



GOA REAL ESTATE REGULATORY AUTHORITY

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

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File no.3/RERA/Complaint (340)/2023/940

Date: 14/09/2023

Sandeep R. Haldankar,

Married, Aged 42 years,

Residing at H.No. 758/1,

Gaonkarwada Mayem,

Bicholim, North Goa.

.....Complainant

Versus

1. M/s Aashirwad Constructions,

Having regd. Off. At shop no. 2,

Perpetua Apartment, Near Alcon Hyundai,

NH 17, Socorro Porvorim, Bardez, Goa.

Through its proprietor Smt. Siya Sanjay Gaude

Residing at. H.no. 45/C, Paithona,

Salvador Do Mundo, Bardez, Goa.

2. Smt. Siya Sanjay Gaude,

Residing at. H.no. 45/C, Paithona, Salvador Do Mundo,

Bardez, Goa-403501.

.....Respondents

ORDER

(Dated 14.09.2023)

This order disposes of the 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 respondents to complete the work and handover the possession of the flat

bearing no. 103 on the second floor of the building/ project "CASA MARIA ARLETTE"; to direct the respondents to execute the deed of sale; to direct the respondents to pay compensation of ₹5,00,000/- (Rupees Five Lakhs only) to the complainant; to direct the respondents to rectify the structural changes made to the building without any permission or approval of the concerned authorities and two third of the purchasers; to direct the respondents not to charge unreasonable and illegal GST and show proper statement of accounts and also to provide the basic amenities as promised in the Agreement for Sale.

2. It is the case of the complainant that Shri Sanjay Chandrakant Gaude, the late husband of respondent no. 2 was carrying on the business of real estate development, in proprietorship, in the trade name and style of "AASHIRWAD CONSTRUCTIONS" and after the death of said Shri Sanjay Gaude, inventory proceeding bearing no.51/2022 was initiated by respondent no. 2 which was disposed of by judgment and order dated 22.04.2022 and thereafter by Portuguese civil miscellaneous application no. 78/22/C, respondent no. 2 was declared as the legal heir and the rights to the said proprietorship of Aashirwad Constructions was vested in the respondent no. 2 who continues the said business of real estate development in the same trade name and presently completing the construction project undertaken by her deceased husband.
3. According to the complainant, Shri Sanjay Chandrakant Gaude, the deceased husband of respondent no. 2 had entered into an agreement for development and sale dated 28.06.2018 with Mrs. Maria Arlette De Lima Fernandes Athaide and

her husband Mr. Braz Anthony Agnelo Athaide for the development of their property known as "ZAMBUL GALLUM" situated at Socorro Village, Bardez North Goa, to construct thereon a multi-storied building to be named as "CASA MARIA ARLETTE" having RERA registration no. PRGO12180698 with flats and offices/ shops and sell the same in favour of the intending purchasers.

4. The complainant has stated that pursuant to the said Development Agreement, various permissions are obtained by the owners for the said development project and late Shri Sanjay Gaude commenced the construction of the multi-storied building in the said property and entered into Agreement for Sale with different intending purchasers.
5. According to the complainant he entered into an Agreement for Sale dated 27.05.2019 with the deceased husband of respondent no. 2 who vide said agreement agreed to construct and sell the residential flat no. 103, admeasuring 67.81 sq. mtrs., situated on the second floor of the said building excluding the area covered by external walls, area under service shafts, the exclusive balcony appurtenant to the said flat and stilt parking no. P-103 for the total consideration of ₹48,00,000/- (Rupees Forty Eight Lakhs only). It is stated that as per clause no. 6 of the said agreement the deceased husband of respondent no. 2 had agreed to give possession of the said flat on or before 15.12.2020.
6. According to the complainant, he had borrowed a loan from Bank of India and the last payment was made to the respondent on 14.10.2020. The complainant has stated that a total amount of ₹38,85,000/- (Rupees Thirty Eight Lakhs

Eighty Five Thousand only) has been paid by the complainant to the respondents by various cheques to the account of Aashirwad Constructions and S. N. Enterprises on the request of the deceased husband of respondent no. 2 and the balance amount approximately of ₹8,65,000/- (Rupees Eight Lakhs Sixty Five Thousand only) (excluding titles and its fitting charges of ₹50,000/-) is with the Bank and will be disbursed once the possession is handed over to the complainant. It is stated that the respondent has not completed the work in all respects and hence the balance amount is pending with the bank since October 2020 onwards though the complainant is paying the installment to the bank since 2019 onwards.

7. According to the complainant, total amount of ₹29,85,000/- (Rupees Twenty Nine Lakhs Eighty Five Thousand only) was credited in the account of M/s Aashirwad Constructions whereas an amount of ₹9,00,000/- (Rupees Nine Lakhs only) in the account of M. S. Enterprises.
8. The complainant has submitted that the premises is not yet complete, though the deceased husband of the respondent no. 2 had obtained the occupancy certificate dated 31.08.2021 from the Village Panchayat of Socorro. According to the complainant with mutual understanding between the complainant and the deceased husband of the respondent no. 2, the floor tiles for the said flat were purchased and fitted by the complainant at his own cost and it was agreed that the expenses towards tiling shall be adjusted in the remaining balance amount payable by the complainant to the deceased husband of respondent no. 2.

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9. According to the complainant, he was regularly following up with the deceased husband of the respondent no. 2 and after his death with the respondent no. 2 to complete the said work as per the terms of the said agreement and the last date by which the respondent no. 2 promised to hand over the said flat to the complainant was 31.05.2022 but the respondent no. 2 did not hand over the possession of the said flat by 31.05.2022.
10. The complainant has stated that on physical inspection at site, it was found that the project was incomplete, as the necessary works and amenities promised to be provided as per the said agreement like water connection, electricity connection, CCTV Camera, door video phone, covered car parking, lift with power backup, water purifier, LED lights, inverter, fans, false ceiling, lighting arrester, SS piped LPG gas system were not provided.
11. According to the complainant, inspite of multiple reminders the respondent no. 2 failed to hand over the possession of the said flat and on the contrary a legal notice dated 25.11.2022 captioned as possession letter cum reminder of payment was sent by the respondents to the complainant demanding therein an amount of ₹27,47,140/- (Rupees Twenty Seven Lakhs Forty Seven Thousand One Hundred and Forty only) to be paid within a period of fifteen days of the said notice. It is stated that in the said notice by the respondents, it was mentioned that only an amount of ₹26,60,000/- (Rupees Twenty Six Lakhs Sixty Thousand only) was received by the respondents, who also claimed GST at the rate of 12%. According to the complainant the said amount is wrongly

mentioned in the said notice as the complainant has paid an amount of ₹ 38,85,000/- (Rupees Thirty Eight Lakhs Eighty Five Thousand only) to the respondents and the balance amount to be paid is ₹9,15,000/- (Rupees Nine Lakhs Fifteen Thousand only).

12. The complainant has stated that he sent a reply dated 13.12.2022 to the respondents' said possession letter cum demand notice, however the respondent no. 2 by reply dated 29.12.2022 failed to acknowledge the payment of ₹ 38,85,000/- (Rupees Thirty Eight Lakhs Eighty Five Thousand only), and stated that the payment received was only ₹26,60,000/- (Rupees Twenty Six Lakhs Sixty Thousand only) and demanded ₹27,47,104/- (Rupees Twenty Seven Lakhs Forty Seven Thousand One Hundred and Four only) as total balance payable inclusive of GST at the rate of 12%. The complainant further stated that the respondent no. 2 falsely stated in the said reply that the work of the project is complete and that the same is ready for possession.
13. The complainant has further alleged that at the time of Agreement for Sale, it was represented through various approved plans that the project consisted of nine flats, however, without the knowledge and consent of the allottees, the respondents have illegally constructed a penthouse, which is blocking the access of the allottees to the terrace which is a common area for all. Hence the prayers of the complainant as stated above.
14. Reply has been filed by the respondents wherein it is submitted that the deceased husband of the respondent no. 2 has completed the said project before



his death and that respondent no. 2 had only taken the responsibility to give possession of the same to the allottees. She has stated that her deceased husband had obtained all the necessary permissions for construction of the said project and he followed all the rules and regulations as per the RERA Act.

15. According to the respondents, the deceased husband of the respondent no. 2 was proprietor of Aashirwad Construction and he entered into an agreement dated 27.05.2019 with the complainant and agreed to construct and sell the residential flat no. 103, on second floor, admeasuring 67.81 sq. mtrs. in the said project at Sucorro, Porvorim, Goa along with stilt parking for price of ₹48,00,000/- (Rupees Forty Eight Lakhs only) excluding GST and any such other taxes as mentioned in the said agreement. According to her, there was a delay in the construction work due to covid pandemic, however her deceased husband obtained occupancy certificate dated 31.08.2021 but due to the sudden death of her husband, he could not hand over the possession to the complainant.
16. In the reply it is further stated that since the complainant is not ready to settle the payment as stated in the Agreement for Sale, the respondent no. 2 sent possession letter cum reminder of payment for the said flat to the complainant and called upon the complainant to settle the balance amount, however the complainant has not shown willingness to settle the said payment and has filed false complaint against the complainant.
17. According to the respondents, the complainant has only paid an amount of ₹26,60,000/- (Twenty Six Lakhs Sixty Thousand Rupees only) and that an



amount of ₹27,16,000/- (Twenty Seven Lakhs Sixteen Thousand only) is due and payable to the respondents and accordingly a possession letter cum reminder of payment of the balance amount was sent to the complainant on 25.11.2022, wherein it was also mentioned that the said premises is ready for possession. The respondents have stated that after obtaining the occupancy certificate dated 31.08.2021, the possession could not be handed over to the complainant due to sudden demise of the husband of respondent No. 2. It is further stated that thereafter the respondent No. 2 filed inventory proceedings before the Civil Court, Mapusa and the order was passed on 11.11.2022, after which the respondent No. 2 sent the aforesaid possession letter cum reminder of payment to the complainant. According to the respondents, the respondent No. 2 has shown willingness to adjust the tiling expenditure against the balance amount payable by the complainant. It is stated that there is absolutely no pending or incomplete work and that the said premises is ready for possession.

18. The respondents have stated that in the reply to the legal notice, the respondent No. 2 again requested the complainant to make the remaining payment of ₹ 27,16,000/- minus tiling expenditure within 15 days failing which the rights of the respondents would be enforced in accordance with agreement for sale but the complainant has not shown any interest or willingness to proceed with the same by paying the balance amount to the respondents. Hence the prayer of the respondents to dismiss the complaint.



19. Affidavits were filed by both the parties along with the notarized documents. Ld. Advocate R. D'Souza appeared for the complainant and Ld. Advocate S. Khot appeared for the respondents. During the course of hearing, consent terms were filed by both the parties and the said consent terms are reproduced herein below:-

"I. The parties hereto after deliberation and discussion amongst themselves and without any coercion have agreed to amicably settle all the disputes which are /were pending amongst themselves and which are listed herein below and have decided to file the consent terms before this Hon'ble Authority which are set out herein under and which may be accepted by this Hon'ble Court and consent decree may be drawn.

II. All the parties agree and admits that this suit/ lis between and amongst them was concerning Flat No.103, situated on second floor, having an area admeasuring of 67.81 sq. mtrs and with one stilt car parking no. P-103 known as the "SUIT FLAT" in the SAID PROJECT named as "CASA MARIA ARLETTE", constructed/ developed in property known as "ZAMBULGALLUM" situated Socorro Village, within the territorial jurisdiction of the Village Panchayat of Socorro, Bardez, North-Goa, Goa. Described in the Land Registrations Office under No. 51158 at pages 75 of Book B- 108, representing half of the land enrolled in the Taluka Revenue office of Bardez, Goa, under No. 1555 of the first circumscription of Socorro, and surveyed under survey no. 372/14- A of Village Socorro, admeasuring 1000 Sq. Mtrs. and bounded as towards the East by road and survey no. 371/1, towards the West by Survey no. 372/1, towards the North by Survey no.

372/14 and towards South by Survey No. 370/1 known as the SAID PROPERTY.

- III. In the present suit it is decided by and between all the parties to the Suit that the suit Flat has been completed in all respects and is ready for possession. The Respondents have agreed that if any work is pending the same shall be completed before handing over the possession to the Complainant.
- IV. It is agreed by and between all the parties to the Suit that the terms of the Deed of Sale have been agreed to by the complainant and the Respondents and the approval for the same has been obtained and that the said Deed of Sale shall be executed before the 31st of September 2023.
- V. All the Parties to the present suit have agreed and decided by and between themselves that the possession of the Suit Flat shall be handed over to the Complainant upon receiving the final payment or upon execution of the Deed of Sale whichever is earlier.
- VI. The Respondent have further agreed after discussion with the Complainant that a shade of metal sheets shall be build and provided to protect and cover the flats wall from direct rainwater and the said expenses are included in the total consideration of Rs. 48,00,000/- (Rupees Forty-Eight Lakhs only) paid by the Complainants.
- VII. It is agreed by and between the Complainant and the Respondents that the consideration of Rs. 48,00,000/- (Rupees Forty-Eight Lakhs only) which is the full and final payment of the suit flat is inclusive of GST and the stilt parking. The Respondents which are the Developers/Builders/Vendors or the Promoters have



acknowledged and accepted that the consideration of Rs. 48,00,000/- (Rupees Forty-Eight Lakhs only) which is the full and final payment of the suit flat is inclusive of GST and the stilt parking and the payment towards GST shall be paid by the Respondents as and when required. The Respondents further undertake to pay the GST and that the same shall not be kept pending or passed over by the Respondents to the Complainants having received and acknowledged the payment towards GST.

VIII. It is agreed between the parties to the suit that the Stamp Duty and Registration fee shall be paid by the Respondent/ Defendants from the Consideration amount paid by the Complainant. The part payment to be paid towards Registration fees shall be paid to the Respondent before taking appointment for the Execution of the Deed of Sale. It is further agreed between the Complainant and the Respondents that the Complainant to pay the remaining balance payment to the Respondent on the date of the execution of the Deed of Sale.

IX. It is further agreed by and between the Complainant and the Respondents that the receipts along with the invoice for the payments made towards the purchase of the said flat shall be issued and handed over by the Respondents to the Complainants.

X. The Respondents have also acknowledged and agreed to the payments advanced to the Respondents by the Complainant as has been claimed in the Suit.

XI. It is agreed by and between the parties to the suit that the Respondents shall undertake to install the generator and the lift and ensure it's functioning at



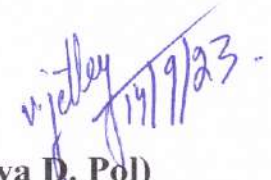
the earlier as part of the amenities that were promised to be installed in the said project.

- XII. That all the suits, compliant, claims, counter claims, cross claims or any disputes of whatsoever nature vis-à-vis the suit property/suit flat shall be deemed to be resolved and stand resolved and closed for all purposes by and between the parties and that all parties agree that they shall not file any further claim/ petition/ suit/application/ appeal or raise any other and further demand etc. against each other in respect of the suit property/ suit flat including that on consideration save and except the captioned suit.
- XIII. All the claims, complaints filed by parties inter-se hereto shall be deemed to be withdrawn/ settled and there shall be no claim and that no party shall pursue any claim in any manner. Further, the execution of this Consent Terms means voluntary withdrawal of all claims against each other and all necessary application be filed.
- XIV. It is further agreed by and between the parties that the True Copy of the present Consent Terms shall be attached by respective parties along with their application seeking withdrawal of the suit so as to enable the respective Courts to pass necessary order on the same.
- XV. As agreed by and between the parties to the present suit the consent terms shall be incorporated in the terms of the Deed of Sale.
- XVI. The above consent terms are executed between the parties hereto after deliberation and discussion amongst themselves and without any coercion.



XVII. The above terms be accepted by this Hon'ble court and accordingly consent decree may be passed."

20. In para IV of the above consent terms it is mentioned that "the said Deed of Sale shall be executed before 31st of September 2023", however since the month of September has 30 days, it is ordered that the aforesaid sentence shall be read as 'the said Deed of Sale shall be executed before 30th of September 2023'.
21. The instant complaint is disposed of as per the aforesaid consent terms. Proceedings are closed.


(Vijaya D. Pol)
Member, Goa RERA