



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(318)/2022/770

Date: 03/08/2023

Mrs. Sonia Bhaskar,

w/o. Mr. Shivam Bhaskar, aged 47 years, Business,
R/o. A78 New Friends colony,
South East Delhi. 110025.

.....Complainant

Versus

M/s. Paradise Estate,

A partnership firm duly registered under the Indian Partnership Act, 1932
Having its office at 17, Gulmohar Apartments,
East Street, Pune, 411 001.

Represented by its partners,

(1) Mr. Mohit Aurora, s/o. Mr. Harish Aurora,
aged 33 years, married business, Indian National,
r/o. Yogi Park, Flat no. 102, C-2,
Koregaon Park, Pune-411001.

(2) Mr. Mohamad Ali Haji, s/o. Mr. Aslam Haji,
aged 34 years, married, business, Indian National,
r/o. Ganga Satellite, Flat No. 201, A1, Wanowrie, Pune-411040.

(3) Mr. Moiz Poonawala, s/o. Mansoor Poonawala,
aged 38 years, married, business, Indian National,
resident of C/o. Shiv Sharma, Clover Plaisades, Flat No. 1063, building A,
NIBM, Undri Road, Pune, 411048.

.....Respondent

ORDER

(Dated 03.08.2023)

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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 for the following reliefs:-

“A) Directing the respondents to execute a deed of sale with respect to the villa bearing no. B-02 situated in Block B of the project 'AMADO VISTAS' within a period of thirty days from the date of passing of the order.

B) The applicant be compensated with an amount of Rs. 1,00,00,000/- (Rupees One Crore only) for mental stress and agony caused to the applicant herein and further the applicant not been able to enjoy to the fullest the possessory and proprietary rights acquired by the applicant on account of failure on the part of the respondents to execute the deed of sale even after several requests.”

2. It is the case of the complainant that vide Articles of Agreement executed and registered on 11.08.2021, the respondent agreed to sell Villa bearing no. B-02 admeasuring 131 sq. mtrs. consisting of ground plus first floor in Block B in the project 'AMADO VISTAS' to the complainant as per clause 32 of the Article of Agreement dated 11.08.2021 from the date of execution of the Agreement, however till date the respondent has not executed the deed of sale, though the complainant has paid entire consideration amount of Rs. 1,60,00,000/- (Rupees One Crore Sixty Lakhs only). Hence the prayers of the complainant as stated above.

v. jethley

3. The respondent has filed reply wherein it is stated that the respondent is not the owner of the property in question but merely holds the developmental rights and actual right is vested with one Mr. Shivdev Singh Malhotra with whom the respondent has entered into an agreement dated 07.06.2016, which fact is also incorporated in the above said agreement executed between the complainant and the respondent.
4. According to the respondent said Shivdev Singh Malhotra expired on 09.01.2021 and after his death the respondent was in constant touch with Mrs. Inderjit Kaur to sign an agreement with the respondent however she could not come to Goa to execute the necessary documents due to age factor and health issues and she also revealed that there was an issue with regard to the estate left by late Mr. Shivdev Singh Malhotra and to sort out these issues, she would be requiring sometime.
5. The respondent has further stated that Mr. Shivdev Singh Malhotra expired by executing a will in favour of his wife Smt. Inderjit Kaur, who probated the will and an order dated 04.02.2022 to that effect has been passed by Civil Judge Maharashtra in probate proceedings. It is further stated that the respondent has entered into amendment of agreement dated 07.06.2016 with Mrs. Inderjit Kaur.
6. Thus, according to the respondent, executing of the sale deed was delayed due to legal difficulties caused by the death of Mr. Shivdev Singh Malhotra. It is also stated that there are thirty unit holders in the said project and the majority



of them are in faovur of the formation of co-operative housing society and to execute conveyance deed in favour of the co-operative housing society as per the Articles of Agreement one of which identical agreement is entered between the complainant and the respondent on 11.08.2021. The respondent has stated that the completion of the said process is awaited as the unit holders are distantly situated in the other parts of India and abroad.

7. Affidavits have been filed by both the parties along with the notarized documents. Written submissions have been filed by Ld. Adocate A. Dessai for the complainant and by Ld. Advocate A. Palekar. Oral arguments were also heard from the Advocate A. Dessai for the complainant whereas the Ld. Advocate for the respondent submitted that his written submissions may be taken into consideration.
8. 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 the respondent is liable to execute the deed of sale with respect to the aforesaid Villa in favour of the complainant in compliance of Section 17 of the RERA Act?	In the affirmative.

Verity

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

Point no. 1

9. The complainant was given possession of the said villa by the respondent after the complainant paid the entire consideration amount to the respondent, however the grievance of the complainant is that the said possession was given without execution of sale deed in favour of the complainant.
10. **Section 11(4) (a)** of the RERA Act imposes all obligations, responsibilities and functions under the RERA Act/ Rules and Regulations on the promoter “till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.”
11. **Section 11(4) (f)** of the RERA Act states as follows:-

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

(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”

12. **Section 17** of the RERA Act states 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.”

13. Thus, responsibility and duty is cast on the promoter under the aforesaid sections to execute a registered conveyance deed of the said flat in favour of the complainant along with the undivided proportionate title in the common areas to the association of allottees or society, as provided under section 17 of the RERA Act and the corresponding right accrues in favour of the allottee/ the complainant to enforce the said duty of the promoter.
14. In para 15 of the written submissions, the Ld. Advocate for the complainant has submitted as follows:-

“It is specifically stated that the complainant is not in favour of the formation of an association or a Housing Co-op. Society and further not willing to be a part of the same”

The aforesaid submission of the Ld. Advocate for the complainant is not only against the clear terms and conditions mentioned in the said agreement for sale regarding the formation of an association or society or condominium but also against the provisions of the RERA Act. **Section 19(9)** pertaining to “**RIGHTS AND DUTIES OF ALLOTTEES**” states as follows:-



“Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or co-operative society of the allottees, or a federation of the same.”

Hence, duty is cast by law on the allottee/ the complainant herein to participate towards the formation of an association or society or co-operative society of all the allottees, or a federation of the same and the complainant cannot escape from his lawful duty.

15. The respondent has submitted in the written submissions inter alia as follows:-

“The respondent is willing to and is ready to execute conveyance deed of the land in favour of the Housing Society. As on the date of filing of this written submissions, out of 30 unit owners, 16 have signed and give their consent for formation of societyAs on date, the majority of the purchasers have given their consent to do so.”

16. From the aforesaid it is clear that the respondent is ready and willing to execute the sale deed in respect of the said villa and to comply the ingredients of Section 17 of the RERA Act, however the onus also lies on the complainant to participate towards the formation of an association of allottees or society.

The instant point is therefore answered in the affirmative.



Point no. 2

17. Under Section 71 of the said 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 view of the aforesaid, I pass the following:-

ORDER

The respondent is directed to comply Section 17 of the RERA Act, quoted above, within two months of the passing of this order and accordingly execute a registered conveyance deed in favour of the complainant for the aforesaid villa along with the undivided proportionate title in the common areas to the association of the allottees/ society and handover all the relevant documents as per the mandate of said Section 17. The complainant is directed to participate towards the formation of an association or society of the allottees as per the mandate of Section 19(9) of the RERA Act.

However, liberty is given to the respondent to approach this Authority after two months of the passing of this order for reasonable extension of time on genuine grounds to fully comply Section 17 of the RERA Act.

The respondent to file compliance report in the form of an affidavit after two months of passing of this order, failing which penalty would be imposed on



the respondent for non compliance of this order and execution proceedings will be initiated by this Authority.

The instant complaint is now referred to the Adjudicating Officer to adjudge compensation, if any, as per Section 71 of the said Act.

v. jetley 3/8/23.
(Vijaya D. Pol)
Member, Goa RERA