



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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

www.rera.goa.gov.in

Tel: 0832-2437655; e-mail: goa-rera@gov.in

F.No.3/RERA/Complaint(256)/2021/783

Date: 27/10/2022

Melissa Rodrigues,
Dharmaji Thakur park Flat B409,
Sainath Road Eksar Village,
Mumbai, Maharashtra-400092.

.....Complainant

V/s

1.M/s Expat Projects & Development Pvt. Ltd.,
With its registered office at Carlton Towers, A wing,
3rd Floor, Unit No. 301-314,
No. 1 Old Airport Road, Bangalore Karnataka-560008

2. M/s Expat Projects and Development Private limited
VIDA Phase 2 located at Survey No. 20/1-L (PART),
Opp. Shiva Temple, Bainguinnim,
Tiswadi, North Goa-403107.

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Respondents

ORDER
(Dated 27.10.2022)


This order disposes of the complaint filed under section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act'),

wherein the complainant has prayed this Authority to issue directions to the respondents to refund to the complainant an amount of ₹25,05,890/- (Rupees Twenty Five Lakhs Five Thousand Eight Hundred and Ninety only) which was paid by the complainant to the respondents as consideration towards purchase of an apartment in a housing project of the respondents in the name VIDA Phase II situated at Bainguinnim, Tiswadi Goa. The complainant has also prayed for the interest on the said amount as well as for compensation.

2. According to the complainant, she booked one bedroom, hall, kitchen unit/ apartment having a carpet area of 1000 sq. ft. at the rate of ₹3700/- per sq. ft. by filling a Product Application Form dated 29.07.2016 in the aforesaid project. It is stated that total consideration amount of the said unit was ₹37,00,000/- (Rupees Thirty Seven Lakhs only) and the complainant has paid the consideration amount of ₹25,05,890/- (Rupees Twenty Five Lakhs Five Thousand Eight Hundred and Ninety only).
3. The complainant has stated that the project is registered and the certificate of registration was valid till 30.06.2021. According to the complainant, the respondents breached the provision of Section 13 of the Act by receiving the



aforesaid consideration amount which is more than 10% of the total cost of the apartment.

4. According to the complainant, inspite of various requests from the complainant, the respondents have not registered any agreement to sell in respect of the said apartment. It is stated that not even a quarter of the project has been completed and the complainant's apartment block is constructed at site only till the plinth level. Further, according to the complainant the website of the respondents is non functional and is not updated and that till date, inspite of requests by the complainant, the respondents have not informed the complainant the stage of the construction of the apartment/the project.
5. According to the complainant, on 09.05.2018, the respondents sent a cost sheet for her apartment wherein it showed the GST calculated on her apartment at 18% which is illegal. The complainant has also raised the issue of address of the respondents as given to this Authority. The complainant has stated that on 25.02.2021 the respondents sent to the complainant a "Request to Consent and Consent Letter" under which the respondents asked for the consent of the complainant to transfer the project to a third party promoter without sending a detailed contract between the respondents and the third party promoter and hence the complainant declined to give her consent for the same. 

6. The complainant referred to the legal notice dated 06.05.2021 sent by her inter alia directing the respondents to register the agreement to sell and to pay compensation and interest and by reply dated 10.05.2021 the respondents disputed all the contentions, allegations and averments made in the said legal notice. According to the complainant, she was constrained to terminate the contract/ agreement and hence the respondents are bound to refund the consideration amount to the complainant along with interest and compensation. Hence the prayers of the complainant as stated above.

7. The respondents in their reply have raised preliminary objections to the effect that the present dispute is of civil nature; that the complainant has approached this Authority with unclean hands; that the complaint is filed prematurely by making a false cause of action; that the complainant failed to come forward to register the agreement; that the complainant is merely an investor who without signing an agreement wants to reap the profits from the project and that the Product Application Form is the only document binding the parties and the same was entered into at Dubai, prior to the said Act coming into force and therefore only Dubai Court would have jurisdiction regarding the prayers of the complainant.



8. On merits, the respondents have submitted that when Product Application Form was signed, at that time the project was not registered under the said Act and subsequently after registering the project, the complainant was requested to execute the agreement to sell as per the said Act but the same was not done by the complainant. According to the respondents, after registering the project with this Authority, an e-mail was sent to the complainant informing the registration of the project and calling upon her to come forward and register the agreement to sell by paying necessary stamp duty and registration fees but the complainant was not interested in the said project as an allottee but wanted to continue as an investor.
9. In the reply, the respondents have denied that the said project comes under the definition of Affordable Housing Project. It is stated that this Authority does not have jurisdiction to deal with the issue pertaining to GST.
10. The respondents have submitted that the project has been delayed due to lockdowns, persistent defaults by many customers and delay in giving consent by the customers to bring in development partner. It is stated that there are about 370 customers who have invested in purchase of units in the project and the interest of all the said customers is paramount for the respondents. The respondents have requested to allow the respondents to complete the project within the time limit



given by this Authority and that any order of refund will only affect the project adversely. The respondents also pointed out that the time line for possession and delivery of the project is extended by this Authority till December, 2023. According to the respondents, the project is done under phase wise construction after laying down plinth level construction.

11. According to the respondents, the progress of the work can be ascertained at the site and also on the RERA website. It is stated that the complainant has herself refused to sign the agreement to sell as the complainant did not want to pay necessary taxes but to stay as an investor, which fact gets confirmed by email dated 14.08.2019, wherein the complainant calls herself as an investor . According to the respondents, timely update pertaining to the project was given to the complainant and that emails were sent to all the allottees informing them about the change in address of the respondents. It is stated that the respondents are ready and willing to perform their part of obligation provided the complainant comes forward to register the agreement to sell and be willing to pay the necessary charges and taxes.
12. Written submissions were filed by Ld. Advocate A. Shirodkar for the complainant and Ms Malvina Franco for the respondents. Oral arguments were also heard. According to the Ld. Advocate for the complainant Section 18 of the said Act is



attracted even though there is no written and registered agreement for sale in the instant case. The Ld. Advocate for the complainant relied upon the oral judgement dated 12.04.2018 passed by Maharashtra Real Estate Appellate Tribunal in the case of “Manjit Singh Dhallwal and others vs. JVPD Properties Pvt. Ltd.” in support of his arguments that in order to attract Section 18 of the said Act, any written agreement for sale is not sine qua non.

13. On the other hand Ms. M. Franco for the respondents submitted that in the absence of any written agreement for sale Section 18 of the said Act is not applicable and in such situation this Authority has no jurisdiction to refund any amount to the complainant under Section 18 of the said Act and only a civil court has the jurisdiction in such circumstances. It is submitted on behalf of the respondents that the respondents had requested the complainant to come forward and register her unit but the same was not done by the complainant since she wanted to be an investor and was not ready to pay the registered stamp duty, GST etc. It is further stated on behalf of the respondents that the Option Letter clearly mentions that she is an investor. It is further submitted that there is no other document which would suggest the time line for the parties to agitate any issue. According to the respondents, the time line for handover would not be applicable to the complainant who has refused to sign an agreement. According to the respondents, this Authority



has already granted extension for completion of the project till 31.12.2023 and the respondents are making effort to complete the project by the said date.

14. 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 complainant is entitled for refund of the consideration amount along with the interest thereon under Section 18 of the said Act?	In the negative.
2.	Whether the complainant is entitled for compensation as prayed in the complaint?	To be decided by the Adjudicating Officer under Section 71 of the said Act.

REASONS

Point No.1

15. It is material to note that a written and registered agreement for sale is the basis and the very foundation for all the rights and duties of an allottee under the said



Act. In this regard it is necessary to reproduce hereunder some of the provisions of the said Act. Section 13 of the said Act reads as follows:-

“13. No deposit or advance to be taken by promoter without first entering into agreement for sale.- (1) A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person **without first entering into a written agreement for sale with such person and register the said agreement for sale,** under any law for the time being in force.

(2) **The agreement for sale referred to in sub section (1) shall be in such form as may be prescribed** and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external developments works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the



possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.” (emphasis supplied)

16. From the aforesaid it is clear that since a written and registered agreement for sale is a mandatory statutory requirement, the parties not only have to enter into a written agreement for sale but also it is mandatory to register the said agreement for sale. **Rule 10** of the Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosures on Website) Rules, 2017 also states that the agreement for sale shall be in conformity with the law in force. The said Rule 10(2) states that “Any application, allotment letter or any other document signed by the allottee, in respect of the apartment, plot or building, **prior to the execution and registration of the agreement for sale** for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale or the Act or the rules or the regulations made thereunder”. Thus, as per the said Rule 10, not only the agreement for sale should be in conformity with the law in force but also the said registered agreement for sale



prevails over any application, allotment letter or any other document signed by the allottee and such other documents signed by the allottee prior to the execution and registration of the agreement for sale do not limit the rights and interests of the allottee under the said registered agreement for sale.

17. Section 11(4)(a) of the said Act reads as follows:-

“11(4) The Promoter shall-

(a) be responsible for all obligation, 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.” (Emphasis supplied)

From the aforesaid it is clear that all the obligations, responsibilities and functions of the promoter under the said Act/ rules/ regulations arise from the agreement for sale.

18. It is material to note that in the instant case the agreement to sell is not executed and registered between the complainant and the respondents. The Product Application Form is dated 29.07.2016 and Option Letter was sent to the complainant for compliance on 29.07.2016. In the said Option Letter, the respondents granted option to the complainant to purchase and acquire from the respondents the residential flat in the said project and the complainant accepted the said option by giving her acceptance by letter dated 31.07.2016. By e-mail dated 20.04.2018 the respondents forwarded the draft agreement to sell to the complainant for its execution and registration and the same is admitted by the complainant in the letter dated 23.09.2021 addressed to the respondents and in the said letter it is admitted that **“Thereafter, you sent to me a draft agreement to sell on 20.04.2018, which formed the Terms and Conditions governing our rights and duties with respect to the said Project and Apartment to be constructed by you.”** Thus, the fact remains that though a draft agreement to sell



was sent by the respondents way back on 20.04.2018 to the complainant for its execution and thereafter registration, however, the same was not signed by the respondents and remained a mere draft agreement to sell. Hence, there is no written and registered agreement to sell between the complainant and the respondents. Though in the legal notice sent by the complainant to the respondents it is stated that despite several reminders from the complainant to register her agreement for sale the respondents failed to register the said agreement, however, the fact remains that the respondents by letter dated 20.04.2018 sent draft agreement for sale to the complainant for her signature showing intention of the respondents to have a written and registered agreement for sale.

19. In this regard it is necessary to reproduce hereunder Section 18 of the said Act, which is invoked by the complainant:-

“18. Return of amount and compensation.- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the



registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall



not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

20 Thus, the remedy of the allottee under **Section 18 of the said Act** for the return of the amount paid by him to the promoter along with the interest and compensation if he intends to withdraw from the project or for the interest for every month of delay till handing over of possession if he does not intend to withdraw from the project provided the promoter fails to complete or is unable to give possession of an apartment, plot or building, “in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein” is available only if the agreement for sale is registered. **The “agreement for sale” referred to in Section 18 of the said Act means a registered agreement for sale as mentioned in Section 13 of the said Act.**



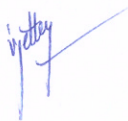
21. The Ld. Advocate for the complainant has submitted that Section 18 of the said Act is attracted in the instant case also even though there is no agreement for sale executed between the parties and in this regard highlights the words “as the case may be” in Section 18 of the said Act. The Ld. Advocate for the complainant argued that Section 18 of the said Act can be invoked even in the cases where there is no written agreement for sale since the words “as the case may be” encompasses the return of amount or compensation even in cases which are without any agreement for sale. **There is no merit in the aforesaid argument as the words “as the case may be” mentioned in Section 18 of the said Act precede and give meaning to the words “duly completed by the date specified therein” i.e. the date specified in the agreement for sale.** The clear interpretation of Section 18 of the said Act is given in **Section 19 under Chapter IV** of the said Act which relates to the rights and duties of allottees. All the rights and duties of the allottees as per **Section 19 under Chapter IV** of the said Act arise only when there is a registered agreement for sale between the parties. **Section 19(4)** states that “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.” (Emphasis supplied). The said terms of agreement for sale refer to a written and registered agreement for sale as mentioned in Section 13 of the said Act.

22. The Ld. Advocate for the complainant relied upon the oral judgement dated 12.04.2018 in the case of “Manjit Singh Dhallwal and Others vs. JVPD Properties Pvt. Ltd.” (supra), wherein it is held that agreement for sale is not mandatory under the said Act and that the complaint of the allottees will not fall for want of agreement for sale, however the aforesaid judgement is not applicable in the instant case because **firstly** the said judgement has not dealt with section 13 of the said Act and **secondly** because in the above case, even in the absence of the agreement for sale, the documents executed between the parties amount to a concluded contract since the documents contained all the terms and conditions of the contract and accordingly it was mentioned therein specifically as follows:-

“In the instant case, nothing was left to be negotiated and settled for future. Terms were agreed and letter of allotment was read and understood. It was a certain and concluded bargain. A concluded contract therefore had come into existence.”



Thirdly, the aforesaid judgement is no longer applicable in view of the exercise being done by the Hon'ble Supreme Court in **writ petition(s) (civil) no.(s) 1216/2020 in the case of "Ashwini Kumar Upadhyay vs. Union of India and ors."** to have a uniform model agreement for sale for all the states/union territories of India. The aforesaid batch of writ petitions were filed in public interest primarily seeking a direction to the Centre to frame a '**Model Builder Buyer Agreement**' and '**Model Agent Buyer Agreement**' to infuse transparency, ensure fair play, reduce frauds and deliberate delays, restrain promoters and agents from indulging into arbitrary unfair and restrictive trade practices and to protect the rights and interests of customers, in spirit of aims and objects of the RERA Act. In the aforesaid writ petitions, which are still pending, the Hon'ble Supreme Court has passed the following order:-

"We have requested Ms. Aishwarya Bhati, Additional Solicitor General and the *amicus curiae* to prepare a road map for the future after considering the responses which may be submitted by the states/ union territories so that, to the extent it is feasible, a **model agreement for sale** can be uniformly made applicable to the states/ UTs while leaving a certain degree of flexibility open based on the individual needs and exigencies as they emerge in



the respective states/UTs. However, the core of the model agreement must be uniformly followed to protect the interests of home buyers.” (Emphasis supplied)

Hence, there is no merit in the argument of the Ld. Advocate for the complainant that under the RERA Act, agreement for sale is not mandatory.

23. As stated above, **in the instant case there is no agreement for sale executed and registered between the complainant and the respondents and also no document is executed to show a concluded contract mentioning all the terms and conditions of the contract including any specified date for handing over of possession of the unit to the complainant.** Even the terms and conditions as mentioned in the Product Application Form clearly state at para 5.1.2 that “ATS (agreement to sell)/AOS(agreement of sale) will be issued on basis of consideration realized as per the schedule of payments that is fixed for the concerned project/transaction” and in para 5.2 that “Registration costs (stamp duty) are subject to Government Guideline value. In addition, minimum ₹10,000/- per unit will be charged for every registration towards legal, liaison and administrative expenses” and at para 5.3 that “all payments are to be made two weeks before the scheduled date of Registration”. Thus, in view of the above, Section 18 of the said Act is not attracted and accordingly no order for refund of



the consideration amount and interest thereon can be ordered under the said Section. The remedy, if any, for the refund of the consideration amount with interest thereon, therefore does not lie before the Real Estate Regulatory Authority under the said Act, as it is a case of mere recovery of money outside the purview of the said Act.

24. Because of the reasons stated above, the complainant is not entitled to any of the reliefs as prayed before this Authority. The instant point is, therefore, answered in the negative.

Point No.2

The instant point has to be decided by the Adjudicating Officer under Section 71 of the said Act.

In the premises aforesaid, the prayers before this Authority in the instant complaint are dismissed by this Authority, however for deciding compensation, if any, the instant complaint is referred to the Adjudicating Officer under Section 71 of the said Act.

Vijaya
27/10/2022
(Vijaya D. Pol)
Member, Goa RERA