



GOA REAL ESTATE REGULATORY AUTHORITY

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001Goa
www.rera.goa.gov.in

Tel: 0832-2437655; e-mail: goa-rera@gov.in

F.No:3/RERA/Complaint(352)/2023/ 814

Date: 17/08/2023

Mr. Bharat Hemchand Kava,
Shantaban Complex, 9/F-3,
Near Sai Samarth Temple,
North Goa, 403005.

.....Complainant

Versus

Hemant D. Naiknavare,
1204/4 Ghole Road,
Shivajinagar, Pune, Maharashtra, 411005.

.....Respondent

ORDER (Dated 17.08.2023)

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 the complainant has prayed this Authority to refund his booking amount of ₹10,79,848/- (Rupees Ten Lakhs Seventy Nine Thousand Eight Hundred and Forty Eight only) towards the booking of a 2bhk flat no. 4-A-403 in the project 'ESMERALDA PROJECT-2' of the respondent.

2. According to the complainant, inspite of his repeated requests, the respondent has failed to return his booking amount and also failed to execute allotment letter or any agreement for sale in respect of the said flat. The complainant has

Vidley

further stated that in the status of the registration of the said project, the respondent has stated that all inventory is sold which statement according to the complainant is false as according to the complainant, the respondent informed him that he was not willing to sell the said unit and would refund his booking amount. According to the complainant, the respondent has falsely stated on the website that the above flat was sold by the respondent.

3. The respondent though duly served did not file any reply, though opportunity was given by this Authority to file reply and documents if any. The respondent was set ex parte. The complainant filed his affidavit and argued the matter. In the argument, the complainant admitted that the aforesaid flat has been sold by the promoter.
4. After going through the entire records of the case, the point which comes for my determination is whether this Authority has jurisdiction under the RERA Act to order the respondent to pay the booking amount to the complainant and the answer to the same is in the negative because of the reasons stated hereunder:-

REASONS

5. Since there is no agreement for sale between the parties, **Section 18** of the RERA Act, which is reproduced hereunder for ready reference, is not attracted:-

“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 thereunder 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.”

6. This is not the case where the promoter fails to complete or is unable to give possession of the said flat to the complainant in accordance with the terms of the agreement for sale or duly completed by the date specified in the agreement for sale or the promoter fails to complete/ unable to give possession of the said flat due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the RERA Act or for any other reason so as to give right to the complainant to ask for return of amount paid by him to the promoter. Hence, Section 18 of the RERA Act is not attracted in the instant case.
7. Another section under the RERA Act which entitles the allottee to ask for refund of his booking amount is **Section 12** of the RERA Act which is reproduced hereunder for ready reference:-

“12. Obligations of promoter regarding veracity of the advertisement or prospectus.-Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall



be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.”

8. As is clear from Section 12 of the RERA Act, the allottee is entitled to have his entire booking amount refunded from the promoter only incase the allottee is affected by any incorrect or false statement provided by the promoter in the notice, advertisement or prospectus or the model apartment, plot or building. This is not the case where the respondent has given any incorrect or false statement in the notice, advertisement or prospectus or in the model apartment. Thus, Section 12 of the RERA Act is not attracted.

9. According to the complainant, the promoter has violated Section 13(1) of the RERA Act by taking more than ten per cent of the cost of the apartment without entering into a written registered agreement for sale. Section 13(1) of the RERA Act states that a promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application or an application fee from a person without first entering into a written agreement for sale with such person and register the said

Vidley

agreement for sale, under any law for the time being in force. In the instant case, it is never the case of the complainant that he was forced by the respondent to part with the amount which was more than ten per cent of the cost of the said flat and the facts of the complaint reveal that the complainant willingly and knowingly paid the aforesaid amount to the respondent. Mere acceptance by the promoter of a sum more than ten per cent of the cost of the flat as an advance payment does not entitle the allottee to ask for the refund of the said amount on that ground alone, in the absence of any specific provision to that effect in the RERA Act. As stated above, the instant case does not come within the purview of Section 12 or Section 18 of the RERA Act.

10. As in the instant case the relief prayed is for mere recovery of money from the respondent outside the purview of the RERA Act and hence purely a civil dispute, this Authority has no jurisdiction to decide the instant complaint.

In view of the aforesaid, the instant complaint is dismissed.

v. jetley 17/8/23
(Vijaya D. Pol)
Member, Goa RERA