



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(329)/2022 | 720

Date: 25/07/2023

Mr. Anees Ahmed Shaikh,

Amans Carlos Paraiso,

Flat No. 403, Alto Mangor

Vasco, Goa- 403802.

.....Complainant

Versus

Aman Builders and Developers,

Shop No. 3 & 4 Karma Empress Building,

Next to KTC Bus Stand,

Vasco Da Gama, Goa- 403802.

.....Respondent

ORDER

(Dated 25.07.2023)

This order disposes of the online complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') wherein the complainant has prayed this Authority to direct the promoter to issue possession certificate and convey the title of the flats in question in compliance with section 17 of the RERA Act.

2. It is the case of the complainant that under the agreements for sale cum construction executed and registered on 23.10.2015, it was agreed by the respondent to sell to the complainant two flats bearing no. F-4 on the first floor

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and flat no. F3 on the fourth floor in the building known as 'Aman's Carlos Paraiso' situated at Vasco, Goa. According to the complainant, as per the said agreement for sale the respondent was bound to deliver the said flats within a period of 24 months from the date of the said agreement i.e. on or before 23.10.2017, however the respondent failed to deliver the possession within the stipulated period and hence violated the terms of the said agreement for sale. Hence, the prayers of the complainant as stated above. However, two separate complaints filed online by the complainant as attachments to the original online complaint i.e. one attached complaint pertaining to flat F-3 and one attached complaint pertaining to flat F-4 are not taken into consideration since both the said attached complaints are not in legal format as mandated under the RERA Act and further the complaint pertaining to flat no. F3 is not verified by the complainant whereas the complaint pertaining to flat F4 is neither signed by the complainant nor verified by the complainant. Hence, for deciding the instant matter only the original online complaint which is in proper legal format, signed and verified by the complainant is taken into consideration.

3. Reply has been filed by the respondent wherein it is stated that it was agreed between the parties as per the said agreement for sale that the promoter shall complete the construction of the said flat F-4 within a period of 24 months from the date of signing of the said agreement subject to the allottee making full payment of all the amount due from him and subject to Force Majeure or any other circumstances beyond the control of the developer or for any unavoidable

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or inevitable circumstances. According to the respondent, the complainant failed to make the payments to the respondent on account of which the construction work was considerably delayed. It is stated that as on 24.10.2017, the complainant had an outstanding amount of Rs. 7,80,000/- and thus the allottee had never paid total consideration in pursuance of the terms of the said agreement.

4. Though the respondent admitted the dates of receiving the completion certificate and the occupancy certificate, the respondent denied that electricity connection was granted to the building in September 2021 and water connection in November 2021. The respondent has denied that the quality of work of the said flat as sub-standard and low.
5. According to the respondent, the possession of the said flat was handed over to the complainant only after he paid the total consideration and the outstanding dues i.e. infrastructure tax, house tax, municipality tax etc. It is further stated that the respondent had given in writing the dues pending on behalf of the allottee and as per the said agreement for sale, the promoter was justified in seeking an additional amount in terms of clause c of the said agreement. Rest of the allegations of the complainant are denied by the respondent.
6. According to the respondent, he is willing and ready to perform his part of the contract by executing title deed in favour of the complainant, however the costs towards execution of the title deed ought to be borne by the allottee as per the prevailing laws in force.



7. Oral arguments were heard from Ld. Advocate R. Almeida for the complainant and Ld. Advocate B. Fernandes for the respondent.
8. 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 the relief of possession of the said flats as prayed in the complaint?	In the negative.
2.	Whether the complainant is entitled to have the sale deed in respect of the said flats to be executed in his favour by the respondent?	In the affirmative.

REASONS

Point no. 1

9. Possession letter dated 01.11.2021 from the respondent to the complainant inter alia states as follows:-

“with reference to your agreement for sale dated 05.11.2015 executed by you for purchase of flat no. **F-3** on the **Fourth Floor**, constructed in the building known as “**Aman’s Carlos Paraiso**” situated at Mangor Hill, Vasco Da Gama, Goa.

We are hereby handing over possession of your flat no. **F-3** on completion of entire work of the flat”.



Similar possession letter dated 01.11.2021 pertaining to flat no. F-4 is placed on record to show that the possession is given to the complainant.

10. Since the possession of the said flats have been given by the respondent to the complainant as per the aforesaid possession letters, the issue of possession as raised by the complainant does not survive and has become infructuous. Hence, the instant point is answered in the negative.

Point no. 2

11. **Section 11(4) (a)** of the RERA Act imposes all obligations, responsibilities and functions under the RERA Act/ Rules and Regulations on the promoter “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.”

12. **Section 11(4) (f)** of the RERA Act states as follows:-

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

(4) The promoter shall

(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 RERA Act states as follows:-



“17. Transfer of title.-(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 of 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 subsection (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, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate.”

14. Thus, responsibility and duty is cast on the promoter under the aforesaid sections to execute a registered conveyance deed of the said flats in favour of the complainant along with the undivided proportionate title in the common areas to the association of allottees or society, as provided under section 17 of the RERA Act and the corresponding right accrues in favour of the allottee/ the complainant to enforce the said duty of the promoter. It is material to note that in the reply the respondent has submitted that he is willing and ready to perform his part of the contract by executing title deed in favour of the complainant, however, the costs towards execution of the title deed ought to be borne by the allottee as per the prevailing laws in force. The instant point is therefore answered in the affirmative.

In view of the aforesaid, I pass the following:-

ORDER

The respondent is directed to comply Section 17 of the RERA Act, quoted above, within two months of the passing of this order and accordingly



execute a registered conveyance deed in favour of the complainant for the aforesaid flats along with the undivided proportionate title in the common areas to the association of the allottees/ society and handover all the relevant documents as per the mandate of said Section 17. Costs for the execution and registration of the sale deed in favour of the complainant to be borne by the complainant and the complainant is directed to participate towards the formation of an association or society of the allottees as per the mandate of Section 19(9) of the RERA Act.

However, liberty is given to the respondent to approach this Authority after two months of the passing of this order for reasonable extension of time on genuine grounds to fully comply Section 17 of the RERA Act.

The respondent to file compliance report in the form of an affidavit after two months of passing of this order, failing which penalty would be imposed on the respondent for non compliance of this order and execution proceedings will be initiated by this Authority.

Vijaya D. Rol
25/7/23
(Vijaya D. Rol)
Member, Goa RERA