



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (383)/2023/ 481

Date: 21/04/2025

(BEFORE THE MEMBER, SHRI VINCENT D'SILVA)

Mr. Warrson Alstin Almeida,

Aged 37 years, Service

Resident of TF-3, Flat No-3,

III Floor, Sapana Terraces,

33, Swatantra Path,

Vasco- Da- Gama, Goa-403802.

.....Complainant

Versus

M/s Prabhu Real Estates Developers and Builders,

Carrying its business through its Proprietor Mr. Amit C. Prabhu,

Aged 42 years, with office addresses:

Address:- 3/4329, Vasant Nagar, Near Jivittam Muth,
Gogol Fatorda, Fatorda,
Salcete, South Goa, 403602.

New known address: Second floor, Prabhu's Emerald,
Alto-Chicalim, Goa-403711.

Residence address: Whistling Woods, plot no. E-17,
Vasant Nagar, Gogol,
Margao, Salcete, Goa-403601.

.....Respondent

Mr. Avito Carmo Almeida, authorised representative for the complainant.

Ld. Advocate Gaurish Kudchadkar for the respondent.

ORDER

(Delivered on this 21st day of the month of April, 2025)

This is a complaint filed under Section 17(1) and (2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act').

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

That the complainant had approached the respondent with an intention to purchase a Flat no. AF-1 in the project named "PRABHU'S WISTERIA", admeasuring 82 sq. mts. of super built up area, corresponding to 62.83 sq. mts. of carpet area located on the first floor of the building "A" as well as fully enclosed garage for parking cars/bikes designated as No. AP-1 located below flat no. AF-1, in the corner of the building of block A, ground floor of the said project for a total consideration of ₹42,00,000/- (Rupees Forty Two Lakhs only). The project of the respondent "PRABHU'S WISTERIA", was granted project registration no. PRGO04180111 by the Goa Real Estate Regulatory Authority, under a Certificate of Registration dated 18th April 2018 valid until 31st December 2019 as per the said certificate and not as per the date mentioned on the agreement for construction and sale, which is 31st July 2019. The respondent was required to handover possession of the completed apartment with occupancy certificate and architect's completion certificate/engineer's certificate. The respondent executed an agreement for construction and sale dated 20.12.2017 with the complainant before Sub-Registrar at Margao and paid the consideration amount of ₹42,00,000/- towards full and final payment including GST as per the agreement for construction and sale dated 20.12.2017.

3. The respondent completed the project on 01.10.2019 as per the occupancy certificate issued by the Panchayat and informed that the construction of the flat with the garage for parking cars and bikes is completed and is ready for possession and to approach the respondent and pay the final pending amount of ₹3,05,005/- and take possession of the flat and the garage. The said amount was paid and the respondent handed over the flat along with the garage and the keys vide letter dated 09.11.2019 to the complainant. The respondent was late by two months in giving the possession as per the agreement of sale because the respondent did not submit building plans to the Town and Country Planning Department. The respondent then provided the TCP with the revised building plan vide application dated 27.06.2019 which was submitted on 04.07.2019 in order to pass the completion order, which was passed on 19.10.2019.

4. The complainant contacted the respondent on several occasions to execute the Deed of sale but the respondent did not comply nor complete the deed of sale in favour of the complainant as per Section 17 of the RERA Act. The complainant made relentless efforts to contact the respondent on several occasions both verbal and written, requesting to execute a deed of sale as per Section 17 of the Act. The complainant yet again vide letter and email dated 25.06.2022 and vide letter and email dated 02.05.2023 requested the respondent to execute a deed of sale in favour of the complainant but failed to give any reply nor execute a deed of sale, thereby depriving the complainant of the ownership of the flat along with the garage. The occupancy certificate was issued by Village Panchayat, Nagoa dated 01.10.2019 based on completion order by Town and Country Planning dated 19.08.2019. It is the duty of the respondent being a promoter under Section 11(4) (f) to execute a registered conveyance deed of the apartment, so also in terms of Section 17 of the Act and therefore, the relief as prayed for be granted.

5. The respondent filed a reply/written statement inter-alia contending that the agreement of construction and sale dated 20.12.2017 was duly registered in the office of Sub-Registrar, Margao Goa on the basis of which the complainant has filed the present complaint. The said agreement was executed between the respondent as 'Promoter' and the complainant and Mr. Avito Carmo Almeida as 'Prospective Purchasers', whereas the present complaint is filed only by the complainant seeking relief to execute the sale deed only in his name, excluding Mr. Avito Carmo Almeida, who is party purchaser to the Agreement. The agreement is with respect to the flat no. AF-1 admeasuring 82.00 sq. mtrs. on the 1st floor of building A and parking space AP-1 in project named 'Prabhu's Wisteria'. The respondent is not guilty of any violation as the premises booked by the complainant have been duly and timely completed with such specifications as agreed in the agreement.

6. The complainant has no valid reason and/or cause of action to approach the Forum as the execution and registration of the sale deed till date has remained pending for reasons attributable to the complainant himself and not for any fault attributed to the respondent as the complainant wants the sale deed to be executed in his name alone as the purchaser, joining his father as consenting party thereof, when the said agreement was in joint names of the complainant and his father and the complainant desires to have the sale deed executed deviating from the standard sale deeds adopted for and registered in respect of the purchasers of the remaining premises in the complex. The respondent was and is ready and willing to execute the sale deed provided that the complainant and his father are party purchasers to the sale deed and that standard sale deed as adopted for others is executed for the transfer of the title of the premises of the complainant and his father. The Forum cannot direct the respondent to execute a sale deed with the complainant alone,

when the said agreement is in joint names of the complainant and said Mr. Avito Carmo Almeida, no matter his parents may be willing to join as the confirming party as any deviation in transfer as was otherwise agreed has to be by mutual consent of all the parties.

7. The present proceedings are bad-in-law as necessary party, Mr. Avito Carmo Almeida, purchaser no. 2 to the agreement is not a party to the present proceedings. The respondent has agreed to be sold an open and unenclosed parking slot for parking of singly car or bike and not cars and bikes and not garage as the respondent never assured any garage as alleged therein since the agreement and the letter dated 01.10.2019 are self explanatory and that after execution of the agreement, the complainant and Mr. Avito Carmo Almeida are equally entitled to the rights and interest in the subject premises. The allegation of delayed possession is false as the same is governed by clause 8(3) of the said agreement and as such, comes within the scope of reasonable extension of time for giving delivery of subject premises. There are multiple flats in the project and the clauses mentioned in all the deeds of other prospective allottees are standard clauses, which cannot be altered only for the complainant as per his whims and wishes. The complainant had shared a draft of sale deed earlier, however it seeks alterations of standard clauses and as such, the same cannot be executed. The Authority cannot direct the respondent to do something prohibited by law, which is not permissible. There is no delay occasioned on account of conduct of the respondent. The relief claimed by the complainant cannot be granted, hence be dismissed.

8. Argument heard. Notes of written arguments came to be placed on record by the respondent. The complainant inspite of several opportunities failed to place on record the written arguments.

9. The points for my determination along with the reasons and findings thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the complainant is entitled for execution of the conveyance deed with respect to flat bearing no. AF-1 and documents, under Section 17(1)(2) and Section 11(3)(a) of the RERA Act?	In the affirmative.
2.	What order? What reliefs?	As per final order.

REASONS

Point no. 1 and 2

10. The complainant has sought direction as per Section 17(1) and (2) of RERA Act to execute the deed of sale in favour of the complainant, handover the necessary documents such as, building plans (old as well as revised building plans (approved by the concerned authorities)), including common areas, with marking/ highlighting of flat no AF-1 as well as fully enclosed garage for parking cars/bikes designated as AF-1 on both the old as well as revised building plans and any other relevant documents at the earliest or within thirty days from the date of the order.

11. The moot question is whether the complainant is entitled for execution of a conveyance deed with the complainant and Mr. Avito Carmo Almeida, in terms of Section 17 of the RERA Act with respect to flat no. AF-1 admeasuring 82 sq. mts. of super built-up area, along with attached open terrace admeasuring 2 sq. mts. of super built-up area, located on the First Floor of the Building “A” of the complex known as “PRABHU’S WISTERIA”, along with parking slot no. AP-1 located at

the stilt below flat no. AF-1 in the corner of the building A, as shown in the plan attached to the Agreement for construction and sale dated 20.12.2017 in terms of Sections 11(4)(f) and 17(1) of the Act and providing necessary documents under Section 17(2) read with Section 11(3)(a) of the RERA Act?.

12. The complainant has filed the present proceedings under Section 17 read with Section 11(4)(f) of the Act. The functions and the duties of the promoter/respondent as per Section 11(4)(a)(f) of the Act are reproduced here-in-below:

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:
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under Section 17 of this Act;”

13. Section 17 of the Act relates to the transfer of title. It reads as follows (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws.

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate. (2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws.

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate.

14. The obligation of the promoter for execution of the conveyance deed and handing over of the necessary documents is contained in Section 11(4)(f) and Section 17 of the Act quoted above, besides that, under Section 11(3)(a) also, the promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the information, namely, (a)

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. It is therefore evident that the promoter is duty bound to execute a conveyance deed in favour of the allottee within three months from date of issue of occupancy certificate and shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate.

15. There is no dispute that the complainant paid the entire consideration amount to the respondent as per the agreement for construction and sale dated 20.12.2017. It is thus the duty of the promoter/vendor to execute a registered conveyance deed of the said flat in favour of the allottees along with the undivided proportionate title in the common areas to the association of allottee or competent authority, as the case may be, as provided under Section 17 of the Act. The respondent has admitted that the sale deed has not been executed and that in terms of Para 3, Page 3 of the reply, it is clearly stated that the respondent was and is ready and willing to execute the sale deed, provided (i) complainant and his father are party purchasers to the sale deed and (ii) standard sale deed as adopted for others is adopted for the transfer of title of the premises of the complainant and his father.

16. It is the contention of the complainant that the purchaser shall have right to install solar panels along with fitting on the terrace or/and wall of the building and shall have unrestricted access to the terrace as well as common area at all time and shall ensure access for ambulance/fire-service/emergency service vehicles to each of the building and shall provide fully enclosed garage for parking cars and no vehicles/materials shall be allowed blocking the access and that no commercial

activity shall be allowed in the said area and no illegal construction of religious structure or shrine shall be allowed to be carried out and no religious activities of any kind shall be conducted in and around the said property and the said clauses shall be incorporated in the sale deed. The aforesaid contentions made on behalf of the complainant are not at all reflected in the complaint or the Agreement for construction and sale nor they are relevant for execution of the sale deed and therefore, cannot be considered having any merits.

17. Ld. Advocate Gaurish Kudchadkar for the respondent has submitted and rightly so that the agreement for construction of sale dated 20.12.2017 was registered between the complainant and Mr. Avito Carmo Almeida as prospective purchasers, whereas, the present complaint is filed only by the complainant seeking relief to execute sale deed in his name, excluding Mr. Avito Carmo Almeida, who is a party purchaser to the agreement. Said Mr. Avito Carmo Almeida who is the joint allottee under the agreement is a necessary party to the sale deed. The said agreement was executed by complainant and his father as joint allottees and not solely with the complainant. However, the complainant is bent upon executing the sale deed, excluding said Shri Avito Carmo Almeida, with whom the agreement for sale was executed and that is the reason according to respondent, the execution of sale deed remained pending, which cannot be attributed to the respondent.

18. Moreover, executing the sale deed in the name of the complainant alone would violate the agreement for construction and sale entered into with both the complainant and Mr. Avito Carmo Almeida and such an action would amount to evasion of stamp duty and may lead to future litigation under the Stamp Act. In any event, as the agreement is with the joint allottees and as possession has been handed over jointly to both the allottees as per letter dated 09.11.2019, the Authority cannot direct the respondent to execute the sale deed in respect of the

complainant alone. Importantly, the complainant has not pleaded any deficiency in service or violation of any rules under the RERA by the respondent, except that the sale deed was not executed in the favour of the complainant. In the first place, the Authority cannot direct the execution of the sale deed in favour of the complainant alone as both the complainant and his father were prospective purchasers and therefore, insisting on executing the sale deed in the name of the complainant alone, is in violation of contractual terms agreed upon by the complainant and his father.

19. The case of the complainant that there is a delay by two months in giving the possession to the complainant as per the agreement of sale also cannot be accepted as Clause 8 of the agreement allows the parties a reasonable extension in the timeline for possession. Clause 8 reads as follows “Provided that the Promoter/Land owner cum Developer shall be entitled to reasonable extension of time for giving delivery of said premises on the aforesaid date and the prospective allottees or prospective purchasers shall not exercise the option provided in preceding clause 7, if the completion of said Project in which the said premises is to be situated is delayed on account of- (1) War, civil commotion or act of God. (2) Any notice, laws, order, rule, notification of Government and or Panchayat and or any other public or Competent Authority, which prevents the promoter/land owner cum developer from carrying out the work of development and construction over the said project. (3) Any delay on part of Village Panchayat or any other Public Authorities in issuing or granting necessary certificates/NOC/permissions/license/connections/ installations to the said project under construction by the promoter/land owner cum developer over the said project.

20. Clause 7 of the Agreement states that the possession was to be delivered by 31.07.2019 subject to a reasonable extension of time for delay on the part of

Government and Local authorities in issuing Licenses/NOC/Certificate as agreed in Clause 8 of the agreement. There is no dispute that the respondent applied for completion certificate to Town and Country Planning Department vide application dated 27.06.2019, much prior to the date of scheduled date for delivery of premises, however, the Town and Country Planning Department granted completion certificate only on 19.08.2019 i.e. after the scheduled date of handing over. Thereafter, the respondent applied for occupancy certificate to the Village Panchayat, which was granted on 01.10.2019 and on the very same day, the respondent addressed letter to complainant and Mr. Avito Carmo Almeida to take possession. It is therefore the delay as alleged by the complainant cannot be attributed to the respondent. In any event, the alleged delay is covered under Clauses 7 and 8 of the Agreement.

21. The Complainant has also claimed that the parking slot as per the agreement has to be enclosed/covered for cars/bikes. However, Clause 22 of the agreement does not provide for covered parking/enclosed garage. Clause 22 of the Agreement reads thus:

“The parking slot corresponding to the said premises (AF-1) is the parking Slot No. AP-1 located at the stilt below Flat AF-1 in the corner of the Building ‘A’. The Prospective Allottees or Prospective Purchasers shall strictly park their vehicle in the allotted parking space as allotted to them and as shown in the plan by Promoter/Land Owner cum Developer and the parking in the allotted space is at the convenience of the Prospective Allottees or Prospective Purchasers”.

It is therefore evident that the parking slot for the complainant is located at stilt below flat no. AF-1 for their vehicle as allotted to them and as shown in the plan attached to the agreement. There is no mention of any covered garage or

enclosed garage as claimed by the complainant, The respondent has agreed to be sold, as per above clause of the agreement, an open and unenclosed parking slot for parking of singly car or bike and not cars and bikes as alleged by the complainant. It is therefore the claim of the complainant as stated above cannot be granted.

22. The complainant is claiming that the sale deed to be executed should contain various clauses as stated above. Draft sale deeds have been exchanged between the parties, however the submissions of the complainant as regards the above clauses to be incorporated in the sale deed have no connection with the Agreement for sale. Eventually, the respondent was directed to produce specimen copies of the sale deeds executed between other allottees of the building with respondent in order to verify whether the clauses in those agreements are 'standard clauses'. A little peep in the said sale deeds dated 06.06.2020 and 14.12.2020 produced by the respondent at exhibit 922/c on 07.02.2025 clearly indicates that clauses in the said sale deeds with respect to the present project are 'standard', which are normal to a builder/buyer agreement. No prejudice would occasion to the complainant, if the 'standard clauses' are incorporated in the present sale deed, similar to the one executed by the respondent with other allottees of the said project.

23. The sale deed has to be standard for all the allottees as all the members should be bound to each other and should have common obligations in respect of the entire complex. Even otherwise, the Authority cannot direct the promoter to act in contravention of law, including executing the sale deed with the nonsensical terms proposed by the complainant, as stated above, including that the sale deed should be only in the name of the complainant, when the agreement was executed with two individuals, even if the father of the complainant, Mr. Avito Carmo Almeida consents to it, as it is matter of consent of all the parties and not just the

allottees and therefore, the request of the complainant as stated above cannot be granted.

24. Be that as it may, the respondent has categorically admitted that it was and is ready and willing to execute the sale deed provided (i) complainant and his father are party purchasers to the sale deed and (ii) standard sale deed as executed for others is adopted for the transfer of title of the premises of the complainant and his father. The above contention of the respondent is sagacious and within the provision of law and therefore, there would not be any difficulty nor the complainant would be prejudiced, if the respondent is directed to execute the conveyance deed in terms of above agreement and as per the sale deeds produced on record executed by the other allottees with the respondent and if the respondent is directed to provide the necessary documents in terms of Section 11(3)(a) and Section 17 of the Act, referred above. The complainant is therefore entitled for reliefs as here-in-below. Hence, the above points are answered accordingly.

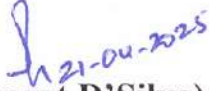
25. In the circumstances, I pass the following:

ORDER

- i. The respondent is directed to execute a conveyance deed with the complainant and Mr. Avito Carmo Almeida as referred above, in terms of Section 17 of the RERA Act with respect to flat no. AF-1 admeasuring 82 sq. mts. of super built-up area, along with attached open terrace admeasuring 2 sq. mts. of super built-up area, located on the First Floor of the Building "A" of the complex known as "PRABHU'S WISTERIA", along with parking slot no. AP-1 located at the stilt below flat no. AF-1 in the corner of the building A, as shown in the plan attached to the Agreement for

construction and sale dated 20.12.2017, within 60 days from the date of this order.

- ii. The respondent is directed to provide all the necessary documents to the complainant in terms of Section 11(3)(a) and Section 17 of the RERA Act.
- iii. The respondent is directed to file compliance report of the order in the form of an affidavit within 60 days of this order, failing which further legal action will be initiated by the Authority under the RERA Act, for execution of the order.


(Vincent D'Silva)
Member, Goa RERA

Panaji, Goa.

Date: 21.04.2025