



# GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

101, 1<sup>st</sup> Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA

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F.No:3/RERA/Complaint(107)/2020/ 553

Date: 28/10/2020

**Rohit Savio Varela**

Block E 407 408,  
Devashri Gardens, Sucoro,  
Bardez-Goa, 403501.

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**Complainant**

V/s

**Naiknavare Constructions Pvt.Ltd.,**

1204/4, Ghole Road-Shivajinagar,  
Pune-Maharashtra, 411004.

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**Respondent**

## ORDER

**Dated: 26/10/2020**

This Order shall decides the application filed by the respondent seeking permission to proceed ahead under Arbitration Clause 12 of the Agreement for Sale dated 28/07/2014 between the complainant and the respondent. The respondent stated that the agreement provided for dispute redressal taking recourse to the provisions under Arbitration and Conciliation Act, 1996.

2.1. The brief facts of the case is that complainant Shri. Rohit Savio Varela, resident of Block E 407 408, Devashri Gardens, Socorro, Bardez-Goa against Naiknavare Constructions Pvt.Ltd., 1204/4, Ghole Road- Shivajinagar, Pune Maharashtra, for not yet handing over of apartment H-201 in project "Esmeralda" located at plot No.16, Survey No 52/1 and 53/1, near Kalavati Temple, Bomanbhat, Mercedes, Tiswadi, North Goa. The project was registered under the Authority with Registration No.PRGO05180276, "Esmeralda project-2" as an on-going project.

2.2. The complainant stated that he has booked said apartment on 29/03/2014. He has already paid Rs. 58, 19,155/- (Rupees Fifty eight lakhs nineteen thousand and one hundred fifty five only) which amounts to the sum of 80% of the total cost. The apartment should have been handed over by February 2017 including 06

months extension (24 months). He was promised by the respondent to handover the apartment by May 2018, which further postponed to December 2019, and again postponed to February 2020.

2.3. Due to delay in handing over the apartment and incomplete work on the site, the complainant sought from the Authority for intervention to refund of money already paid with interest and direction to the promoter to hand over the apartment in next 04 months i.e. by April 2020 or else refund all money with interest.

3. The Authority has issued notice for hearing to both parties on 20/02/2020. The complainant was present. Shri. Pritesh Shetty, learned Advocate represented on behalf the promoters. Shri. Shetty also filed an application under Section 8(1) of the Arbitration and Conciliation Act, 1996 seeking permission of the Authority to settle the dispute between the complainant and the respondent as per provisions of Agreement for Sale dated 28/07/2014. A copy of the plea given to the complainant to file reply if any before next hearing.


4. Again both the parties were heard on 20/03/2020. Complainant failed to file reply to the respondents plea to settle the dispute as per sale-purchase agreement. The respondents failed to file reply to the complaint of the complainant for refund of money already paid to the respondent along with interest. The learned advocate representing the respondent has stated that the said project has got extension upto June 2020 from the Authority. The Complainant agreed to wait till June 2020 for possession in view of the extension. The complainant has also raised issue of compensation for delay. To the suggestion of the Authority both parties agreed to sit together to settle the issue of compensation.

5. With regard to the respondents plea for permission of the Authority to settle the dispute as per provisions under the sale- purchase agreement dated 28/07/2014 through Arbitration is concerned, that the Real Estate (Regulation and Development) Act, 2016 not only intended to regulate and develop real estate sector but also aims to protect the interest of the consumer. Once, the project is registered under the Act, it is bound by its provisions, therefore, the arbitration as per sale- purchase agreement is not in harmonious with the spirit of the Act. One of the functions of the RERA enlisted in Section 32(g) of the Act is to facilitate amicably conciliation of dispute between the parties through dispute settlement forum set up through consumer or promoter association. Until constitution of such a forum, the Authority strive to settle the disputes amicably between the parties, failing which, adjudicate it.

6. The Real Estate (Regulation and Development) Act, does not bars the jurisdiction of any other judicial or quasi-judicial body except the Civil Court is a grey area as far as jurisdiction is concerned. While the Act is not clear with respect to whether the dispute under the Act can be referred or not, Section 88 and 89 of the Act read together create an overriding effect of the Act i.e. Section 88 of the Act states that “the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law” and Section 89 of the Act states that “the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force”. The spirit of the Act is to speedy resolution of the disputes as one of the main objective and also to create a body for such a resolution and any provision being inconsistent with the remedy provided under the Act, would be rendered inapplicable to the extent.

7. Though there is an agreement for sale-purchase between the parties involving Arbitration Clause, the intent of the Act clearly appears to be that all disputes arising under the Act once the project is registered is to be governed with and are not be referred to Arbitration. Therefore, the plea of the promoter to refer the dispute for resolution through arbitration as per the sale- purchase agreement is not admitted. The matter stands decided accordingly.

8. Therefore, the respondent is directed to file response to the complaint of the complainant along with progress with respect to settle the matter of handing over possession of the apartment as well as compensation. The complainant is also directed to file reply with respect to the same.

  
S.Kumaraswamy, IAS(Retd.)  
Chairperson, Goa RERA

To,

1. **Naiknavare Constructions Pvt.Ltd.**,1204/4, Ghole Road-Shivajinagar, Pune-Maharashtra, 411004.
2. **Rohit Savio Varela**, Block E 407 408,Devashri Gardens, Sucoro, Bardez-Goa, 403501.