



**GOA REAL ESTATE REGULATORY AUTHORITY  
DEPARTMENT OF URBAN DEVELOPMENT  
GOVERNMENT OF GOA**

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No.3/RERA/Complaint (133)/2020/366

Date: 06/05/2022

**1. Manish V. Gosalia**

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Fatorda, Salcete-Goa, 403601.

**2. Toral Manish Gosalia**

Flat No. 501, 5<sup>th</sup> floor B Block,  
'status Residency', Bolepand,  
Fatorda Salcete-Goa, 403601.

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**Complainants**

V/s

**1. M/s Umiya Holding Pvt. Ltd.**

**2. M/s Umiya Builders and Developers**

29/3, HM Stafford, 2<sup>nd</sup> Floor,  
7<sup>th</sup> Cross Road, Vasant Nagar,  
Banglore, Karnataka-560 052.

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**Respondents**

**ORDER**

**Dated 06/05/2022**

This order disposes of the complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') filed against the respondents in respect of the project "UMIYA MERCADO" wherein the complainants have prayed the Authority to direct the respondents to execute sale deed and form a society.

2. The complainants have inter alia stated that they booked a commercial shop bearing no 105 (A) admeasuring 103.4 sq. mtrs. of super built area along with outside seating area of 20.4 sq. mtrs. situated on the first floor in Building Block No. II of Umiya Mercado (hereinafter referred to as the “commercial shop”) to be constructed on all that independent part and parcel of the land indentified as plot no. 92, admeasuring an area of 5074.5 sq. mtrs. being a part of the large property admeasuring 61,175 sq. mtrs. bearing Survey No. 139/1 of Village Benaullim for a total consideration of Rs.74,18,000/- (Rupees Seventy Four Lakhs Eighteen Thousand only). According to the complainants, the parties entered into an agreement for construction and sale dated 20/07/2016 and the complainants complied with and adhered to the terms and conditions of the agreement and have fully paid the entire consideration amount to the respondents.
  
3. According to the complainants, at the time of booking the said commercial shop, the respondents represented to the complainants that the possession of the said commercial shop will be handed over to them within 24 months from the date of executing the said agreement subject to an extension of six months and after obtaining occupancy certificate from the competent authorities and based on the said assurances and representations made by the respondents, the complainants agreed to purchase the said commercial shop. According to the complainants, the respondents handed over the possession of the commercial shop after a delay of 14 months and 10 days i.e. on 1/10/2019 for which delay, the respondents are liable to pay interest.
  
4. The complainants have further stated that it was agreed between the parties that the annual maintenance charges and other society expenses for the



commercial shop would be Rs. 65,120/- (Rupees Sixty Five Thousand One Hundred and Twenty only), however, the respondents in breach of the agreement demanded a further sum of Rs. 2,00,000/- (Rupees Two Lakhs only) without any reasonable basis and which is contrary to the aforesaid agreement. According to the complainants since the issue of maintenance charges was not resolved inspite of protest by the complainants, an amount of Rs. 1,32,240/- (Rupees One Lakh Thirty Two Thousand Two Hundred and Forty only) was paid to the respondents towards the maintenance charges till the month of September 2021 excluding Goods and Services tax as the amount of maintenance payable to a society is not subjected to tax.

5. According to the complainants, the respondents have failed and neglected to constitute a Cooperative society/ Association of Persons or such other entity despite handing over the possession of the units to the majority of the allottees. It is submitted that the formation of the said entity/society is specifically provided in clause 7 (W) (XX) of the said agreement and as per clause 7 (E) of the agreement the respective purchasers will be solely responsible and liable with respect to the common amenities of Umiya Mercado and further as per clause 7 (W) (IV) it is the duty of the respondents to assist the purchasers in forming the Cooperative society or any other entity and therefore the respondents are not entitled to charge any amount from the complainants towards the maintenance fee and it is the duty and liability of the respondents to form the society/ entity for the maintenance of the plot and common areas of Umiya Mercado.
6. The complainants have mentioned that as per clause 7 (W) (XIX), the respondents have already taken from the complainants the amount pertaining



to the formation of the said society, the details of which are mentioned in the said agreement and after receiving the said amount, the respondents cannot refuse to perform their part of the obligation under the said agreement.

7. It is further stated by the complainants that the respondents have also taken from them the maintenance fees for the period prior to handing over the possession of the premises to the complainants but the respondents are claiming GST charges also on the amount of maintenance fees paid by the complainants on the ground that the respondents are carrying out the maintenance of the premises and not the society, however, according to the complainants the aforesaid cannot be a ground for the respondents to charge additional amount as it is solely on account of the inaction on the part of the respondents that the society is not formed and as such the complainants cannot be made liable to pay more than what was agreed at the time of the execution of the agreement for sale
8. It is further stated by the complainants that there is no provision in the agreement for sale to increase the amount payable as maintenance and the increase if at all can be done only after the society is formed and all the members decide in favour of the same and therefore the respondents cannot burden the complainants with their unilateral decisions after the expiry of the period for which the respondents were authorized to maintain the premises and hold the amount already paid to them in trust.
9. The complainants have stated that the respondents have failed to execute the sale deed of the commercial shop in favour of the complainants along with the undivided proportionate title in the common areas and therefore the



respondents have violated Section 11 (4)(f) of the Act. According to them, the respondents have also failed to hand over the necessary documents, plans including that of the common areas after handing over the possession of the commercial shop and other units to the allottees. Thus according to the complainants, the respondents are liable to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation to the complainants and further liable to execute the Conveyance Deed of the commercial shop in favor of the complainants, to form a society/ Association of Persons or any other entity and hand over all the documents including books of accounts/ electronic accounting formats related to the maintenance accounts, plans including that of the common areas to the society members. It is stated that the respondents are liable to pay penalty for violation of Section 11(4) (e), 11(4) (f) and Section 17(1) of the Act and further imposition of a penalty of 5% of the project cost as per Section 61 of the Act.

10. Reply has been filed by the respondents wherein it is stated that the complainants have approached this Authority with unclean hands and has suppressed the legal notice sent by the complainants dated 25/01/2020 and the reply from the respondents dated 18/02/2020 denying the allegations made in the said notice and has also suppressed the refund of Rs.17,00,000/- (Rupees Seventeen Lakhs only) after the execution of the agreement for construction and sale, which was considered as default in payment on the part of the complainants. It is stated in the reply that the complainants have violated the terms and conditions of the said agreement on several occasions and failed to comply with the payment schedule mentioned in the said agreement. According to the respondents, it was specifically agreed between both the parties that there will be an extension of six months after obtaining occupancy

certificate and the same was subject to the payments and adherence to the agreement for construction and sale but the complainants failed and neglected to comply with the same.

11. The respondents have further stated in their replies that though the commercial shop was agreed to be completed within 24 months from the date of execution of the agreement subject to an extension of another six months and after obtaining the occupancy certificate from the concerned authority, however, the work stopped due to unavailability of building material in the market due to the direction issued by National Green Tribunal with respect to stoppage of extraction of sand. It is stated that the respondents managed to complete the project and obtained the completion certificate dated 27/03/2019 and the occupancy certificate dated 15/04/2019 and requested the complainants to take over the possession of the commercial shop but the complainants delayed taking possession of the same.
12. According to the respondents, the complainants were informed about the shortage of raw materials and the complainants orally agreed to condone the delay of 90 days.
13. The respondents submitted that clause W(XIX)(b) of the said agreement speaks about the maintenance charges of Rs. 66,120/- (Rupees Sixty Six Thousand One Hundred and Twenty only) however, clause (XXII) speaks and authorizes the respondents to increase the same and accordingly the representative of the respondents met the complainants and gave explanation of actual expenses and the necessity to increase the maintenance amount and the complainants agreed to the same.





14. Regarding the formation of society, it is stated by the respondents that only four units are sold in the said building out of 35 units and therefore to keep the standard of maintenance and to avoid any risk to the life and property, the respondents are maintaining the said complex under their supervision, as for the formation of the society, 50% of the members are required to sign the bye laws and required documents.
15. Regarding the sale deed, the respondents have submitted that the draft of the same has already been sent to the complainants through email but the complainants want changes in the said draft and are not resolving the issue amicably and therefore the complainants are delaying the execution of the sale deed. According to the respondents, they are ready and willing to furnish all the copies of the documents to the complainants. It is submitted by the respondents that they are not liable for any interest or compensation to be paid to the complainants.
16. Copies of documents were filed by the parties. Though both the parties were directed to file affidavits in support of their cases, however only the complainant No. 1 filed his affidavit and no affidavit was filed on behalf of the respondents.
17. Written submissions were filed by Ld. Advocate S. Mordekar for the complainants and oral arguments were also advanced by the said Advocate, whereas the Advocate for the respondents did not appear either to file affidavits of the respondents or to argue the matter.



18. In the agreement for construction and sale dated 20/07/2016 it is mentioned in para 7(A) that “the VENDOR/ BUILDER shall complete the SAID COMMERCIAL SHOP within 24 months from the date of signing this agreement, subject to an extension of further 6 months, and after obtaining the occupancy certificate from the competent authorities, handover its delivery to the PURCHASER; PROVIDED, all the amounts due and payable by the PURCHASER under this agreement are paid by the PURCHASER to the VENDOR/BUILDER”. From the aforesaid para it is clear that the Vendor/Builder had to “complete” the commercial shop within the outer limit of thirty months from the date of signing the said agreement and though no specific date is mentioned for delivery of its possession, however possession was to be delivered after obtaining the occupancy certificate. No occupancy certificate is produced on record by any of the parties but the respondents in their reply have stated that the occupancy certificate is dated 15/04/2019. Thus, the period of delay, if any, would start from the date of occupancy certificate i.e. 15/04/2019 but there are no averments either in online complaint or in online supplementary complaint as to the total amount paid by the complainants to the respondents till 15/04/2019, whereas the receipts produced on record show that the complainants continued making payments to the respondents till 01/10/2019 which is the date of possession. The online supplementary complaint even otherwise gives wrong calculation of period of delay in giving possession of the shop. In the absence of the authentic facts in the complaints, regarding the period of delay in giving possession and the actual amount on which interest has to be calculated, the said statutory interest on the delay of giving possession, prayed for by the complainants cannot be granted and hence rejected.



19. Regarding the maintenance of the premises and the maintenance charges, there are specific terms in the said agreement for construction and sale. **Para 7 (E)** states as follows:-

“From the date of the occupancy certificate for the respective premises, the responsibility/liability for maintenance of the premises (including the said commercial shop) in UMIYA MERCADO shall be of the respective purchasers and the responsibility /liability with respect to the common amenities of UMIYA MERCADO and looking after the upkeep thereof shall be solely that of the respective purchasers”

From the aforesaid term of the agreement it is clear that after obtaining the occupancy certificate, the responsibility/ liability for maintenance of the premises/ the said commercial shop and also of the common amenities is solely on the complainants /respective purchasers and the said responsibility/ liability is no more on the respondents. Thus, the stand taken by the respondents in the reply to the complaint to the effect that “to keep up the standard of maintenance and the building and to avoid any kind of risk to the life and property of the purchaser, the respondents are bound to maintain the said complex under their supervision and through professionals” is contrary to the said agreement.

20. **Para 7 (K)** of the said agreement also casts duty on the purchaser to maintain the commercial shop and common areas from the date of possession and in the instant case the date of possession is 01/10/2019. The said para 7(K) is reproduced hereunder:-

“The PURCHASER shall, from the date of possession, maintain the SAID COMMERCIAL SHOP, the walls,

partition walls, sewers, drains, pipes and appurtenances thereto, at cost, in good and tenantable repair and condition and shall not do or suffer to be done anything in or to the SAID COMMERCIAL SHOP and/or common passage, or the compound or any other common areas, which may be against the conditions or rules or bye-laws of the Village Panchayat or any other Authority and shall attend to and answer and will be responsible for all actions for violation of any such conditions or rules or bye-laws.”

Thus the aforesaid para also clearly shows that from the date of possession, it is the duty and liability of the purchaser to maintain the said commercial shop and appurtenances thereto and also its common passages/common areas and in this regard it is not the duty of the VENDOR/respondents herein to maintain the same.

**21. Para 7(xxiii) of the said agreement states as follows:-**

“It is clearly agreed and understood that the responsibility/liability with respect to the common amenities of UMIYA MERCADO is exclusively that of the purchasers (including the PURCHASERS herein) of various premises in UMIYA MERCADO and /or of the ENTITY.”

**22.** Thus, after the delivery of possession of commercial shop to the complainants, it is the duty and liability of the complainants to maintain the same and also the common areas. Para 7(xix) gives details of the amounts to be given by the complainants to the respondents including the maintenance charges before taking possession of the said commercial shop and in the affidavit, the

complainants have mentioned that all the charges mentioned therein have been given to the respondents and the respondents have not denied the same.

23. Para 7 (xxii) of the said agreement to the effect that “if the VENDOR/BUILDER and /or the ENTITY are of the opinion that the yield on amount as mentioned herein above is not going to be sufficient to meet the upkeep expenses, the VENDOR/BUILDER and/or the ENTITY are authorized to increase the aforesaid deposits with prior intimation to the PURCHASERS and the PURCHASERS shall pay the same within 15 days from the date of such intimation” has to be read in harmony with the other paras mentioned above of the said agreement and therefore the inevitable conclusion is that after giving of possession of the commercial shop to the complainants, the duty and liability of maintaining the commercial shop and its common areas is no more with the vendor/builder/the respondents but the said duty and liability shifts to the complainants /the purchasers and thereafter the respondents have no scope for any increase in the maintenance amount as the respondents have no right over the same after the possession is given to the purchasers. Thus, the respondents cannot demand any further maintenance amount from the complainants who have taken the possession of the commercial shop on 01/10/2019.

24. Regarding the formation of the society/entity, it is clearly mentioned in **para 7(vii)** of the said agreement that **“it is agreed by and between the parties hereto that the VENDOR/BUILDER shall have the ENTITY formed of the premises holders of UMIYA MERCADO as a whole.** However, VENDOR/BUILDER shall have the option to have separate ENTITIES formed of any part of UMIYA MERCADO or along with the premises



holders of any building schemes adjoining or in the vicinity of UMIYA MERCADO or in any other manner as the VENDOR/BUILDER may deem fit” (emphasis supplied). However, **para 7(v)** states that it is entirely the discretion of the vendor/builder to decide the form of Entity i.e. whether to form a Cooperative society or a limited company or an Association of Persons or any other Entity and **para 7(iv)** states that the vendor/builder shall assist the purchaser in forming such Entity. **Para 7(xvii)** of the said agreement further states that **“upon completion of the UMIYA MERCADO, the VENDOR/BUILDER shall convey /get conveyed the said plot along with the buildings thereof and/or UMIYA MERCADO in the name of the ENTITY.”** (emphasis supplied).

25. From **para 7 (xxv)** of the said agreement it is clear that pending formation of the Entity, the interim arrangement as mentioned in the said agreement was for a maximum period of one year from the date of occupancy certificates for all the building blocks of UMIYA MERCADO, unless extended by the vendor. As the occupancy certificate is dated 15/04/2019, the said interim arrangement period expired after one year of the aforesaid date and accordingly, as rightly argued by the Ld. Advocate for the complainants, the respondents have no authority to hold the funds collected from the complainants and other purchasers towards maintenance and keep delaying the formation of the society.
26. Even otherwise **Section 11 (4) (e)** casts the duty and the responsibility on the promoter regarding the formation of the society and the said Section is reproduced herein below:-



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

(4)The promoter shall-

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;”

Thus, even otherwise, it is the statutory duty of the respondents to form the society/ Association of allottees / Entity, as per law.

27. Regarding the execution of sale deed of the said commercial shop in favour of the complainants, it is again the statutory duty of the respondents to execute the same as is clear from **Section 11(4)(f)** of the Act which is reproduced herein below for ready reference:-

“(4) The promoter shall-

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under Section 17 of this Act.”



**28. Section 17** of the Act reads as follows:-

**“17. Transfer of Title.-** (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the



competent authority, as the case may be, within thirty days after obtaining the completion certificate.”

In the instant case, the possession of the shop was given to the complainants on 01/10/2019 but till date the sale deed is not executed regarding the said premises.

29. From the premises aforesaid, it is clear that the respondents have not discharged their statutory duties of forming the society/ association as per Section 11(4) (e) and of execution of sale deed in favour of the complainants as per Section 11 (4) (f) read with Section 17 of the Act. For the violation of the above provisions of the Act, **Section 61 of the Act** is attracted and is therefore reproduced herein below:-

**“61. Penalty for contravention of other provisions of this Act.-** If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project as determined by the Authority.”

30. At the time of the registration of the concerned project, the respondents submitted before this Authority “Chartered Accountant certificate” given by Chartered Accountant’s A.D. Ashar and Co., wherein the total estimated cost of the instant Real Estate Project is mentioned as Rs.15,98,25,690/- (Rupees Fifteen Crores Ninety Eight Lakhs Twenty Five Thousand Six Hundred and Ninety only). The above figure of estimated cost of the project has to be taken into consideration while imposing the penalty on the respondents under

Section 61 of the Act, however taking into consideration the facts of the case, lenient view is taken in this regard.

Thus, I pass the following:

### **ORDER**

The respondents are directed to form a society /Co-operative society/ an association of allottees in respect of the aforesaid project, without any additional charges from the complainants other than those mentioned in the agreement for construction and sale dated 20/07/2016 within two months from the date of this order and handover to its members within the said period all the necessary documents including plans related to the common areas of the said building.

The respondents are further directed to execute a sale deed of the said commercial shop in favour of the complainants along with the undivided proportionate title in the common areas to the association of allottees within two months from the date of this order.

The respondents are further directed to pay a penalty of Rs. 1,00,000/- (Rupees One Lakh only) for violation of Section 11 (4) (e) of the Act within two months from the date of this order and also to pay a penalty of Rs. 1,00,000/- (Rupees One Lakh only) for violation of Section 11 (4) (f) of the Act within two months from the date of this order.

The instant matter is now referred to the Adjudicating Officer for deciding compensation, if any.

*Vijaya*  
*16/5/2022*  
**(Vijaya D. Pol)**  
**Member, Goa RERA**