



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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F.No.3/RERA/Complaint(261)/2021/607

Date: 25/08/2022

Prashant P. Desai,

Janki, House No. 711,

Borda, Margao Goa-403206.

..... **Complainant**

V/s

Venkatesh Prabhu Moni,

Prabhu Construction, 7th Floor,

Dempo Trade Center, Patto,

Panjim, Goa-403001.

..... **Respondent**


ORDER

(Dated 25/08/2022)

This order disposes of the instant complaint filed under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act') in respect of the project "Prabhu Chambers" situated in the city of Mapusa Goa. In the said complaint, the complainant has alleged that there is water logging in the basement, lift is not working, kiosk in front of the main entrance has not been removed, parking area is submerged under water, there is no electricity connection, no occupancy

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is given and therefore the relief sought from this Authority are “PROJ. TAKEOVER, COMPENSATION EXECUTION REG AGREEMENT”.


2. In the supplementary complaint, it is stated inter alia that this Authority vide its Order dated 17.03.2022 in complaint bearing no.3/RERA/Complaint (COMB. Prabhu Chambers)/2019/186 directed the developer to carry out all the pending works within a period of two months from the date of order and in addition also imposed a fine of Rs.50,00,000/- for violating the directions passed by this Authority and that a similar order may also be passed in the instant case. It is further stated in the supplementary complaint that the developer was required to deliver the possession of unit bearing no. 2-SF-15 on or before 01.08.2016 and therefore the respondent is liable to pay the statutory interest for delayed possession from 01.08.2016 “till actual handing over of possession”. It is also stated that the developer has failed to register his project and is defying the order passed by this Authority in another complaint to register the project. In the supplementary complaint therefore, the complainant has also prayed for grant of interest for delayed possession in addition to the prayers mentioned in the online complaint. 

3. After hearing the oral arguments from both the parties, on perusal of the Agreement for Construction cum Sale dated 30.07.2014, it was noticed by the Authority that the said agreement was not registered and the said fact was brought to the notice of the complainant's Advocate and pursuant to the same, application for amendment to the supplementary complaint was filed by the complainant to direct the respondent to register the said complaint. The amendment to the said supplementary complaint was allowed and accordingly the complainant added additional prayer to the effect that the respondent be directed to register the Agreement for Construction cum Sale in the office of Sub Registrar of Bardez with respect to the premises bearing unit no.2-SF-15. The complainant also filed additional documents i.e. the receipts of payments towards the said unit as well as the letter dated 10.06.2019 by the respondent to the complainant asking the complainant to clear all the dues and remit an amount of Rs.7,79,578/- as per the said agreement.

4. The respondent has stated in the reply that all the issues like water logging in the basement, non working of the lift, parking area being submerged under water and absence of electricity connection have already been resolved during the pendency of the other proceedings before this Authority. It is stated that the respondent has carried out fresh water proofing by engaging Nitin Jain, Proprietor of Naman Contractors



who is a known expert in this field and at present the said issue is resolved. The respondent has also referred to the scientific study and report on structural stability obtained from Goa Engineering College. According to the respondent, as regard the issue of removal of kiosk and provision for parking, since the said kiosk is illegal, Mapusa Municipal Council passed an Order dated 11.01.2021 for its removal against which the owner Jeevan Mayekar filed an appeal before Municipal Appellate Tribunal, which appeal is still pending and therefore on conclusion of the said proceedings, the illegal kiosk would be removed. It is stated that the Municipality has withheld occupancy certificate only on the ground that the illegal kiosk is not removed and the respondent is pursuing the matter before the Municipal Appellate Tribunal. It is further stated that once the occupancy is granted, the respondent would obtain electricity connection along with independent meters for each of the allottees and the transformer would also be made functional, though at present all the units are supplied electricity by the respondent through a temporary connection obtained by him for the project.

5. According to the respondent the prayer of the complainant for takeover of the project is an abuse of process of law. Hence, the prayer of the respondent to dismiss the instant complaint. 

6. Documents were placed on record and affidavits were filed by both the parties. Written submissions were filed by both the parties. In the written submissions, besides pointing to the aforesaid defects and deficiencies in the constructions, the complainant has also alleged that there is shortfall in area with respect to the units agreed to be sold by the developer and the said shortfall is also given in tabular form. It is further alleged that there is also shortfall in parking spaces also and that the material used by the complainant is of sub standard quality. It is stated therein that the complainant is unnecessarily blaming the Statutory Authorities including Mapusa Municipal Council in order to wriggle out of the lapses committed by the respondent. The complainant relied upon the judgements of the Hon'ble Supreme Court in the case of "Bikram Chatterjee and Others v/s Union of India" (2019) 19 SCC 161 and "Eminent Infra Developers Pvt. Ltd. v/s Vivek Radhu" (2019 SCC online Utt 1676).

7. The respondent, in his written submissions has stated as to how due to the arbitrary approach of the Collector, the occupancy certificate got delayed. It is stated that after the construction was completed, the respondent handed over their individual premises to the purchasers and therefore most of the purchasers have already taken their possession and even started their business operations in the premises after obtaining the



required licenses and doing the legal formalities and also have started paying municipal taxes. According to the respondent, excessive rainfall in Goa in the year 2019 and cloud burst created water logging in the basement and in this regard about 35 occupants out of about 120 occupants filed a false complaint dated 11.07.2019 before Mapusa Police Station under Sections 120, 336 of IPC and Section 73 of Contract Act due to which the respondent was restrained from interfering at the site and accordingly he could not take corrective steps at that time to prevent water logging in the basement. It is further stated that on the basis of the information given by the complainants including that of the aforesaid FIR, a Show Cause Notice dated 05.08.2019 was issued to the respondent by Mapusa Municipality to which the respondent filed reply, however, the Chief Officer by Order dated 30.08.2019 directed the respondent to comply with the directions given by him within 48 hours and since the same could not be complied within the said period, the occupancy certificate dated 29.05.2019 was revoked by order dated 12.09.2019. According to the respondent, the said problem of water logging is now solved through expert Shri Nitin Jain but Mapusa Municipal Council is withholding the restoration of occupancy certificate only on the ground that the kiosk has not been removed from the site, regarding which, the respondent submitted that the case is pending before Municipal Appellate Tribunal. The respondent in his written submissions has also referred to



the FIR registered against all the accused who are some of the allottees including allottee Imran Sayyed in respect of the incident of abduction of the son of the respondent on 23.03.2022, assaulting him and attempting to kill him and regarding which the matter was pending before District and Session Court. According to the respondent, the delay in construction/possession, if any, is attributable to reasons beyond the control of the respondent and such extraneous circumstances would be categorized as 'Force Majeure' and would extend the time line of handing over the possession of the unit and completion of the project. The respondent submitted that the Hon'ble Supreme Court in the case of 'Gajendra Sharma v. UOI & Ors' as well as "Credai MCHI & Anr. V. UOI & Ors." has taken cognizance of the devastating condition of the real estate sector and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector.

8. Oral arguments were heard from Ld. Advocate Shri Nilesh Takkekar for the complainant and Ld. Advocate Shri Ankur Kumar for the respondent.
9. After going through the entire record of the case, the points which come for my determination as per the online complaint/supplementary complaint along with the reasons and findings thereon are as follows:-



Sr. No.	Points for determination	Findings
1.	Whether the complainant is entitled for the reliefs as prayed in the online complaint/supplementary complaint?	In the negative.
2.	Whether the complainant is entitled for compensation as prayed in the complaint?	To be decided by the Adjudicating Officer.

REASONS

Point no.1

10. It is material to note that a registered agreement for sale is the basis and the very foundation for all the rights and duties of the allottee under the said Act. In this regard it is necessary to reproduce hereunder Section 13 of the said Act:-

“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)

11. From the aforesaid it is clear that 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.

12. It is material to note that in the instant case, the allottee/the complainant knowingly and willingly entered into written agreement for sale with the promoter/the respondent way back on 30.07.2014 and from the year 2014 onwards no effort or step was taken to get the said agreement registered before the Sub Registrar. Without getting the said agreement for sale registered as per law, it is the case of the complainant that he has paid the entire sale consideration to the respondent. **Under Section 13 of the said**



Act, the promoter cannot accept a sum more than ten percent of the cost of the apartment without first executing a registered agreement for sale and this necessarily implies that the allottee cannot advance a sum more than ten percent of the cost of the apartment to the promoter without first executing a registered sale agreement. Thus not only the promoter has done an illegal act of taking the entire sale consideration as claimed by the complainant, prior to executing a registered agreement for sale but also the allottee in the instant case is an accomplice to the said illegal act of the promoter, as it is not the case of the allottee that the entire sale consideration was paid by him to the promoter due to misrepresentation, undue influence or coercion etc. It is clear therefore that the complainant knowingly and willingly did not get the said agreement for sale registered as per law and also did the illegal act of parting with the entire sale consideration without first registering the said agreement for sale. Infact, no effort and no step was taken either by the complainant or the respondent to get the said agreement for sale registered as per law. It is never the case of the complainant that he ever requested the respondent to get the said agreement for sale dated 30.07.2014 registered and the respondent refused to do so or failed and neglected to do so. Thus the complainant equally participated in the aforesaid illegal act of not registering the said agreement for sale and parting with the entire sale consideration amount to the respondent, as claimed by the complainant.



13. 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 registered agreement for sale as mentioned in Section 13 of the said Act. Similarly 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. As stated above, in the instant case the agreement for sale dated 30.07.2014 is not registered and in this regard the complainant is an accomplice to the aforesaid illegal act as according to the complainant, he paid the entire sale consideration to the respondent without registering the said agreement for sale and taking no steps since 30.07.2014 to get the said agreement registered. Only when this Authority after hearing the oral arguments pointed out to the complainant’s Advocate that the agreement for sale is unregistered, that the prayer was added by the complainant to direct the respondent to get the said agreement for sale registered. The said additional prayer besides being outside the purview of the said Act is also not legally tenable since the allottee knowingly and willingly did not get the said agreement for sale registered and participated in the aforesaid illegal acts contrary to the provisions of Section 13 of the said Act.

14. Because of the reasons stated above, the complainant is not entitled to any of the reliefs as prayed in the online complaint/supplementary complaint. 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 instant complaint is 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
25/8/2022
(Vijaya D. Pol)
Member, Goa RERA