



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(287)/2021 /694

Date: 19 /07/2023

1. Mr. Ryan W. Fernandes,

2. Mrs. Swapna Sasi,

Both residents of Flat No. GF-1,
Babuso Enclave, Jai Kisan Club Road,
Opp. Jal Vayu Villas, Sancoale,
Goa-403726.

.....Complainants

Versus

1. M/s Zuari Industries Limited,

Mr. Rajesh S. Menon,
Authorised Signatory
Jai Kisan Bhawan
Zuarinagar, Goa-403726.

2. M/s Zuari Industries Limited,

Mr. Alok Banerjee,
Authorised Signatory
1st Floor, Adventz Centre,
No. 28 Union Street, Bangalore-560001.

3. M/s Zuari Infraworld India Limited,

Mr. Rajesh S. Menon,
Authorised Signatory
1st Floor, Adventz Centre,
No. 28 Union Street, Bangalore-560001.Respondents

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ORDER
(Dated 19.07.2023)

Complaint was filed under section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') wherein the complainants have prayed this Authority to direct the respondents to handover possession of unit 312, Block C in the project known as "Zuari Rain Forest" situated at Zuarinagar, Sancoale, Goa as per the terms and conditions of Agreement of Construction and Sale dated 23.02.2018; to direct the respondents to pay the interest at the rate of 15% per month on the sale consideration of ₹49,70,275/- (Rupees Forty Nine Lakhs Seventy Thousand Two Hundred and Seventy Five only) from 25.08.2021 till the actual handing over of possession of the aforesaid unit and to direct the respondents to refund the amount of ₹ 30,000/- (Rupees Thirty Thousand only) which was paid towards registration process and legal fees along with interest thereon at the rate of 15% per month from 25.08.2021 till actual handing over of possession of the said unit.

2. It is the case of the complainants that an Agreement for construction and Sale was executed between the respondents 1 and 2 and duly registered on 23.02.2018 in respect of the purchase by the complainants of a 2BHK apartment i.e. unit 312, Block C in the project known as "Zuari Rain Forest" situated at Zuarinagar, Sancoale, Goa for a total consideration of ₹49,70,275/- (Rupees Forty Nine Lakhs Seventy Thousand Two Hundred and Seventy Five only), which amount, according to the complainants has been paid to the respondents 1 and 2.
3. According to the complainants, in respect of the said apartment, Deed of Sale has been executed and duly registered on 25.08.2021, however according to the complainants, prior to the registration of the said sale deed, the Dy. Manager of Zuari Infra world by name Mr. Anil Kumar demanded from the complainants ₹30,000/- (Rupees Thirty Thousand only) towards registration process and legal

fees and the complainants paid the said amount to Mr. Anil Kumar outside the office of the Sub-Registrar, Mormugao, Vasco in order to avoid delay in the registration process.

4. The complainants have submitted that they are entitled for refund of the aforesaid amount of ₹30,000/- as the same was paid contrary to the waiver given as per the booking form dated 01.10.2016. It is further submitted that prior to taking possession of the said apartment, the complainants inspected the said apartment and were disappointed by the condition of the said apartment and accordingly by e-mail dated 15.09.2021 sent to the respondents no. 1 and 2, various shortcomings were listed and request was made for the rectification of the same.
5. According to the complainants, because of numerous shortcomings in the said apartment, its possession was not taken by the complainants and the respondents were informed of the same and thereafter another e-mail dated 23.09.2021 was sent to the respondents requesting early rectification of the shortcomings of the said apartment. The complainants have submitted that vide various e-mails, the said shortcomings were pointed out to the respondents including an e-mail dated 03.10.2021 but because of non compliance of the said shortcomings by the respondents, the complainants engaged the services of a professional agency to do the required quality control/ check in respect of the said apartment and accordingly inspection was made of the said apartment and report was prepared and e-mailed to the respondents for needful action but no action was taken by the respondents to rectify the shortcomings. The complainants have submitted that the shortcomings as stated in the report of the expert pertain to “the wrongful/ incorrect placement of flooring tiles, incomplete installation of bathroom requirements, cracks seen in tiles etc.” The complainants have also referred to the legal notice dated 10.11.2021 issued to the respondents in this regard. Hence the prayers of the complainants as stated above.



6. In the reply/ additional replies filed by the respondents 1 and 2 preliminary objections were raised to the effect that the instant complaint is not legally maintainable; that the complainants have not approached this Authority with clean hands; that the construction of the building has been completed within the time line and even the occupation certificate dated 04.06.2020 has been obtained by the respondents; that the possession of the said apartment was offered and accordingly the complainants have been in possession of the said apartment since 25.08.2021; Section 18(1) of the RERA Act is not attracted in the instant case; that the possession of the said apartment was given to the complainants on the day of the execution of sale deed (which statement by way of amendment was substituted to the earlier statement that the possession was given on the next day of execution of the sale deed); that after taking possession of the said apartment on 25.08.2021, the complainants handed over the key of the said apartment to the respondents 1 and 2 for carrying out certain minor repairs and the said respondents after completing the minor repairs handed over the key to the complainants on 08.04.2022 and the complainants were fully satisfied of the said repairs and acknowledged their satisfaction vide letter dated 08.04.2022; that the “repairs or snags” listed by the complainants do not fall within the purview of Section 18(1) of the RERA Act; that after the issuance of occupancy certificate by the competent authority, the said property is deemed to be fit to be occupied by the complainants.
7. Regarding the disputed amount of ₹30,000/- (Rupees Thirty Thousand only) taken towards registration charges, it is submitted by the respondents 1 and 2 that the said charges are incidental to the miscellaneous expenses for the registration of the sale deed which is usually borne by the purchaser only and further since the complainants had taken the possession of the said apartment, the doctrine of estoppel comes into picture.



8. According to the said respondents, since the key of the said apartment is handed over to the complainants and taken by them after their satisfaction, the instant complaint has become infructuous and hence liable to be dismissed.
9. On merits the respondents have reiterated that the complainants inspected the premises before the registration of sale deed and no issues were raised by them at that time. It is stated that even after completing all the works including additional works by the respondents, the complainants filed the instant false complaint.
10. Affidavit in rejoinder was filed by the complainants wherein it is inter alia stated that possession of the said apartment was handed over by the respondents to the complainants on 08.04.2022 and the same is clear by the “handover letter” which was given to the complainants on the said date. According to the complainants the possession of the said apartment was given by the respondents to the complainants on 08.04.2022 and not on 25.08.2021. Thus, the complainants have stated in the affidavit in rejoinder that “the complainants submit that as stated herein above, the possession of the apartment was taken only on 08.04.2022 after the rectification of some of the incomplete issues that were raised on 25.08.2021”.
11. In the additional reply dated 23.06.2022, the respondents 1 and 2 inter alia stated that since it is the case of the complainants that the amount of Rs. 30,000/- was paid to Zuari Infra World India Ltd. which is a separate legal entity, the said company is a necessary party to the present proceedings. Accordingly, on the complainants’ application dated 13.09.2022 for impleading Zuari Infra World India Ltd., order was passed on 27.12.2022 allowing the complainants to add M/s Zuari Infra World India Ltd. as respondent no. 3 and also allowing the complainants for substituting the name of M/s Zuari Global



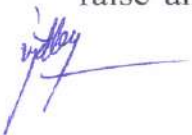
Ltd. with Zuari Industries Ltd. and accordingly the complainants took steps for addition of party and substitution of party.

12. In the additional reply, the respondents 1 and 2 stated that the prayer of the complainants regarding the refund of ₹30,000/- with interest thereon is not legally maintainable with this Authority and even otherwise such charges are collected as incidental and miscellaneous expenses for the execution and registration of the sale deed and such charges are collected for the expenses borne and services provided by the liaison officer of the respondents for the smooth functioning of the procedure of registration and expenses incurred for the same. It is stated that the relief, if maintainable, would lie within the exclusive jurisdiction of the Adjudicating Officer as the claim of the complainants is for the period after 25.08.2021.
13. The respondents have referred to clause 3 of the sale deed dated 25.08.2021 which expressly stipulates and acknowledges that the purchasers/ the complainants herein have taken vacant, lawful and exclusive possession of the said apartment on the date of the said sale deed i.e. on 25.08.2021. According to the respondents the said sale deed is duly registered and binding on the parties and it is now not open to the complainants to falsely contend that the possession of the said apartment was not handed over on the date of the execution and registration of the said sale deed. The respondents clarified a typographical mistake/ error in para 3 of their reply dated 09.05.2022 and submit that it was erroneously stated in the earlier reply that the possession was offered to the complainants on the next day of execution of the sale deed. The respondents reiterated and asserted that, as expressly acknowledged and stated in the sale deed dated 25.08.2021, vacant, lawful and exclusive possession of unit no. 312/ the said apartment was taken by the complainants on the date of the sale deed i.e. 25.08.2021 and that after taking possession of the said apartment on 25.08.2021 the complainants raised the issue of some alleged snags in the said

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unit and handed over the keys of the said apartment to the respondents to have a look at the said alleged snags. It is further stated that even though the alleged minor snags were not related to any structural defects, however out of goodwill, the respondents at their own cost carried out the necessary minor changes in the said apartment to the satisfaction of the complainants. The respondents emphasized on the letter dated 08.04.2022 from the complainants addressed to the respondent, wherein the complainants certified that they were fully satisfied with the work and that the keys have been handed over by the respondents to the complainants. Hence, according to the respondents since the vacant, lawful and exclusive possession of the said apartment was already taken by the complainants on 25.08.2021, the complainants are not entitled to any interest as claimed or otherwise.

14. Reply was also filed by the respondent no. 3 which was added in the complaint by way of amendment. The respondent no. 3 submitted in the reply that it is not a promoter as defined in the RERA Act and as such, any alleged or purported disputes between the complainants and respondent no. 3 cannot be a subject matter of proceedings under the RERA Act and hence the prayer of the complainants for refund of ₹30,000/- along with interest may be dismissed. It is submitted that the reliefs as prayed in the complainant are not legally maintainable before this Authority.
15. According to respondent no. 3, the charges of ₹30,000/- were taken as a matter of practice by Zuari Infra World India Ltd. not only from the complainants but from all the purchasers of the project as incidental and miscellaneous expenses and costs incurred for the execution and registration of the sale deed before the Sub Registrar and such amount is usually borne and paid by the purchaser only.
16. It is further submitted by the respondent no. 3 that the complainants did not raise any grievance at the time of paying the said amount of Rs. 30,000/-and



availing the services of the respondent no. 3 for the purpose of facilitating the registration process without any objection and that once having availed the services of respondent no. 3 and completing the registration process smoothly, it is not open to the complainants to claim a refund of the said amount and they are estopped from doing the same. Respondent no. 3 has stated that even on merits, the claim for refund of the said amount of ₹30,000/- is devoid of any merits and hence the said prayer may be dismissed.

17. Oral arguments were heard from Ld. Advocate S. Henriques for the complainants and Ld. Advocate Y. V. Nadkarni for the respondents.
18. After going through the entire records of the case, the points which come for my determination along with the reasons and findings thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the complainants are entitled to the prayer of handing over of possession of the said apartment by the respondents 1 and 2 as per the terms and conditions of the Agreement of Construction and Sale dated 23.02.2018 and after rectification of the snags by the said respondents in terms of the experts report at exhibit 'E' colly?	In the negative.
2.	Whether the respondents no. 1 and 2 are liable to pay interest at the rate of 15% per month on the sale consideration of ₹49,70,275/- from 25.08.2021 till the actual handing over of possession of the said unit to the complainants?	In the negative.
3.	Whether the complainants are entitled for the refund of the amount of ₹30,000/- with interest thereon per	In the negative.

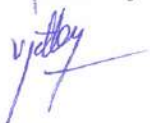
Y. V. Nadkarni

month until its repayment by the respondents?	
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REASONS

Points 1 and 2

19. Both the points are taken up together for the sake of brevity as they are inter connected and reasons for deciding the same overlap each other.
20. Regarding possession of the unit 312, Block C in the project known as “Zuari Rain Forest”, Zuarinagar, Sancoale Goa, it is the case of the complainants as per the prayers ‘c’ and ‘d’ of the complaint that the respondents have not handed over the said unit to the complainants though the sale deed has been executed in favour of the complainants and also duly registered on 25.08.2021. Hence in prayer ‘d’ of the complaint, the complainants have prayed this Authority to direct the respondents to **“hand over possession of unit 312, Block C, in the development known as “Zuari Rain Forest”, Zuarinagar, Sancoale, Goa complete in all respects as per the terms and conditions of agreement of construction and sale dated 23.02.2018 after rectification in terms of the report at exhibit ‘E’ colly”** (emphasis supplied) and in prayer ‘c’ of the complaint, the complainants have prayed this Authority to direct the respondents to pay interest at the rate of 15% per month on the entire sale consideration of ₹ 49,70,275/- **“ from 25.08.2021 until the actual handing over of the possession of unit”**.
21. From the aforesaid prayers, it is clear that it is the case of the complainants that the respondents have not handed over the possession of the said units to the complainants. However, in the affidavit in rejoinder dated 31.05.2022, in para 7 therein, the complainants have submitted that possession of the said unit was handed over to them on 08.04.2022. The said para 7 of the affidavit in rejoinder filed by the complainants is worth reproducing hereunder:-



“The complainants submit with respect to para 1 of the preliminary objections that the possession of the Apartment bearing Unit No. 312 has been handed over on 08.04.2022 pursuant to an email dated 02.04.2022 received from the same Respondents seeking to handover possession on 07.04.2022 however the same could not be done and handover/ possession was given 08.04.2022 to the Complainants, and the same is evidenced by the handover letter which was given to the Complainants on the said date and consequently the statement at para 1 that the Complainants have been in possession of the Unit/ Apartment 312 since 25.08.2021 is a patently false statement to the knowledge of the Respondent. Infact, the Respondent has failed to place the true and complete facts before this Hon’ble Authority whereby the Sale Deed was executed on 25.08.2021 and an attempt was made to handover possession of the said Apartment to the Complainants, however, on account of the fact that the Apartment was incomplete in terms of the Agreement of Construction and Sale dated 23.02.2018, the possession was not taken by the complainants. Cop of email dated 02.04.2022 and handover letter dated 08.04.2022 is annexed as “Exhibit C Colly”.”



22. Firstly, though in the complaint and as per the prayers of the complainants, they have submitted that the possession is not given by the respondents and hence have prayed this Authority to direct the respondents to handover possession of the said unit as per the said agreement for construction and sale and after rectification in terms of the report submitted by them and also prayed this Authority to direct the respondents to pay interest at the rate of 15% per annum on the amount paid by the complainants and the interest to be calculated from the date of the execution and the registration of the sale deed i.e. 25.08.2021 till the actual handing over of the possession of the said unit, however as mentioned above, the complainants have changed their version and submitted in the affidavit in rejoinder that the complainants received the possession of the said unit on 08.04.2022.
23. Secondly, it is clear from the sale deed dated 25.08.2021 that the possession was handed over to the complainants by the respondents on the date of execution and registration of the sale deed i.e. 25.08.2021 and not on 08.04.2022, as alleged by the complainants. In this regard it is worth reproducing hereunder clause 3 of the said sale deed dated 25.08.2021:-

“3. The VENDOR does hereby, on this date of sale deed to the PURCHASERS vacant, lawful and exclusive possession of the SAID APARTMENT and having taken possession thereof, the PURCHASERS shall be entitled to exclusively hold, enjoy and possess the same absolutely and forever without any suit, unlawful eviction or interruption, claim and demand whatsoever from or by the VENDOR or the respective heirs of the partners, successors, or any of them or by any person/s claiming to or from, under or in trust for them or any of them in the SAID APARTMENT.” (emphasis supplied)



24. Credence has to be given to the aforesaid sale deed which is duly registered before the Sub Registrar and which sale deed is a conclusive proof of possession given to the complainants on the day of its registration. It is the case of the respondents that after taking possession of the said unit on the date of execution and registration of the sale deed i.e. 25.08.2021, the complainants raised some issues regarding minor snags, defects in the unit and handed over the keys of the said unit to the respondents to rectify the said snags in the unit and accordingly the respondents, at their own costs and as a matter of goodwill, rectified the minor snags and carried out the necessary minor changes in the said unit and handed over the keys of the said unit again to the complainants. According to the respondents, by communication dated 08.04.2022, the complainants have certified that they were fully satisfied with the work and that the respondents after doing the necessary work handed over the keys of the said unit to the complainants. The letter dated 08.04.2022 signed by the complainants and addressed to the Project Head of the respondent Zuari Rain Forest project fully supports the aforesaid statement of the respondents and hence the relevant portion of the same is quoted below:-

“The post snag works of unit no. 312 in the project known as “Zuari Rain Forest” situated at Survey no. 194/1-A, Jai Kisan Club Road, Near MES College Junction, in Village Sancoale, Mormugao Taluka, South Goa-403726.

All the available keys (with Builder for the purpose of snag work) has been collected by me and I do not have any issues pertaining to keys and snag works. Hence all keys of my unit are available in my custody.

I am fully satisfied with the workmanship and keys handed over to me.”



25. From the aforesaid letter dated 08.04.2022, it is clear **firstly** that the keys were handed over to the respondents by the complainants only to rectify the snags/ defects in the said unit, **secondly** that the respondents who took the keys from the complainants to rectify the snags, handed over the keys back to the complainants after doing the necessary work in the said unit and **thirdly** that the complainants were fully satisfied with the workmanship in the said unit before taking back the keys of the said unit from the respondents.
26. From the aforesaid it is clear that the possession of the said unit was given to the complainants on the date of the execution and registration of the sale deed i.e. 25.08.2021 and thereafter since the complainants were not satisfied with the work in the said unit, they handed over the keys of the said unit to the respondents to rectify the snags and the respondents at their own costs rectified the snags and did the necessary changes in the said unit, after which the respondents handed back the keys of the said unit to the complainants, who were then fully satisfied with the said rectification and workmanship in the said unit. Hence, the prayer of the complainants to direct the respondents to handover possession of the said apartment as per the terms and conditions of the agreement for construction and sale dated 23.02.2018 after rectification of the snags by the respondents, does not survive. The instant points are therefore answered in the negative.

Point no. 3

27. As admitted by the complainants, ₹30,000/- (Rupees Thirty Thousand only) was not given by the complainants to the promoter but the said amount was given by the complainants to respondent no. 3 i.e. M/s Zuari Infracore India Ltd., which is not a promoter and with which the complainants are not having any privity of contract.



28. Further, there is no document/ correspondence placed on record by the complainants to show that the respondents threatened the complainants to pay the aforesaid charges of ₹30,000/- or else the registration of the sale deed will not be done. It is worth mentioning that the said amount was paid by the complainants to the respondent no. 3 without raising any dispute with the said respondent at the time of such payment and without approaching this Authority with any grievance for the said payment, before making such payment to the respondent no. 3. By e-mail dated 24.08.2021 addressed to the complainant Ryan Fernandes, the Deputy Manager of respondent no. 3 requested the said complainant “to make the payment of ₹30,000/- (Rupees Thirty Thousand only) in cash towards the registration process and legal fees” to which the complainant Ryan Fernandes by e-mail dated 25.08.2021 submitted as follows:-

“Handed over Rs. 30,000/- in cash to Mr. Anil Outside Sub-Registrar office, as requested”

From the aforesaid, it is clear that the complainants paid the amount of Rs. 30,000/- willingly to the respondent no. 3, which as stated above, is not a promoter, for registration services prior to the registration of the sale deed dated 25.08.2021.

29. As admitted by the complainants, the entire amount of ₹30,000/- was paid by the complainants to the respondents before the execution and registration of the sale deed and afterwards filed the instant complaint submitting herein that the



aforesaid amount was wrongly paid by the complainants and wrongfully taken by the respondents before the registration of the sale deed and hence asked for the refund of the same. However, there is no provision in RERA Act under which the complainant after registration of the sale deed and becoming the owner of the premises can ask for the refund of any amount paid by the complainant to the respondent before the registration of the sale deed. **Section 18** of the RERA Act which deals with refund of the amount paid by the complainant to the respondent pertains to those cases where “the promoter fails to complete or is unable to give possession of an apartment, plot or building”. Moreover, the complainant can even ask from this Authority under **Section 18** of the RERA Act the interest on the principal amount for the delay in giving possession to the complainant even if the possession has been taken by the complainant. In the instant case, not only the project is complete and the possession of the said flat is handed over to the complainants but also the sale deed was executed and registered on 25.08.2021. Hence, Section 18 of the RERA Act does not apply to the instant case.

30. Moreover, the amount claimed by the complainants from the respondents does not pertain to the “real estate project” within the purview of **Section 2(zn)** of the RERA Act, which is reproduced hereunder for ready reference:-

“2.....

(zn)"real estate project" means the development of a building or a building consisting of apartments, or



converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;”

31. From the aforesaid definition of the “real estate project” it is clear that it pertains to those projects which are under development for the purpose of selling the same and not those projects which are completed, the possession of which is given to the allottees and which are already sold to the allottees by executing and registering the sale deeds, as is the case in the instant complaint.
32. After the sale deed is executed and registered, right is given to the allottee to approach this Authority by invoking **Section 14(3)** of the RERA Act for compensation in case any structural defects are not rectified by the promoter inspite of giving notice to the promoter for such rectification. In this regard it is significant to refer to **Section 11 (4) (a)** of the RERA Act, which is reproduced hereunder for ready reference:-

“11. Functions and duties of promoter:-.....

(4) The promoter shall –

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and



regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, 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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of Section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed”

From the aforesaid Section 11(4)(a) of the RERA Act it is clear that all the obligations, responsibilities and functions of the promoter under the RERA Act/ its rules and regulations are only “till the conveyance of all the apartments, plots or buildings”, as the case may be, though the responsibility of the promoter with respect to the structural defect or any other defect as referred in section 14(3) shall continue even after the conveyance deed is executed and registered. In the instant case, the complainants in whose favour the sale deed is already executed and registered have not approached this Authority under Section 14(3) of the RERA Act for any structural defect or any other defect and hence after the registration of the sale deed, the respondents have no further responsibility or obligation.



33. Thus, there is no provision in the RERA Act under which the allottee after taking possession of the premises and after the registration of the sale deed and becoming the owner of the premises can demand the return of any amount paid by the allottee to the promoter before the registration of the sale deed, when there is no “real estate project” as per Section 2(zn) of the RERA Act in existence at the relevant time. In such a scenario, the only issue is of mere recovery of money by the owner from the erstwhile promoter towards the sales transaction and in such civil dispute, RERA Act is not attracted. Hence, this Authority even otherwise has no jurisdiction to decide a case of mere recovery of money by the owner of any flat/ apartment/ building constructed by the erstwhile builder and therefore the complainants have chosen a wrong forum in the instant case.
34. Thus, the aforesaid amount, was paid by the complainants to the respondents before the registration of the sale deed without raising any dispute with the respondents at the relevant time and without approaching this Authority at the relevant time before parting with the money. As stated above, the sale deed in favour of the complainants has been executed and registered on 25.08.2021 and consequently the complainants have become the owners of the said flat and because of the reason stated above, this Authority has no jurisdiction to decide a case of mere recovery of money filed by the owners of the premises against the erstwhile builder after the sale deed is registered in their favour, especially when



the case does not come within the purview of Section 18 or Section 14(3) of the RERA Act. Hence, the instant point is answered in the negative.

Accordingly, the complaint is dismissed and the proceedings are closed.

vijeta 19/7/2023
(Vijaya D. Pol)
Member, Goa RERA