



GOA REAL ESTATE REGULATORY AUTHORITY
DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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No.3/RERA/complaint (315)/2022 /819

Dated: 08/11/2022

Preeti Desai,

Sai Enclave, Flat No. S-12, Second floor,
Orgao, Marcel,
South Goa, 403107.

.....Complainant

V/s

Nagesh patil,

Shivani Builders and Developers,
Prop.: Mr. Nagesh Patil,
Sai Enclave, Banastarim, Marcel Main road,
Opp. Indian Oil Petrol Pump,
Orgao, Marcel, Ponda, South Goa, 403107.

.....Respondent

ORDER

(Dated 07.11.2022)

This is to dispose of the complaint received on 16.07.2022 from Ms. Preeti Desai (complainant herein) on the web portal of the Authority. The complaint has been filed against Mr. Nagesh Patil of Shivani Builders and Developers. In this case, complainant and her husband i.e. Mr. Dhanaji Pandurang Desai had booked a flat no. S-12, Second floor, Sai Enclave. This project is situated in Urgao, Marcel, Goa. This project was developed by M/s Shivani Builders and Developers which is a partnership firm in which Shri

Nagesh Patil is one of the partners who has been made respondent in this case. The complainant and her husband have booked the said flat for a total consideration of ₹22,25,000/- (Rupees Twenty Two Lakhs Twenty Five Thousand only) and agreement for sale dated 10.12.2018 was executed between the parties. Subsequently, by deed of sale dated 25.08.2020, this flat was sold to the complainant and her husband by the Shivani Builders and Developers. The grievance of the complainant is that there is heavy leakage in the building, lift is not working, no proper water facilities, no garbage facility, no parking area. The complainant has made a request to refund the money with interest and payment.

2. Copy of the complaint was served to respondent/promoter with direction to file the reply and accordingly respondent has filed reply dated 23.08.2022. In his reply, the respondent has stated that complainant had grievances regarding the tiles. So as desired by the complainant, after execution of the deed of sale, the entire tiles of the flat of complainant were replaced. Regarding leakage, the building has 15 flats and 12 shops. There were no grievances as regards leakages by any other flat owners. Regarding lift functioning, respondent has stated that lift was not functioning only for one day. There was a technical problem which was then rectified. Regarding water supply, the respondent has stated that entire village of Marcel was facing water shortage for some time. However, respondent has provided an overhead tank and entire colony was taken care of by the respondent. In this case also, there is no grievance from

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other owners of the building. Regarding garbage issue, the same is being sorted out through Village Panchayat. In short, respondent has denied all the charges.

3. The case was fixed for hearing on 15.09.2022. Both the parties were present. Complainant pointed out about leakages in the building and other structural problems. Respondent stated that he is willing to sort out the problem if it is there. The case was adjourned on the note that parties will discuss and sort out the issues in three weeks.
4. On the next and final date of hearing i.e. 17.10.2022, respondent pointed out he sent a letter dated 19.09.2022 to the complainant for inspection of the flat but the same was returned unclaimed. The complainant pointed out that he has not received the same.
5. I have considered the peculiar circumstances of the case. The complainant is insisting about leakage and structural aspect of the building while the respondent is totally denying it. In this particular case, possession of the premises i.e. flat has already been given by the respondent to the complainant i.e. allottee and a sale deed has been executed two years back. Once this is done, there is no question of refunding the money along with interest. However, the issue to be addressed is leakage and structural aspect of the building. This issue comes within the purview of the Section 14(3) of the RERA Act. For the convenience, Section 14(3) of the Act is transcribed below:-

14(3). In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.


From the provision of Section 14(3) of the Act, it is very clear that if any structural defect is noticed within five years by the allottee from the date of handing over possession, promoter should rectify it within 30 days. If promoter fails to rectify the defects within 30 days, the aggrieved allottee shall be entitled to receive appropriate compensation. Here whether structural defects are there or not, is subject matter of determination. The complainant has pointed out the defect but respondent has denied. The only solution to the problem is to compensate the allottee if structural defects is established which can be assessed while determining the amount of compensation.

6. As per Section 71 of the Act, the power to determine the compensation is vested in Adjudicating Officer appointed under the Act. Section 71 of the Act which is as follows:-

“71. Power to adjudicate.-(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard.”

- 7. From the above, it is clear that case comes within the purview of Section 71 read with Section 14(3) of the RERA Act. This issue comes within the jurisdiction of Adjudicating Officer appointed under the Act.
- 8. In view of foregoing observations, the case is referred to Adjudicating officer appointed under the Section 71 of the Act for disposal.

Order accordingly,


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

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 South Goa, 403107.

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