainant against the respondent” and that “the respondent is not under any liability to pay any amount to the complainant”. As stated above it is admitted by the complainant also that the respondent is not willing to pay any balance amount to the respondent and in such circumstances, the complainant has stated in the affidavit in evidence as well as in the written submissions that the complainant therefore seeks relief “that agreement be allowed to be declared as terminated”. Against the backdrop of the aforesaid facts the only point for determination before this Authority is whether this Authority has power and jurisdiction to declare the said Agreement for Sale dated 15.06.2017 as terminated/ cancelled.

20. In the aforesaid Agreement for Sale dated 15.06.2017 and registered on 22.06.2017, it is mentioned in para 11 therein as follows:-



“11. Time is essence of this contract. If the Purchaser fails to make payments as stipulated in this agreement and/ or in observing and performing any of the terms and conditions of this agreement, then the DEVELOPER shall be entitled, without prejudice to their other rights, TO CHARGE interest on such installment amount for the delayed period as 18% per annum which shall be paid by the Purchaser to the DEVELOPER and consequently the period of completion of sale shall stand extended by such period of delay in payment of installment/s. However, in no case the payment of the installment shall be delayed beyond a period of six weeks after the same has fallen due and payable. **In case the same is not so paid, the DEVELOPER shall be entitled to serve a thirty days notice of termination of the contract on the Purchaser and in case the payment due is not paid within such notice period of thirty days, the contract shall automatically stand terminated on the expiry of the said period of thirty days.** The DEVELOPER shall however on such termination refund to the Purchaser, within three months from the date of such termination, any payment other than the earnest money paid by the Purchaser to DEVELOPER at the time of execution of this agreement, without any interest or other amounts whatsoever and the earnest money shall



stand forfeited in favour of the DEVELOPER as and by way of liquidated damages for breach of contract. On the DEVELOPER terminating this Agreement under this clause, the DEVELOPER shall be at liberty to immediately sell off the said plot to any other person as the DEVELOPER deems fit, at any price the DEVELOPER may determine and the Purchaser shall not be entitled to question such a sale or to claim any amount from the DEVELOPER or claim any rights under this agreement or in respect of the said plot.” (emphasis supplied).

21. From the aforesaid term and condition in the said Agreement for sale it is clear that in case the payment of installment is delayed by the respondent beyond a period of six weeks after the same has fallen due and payable and the same is not paid by the respondent, then in such circumstance, the developer/ the complainant shall be entitled to serve a thirty days notice of termination of the contract on the purchaser/ the respondent and in case the payment due is not paid within such notice period of thirty days, the contract shall automatically stand terminated on the expiry of said period of thirty days.
22. In the instant case, though according to the complainant, the respondent was supposed to pay an amount of ₹17,85,063/- (Rupees Seventeen Lakhs Eighty Five Thousand and Sixty Three only) within one month from the date of the agreement,



which amount is not paid by the respondent, **no notice of termination of the contract is served on the respondent by the complainant as per the terms of the said agreement.** The complainant has only in the reply dated 20.06.2022 to the legal notice dated 26.04.2022 of the respondent stated as follows:-

“9. That you are directed to come forward to take possession of the plots by making all the balance consideration with interest @ 9% p.a. within 15 days from receipt of this reply.

10. That if you fail to comply as above, **we shall terminate your agreement** and you shall be solely responsible for all the consequences thereof.”(emphasis supplied).

23. Thus in the aforesaid reply dated 20.06.2022 addressed to the Ld. Advocate for the respondent and the respondent, the complainant called upon the respondent to pay the balance consideration amount along with interest and to take possession of the plot failing which the complainant “shall terminate” the said agreement. **It is relevant to note that no notice of termination of the said agreement is given by the complainant to the respondent.**

24. Not only under the said agreement dated 15.06.2017, the complainant is entitled to give such notice of termination of the contract to the respondent in case the respondent has not paid the installment beyond a period of six weeks after the

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same has fallen due and payable, but also **Section 11(5) of the RERA Act** dealing with the functions and duties of the promoter gives power to the promoter/ the complainant to cancel the said agreement “only in terms of the agreement for sale”. In this regard it is relevant to reproduce hereunder **Section 11(5)** of the RERA Act:-

“11.Functions and duties of promoter.-

.....

(5) The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause”

25. **Thus, Section 11(5) of the RERA Act gives power to the promoter/ the complainant to cancel/ terminate the said Agreement for Sale dated 15.06.2017 and no power and jurisdiction is given in the RERA Act to this Authority either to declare the said Agreement for Sale as cancelled/ terminated or to direct the Sub-Registrar to cancel the same. As per the terms of the Agreement for Sale dated 15.06.2017 and as per Section 11(5) of the RERA Act, power and authority is given only to the promoter to cancel the Agreement for Sale strictly in terms of the same and in case the cancellation is**



not in accordance with the terms of the agreement, unilateral and without any sufficient cause, the allottee/ the respondent may approach this Authority in case the allottee is aggrieved by such cancellation. In view of the same, the rulings relied upon by the Ld. Advocate for the complainant regarding the forfeiture of money paid as part payment of purchase price are not applicable in the instant case. For the same reason emphasis given by the Ld. Advocate for the complainant on **Section 19(6) of the RERA Act** which states that “every allottee, who has entered into an Agreement for Sale to taken an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said Agreement for Sale and shall pay at the proper time and place the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges, if any” and on **sub-Section (7)** which states that “the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)” is not relevant in view of the remedy sought by the complainant of cancellation/ termination of the Agreement for Sale dated 15.06.2017 by this Authority. Even in the case of “**M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. and others**” (Civil Appeal no(s). 6745-6749 of 2021) (Arising out of SLP (Civil) No(s) 3711-3715 of 2021), the Hon’ble Supreme Court has held that in case of any



default on the part of the allottee either in making installments or any breach of the agreement, the promoter is entitled to cancel the allotment in terms of the Section 11(5) of the RERA Act. The relevant finding of the Hon'ble Supreme Court in the aforesaid judgment is quoted below:-

“80. The further submission made by Ld. Counsel for the appellants that if the allottee has defaulted the terms of the agreement and still refund is claimed which can be possible, to be determined by the Adjudicating Officer. The submission appears to be attractive but is not supported with legislative intent for the reason that if the allottee has made a default either in making installment or made any breach of agreement, the promoter has a right to cancel the allotment in terms of section 11(5) of the Act and proviso to sub-section 5 of section 11 enables the allottee to approach the regulatory authority to question the termination or cancellation of the agreement by the promoter and thus, the interest of the promoter is equally safeguarded” (emphasis supplied).

Thus, it is for the promoter/the complainant to cancel the said Agreement for Sale as per Section 11(5) of the RERA Act, if need arises for the same. Hence the instant point is answered in the negative.



Point no. 2

26. Under Section 71 of the RERA Act, compensation under Sections 12, 14, 18 and 19 of the Act has to be adjudged only by the Adjudicating Officer. Accordingly, the prayer for compensation has to be referred to the Adjudicating Officer for adjudging the compensation, if any.

In the premises aforesaid, I pass the following:-

ORDER

The instant complaint is dismissed by this Authority however the matter is referred to the Adjudicating Officer for deciding the relief of compensation, if any.

v. jetley 28/6/2023
(Vijaya D. Pol)
Member, Goa RERA