



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

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No.3/RERA/Complaint (254)/2021/ 975

Date: 25/10/2022

Archana Ashok Amshekar

H.no. 10/A Ashray Ward No. 8,

Opp. Maruti Temple, Valpoi,

North Goa, 403506.

..... **Complainant**

V/s

M/s Rehan Construction, Builder & Developers

(A Partnership firm of Mr. Khaja Shaikh and Ms. Sharifa Shaikh)

Flat no. S-1, 2nd floor, D'Souza Apartment,

Nagamasjid, Curti, Ponda-Goa, 403401.

.....**Respondent**

ORDER

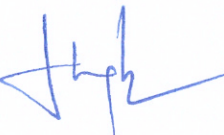
(Dated 21.10.2022)

This is to dispose of the complaint received on 14.10.2021 from the complainant Archana Ashok Amshekar in respect of project '**Anwar Residency**' under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act'). The promoter of this project is M/s Rehan Construction, Builder & Developers (A Partnership firm of Mr. Khaja Shaikh and Ms. Sharifa Shaikh). The complainant had entered into an Agreement for Construction cum Sale dated 21.09.2016 with respondent/promoter wherein he had agreed to purchase a flat on the first floor of the building '**Anwar Residency**' being constructed by the respondent.

2. This project 'Anwar Residency' is undertaken by the promoter in the property surveyed under survey no. 7/4 of the Village of Valpoi situated in ward Massordem in the said village of Sattari Taluka. As per the said agreement for sale, the purchaser/complainant agreed to purchase flat admeasuring 119.08 sq. mtrs. for a consideration of ₹20,00,000/- (Rupees Twenty Lakhs only) along with undivided proportionate right to the land. Complainant already paid the amount of ₹15,00,000/- (Rupees Fifteen Lakhs only) till date.

3. As per terms of agreement for sale, respondent/promoter was liable to handover the possession of the flat to the complainant within 03 years. The said period of 03 years expired in September 2019. However, respondent has not completed the construction till date and handed over the possession of the flat to the respondent. By this complaint, complainant has requested to issue direction to the respondent to complete the project and handover the possession.

4. Subsequently, the complainant has filed a revised complaint dated 03.02.2022 enclosing all the relevant documents and have requested for possession of the premises within 03 months and also compensation for the losses.

5. The copy of the complaint was served to the respondent and respondent has filed reply dated 06.12.2021 of the original complaint and reply dated 03.08.2022 of the revised complaint.
6. Again complainant has filed written submission dated 19.08.2022. Respondent has also filed written submission on 26.09.2022 on the last date of hearing on 26.09.2022.
7. It has been contended by the complainant that in terms of the agreement for sale, respondent should have delivered the possession of the premises within 03 years but so far hardly 40% of the construction is completed.
 According to the complainant, he has already paid ₹15,00,000/- i.e. 75% of the cost of the flat to the respondent in terms of the agreement for sale and is willing to pay the remaining amount at any time on delivery of the possession of the flat. Since respondent has violated the terms of the agreement for sale, it has been requested to complete the construction within 03 months and hand it over to the complainant. Complainant has also requested for compensation.
8. The respondent has stated that work was delayed due to covid and now they have resumed the work to complete the construction. Respondent has also stated that in the beginning, complainant has requested many changes due to which the construction was delayed. This aspect has been

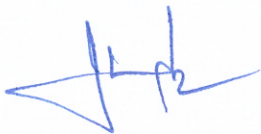
categorically denied by the complainant. In any case, respondent has requested for 08 months time to complete the work.

9. I have considered the case. It is admitted position that as per Agreement for Sale dated 21.09.2016, the possession of the flat was to be delivered to the complainant within 3 years time that is by September, 2019. However, the respondent was unable to do the same as the project is still under construction. The ground for delay taken by the respondent has been Covid. This is not acceptable as the covid started in February-March, 2020 whereas project was to be completed by September, 2019. Similarly, ground of delay on account of changes suggested by complainant is concerned, the same is also not acceptable as the complainant has denied it out rightly. Again, respondent has not submitted documentary or any kind of evidence in this regard. Hence, it is established fact that respondent has violated the terms & conditions of the Agreement for Sale.

10. Complainant has requested the relief in terms of directions to the promoter to complete the project within 03 months and compensation. Respondent has requested 08 months time to complete the project. Taking a proper and considerate view, I feel respondent should be given opportunity to complete project within 04 months time and deliver the possession of the flat to the complainant.

11. As far as compensation is concerned, it is pointed out that power to determine compensation is vested in Adjudicating Officer under Section 71 of the Act. This position has been confirmed in Supreme Court Judgment “M/s. Newtech Promoters and Developments Pvt. Ltd. versus State of UP & ORS. ETC. dated 13.11.2021”. For the convenience, portion of para 86 of the said judgement is transcribed herein below:-

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of



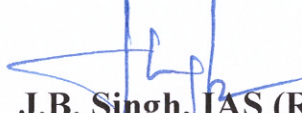
adjudging compensation and interest thereon under section 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandated of the Act 2016.”



12. In view of foregoing observations, the following directions are issued:-

- a) Respondent is directed to complete the project within 04 months and deliver the possession of the flat to the complainant accordingly.
- b) For the purpose of determining the compensation, as requested by the complainant, the matter is referred to Adjudicating Officer under Section 71 of the said Act.

Order Accordingly,


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

To,

1. Archana Ashok Amshekar

H.no. 10/A Ashray Ward No. 8,
Opp. Maruti Temple, Valpoi,
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