



## GOA REAL ESTATE REGULATORY AUTHORITY

101, 1<sup>st</sup> 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 (384)/2023/1270

Date: 02/09/2024

**Nikita Naik,**

Flat no. 102 first floor building I,  
Devashri Pinto Ville phase III,  
Socorro Bardez Goa 403101.

.....complainant

*Versus*

**1. Devashri Nirman LLP,**

710-712 Seventh Floor, Dempo Towers,  
Patto Plaza, Panaji, Goa-403001.

**2. Pallavi Shrinivas Dempo,**

Partner of Devashri Nirman LLP  
710-712 Seventh Floor, Dempo Towers,  
Patto Plaza, Panaji, Goa-403001.

**3. Shrinivas Vasudev Dempo,**

Partner of Devashri Nirman LLP  
710-712 Seventh Floor, Dempo Towers,  
Patto Plaza, Panaji, Goa-403001.

**4. Neela Vasudeva Dempo**

Partner of Devashri Nirman LLP  
710-712 Seventh Floor, Dempo Towers,  
Patto Plaza, Panaji, Goa-403001.

4

**5. Mr. Carl Pinto Andrade**

871/3, Fotquirem,  
Behind SBI Varsha Colony,  
Alto Porvorim, Bardez Goa 403521.

**6. Secretary**

Devashri's Pinto Ville Co-operative Housing Society Ltd.  
Devashri Pinto Ville, Porvorim Socorro  
Bardez Goa 403101.

.....Respondents

Ld. Advocate Shri J. George for the complainant.  
Ld. Advocate Shri A. Kantak for the respondents.

**ORDER**  
**(Dated 02.09.2024)**

Brief facts of complainant's case:-

1. On 01.08.2019 the complainant entered into an agreement of sale with the respondents to purchase flat no. 102, with one "stilted car park" in the project known as "Devashris Pinto Ville" Phase III situated at Socorro Bardez for consideration of ₹52,00,000/-.
2. The complainant paid entire sale consideration in terms of the agreement of sale, pursuant to which by letter of possession dated 02.03.2021, respondents handed over possession of the flat to the complainant.
3. Within less than three years of hand over of flat, defects in the workmanship and quality such as (a) cracks and splits in doors of the bedroom and living room (b) detaching/ unfastening of the fixtures and fittings such as latches, hinges and locks of the doors (c) unbuckling/ unclasping of the glass windows from the walls

f

and (d) cracks on the walls of the flat started developing and began leaking with water. The complainant brought these defects to the notice of the respondents. The respondents failed to address the grievances of the complainant.

4. In terms of clause II (a) and V of the agreement, the respondents were obliged to hand over one “stilted car parking” bearing no. 102 to the complainant, however inspite of paying full consideration towards the flat and stilted car park, the respondents provided “open car parking” to the complainant. Upon enquiry, the respondents informed the complainant that “open car park” was provided to the complainant as a temporary arrangement and that shortly she will be provided “stilted car park”. Inspite of assurance, the respondents failed to allot “stilted car park” to the complainant.

5. In term of clause III (c) of the agreement, the obligation of the complainant to pay maintenance charges were to commence within thirty days after notice in writing was received by the complainant from the respondents, stating that the flat was ready for the use and occupation. The respondent delivered possession of the flat to the complainant on 02.03.2021. The maintenance by the complainant therefore would commence from 02.04.2021. The respondents collected the maintenance charges from the complainant amounting to ₹27,402/- and applied the said maintenance charges from July 2020 to March 2021. The respondents have no authority to collect maintenance charges prior to 2nd March 2021. The complainant called upon respondents to refund the maintenance charges however they refused.

6. In the circumstances, the complainant filed present complaint praying following reliefs: (a) to direct respondents to rectify defects in the workmanship by



✓

undertaking repairs in the flat (b) to direct respondents to hand over silted car park as provided in the agreement of sale (c) to direct the respondents to return maintenance charges of ₹27,402/- with interest and (d) to direct the respondents to pay compensation.

7. A notice of the complaint along with the relevant documents were served on the respondents, pursuant to which the respondent nos. 1 to 4, filed a reply dated 13.02.2024. The respondent no. 5 filed a reply also dated 13.02.2024 and respondent no. 6 filed reply dated 29.01.2024.

**The brief facts of the case of respondent nos. 1 to 4 and 5:-**

8. Respondent nos. 1 to 4 stated that they were concerned with the sale of only flats allotted to them in the said project. Their responsibility and liability was only to construct and deliver to the owners of the remaining constructed flats, which did not belong to them in terms agreed upon, and completed in all respect. As regards other aspects the case of two sets of respondents is identical.

9. They stated no "stilted car park" was agreed to be sold to the complainant. The complainant is taking advantage of the error of mentioning "stilted car park" in the agreement at some places. In the agreement there is a reference of "reserved car park" at some places. In the booking Form in which the complainant has booked flat 102, it is mentioned "open/ cover park". The car park no. 102 as has been set out in the plan annexed to the agreement has been handed over to the complainant. The complainant was promised "open /covered park" as mentioned in the booking form.

4

10. The workmanship and quality defects alleged in the complaint are not structural defects. There are more than 300 allottees in the project; however none of the flat owners has any grievance of the defects as pointed out by the complainant.

11. The maintenance charges for the entire building commenced from 01.07.2020. The building in which the complainant flat is located was completed long back and soon thereafter complainant was asked to take possession of the flat. The complainant defaulted in payment of the consideration towards the flat and consequently delayed in taking the possession of the flat. The delay in taking possession of the flat is attributed to the complainant. She is not entitled for the refund of the maintenance charges. The respondents prayed to dismiss the complaint.

**Facts of the case of the respondent no. 6:-**

12. The respondent no. 6 stated that it is a cooperative housing society registered in the office of the Assistant Registrar of cooperative society on 08.04.2021. The agreement executed by the complainant with respondents is dated 01.08.2019 at which time respondent no. 6 was not in existence and is not a party to the said agreements. Respondent no. 6 is neither a necessary party nor a proper party and as such requires to be deleted.

13. In the course of hearing, the complainant and respondents 1 to 5 filed their affidavits in evidence and produced relevant documents which are on record. The respondent no. 6 did not produce any evidence.

4

14. Short points that arise for my determination are:-

(1) Whether the complainant is entitled for “stilted car park” no. 102?

Ans: No.

(2) Whether complainant is entitled to the refund of maintenance amount of ₹27,402/-?

Ans: Yes.

(3) Whether the complainant is entitled for the repairs of the defects mentioned in the complaint?

Ans: Yes.

(4) Whether the complainant is entitled for compensation?

Ans: To be decided by Adjudicating Officer.

### **REASONS**

#### **Point no. (1)**

15. It is submission of learned Advocate Mr. Jonathan for the complainant that in terms of agreement of sale the respondents agreed to sell flat no. 102, on the first floor of building-I along with one “stilted car park”. On 02.03.2021 the respondents handed over possession of the flat however instead of giving possession of “stilted car park no. 102” in terms of clauses II (a) and clause V, the respondents provided “open car parking” to her as temporary arrangement with promise that “stilted car park” will be provided in the course of time however not honored promise. In the booking Form the complainant is shown booked one “open/covered park” however it is irrelevant as the agreement supersedes all other previous documents. Learned Advocate highlighted relevant portions of the agreement wherein respondents agreed to provide stilted car park.



4

16. On the other hand it is submission of learned Advocate A. Kantak that it was never agreed to sell “stilted car park” to the complainant. There is an error in the agreement wherein there is mention of “stilted car park” at some place, whereas, at pages 16 and 17 of the agreement there is a mention of “reserved car park”. The complainant at the time of taking possession of flat is given possession of “covered car park” no. 102 as has been set out in the plan annexed to the agreement. The complainant has booked open/ covered park in the booking Form which is binding on the complainant. Mr. Vishal Bharne with whom complainant has booked flat has filed his affidavit in evidence substantiating point that complainant has booked open/covered park and not stilted car park as sought to be claimed in the complaint.

17. I have perused agreement of sale. On page-19 Paragraph-II clause (a) it is stipulated, “In consideration of the purchase of the said apartment inclusive of the “stilted car park” denoted under no. 102 as shown on the plan annexed to this agreement.....”

18. On page-33 paragraph V clause (a) it is stipulated, “the purchasers/ allottees along with the said apartment has been allotted one “reserved car park” denoted under no. 102 as shown on the plan annexed to this agreement”.

19. On page-16 paragraph I clause (b) it is stipulated, “the purchasers/ allottees having approached the owner/ vendor hereby agrees to purchase and acquire the said apartment inclusive of one “reserve car park” as per the scheme of development and the owners/ vendors hereby agrees to sell and transfer to the purchasers/ allottees .....”

4

20. On the booking Form carrying the signature of the complainant, the complainant has booked one “open-covered car park.” In Affidavit in evidence Mr. Vishal confirms on oath that the complainant has booked open/covered park.

21. It can be seen from above that in agreement of sale at some places it is mentioned that the complainant agreed to purchase “stilted car park” whereas at some places it is mentioned that she agreed to purchase “reserved car park” and further in the booking Form she has agreed to purchase “open/covered park”. Therefore, there are three versions as regard the type of car park the complainant agreed to purchase from the respondents. In the mist of these variety of versions it is difficult to select as to which version is true. The complainant’s stand that she agreed to purchase “stilted car park” is in serious doubt as material on record suggests three possibilities. (a) That she might have agreed to purchase “stilted car park”, or (b) “reserved car park” or (c) “open-covered park.” It is only in the event that it is proved that the complainant agreed to purchase “stilted car park” the respondent could be held for violation of the terms of agreement for providing “open covered park” to the complainant.

22. It is admitted that the complainant is handed over one “open /covered park” no. 102. This is the same car space as has been depicted in the plan annexed to the agreement of sale. The complainant is admitting she is allotted same space as has been shown in the plan annexed to the agreement. The complainant in some of her correspondence with the respondents has alleged that plan annexed to the agreement of sale in which car space is depicted is manipulated by the Authorities. However which Authorities manipulated plan is not stated by her. Moreover the case of manipulation of plan is not pleaded by her in the complaint. In the absence of pleading such case in the complaint, the allegation of manipulation in the plan



4

has to be held as afterthought. By allotting the car space no.102 as identified in the plan annexed to the agreement by the respondents to the complainant the obligation of the respondents in the terms of the agreement stands honored with respect to the car park space. Being so, I find no violation of the terms of the agreement by the respondents with respect to the allotment of car park space.

23. Booking Form is signed by the complainant. This is confirmed by Mr. Vishal in his Affidavit in evidence. In the booking Form complainant has booked open/covered park. This is binding on the complainant. Just because in the agreement it is mentioned that it supersede all previous documents will not enable complaint to deny her commitment stated in the booking Form as sought to be argued by learned Advocate Mr. Jonathan.

24. In the circumstances my answer to the point no. 1 is in the negative.

**Point no. (2)**

25. It is submission of learned Advocate Mr. Jonathan that on 02.03.2021 respondents handed over possession of the flat to the complainant by letter of possession dated 02.03.2021. She was responsible for paying maintenance fees within thirty days after receipt of letter of possession i.e. from 02.04.2021 onwards. On 04.03.2021 she paid ₹27,402/- to the respondents as maintenance charges. In the month of May 2022 she received email from respondent no. 6 stating that she had not paid maintenance charges for the period up to March 2022. She checked the receipt and learnt that ₹27,402/- has been shown paid as maintenance for a period from July 2020 to March 2021. Since physical possession of the flat was handed over to the complainant on 02.03.2021 only, the collection of the

cf

maintenance amount of ₹27,402/- and showing the payment of maintenance for the period prior to the taking of the possession of the flat is illegal. The complainant requested respondents to refund the maintenance amount however they refused. The collection of said maintenance amount and applying same to the period prior to handing over possession of the flat is illegal. In support relied on the decision in case of **Kamal Kishore and others vs. Supertech Limited MANU/CF/0140/2017 dated 14.03.2017 in consumer case no. 1009 of 2016** decided by the National Consumer Dispute Redressal Commission New Delhi.

26. It is submission of learned Advocate A. Kantak that as per the agreement the respondents/ promoters were required to hand over the possession of the flat by 31.03.2020. This was subject to the payment of the full consideration as set out in the agreement of sale. The last installment was payable on possession on or after receipt of occupancy certificate or completion certificate provided that earlier installment have been paid and clear. The complainant has defaulted in making the payment of consideration amount. There is notice on record issued by Advocate on behalf of the respondents calling upon complainant to pay certain amount for delayed payment. The completion certificate was issued on 31.12.2019 and the occupancy certificate on 17.02.2020. The maintenance charges thereafter commenced for the entire building with effect from 01.07.2020. The delay in taking possession was entirely attributable to the complainant. The respondents have charged uniform maintenance from a fixed date to all the residents of the building in which complainant is residing. The maintenance charges are rightly applied by the respondents.

27. Para III clause (b) is relevant, it stipulates, "The builder/ promoter upon receipt of the occupancy certificate and the payment made by the purchaser as per



4

the agreement, by a notice in writing intimate the purchaser to take delivery and possession of the said apartment within thirty days from the date of the receipt of such notice....”

28. Clause (c) stipulates, “Upon receiving written intimation the purchaser shall take possession of the apartment by paying all amounts within thirty days of the written notice from the promoter intimating that said apartment is ready for use and occupation....” “The purchaser agrees to pay maintenance charges as determined by the promoter or society....” “in case the purchaser fails to take possession within thirty days of written notice then the purchaser shall continue to be liable to pay maintenance charges as applicable including all Government rates, taxes charges, interest on delay and all other outgoing and expenses of an incidental to the management and maintenance of the said project and the building constructed thereon.”

29. The plain reading of the above clauses makes it clear that in terms of the agreement, the liability of the complainant to pay the maintenance charges starts from the expiry of thirty days from the date of the receipt of the intimation in writing from the promoter intimating that the apartment is ready for use and occupation. The completion certificate and the occupancy certificate are dated 31.12.2019 and 17.02.2020 respectively. However these dates are irrelevant for starting the maintenance as no where it is stipulated that the maintenance charges by the complainant would start from the date of the receipt of the completion certificate or the occupancy certificate. Nothing is produced on record to show that the complainant has defaulted in payment of the installments as claimed by the respondents prior to hand over of the possession. There is certificate on record issued by the respondents dated 17.04.2021 wherein it is certified that complainant



4

has completed payment of ₹54,60,000/- towards total consideration of the flat plus GST to Mrs. Lucille Pinto de Andrade, as specified in the agreement for sale dated 1<sup>st</sup> August 2020 and that there are no further dues pending from the complainant with regards to the flat consideration or GST. A notice dated 10.02.2024 by Advocate for the respondents is produced on record demanding an interest amount of ₹4,28,725/- which is sent to the complainant during course of the hearing of the complainant. In light of the certificate dated 17.04.2021 the Advocate Notice appears to be an afterthought to create a ground to deprive complainant of the refund of the maintenance amount by attributing fault to the complainant of delayed payment. There is no material on record to show that the respondents have issued notice in writing intimating that apartment is ready for possession after receiving completion and occupancy certificate. What is on record is the allotment letter dated 02.03.2021 from the respondents of handing over possession of the apartment to the complainant on 02.03.2021. Therefore, as rightly contended by the complainant her liability to pay maintenance charges would start from 02.04.2021 i.e. after expiring of thirty days from 02.03.2021.

30. In the matter of **Kamal Kishore and others vs. Supertech Limited MANU/CF/0140/2017 dated 14.03.2017 in consumer case no. 1009 of 2016** decided by the National Consumer Dispute Redressal Commission New Delhi relied upon by Ld. Advocate Mr. Jonathan, in the agreement for sale it was stipulated that the maintenance shall be payable by the allottees to the company as mentioned in the payment plan. The date of commencement of maintenance of the complex for which monthly maintenance charges to be paid by the allottee based on super area of the unit, shall be reckoned from the date of issue of letter of offer of possession. The commission held that the maintenance charges therefore are

&

required to be paid by the allottee from the date of issue of letter of offer of possession.

31. The stipulations in the agreement of sale in the present case, is similar to the stipulations in the above cited case with respect to the commencement of payment of maintenance charges which has to be started thirty days after receipt of the notice by the complainant from the respondent that flat is ready for delivery of possession. Being so, the ratio will apply to this case.

32. This discussion leads to the safe conclusion that the respondent has illegally charged maintenance amount of ₹27,402/- to the complainant from July 2020 and therefore she is entitled for refund of the same. My answer to the point no. 2 is in the affirmative.

**Point No. (3)**

33. It is submission of learned Advocate Mr. Jonathan that within less than three years of hand over of the flat, defects in workmanship and quality began appearing in the flat. Doors attached to bedroom and living room developed cracks and splits. The latches on the doors, door hinges, door locks began detaching from the doors without any external pressure. Glass windows attached to the flat began unbuckling/ unclasping from the wall and the walls of the flat started developing cracks and began leaking with water. The respondents therefore are liable to rectify all these defects within 30 days from the day same were brought to the notice of the respondents by the complainant however they failed.

4

34. It is submission of learned Advocate A. kantak that there are no defects in the workmanship or quality as alleged in the complaint. The defects pointed out by the complainant does not constitute structural defect.

35. Section 14(3) of the RERA Act provides that in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligation 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 of possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days.

36. It can be seen from above that the promoter is under obligation to rectify not only structural defects but also any other defect in the workmanship, quality or provision of the services brought to his notice by the allottees within five years. The defects pointed out by the complainant pertain to defect in workmanship quality or provision of services therefore is covered by section 14(3) of the RERA Act.

37. Email dated 06.05.2022 is sent by the complainant to the respondents wherein she had mentioned that the main door has developed several cracks. The toilet seat, door locks, latches, window panels to be replaced. There is also leakage. In the email dated 01.11.2022 the complainant reminded the respondents about not attending internal repair work of her flat inspite of several reminders and has requested to replace the main door, toilet seat, carpentry work, door locks, latches window panels etc.



38. The complainant has produced photographs to substantiate the defects in workmanship.

39. It can be seen from above that the complainant has brought the defects in workmanship, quality of services to the notice of the respondents. There is not material to show that respondents disputed those defects. There is no evidence to show that the respondents have addressed the grievances of the complainant in terms of law. The material on record is sufficient to make believe this Authority that there is defect in workmanship quality of services on the part of respondents. Being so, the complainant would be entitled for the repairs of the defects pointed out in the complaint. In the circumstances my answer to the pint no (3) is in the affirmative.

**Point no. (4)**

40. To be decided by the Adjudicating Officer.

41. It can be seen from above that the complainant failed to prove point no. (1), however has proved point no. (2) and (3). Being so, I pass the following :-

**ORDER**


The respondents 1 to 5 are directed to refund an amount of ₹27,402/- (Rupees Twenty Seven Thousand Four Hundred and two only) to the complainant with interest at the rate of 11.10% from the date of the receipt of the amount till the date of refund.

The respondents 1 to 5 are directed to replace the bedroom and living room doors including the door latches, door hinges and locks also replace glass windows attached to the flat and undertake the repair to prevent the leakages in the flat.

Complainant request for the relief of allotting “stilted car park” stands dismissed.

Respondent no. 1 to 5 shall report compliance of this order to the Authority within 60 days from the date of this order.

The matter shall be referred to the adjudicating officer to decide appropriate compensation in terms of law.

  
(Cholu M. Gauns)  
Member, Goa RERA