



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (118)/2024/1377

Date: 27/09/2024

BEFORE THE ADJUDICATING OFFICER

Mr. Bhupinder Jeet Singh and

Mrs. Jaspreet Kaur

Flat no. 705 and 803 Elements by Shantilal,
Near Joggers park, Airport Road,
Chicalim, South Goa-403711.

.....Applicants

Versus

The Shantilal Real Estate Services,

Represented by partners,

1. Mr. Ashwin Cholera,
 2. Hemant Cholera,
- C/o 301, 3rd Floor, Anand Trade Centre,
Next to MMC Building,
Vasco,Goa-403802.

.....Respondent

Ld. Advocate Shri Joshua Gracias for the applicants.

Ld. Advocate Shri Parag Rao along with Advocate Ajay Menon for the respondent.

ORDER

(Delivered on this 27th day of the month of September, 2024)

This order shall dispose of the application filed by the respondent at exhibit
272/c for inspection of the flat.

2. Briefly stated, the case of the respondent is as follows:-

That the applicants have relied upon certain photographs claiming to be the photographs of the interiors of flat no. 705 of the applicants and based on the same it is claimed that the defective work has been carried out. The photographs appeared to be recent and are relying upon the report of M/s Ideal Homes. The subject matter of the application does not pertain to open and common areas of the said project accessible to the respondent. The applicants claimed that there was a patch on the surface of the wall which they wanted the respondent to inspect and a joint inspection was held on 16.05.2021. The entire claim of the applicants was confined to a solitary patch. The respondent brought it to the notice of the applicants that the respondent was not responsible for the said patch. The applicants referred to the alleged defective work based on the photographs which are recent and the report of M/s Ideal Homes. The respondent had no opportunity whatsoever to physically inspect the alleged areas or to ascertain whether the areas pertain to the interiors of the said flat. The respondent therefore be permitted to inspect the premises along with technically qualified engineer and/or architect on the day and time convenient to both the parties. Hence, the application.

3. The applicants filed a reply cum written arguments inter-alia contending that the application filed by the respondent is with intention to delay the proceedings. There is no procedure established by law for filing of the said application so also the application is bereft of any legality. The respondent never intended to address

the issues brought to its notice vide legal notice dated 27.05.2023. The application therefore be dismissed with exemplary cost.

4. Argument heard.

5. Admittedly, the respondent has not filed any reply after they were duly served with the application for compensation. The respondent instead of filing reply filed an application on 14.06.2024 for deferment of the hearing claiming that the Hon'ble Adjudicating Officer has taken a view of the report submitted by M/s Ideal Homes with respect to the order passed in case no. 4/RERA/Adj. Matters(109)/2023 between the Element by Shantilal Co-operative Housing Society Ltd. vs. The Shantilal Real Estate Services and that it may not be possible to take any other view with respect to the report of M/s Ideal Homes. There cannot be any dispute that the report of M/s Ideal Homes in the above case is different from the report produced in the present case, which is pertaining to the interiors of the flat of the applicants, unlike the above referred case.

6. Be that as it may, the applicants have relied upon the report of M/s Ideal Homes along with the photographs with respect to the above flat, which copy has been already furnished to the respondent. Admittedly, the respondent was sent a legal notice dated 27.05.2023 requesting to address the issues of defects in the said flat under Section 14(3) of the RERA Act, which was replied through his counsel

on 06.07.2023 disputing the contents; however no inspection was sought of the said flat by the respondent.

7. Ld. Advocate Shri Parag Rao for the respondent has submitted that the provision contained in sub-section 3 of Section 71 of the RERA Act confers wide powers on the Authority to conduct an inquiry. He further submitted that under Rule 7, Sub-Rule 2 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal Etc.) Rules, 2017 once the applicant prefers an application before the Adjudicating Officer, he shall follow the procedure to call for documents/evidence which in his opinion may be useful or relevant to the subject matter for inquiry and therefore, the Authority has jurisdiction to grant the application.

8. Needless to mention, the respondent has not rectified or repaired the issues of concern inspite of issuing a legal notice dated 27.05.2023 to the respondent nor sought inspection of the flat. The respondent has also not filed any reply to application for compensation disputing or admitting the claim of the applicants and instead filed the application for inspecting the flat. The respondent had an opportunity to physically inspect the flat when the legal notice dated 27.05.2023 was issued to it to rectify and repair all the issues brought to their notice, which they ignored for the reasons best known to them. They also filed an application for

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deferment dated 14.6.2024 with unjustified and gratuitous reasons, which is indication of the fact that the intention of the respondent is to protract the litigation.

9. The respondent is not entitled to file the present application without filing the reply/written statement nor provision of Section 71(3) of the RERA Act or Rule 7 sub-Rule 2 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal Etc.) Rules, 2017 permit the respondent to avoid filing reply/written statement and hence, the above submissions of Ld. Adv. Parag Rao pales into insignificance. However, in the interest of justice and fair play, the respondent is permitted to inspect the above flat so as to allow the respondent to file a comprehensive reply/written statement in the present case, subject to payment of cost to the applicants. Hence, the applications stands granted.

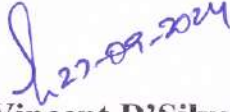
10. In the result, I pass the following:-

ORDER

- (i) The application for inspection of flat of the applicants stands allowed.
- (ii) The applicants shall permit the respondent to inspect the flat no. 705 in the presence of technically qualified Engineer and/or Architect between 28.09.2024 to 10.10.2024, subject to payment of cost of ₹20,000/- (Rupees Twenty Thousand only) to the applicants, condition precedent.

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(iii) The respondent shall file the reply/written statement as last opportunity on 21.10.2024 at 12.00 p.m.


(Vincent D'Silva)
Adjudicating Officer,
Goa RERA

Panaji, Goa.

Date: 27.09.2024.