



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA
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No.3/RERA/Complaint (308)/2022/803

Date: 03/11/2022

Mr. Santosh Krishna Prabhugaonkar,

House no. 540, Kolsar, Loliem,

Canacona Goa-403702.

.....Complainant

V/s

1.M/s M. S. Builders and Developers,

Represented by its Managing Partner's,

Mr. Vithal Mohan Miringkar & Mr. Sadanand Govind Gaude,

Having Business office at office no. 18, First floor,

Ponda Commerce Centre,

Ponda-Goa, 403401.

2. Mrs. Sandhya Sadanand Gaude,

Represented by her constituted power of attorney holder,

Shri Sadanand Govind Gaude,

Both residents of H.No. 139,

Borim, Ponda Goa, 403401.

3. Mrs. Savita Vithal Miringkar,

Represented by her constituted power of attorney holder,

Shri Vithal Mohan Miringkar,

Both residents of H.No. 1372,
Chikangal, Shiroda, Ponda, Goa, 403401.

4. Mr. Narendra Gopinath Gaonkar,

Resident of Flat no. F-5,
Shri Kulswamini, Deulwada,
Borim, Ponda, 403401.

.....Respondent(s)

ORDER
(Dated 03.11.2022)

A complaint was received on 30.04.2022 from Santosh Krishna Prabhu Gaonkar (complainant herein) under Section 31 of The Real Estate (Regulation and Development) Act, 2016 for the project '**Kulswamini**'. Respondent no. 1,2,and 3 are the promoters of the project '**Kulswamini**' while respondent no. 4 is an allottee and neighbour of complainant. The complainant is an allottee of the flat no. F-1situated on the first floor in the said building '**Kulswamini**' which is situated in Deulwada, Borim, Ponda, Goa. The complainant had purchased the said flat admeasuring 93.93 sq. mtrs. by way of a sale deed dated 01.10.2020. The said building is registered under the RERA Act, 2016. As per complainant, there is an open space admeasuring 45 sq. mtrs. towards the southern side of his flat which is vertically open to the sky. This open space is located in between flat bearing no. F-1 (complainant's flat) and flat no. F-5 (flat of Respondent no. 4). As per construction licence and approved plan issued by the competent authorities, the said open space was not to be used by a particular flat dweller as it is a common area. However, the said open area of 45 sq. mtrs.

was altered and modified by installing marine ply sheets and by covering the roof top by the owner of flat F-5 (i.e Respondent no. 4). The complainant has stated that on enquiry he found that the said open space has been sold by promoter to the Respondent no. 4 by way of sale deed dated 30.11.2020 along with flat no. F-5.

2. Complainant has further submitted that the said open ventilation cut out area or the open space provided to the building is basically meant for the purpose of ventilation, retention of free sunlight, for installation of central services such as electricity, water sanitation etc. By selling the said open space to Respondent No. 4, promoter has also violated the provisions of Section 12 and 14 of the RERA Act, 2016. Accordingly, complainant has requested to issue appropriate direction to respondent to restore the open area to its original state and declare its sale to Respondent no. 4 as illegal. The complainant has also requested for compensation.

3. A notice dated 19.05.2022 was issued to respondents to file the reply. Respondent no. 1 to 3 have filed reply dated 07.06.2022. Notice sent to Respondent No. 4 returned back with the remark of postal authorities as 'unclaimed'. On the date of hearing on 22.06.2022, it was decided to make one more attempt to serve the notice to Respondent no. 4, however, the said attempt also was not successful as again notice returned as 'unclaimed'. On 04.08.2022, the date of hearing, Advocate for complainant submitted that he made all efforts

to serve the notice to respondent no. 4 and finally sent whatsapp message for the service of the same which has been received by him showing blue tick. It seems that Respondent No. 4 is deliberately avoiding the notice and hence, it is held that notice is duly served.

4. In response to the notice dated 19.05.2022 issued by this Authority, the promoter i.e Respondent No. 1 to 3 have filed the reply dated 07.06.2022. By this reply, promoters have denied the charges levelled against them and requested to dismiss the plea. The case was taken up for arguments on 14.09.2022 and 14.10.2022. Ld. Advocate for the complainant argued the case on 14.09.2022 and Ld. Advocate for the respondents filed written arguments on 14.10.2022.
5. It is the case of the complainant that it was wrong on the part of the Respondent no 1 to 3 to sell the open space admeasuring 45 sq. mtrs. to respondent no. 4 along with the flat no. F-5. The Act of the promoters regarding selling of 45 sq. mtrs. open space to Respondent no. 4 is in contravention of the section 12 and 14 of the Act. Promoters have also violated the provisions of section 11 of the Act as they have not formed the maintenance society so far. It is the responsibility of promoters to clear any encroachment on the open space in the society. Executing the sale deed in respect of the open area is against the spirit of the RERA Act and the same should be declared as illegal and removed. He

has also made the plea that complainant should be paid compensation for the inconvenience caused to him in this regard.

6. In the written submissions dated 14.10.2022 submitted by Ld. Advocate for the Respondent no. 1 to 3, the claims of the complainant have been denied. It has been pointed out in written arguments that this Authority has no jurisdiction in the present complaint and that the allegations of illegal erection of any kind of structure is to be dealt in by the local authorities. He has also mentioned that complainant has approached the Authority with incomplete and incorrect facts.
7. I have considered the arguments and have gone through the regards and proceedings of the case. A deed of sale has been executed between the promoters and Respondent no. 4 dated 30.11.2020. As per schedule II of the sale deed, the description of premises sold between the parties have been given which is as under:-

“SCHEDULE II
OF THE FLAT

All that Flat being Flat No. F-5 admeasuring 93.93 sq. mtrs. along with open space of 45.00 sq. mtrs. situated on the first floor of the building known as “**Shri. Kulaswamini**”, along with parking slot and the proportionate undivided rights in the property described in Schedule I above and bounded as under.

East: by Flat No. F-6

West: by area open to air

North: by staircase and area open to air

South : by area open to air

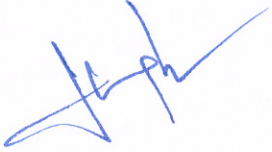
Said Flat is registered under House No. 273 (Flat F-5).”

From this, it is very clear that promoters i.e. Respondent no 1 to 3 have sold the area of 45 sq. mtrs. which is termed ‘open space’ in the sale deed itself. This open space has been sold along with flat no. F-5 to the Respondent No. 4. As per Section 14 of the Act, any project has to be developed and completed by the promoter in accordance with the sanction plans. Sanction plan consist of independent units to be sold and common area as well as open space which is supposed to be kept and maintained for common good. From the wordings of the sale deed dated 30.11.2022, its very clear that promoter has sold the open space apart from the regular unit of the project. This is in violation of section 14. Section 14 (3) goes further beyond the completion of the project and as per this any defect or any other obligation of the promoter within a period of five years of the handing of the possession, has to be rectified by the promoter.

8. It is evident from the fore going observations that promoters have sold the open space to the respondent against the provisions of law. It is also mentioned that respondent no. 4 has further erected structures on the said open space for its convenience. As per section 14 of the Act, promoter has to strictly adhere the sanctioned plans and project specifications approved by Competent Authorities. Any departure from this is against the law and will cause inconvenience to other allottees. Though the structure on the open area has been erected by respondent

no. 4, the promoters have illegally sold the open area to respondent no. 4. If promoters won't have sold it to the respondent no. 4, it was not possible to erect any structure on the said open space by respondent no. 4. Again, it has come on record that no society for maintenance has been formed in this case by promoter so far and hence promoter is solely responsible to remove any structure against the sanctioned plan.

9. The plea of the respondent no. 1 to 3 that this Authority has no jurisdiction is baseless. As per Section 31 of the Act, any aggrieved person can file the complaint with the Authority or Adjudicating Officer for any violation or contravention of the provisions of the Act against any promoter or allottee. Since structure has been erected illegally on the open space by the respondent no. 4 which is also against the approved plan, complainant is within his right to file complaint with this Authority. Also, Authority has got power under Section 37 of the Act to issue directions in such cases. Section 37 of the Act is as follows:-



“37. Powers of Authority to issue directions.- The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoter or allottees or real estate agents, as the case may

be, as it may consider necessary and such directions shall be binding on all concerned.”

Hence, it is very clear that complainant is fully justified in filing the complaint in this case and the Authority has to decide the case on merit. It is evident that the said open space of 45 sq. mtrs. has been sold illegally by promoters to the respondent no. 4 and respondent no. 4 has illegally erected the structures on the said area. Since maintenance society is also not formed which has to be formed by the promoter under Section 11 of the Act and since it is promoter who has illegally sold the land to Respondent no. 4, I feel it is the responsibility of the promoter to take possession of the area and remove the structure erected on the open area.

10. As far as compensation is concerned, the same need to be decided by the Adjudicating Officer under Section 71 of the Act. Section 71(1) of the Act 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:”


From the above, it is clear that determination of compensation comes within the jurisdiction of Adjudicating Officer appointed under Section 71 of the Act. This has been confirmed by Hon’ble Supreme Court also in case of “M/s. Newtech Promoters and Developments Pvt. Ltd. versus State of UP & ORS. ETC. dated 13.11.2021.

11. In view of the above observations, following directions are issued for compliance:-

a) The sale of open area admeasuring 45 sq. mtrs. by promoters to the respondent is declared as illegal and respondent is hereby directed to take possession of the area and remove the structure on this open space within 45 days.

b) For the purpose of determination of compensation, the case is referred to Adjudicating Officer under Section 71 of the Act.

Order accordingly,


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

To,

1. Mr. Santosh Krishna Prabhugaonkar,
House no. 540, Kolsar, Loliem,
Canacona Goa-403702.

- 2. M/s M. S. Builders and Developers,**
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