



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(327)/2022 / 918

Date: 25/07/2023

Mr. Pradeep Rama Korgaonkar,

Flat No. 504, Alto Mangor Aman Carlos Paraiso,
Vasco, Goa- 403802.

.....Complainant

Versus

Aman Builders and Developers,

Shop No. 3 & 4 Karma Empress Building,
Next to KTC Bus Stand,
Vasco Da Gama, Goa- 403802.

.....Respondent

ORDER

(Dated 25.07.2023)

This order disposes of the online 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 direct the promoter to issue possession certificate and to convey/transfer the title of the flat in question in compliance with section 17 of the RERA Act.

2. It is the case of the complainant that under the agreement for sale cum construction dated 01.02.2017 and registered on 02.02.2017, it was agreed by the respondent to sell to the complainant a flat bearing no. F-4 on the fifth floor in the building known as 'Aman's Carlos Paraiso' situated at Vasco, Goa.

According to the complainant, as per the said agreement for sale the respondent was bound to deliver the said flat within a period of 24 months from the date of the signing of the said agreement. However the respondent failed to execute the sale deed in favour of the complainant and hence violated Section 17 of the RERA Act. Hence, the prayer of the complainant as stated above. However, a separate complaint filed online by the complainant as attachment to the original online complaint pertaining to the said flat no. F-4 is not taken into consideration since the said attached complaint is not in legal format as mandated under the RERA Act and further the said attached complaint pertaining to the said flat no. F-4 is not verified by the complainant. Hence, for deciding the instant matter only the original online complaint which is in proper legal format, signed and verified by the complainant is taken into consideration.

3. Reply has been filed by the respondent wherein it is stated that it was agreed between the parties as per the said agreement for sale that the promoter shall complete the construction of the said flat F-4 within a period of 24 months from the date of signing of the said agreement subject to the allottee making full payment of all the amount due from him and subject to Force Majeure or any other circumstances beyond the control of the developer or for any unavoidable or inevitable circumstances. According to the respondent, the complainant failed to make the payments to the respondent on account of which the construction work was considerably delayed. It is stated that as on 04.02.2019, the complainant had an outstanding amount of ₹3,75,000/-.



4. Though the respondent admitted the dates of receiving the completion certificate and the occupancy certificate, the respondent denied that electricity connection was granted to the building in September 2021 and water connection in November 2021. The respondent has denied that the quality of work of the said flat as sub-standard and low.
5. It is further stated that the respondent had given in writing the dues pending on behalf of the allottee and as per the said agreement for sale, the promoter was justified in seeking an additional amount in terms of clause c of the said agreement. The respondent also states that the complainant has undertaken illegal construction in the said flat without the permission of the authorities and the planning authority has taken cognizance of the illegalities done by the complainant and Mormugao Municipal Council has also issued notice to the complainant in this regard. Rest of the allegations of the complainant are denied by the respondent.
6. According to the respondent, he is willing and ready to perform his part of the contract by executing title deed in favour of the complainant, however the costs towards execution of the title deed ought to be borne by the allottee as per the prevailing laws in force.
7. Oral arguments were heard from Ld. Advocate R. Almeida for the complainant and Ld. Advocate B. Fernandes for the respondent.
8. After going through the entire records of the case, the points which come for my determination along with the reasons and findings thereon is as follows:-



Sr. No.	Points for determination	Findings
1.	Whether the complainant is entitled for the relief of possession of the said flat as prayed in the complaint?	In the negative.
2.	Whether the complainant is entitled to have the sale deed in respect of the said flat to be executed in his favour by the respondent?	In the affirmative.

REASONS

Point no. 1

9. The respondent in the reply has denied the allegation of the complainant to the effect that the complainant has not received the possession of the said flat and the respondent also stated that “the complainant has also undertaken illegal construction without the permission of the authorities” and that the planning authorities and Mormugao Municipal Council have taken cognizance of the said illegalities undertaken by the complainant and the Municipal Council has issued notices to the complainant and the promoter in this regard. The respondent has also placed on record the complaint dated 14.12.2022 by the respondent addressed to the PI, Vasco Police Station whereby it was informed to the police that the complainant took over the possession of the said flat no. F-4 and started staying therein without the respondent handing over the said flat to the complainant.



10. Since the possession of the said flat has been taken by the complainant, the issue of possession as raised by the complainant does not survive and has become infructuous. Hence, the instant point is answered in the negative.

Point no. 2

11. **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.”

12. **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”

13. **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 or 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, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate.”

14. 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

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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. It is material to note that in the reply the respondent has submitted that he is willing and ready to perform his part of the contract by executing title deed in favour of the complainant, however, the costs towards execution of the title deed ought to be borne by the allottee as per the prevailing laws in force. The instant point is therefore answered in the affirmative.

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 flat 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. Costs for the execution and registration of the sale deed in favour of the complainant to be borne by the complainant and 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.

vijaya
7/25/7/2023
(Vijaya D. Pol)
Member, Goa RERA