

## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (121)/2024/1092

Date: 16 /08/2024

### BEFORE THE ADJUDICATING OFFICER

**Mr. Prakash Balkrishna Naik,**

S/o Late Balkrishna Naik,

Aged 68 years, Married,

Retired, Indian National,

R/o Flat No. 607, 6<sup>th</sup> Floor,

Elements by Shantilal Co-operative Housing Society Ltd.,

Near Joggers Park, Chicalim,

Mormugao, Goa-403711.

.....Applicant

*Versus*

**The Shantilal Real Estate Services,**

Represented by partners,

1. Mr. Ashwin Cholera,

2. Hemant Cholera,

C/o 301, 3<sup>rd</sup> Floor, Anand Trade Centre,

Next to MMC Building,

Vasco, Goa-403802.

.....Respondent

Ld. Advocate Shri Narayan Pai for the applicant.

Ld. Advocate Shri Parag Rao along with Advocate Ajay Menon for the respondent.

### ORDER

(Delivered on this 16<sup>th</sup> day of the month of August, 2024)

This order shall dispose of the application filed by the respondent at exhibit  
328/c for inspection of the flat.

2. Briefly stated, the case of the respondent is as follows:-

That the applicant has relied upon certain photographs claiming to be the photographs of the interiors of flat no. 607 of the applicant and based on the same it is claimed that the defective work has been carried out. The photographs appeared to be recent and are relying upon the report of M/s Ideal Homes. The subject matter of the application does not pertain to open and common areas of the said project accessible to the respondent. The applicant alleged defective work based on the photographs and the report of the M/s Ideal Homes. The respondent has no opportunity to physically inspect the flat to ascertain whether the areas pertain to interiors of the said flat and in order to enable the respondent to deal with the allegations made on the basis of above documents, the respondent may be permitted to inspect the premises along with technically qualified engineers/architects on a particular day and time convenient to both the parties and such an exercise would be beneficial to the parties concerned as well as the Hon'ble Authority to decide the matter. Hence, the application.

3. The respondent filed a reply inter-alia contending that the application is not tenable in law and in fact is a gross attempt by the respondent to prolong the proceedings and frustrate the applicant to the relief sought. The Hon'ble Authority has no jurisdiction to try and entertain the application as also no fruitful purpose would be served and therefore, the application be dismissed.

4. Argument heard. Notes of written argument came to be placed on record by the respondent.

5. Admittedly, the respondent has not filed any reply after they were duly served with the application for compensation. The respondent instead of filing reply filed an application on 13.06.2024 for deferment of the hearing claiming that the Hon'ble Adjudicating Officer has taken a view of the report submitted by M/s Ideal Homes with respect to the order passed in case no. 4/RERA/Adj. Matters(109)/2023 between the Element by Shantilal Co-operative Housing Society Ltd. vs. The Shantilal Real Estate Services and that it may not be possible to take any other view with respect to the report of M/s Ideal Homes. There cannot be any dispute that the report of M/s Ideal Homes in the above case is different from the report of M/s Ideal Homes filed by the applicant in the present case which is pertaining to the interiors of the flat of the applicant.

6. Be that as it may, the entire application filed by the applicant along with the documents is silent about any photographs of the said flat as no photographs are relied. The applicant however has relied upon the Inspection reports of Ms/ Ideal Homes and MACJ with respect to the above flat along with the estimate which copies have been already furnished to the respondent. Admittedly, the respondent was sent a notice asking to rectify and repair all the issues of concern in the said

flat, which was ignored by the respondent nor any person was deputed to inspect the flat before filing the present application.

7. Ld. Advocate Shri Parag Rao for the respondent has submitted that the provision contained in sub-section 3 of Section 71 of the RERA Act confers wide powers of the Authority to conduct an inquiry. He further submitted that under Rule 7 Sub-Rule 2 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal Etc.) Rules, 2017 once the applicant prefers an application before the Adjudicating Officer, he shall follow the procedure to call for documents/evidence which in his opinion may be useful or relevant to the subject matter for inquiry and therefore, the Authority has jurisdiction to grant the application.

8. Needless to mention, the respondent has not rectified or repaired the issues of concern inspite of issuing notice to the respondent and ignored repairing the said flat nor filed any reply to the said notice. The respondent has also not filed any reply to the application disputing or admitting the claim of the applicant and instead filed the application for inspecting the flat. The applicant is relying upon the inspection reports of M/s Ideal Homes and MACJ who have taken various photographs of alleged interiors of the flat and have given their findings. The subject matter of the application does not pertain to open and common areas of the

said project accessible to the respondent. The applicant alleged defective work based on the reports of the M/s Ideal Homes and MACJ.

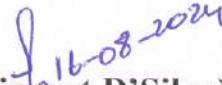
9. The respondent had an opportunity to physically inspect the flat when the notice was issued to it to rectify and repair all the issues of concern, which they ignored. They also filed an application for deferment dated 13.6.2024 with unjustified and gratuitous reasons. The respondent is not entitled to file the application without filing the written statement nor provision of Section 71(3) of the RERA Act or Rule 7 Sub-Rule 2 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal Etc.) Rules, 2017 permit the respondent to avoid filing reply/written statement. Nonetheless, if the respondent is not allowed to inspect the flat serious prejudice would occasion to the respondent in filing the reply and or to challenge the reports relied upon of M/s Ideal Homes and MACJ with respect to the alleged defects in the flat of the applicant. The inspection of the flat by a technically qualified engineer/architect and a report prepared thereto would meet the ends of justice and is in consonance with the principles of natural justice, subject to payment of cost to the applicant. Hence, the application stands granted.

10. In the result, I pass the following:-

**ORDER**

(i) The application for inspection of flat of the applicant stands allowed.

- (ii) The applicant shall permit the respondent to inspect the flat no. 607 in the presence of technically qualified Engineer and/or Architect on 16.08.2024 to 31.08.2024, subject to payment of cost of ₹20,000/- (Rupees Twenty Thousand only) to the applicant, condition precedent.
- (iii) The respondent shall file the reply/written statement as last opportunity on 20.09.2024 at 12:00 p.m.

  
(Vincent D'Silva)  
Adjudicating Officer,  
Goa RERA

Panaji, Goa.  
Date: 16.08.2024.