GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (379)/2023/443 Date:05/03/2024

1.Mrs. Anita Kiran Kendadmath and
2. Shri Kiran ShantayyaKendadmath
Both resident of Kiran Residency,
10th Cross, Saptapur, Dharwad,
580001, Karnataka. **.....Complainants**

Versus

1.Shri Pedro Joaquim CorreiaAfonso,
2. Smt. Isabelle Coelho CorreiaAfonso
Both resident of House No. 573, Pulwado,
Benaulim, Salcete, Goa-403716.

3. Shri ShrinivasDattatrayaThorwat
AmbicaRealty, AT-1, 3rd floor,
Pancharatna Co-operative Housing Society.
Above Borkar Super Stores,
Margao, Salcete, Goa-403601.

4. Smt. Vrishali Vilas Dumale,
C/o Shrinivas D. Thorwat
Villa #A/14, CD Countryside,
Near Hotel Shivam,
Fatorda, Margao, 403602. **.....Respondents**

ORDER
(Dated 04.03.2024)

This Order disposes of the application for amendment of the complaint dated 17.10.2023 filed by the complainant seeking reliefs for delivery of possession, interest in delaying the possession and direction to register Sale deed in favor of the Complainants. As stated, the said complaint was filed on the basis of Agreement for Sale inter alia alleging non adherence to some of the stipulations contained the Agreement for Sale particularly schedule VII relating to building specifications executed between the complainant & Respondent. It was further stated by the complainant that some new facts came to be revealed for first time particularly that the plan of the Villa is revised and alleged that the same was done without informing or taking prior consent of the Complainant.

The Complainant further submitted that he was kept in dark bythe Respondent no.3 and 4 as they regularly demanded payments but never informed about revision in the plan of the said Villa and the Complainants made payment on understanding that the Respondents are adhering to terms of the agreement and the said Villa would be constructed as per plan annexed to the agreement. It is stated that as per clause 2 of the Agreement for Sale, particularly schedule VII relating to building specifications a prior consent in writing is mandatory in respect of variations or modifications which would adversely affect the said Villa. It is stated no such consent was obtained by the Respondent no.3 and 4 and the revision of plan of the said Villa is done without

proper authorization and evidently in contravention of Section 14 (2) (i) of the RERA Act as they have deliberately not obtained any prior consent of the Complainant before putting of plans of the said Villa for Revision.

The complainant further stated that the respondent No.3 and 4 are forcing the Complainants to take possession of the said Villa without it being completed as per the Agreement and also asking for further payment without completing the said Villa. It was further stated that the Respondent No.3 and 4 till date has not even provided copy of revised plan. The Complainants have informed respondent that stating once work pending is completed in entirety as per the agreement, the Complainants are ready and willing to pay balance amount as stated in the agreement.

It was thus submitted that in view of the above, the complainants are seeking to amend the complaint to incorporate facts which have occurred subsequently after filing of complainti.e. the Respondent no. 3 and 4/ developer has revised the plans without taking prior consent of the Complainants and, it came to his notice when the respondents filed their reply. It was further submitted that the amendment sought for is necessary for the purpose of determining the real questions in controversy between the parties and no prejudice of whatsoever nature will be caused to the Respondent if the amendment is granted.

The respondent in its say has stated that filing of the application under reply is an after thought and an act on the part of the Complainant to cause prejudice to the Respondents. It was further stated that this Authority had fixed the matter for AIE of the complainants which was filed on 21.02.2024 and the Matter, was further fixed for filing of AIE of the Respondents, which was filed 04.03.2024. It was further submitted that the proceedings filed by the Complainants are misconceived and the Respondents have filed their reply dealing with the contents of the complaint. It was further contended that the Complainants cannot expand the scope of the complaint as filed on the plea as sought to be contended in the application under reply particularly when the said plea otherwise is frivolous. It was also submitted that the stand/defense taken by the Respondents in their reply dated 08.01.2024, is inline with the stand notified to the Complainants vide reply dated 24.10.2023 which was in response to the Advocate's notice dated 12.09.2023 sent by the complainants before the filing of their AIE. In such circumstances, the statement/ contentions of new fact being revealed, as sought to be suggested in the application under reply, would be misrepresentation, intentions in doing so is to mislead the Authority.

It was further averred that the proposed amendment is malafide, aimed to cause prejudice to the defense setup by the Respondents, which was to the knowledge of the Complainants as way back as October, 2023 upon receipt of the reply dated 24.10.2023 and thereby to dislodge the case of the Respondents.

The Complainants are therefore not entitled to seek amendment, which amendment is otherwise not relevant to the case setup by the Complainants.

It was further submitted that the Complainants are attempting to widen the scope of the present proceedings and by the proposed amendment a new set of case is sought to be introduced. Also that the proposed amendment is filed with delay and latches and at any rate filed to cause serious prejudice to the Respondents. The respondent further sought to deny the statement of monitory terms/ prejudice being caused to the Complainants alleged and stated that the proposed amendment is neither necessary nor relevant.

It needs to be noted that the complainants had filed the initial complaint seeking reliefs for delivery of possession, interest in delaying the possession and direction to register Sale deed in favor of the Complainants.The perusal of the complaint further reveals that the complainant had also alleged non-adherence by the respondents to the provisions of the Agreement for Construction and sale more particularly in respect of schedule VII relating to building specifications.

The main contention of the complainants seeking amendment is with regard to knowledge of new facts i.e. revision of the plan of the subject property without taking prior consent of the complainants. The complainant have further sought to support its contention by stating that as per clause 2 of the Agreement for Sale, a prior consent in writing is mandatory in respect of variations or modifications which would adversely affect the said Villa. It is stated that since

no such consent has been obtained by the Respondent no.3 and 4, the revision of plan of the said Villa is done without proper authorization. It was further stressed that the Respondent no.3 and 4 were thus acting in contravention to Section 14 (2) (i) of the RERA Act as they have deliberately not obtained any prior consent of the Complainants before putting of plans of the said Villa for Revision.

In reply to the present application filed by the applicants, the respondents have denied the contentions of the applicants generally and have sought to plead that the complainants were aware of the revisions of the plan. And that the proposed amendment is malafide, aimed to cause prejudice to the defense setup by the Respondents, which was to the knowledge of the Complainants as way back as October, 2023 upon receipt of the reply dated 24.10.2023 and therefore the Complainants were not entitled to seek amendment which otherwise is also not relevant to the case setup by the Complainants.

In view of the complainants having alleged deviations from provisions of the Agreement for construction and sale particularly in respect of schedule VII relating to building specifications at the very initial stage and also the fact that Section 14(2) casts a distinct duty upon the promoter to obtain the previous written consent of the Applicant allottee with regard to any changes in the plan and also vests substantial right in the allottees of due information and the option of either agreeing or disagreeing to the changes proposed, amendments sought

by the complainants do not appear to be expanding the scope of the complaint already filed or cause any prejudice to the respondents. The amendment application is accordingly allowed in the interest of justice particularly when the respondent has neither denied the revision of plan of the subject villa nor even claimed that it had taken any previous written consent of the complainants. Further, in view of the plea of the respondents that it would cause serious prejudice to the defence of the complaint set up by it since having filed its AIE already, the Respondents are hereby given opportunity to file further submissions by filing additional AIE or amended AIE and relevant documents if any. Needless to add that in response, complainants may also file additional submissions if so required at its end.

04/03/24

(Virendra Kumar, Retd. IAS)
Member, Goa RERA