



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

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F.No: 3/RERA/Complaint(108)/2020/ 567

Date: 06/10/2021

Suraj R. Sangelkar,

H.No.124, Flat No.1,

2nd Floor, Ekawade Building,

Cotta Amona, Quepem-Goa, 403705.

.....

Complainant

V/s

Madhav Talak,

Ashiyana, Comba,

Margao-Goa, 403601.

.....

Respondent

Order

This is to dispose off the complaint received on the website of Authority on 08/01/2020 against project 'Shivam' filed by complainant. Respondent is the promoter of the project 'Shivam'. As no detail was available in the complaint, the Respondent insisted for the same from time to time and finally complainant filed complaint in detail dated 04/04/2021 and copy of the same was handed over to Respondent. Respondent filed reply to the complaint dated 27/08/2021 before the Authority. Again case was adjourned and fixed for arguments on merit on 23/09/2021.

2. On 23/09/2021 i.e. date of hearing, complainant was present and narrated the case while Respondent remained absent. There was no communication from the Respondent before this Court. In absence of Respondent and any communication from him, it was decided to decide the issue on the basis of complainant as well as reply of the Respondent.

3. The complainant approached Respondent/ builder for flat and an Agreement dated 18/08/2017 was entered between them for purchase of the same. The said flat No.

F-8 was on the first floor the building 'Shivam' with super built up area of 97.31 sq.mt. for a total amount of Thirty eight lakhs. As per the said agreement, the Respondent/ promoter was to deliver the possession of the said flat within period of 18 months from the date of execution of the aforesaid agreement except for the reasons mentioned therein. Accordingly, the promoter was required to deliver the flat to complainant on or before 18/02/2019.

4. It is the case of the complainant that he made all the payments to the Respondent as per schedule of payment as reflected in the aforesaid agreement dated 18/08/2017. First to six stages of payments as stipulated in the Agreement dated 18/08/2017 was made by complainant to the Respondent. However, during his visit to the building, complainant noticed several defects in construction including seepage of rain water through the walls, incomplete painting, incomplete electrical wiring etc. These defects were brought to the notice of Respondent on several occasions. However, the Respondent failed to rectify the said defects.

5. It has been pointed out by the complainant that by letter dated 25/11/2019, the respondent called upon the complainant to make payment for an amount of Rs.1,01,000=00 (Rupees One lakh one thousand only). The said demand letter was replied by complainant by his reply dated 31/12/2019 wherein, he had brought to the notice of the Respondent that the final painting of the said flat was not carried as per the agreement. By the said letter, complainant pointed out the earlier short comings in the flat again. As per complainant, Respondent was supposed to deliver the possession by February 2019 but till now he has not done so as the flat is not complete fully in terms of Agreement. Accordingly, complainant has sought the relief for delivery of possession of flat and compensation.

6. Respondent has filed the reply dated August 27, 2021. In the reply, Respondent has denied all the charges leveled against construction by Complainant. Regarding delay in completion of project, Respondent has pointed out that the said project was to be completed within 18 months. However in terms of Agreement, he was entitled to extend the date for delivery of possession for any or all of the following reasons:

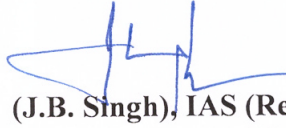
1. Non-availability of cement in open market.
2. Non-availability of any or all of the building materials.

3. Delay in obtaining the necessary occupancy certificate, after the same has been applied for
 4. Any government curbs, restriction on civil construction affecting the construction or commencement of the building on which the flat alongwith the car park agreed to be sold is located.
7. Further, respondent obtained the necessary registration in respect of the Project under the provisions of the Real Estate (Regulation and Development) Act, 2016 with the Real Estate Regulatory Authority, Goa. At the time of Registration under RERA, respondent represented to the RERA Authorities that the scheduled date of possession in respect of the project would be revised to June 30, 2020. Respondent also informed complainant that project Registration was valid upto June 30, 2020 and scheduled date of possession would be revised accordingly. In view of the judgments NGT and the High Court and orders of Govt. of Goa implementing a ban of illegal sand mining and further in view of the Govt. of Goa banning transportation of minor minerals in rainy season, the same impacted the progress of the work completion as highlighted in clause No.6 (II) of the Agreement to Sell.
8. As per reply of the Respondent, on November 25, 2019, upon completion of painting, the Respondent issued a demand letter for the payment of the 7th installment of Rs. One lakh due and payable by the Complainant and his wife under the terms of the Agreement to Sell. However, Respondent after a more than one month replied that painting of the flat has not been done properly. As per Respondent, the pictures relied upon the complainant himself reveals that the painting of the flat is completed.
9. I have considered the case. As per agreement dated 18th August 2017, the entire amount of Rupees thirty eight lakhs was to be paid by Complainant in eight installments linked to the stages of construction. Out of eight installments, six installments were paid by Complainant as and when demands were raised by Respondent. Seventh installment was to be paid after painting as per agreement. However, when this demand for seventh installment was raised by Respondent, the same was not paid by Complainant on the ground that painting has not been done properly. Complainant also pointed out several defects in the construction and communicated to Respondent. Respondent did not rectify those defects and at the

same time raised final bill including 8th installment which complainant refused to pay on the ground that Respondent has not rectified the defects.

10. Now, Complainant has requested for direction to complete the project so that he can take possession of the same. Complainant has also requested for compensation for defective construction and losses suffered by him. As far as completion of the building is concerned, as per Respondent, it is already completed. But as per Complainant, its construction is not proper. Under such circumstances, I feel, it will be appropriate to determine compensation in the first instance for any defects etc. and after adjusting this compensation with the installments due the further action can be taken.
11. Power to determine the compensation under the provisions of RERA is vested in Adjudicator as per Section 71 of the Act. Therefore, Case is referred to Adjudicator for determination of Compensation in this case under the provisions of the Act. Once, compensation is determined, after adjusting the same with installment due, delivery of the flat be given to Complainant.

Order accordingly,


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

To,

1. **Suraj R. Sangelkar,**
H.No.124, Flat No.1,
2nd Floor, Ekawade Building,
Cotta Amona, Quepem-Goa, 403705.
2. **Madhav Talak,**
Ashiyana, Comba,
Margao-Goa, 403601.