



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

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No.3/RERA/Complaint (249)/2021 / 62

Date: 24/01/2022

Shraddha Kirtikumar Jobanputra/

Sangita K. Jobanputra

Flat No. 7/S3, S4 Models Exotica,
St. Inez, Panaji-Goa, 403001

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Complainant

V/s

Realcon Residency LLP

Vianaar Homes
325, Kolpa Waddo,
Canca Parra,
Goa 403510

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Respondent

ORDER

This is to dispose of the complaint received on 17/09/2021 on the web portal of the Authority. The complainant had booked a villa on 30/12/2019 by payment of advance amount of Rs. 9,87,000/- (Rupees Nine Lakh Eighty Seven Thousand only) to the respondent/promoter i.e. VIANAAR by Realcon Residency LLP. Upon booking, complainant was allotted Villa No.17 at LA AVILA Project situated at Survey No. 84/2 & 84/3, Village of Marna, Panchayat of Siolim, Bardez Taluka, North-Goa. It has been pointed out in the complaint that as per Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as 'Act') under Section 11, Promoter /Respondent was supposed to provide :

1. Sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority:

2. The stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity

Which was never provided by the promoters i.e.VIANAAR by Realcon Residency LLP.

It has been further pointed out in complaint that due to uncertain and unfortunate advent of covid19 virus in early 2020, the financial position of complainant was shaken. Due to lockdowns and restrictions, income of the complainant was affected very seriously. Due to this uncertain scenario, complainant decided to cancel the booking done for the afore mentioned Villa. Accordingly, complainant made a request for cancellation of booking and the request was accepted. The complainant was issued a letter with confirmation of cancellation of afore-said Villa on 24/07/2020.

2. As per complainant, upon cancellation, he requested for advance amount to be refunded. He followed up with the customer care of Respondent on many occasions, but he was given the same reason of contacting their office. For the last one year, all his calls and email communications have not resulted in any satisfactory resolution of this issue. Now through this complaint, he has requested for refund of his advance amount of Rs. 9,87,000/- ((Rupees Nine Lakh Eighty Seven Thousand only). He has also requested that incase refund is not possible, then booking of the villa should be reinstated.
3. The copy of the complaint was served to the respondent by notice of this Authority dated 20/10/2021 with direction to file the reply within 10 days. The respondent/promoter filed the reply on 21/12/2021. Again, case was fixed for arguments on merit on 12/01/2021. On this day, both the parties were present and argued the case.
4. In his written reply dated 21/12/2021, respondent has raised the preliminary objections about maintainability of the complaint. It has been submitted that the said complaint is filed under the provisions of Section 19(4) of the Act and complainant has completely misconstrued the said provision of Section 19(4) of the RERA Act. As per respondent, under the said provision, the Allottee can claim refund only in case of failure of the promoter to give possession of the plot, apartment or building in terms of the Agreement. The said provision can be invoked only in case there is a breach of an Agreement and /or delay in possession. In the present case, there was no Agreement signed by the complainant nor was there was any delay in giving possession of the unit. Hence, the said provision cannot be applied in the present case and hence, the said complaint is liable to be dismissed at the threshold.

5. It has been submitted by the Promoter that though there is no Agreement for sale, an 'Application Form' was signed by the Applicant and clause 3 of the terms and conditions in respect of said bookings mentioned in the said 'Application Form' was in relation to the cancellation of the allotment. This clause stipulates as -

“in case the applicant, at any time, desires for cancellation of the allotment, it may be agreed to at the sole discretion of the company, and in such case 15% of the basic price of the Unit, consisting the earnest money, will be forfeited and the balance, if any will be refunded without any interest.”

Hence, in terms of this clause, in-case of cancellation, 15% of the entire cost of the villa has to be forfeited. The advance amount paid by complainant is less than the 15% of the total purchase price of the villa. Accordingly, complainant is not eligible for refund of the advance amount paid by him as the said amount is less than 15% of the cost of the Villa which is liable for forfeiture in terms of Clause 3.

6. In respect of non-providing of sanction plans, layout plans along with the specification approved by the competent Authority, the respondent has submitted that details were supposed to be provided by the respondent gradually and over a period of time. The respondent had every intention of providing the same to the complainant, however in March 2020, on account of covid-19 pandemic, the functioning of respondent was affected adversely and the operations slowed down considerably.

7. I have gone through the complaint, reply filed by respondent/promoter and arguments advanced by both the parties. It is a fact that complainant had mentioned that complaint is filed under the provisions of Section 19(4) of the Act which should have been filed under Section 31 of the Act. As per the Act, complaints are supposed to be filed under Section 31 by any aggrieved person for any violation or contravention of the provisions of this Act or the rules and regulations made there under. However, complainant has made the complaint under Section 19(4). Section 19(4) provides for refund of amount. The provisions in corporate in Act is as under 19(4)-

“The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or

building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.”

However, simply for this technical reason complaint cannot be rejected. The purpose of the complaint is to highlight the violation of the provision contained in Section 19(4) of the Act which has been done. Complainant has mentioned in the complaint that there is violation of provision as respondent has not refunded his amount. So in my opinion complainant has raised his grievances about violation of Section 19(4). The veracity of the content of the complaint will be discussed in the subsequent paras but as far as maintainability of the application is concerned I feel the complaint cannot be dismissed as non-maintainable on this ground at this stage.

8. There is no Agreement for sale executed between the parties. Actually, Agreement for sale should be executed between the parties after receiving advance from the allottee by promoter. It is the duty of the promoter to do this. The promoter has not done this. In place of Agreement of sale, the promoter has formulated one ‘Application Form’. The allottee has filled up that form and after signature, the same was submitted to promoter. As per complainant, which he mentioned during the course of hearing, even copy of this form was not provided to him. The said clause 3 which has been mentioned in preceding paras and has been highlighted by respondent, is incorporated in the ‘Application Form’.

9. After receiving the advance amount, promoter should have entered into a written Agreement for sale, which has not been done by the promoter. By this, promoter has violated the spirit of the Act and Rule. More so, he has formulated an Application Form and made to sign the application on his terms and conditions. The said clause 3 of the ‘Application Form’ where 15% forfeiture has been mentioned in case of cancellation of allotment is against the provisions of the Act and Rules. It is mentioned that in Goa Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017(hereinafter referred to as ‘Rules’), a proforma of the ‘Model Form of Agreement’ has been provided. This Model Form of Agreement is submitted at the time of registration by the builder before the Authority and he is supposed to enter into Agreement with the Allottee in the same Model Form of Agreement. In any case, any

Agreement or any condition imposed by promoter on allottee which is against the provisions of this Model form of Agreement will be contrary to the Act and Rules. Nowhere in the Model Form of Agreement, the condition like clause 3 of 'Application Form' mentioned by promoter is incorporated. In short the clause 3 of the said 'Agreement Form' is inconsistent of the provision of Model Form of Agreement and hence the same is not sustainable.

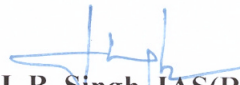
10. In respect of non-providing of sanction plan etc., promoter has pointed out that these details were supposed to be provided by the respondent gradually and over a period of time. However, on account of covid-19 pandemic in March 2020, the same was delayed. The submission made by promoter doesn't hold good as in terms of Section 11(3) of the Act, the promoter has to provide their details at the time of booking itself, it cannot be said that it was to be provided gradually and over a period of time. The plead taken by the respondent that it was delayed because of covid-19 pandemic in March 2020, also doesn't hold good as the respondent had received the said advance amount of Rs. 9,87,000/- in the last week of December, 2019 itself and by his own submission of respondent covid-19 pandemic has affected his functioning for March 2020 onwards. Hence, I conclude that respondent/promoter has not provided the details as per Section 11(3) of the Act to the Allottee as per his own submission mentioned in his reply dated 21/12/2021.

11. In his complaint dated 17/09/2021, complainant has highlighted two reasons. first, Promoter has not given any requisite information like sanction plan, layout plan, etc. which is required to be provided to him under Section 11(3) of the Act. And second, due to pandemic, his financial position became weak. While the Authority is sympathetic to complainant for suffering due to pandemic, but this will not be helpful in determining the issue. However, not providing the details mentioned in earlier paragraphs sanction plan, layout plans, etc. is contrary to the Act and Rules. Though Respondent has taken the advance amount, he has not executed Agreement of Sale in the prescribed Model Form of Agreement till date. Section 19(4) of the Act provides for refund of amount paid along with the interest to allottee, if the promoter fails to comply or is unable to give possession of the apartment in accordance with the terms of Agreement of sale. Here there is no Agreement for sale and Promoter has violated the provisions of Section 11(3) of the Act. Hence, in my opinion, the Allottee/complainant is entitled for refund of the advance amount paid since stage of possession has not come in this case. As far as interest

is concerned, I feel that it is not appropriate to charge interest on this amount. It is needless to mention that complainant has also not requested for interest on this amount. However, Promoter/Respondent will be liable to pay the interest if he does not refund the advance amount within time limit prescribed under this order. The rate of interest chargeable in that case will be as per Rule 18 of the Goa Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017 i.e. $7.3 + 2 = 9.3$ % per annum.

12. In view of the above, promoter/respondent is directed to refund the advance amount of Rs. 9,87,000/- to the Complainant/Allottee within 30 days of the receipt of this Order. In case of non-payment of this amount, respondent/promoter will be liable to pay the interest @ 9.3% per annum to the complainant/Allottee from the date as per this Order till the date of payment or till the amount is recovered from the Respondent as per law.

Order accordingly,


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

To,

1.Shraddha Kirtikumar Jobanputra/

Sangita K. Jobanputra

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St. Inez, Panaji-Goa, 403001

2.Realcon Residency LLP

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