



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(312)/2022 / 292

Date: 19/04/2023

Celina and Frazer D'Silva,
Near Priya Workshop Shantinagar,
Vasco da Gama, Goa, 403802.

.....Complainants

Versus

Prabhu Realtors,
Behind Vishal Mega Mart,
Alto, Chicalim, Goa, 403711.

.....Respondent

ORDER **(Dated 19.04.2023)**

This order disposes of the complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA Act'), wherein it is inter alia submitted that vide Agreement for Construction and Sale dated 11.03.2020, which was registered on 13.03.2020, the complainants agreed to purchase from the respondent an apartment bearing Flat no. A-101 admeasuring 130.00 sq. mtrs. of super built up area corresponding to 75.03 sq. mtrs. of carpet area located on the first floor of block

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A of the project "PRABHU'S VIOLETTA" which project is registered with this Authority.

2. The complainants further submitted that the consideration amount for the said apartment is Rs. 48,00,000/- (Rupees Forty Eight Lakhs only) and that till date the complainants have paid a sum of Rs. 52,82,000/- (Rupees Fifty Two Lakhs Eighty two Thousand only) and only the final instalment of Rs. 96,000/- remains, which final instalment is payable upon handing over of possession. According to the complainants, as per the aforesaid Agreement for Sale the due date of handing over of possession of the apartment is August, 2021 but till date the possession is not given to the complainants. The complainants have also mentioned in detail various demands of money from the respondent, which according to the complainants are illegal demands.

3. The complainants have referred to the public interest litigations, two in number bearing numbers 2631/2021 (F) and 2718/2021 (F) which are filed against the respondent before the Hon'ble High Court of Bombay at Goa challenging the instant project and in the said PILs, the Hon'ble High Court directed that occupancy of the structures will be subject to the final orders in the said petitions and that the said position should be made clear by the respondent number 12/respondent herein to the purchasers/ occupants. According to the

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complainants, the respondent did not inform the complainants about the pendency of the aforesaid PILs and/ or the orders passed therein.

4. Hence, the prayers of the complainants as stated below:-

a) Reject the registration of the project in terms of Section 7 of the RERA Act and/ or

b) Direct the respondent to revoke demand letters dated 17.01.2022 and 03.03.2022 in so far as the demands for six post dated cheques, legal fees for society formation; pending GST @ 4% and transformer and STP connection charges;

c) Direct the respondent to arrange for inspection of the apartment by the complainants and only after such inspection and satisfaction of complainants as to the completion of the said flat in all aspects commensurate to the specifications provided for in the said Agreement and/ or such reasonable standards as to make the flat habitable, the complainants be called upon to take possession of the said flat upon payment of final instalment charges of Rs. 96,000/-.

d) Direct the respondent to hand over allotment letter in respect of the apartment to the complainants;

e) Direct the respondent to execute the Recitation Deed in terms of letter dated

26.12.2020;



- f) Direct the respondent to return to the complainants blank paper carrying the complainants' signatures as demanded in the legal notice dated 04.04.2022;
- g) Direct the respondent to publish and provide details of the aforesaid public interest litigations in terms of order dated 27.01.2022;
- h) Award compensation to the complainants as mentioned in the complaint and pass such other order as this Authority deems fit and proper.

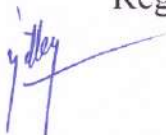
5. Reply was filed by the respondent denying all the allegations made by the complainants and it is stated that the demands of money made by the respondent are legal and as per the terms of the Agreement for Sale. The respondent has stated that it is specifically stated in the Agreement for Sale dated 11.03.2020, in clause 1.b and 1.d that the total price of the said flat excludes other charges like the tax paid/ payable by the promoter by way of GST, infrastructure tax and cess or any other similar taxes which may be levied in connection with the construction of the project and that in clause 1.d it is clearly stated that all these taxes and other outgoings shall be borne and paid by the prospective allottee/ purchaser as and when demanded by the respondent. The respondent also referred to clause 1.f of the said Agreement which expressly states that if there is any reduction in the carpet area within the defined limit then the respondent being the promoter would refund the excess money paid by the allottee and in case there is any increase in the carpet area or super built up area, then the respondent shall demand the deficit money from the allottee by written notice



and the same shall be paid within the time mentioned in the said notice. According to the respondent, no arbitrary or illegal demand is made by the respondent.

6. Affidavit in evidence was filed by the complainants as well as by the respondent. However, during the pendency of the complaint, the parties settled the matter and filed the following consent terms in the presence of Ld. Advocate Ms. F. Mesquita for the complainants and Ld. Advocate Shri G. Kudchadkar for the respondent:-

“1. That in pursuance to the present Consent Terms, the Complainants and the Respondent shall, within reasonable time and not beyond 30/04/2023 (subject to Complainants getting the Special Power of Attorney dated 24/01/2023 adjudicated from the Office of the Collector and furnishes the notarized copy of the same to the Respondent atleast 8 days before 30/04/2023), execute and register before the Sub-Registrar of Mormugao, Instrument/Deed of Cancellation, thereby cancelling the Agreement for Construction and Sale dated 11/03/2020 registered in the office of the Sub-Registrar, Mormugao under Reg. No. MOR-1-471-2020



dated 13/03/2020 in respect of Flat No. A-101 located on the first Floor of the Block A of the Complex "Prabhu's Violette", against the Respondent paying unto the Complainants a sum of Rs. 62,50,000/- (to be paid at the time of registration of Deed of Cancellation) as and by way of full and final settlement of all claims of whatsoever nature of the complainants as against the Respondent including but not limited to refund of monies paid under whatsoever head by the Complainants to the Respondent under and in pursuance to the Said Agreement.

2. With the execution of these Consent Terms and the execution and presentation for registration of the Instrument/ Deed of Cancellation, all the claims of the Complainants as against the Respondent in respect of the Said Premises whether arising from the present complainant and or from the aforementioned agreement shall stand waived and withdrawn for all purposes and effect and the Respondent shall stand discharged from all its obligations.
3. The Complainants declare that they have not mortgaged the said premises nor availed any financial assistance on



the basis of the security of the Said Flat No. A-101 nor have entered into any third party understanding or commitment, oral or in writing, in respect of the Said Flat and that they shall handover the original of the Agreement for Construction and Sale dated 11/03/2020 on the date of execution of the instrument of cancellation.

4. The parties hereto are entitled to present and register the Deed of Cancellation before Sub-Registrar, Mormugao, thereby cancelling the Agreement for Construction and Sale dated 11/03/2020 registered in the office of the Sub-Registrar, Mormugao under reg. No. MOR-1-471-2020 dated 13/03/2020 in respect of Flat No. A-101 located on the First Floor of the Block A of the Complex "Prabhu's Violetta" situated at Dabolim, Goa.
5. The cost and expense of the cancellation agreement shall be borne and paid by the Respondent but subject to what is agreed herein later. The cancellation draft as attached hereto has been approved by both the parties hereto. The Complainant No. 1 shall be represented in the Cancellation Deed by Mrs. Lavina Passainha the sister of the Complainant No. 1 by virtue of Special Power of Attorney dated 24/01/2023, executed before High



Commission of India, London and which the Complainants undertakes to get adjudicated from the Collector South Goa.

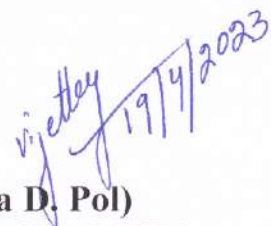
The Cancellation Deed has been approved by the Sub-Registrar, Mormugao and registration fees of Rs. 2120/- has been paid by the Respondent vide Challan No. 202300238680 dated 24/03/2023. The said document approved by the Sub-Registrar is valid for four months only from the dated of its approval and the Respondent is ready and willing to register the Cancellation Deed at anytime hereinafter but the same is deferred for want of adjudication by the Collector of the Special Power of Attorney dated 24/01/2023 and thus in case for any reason whatsoever if the registration gets delayed on account of any reason attributed to the complainant/s, resultant whereof the approval as received is blocked/ outdated, the cost, fees and expenses in registering the cancellation deed shall be borne and paid by the Complainants. It shall be the responsibility of the Complainants to procure the presence of Mrs. Lavina Passainha for execution and registration of the deed.



6. The present complaint be thus disposed off in terms of above consent terms with no order as to cost to any parties. Parties to bear their own costs, fees and expenses.

6A. The Complainants Celina and Frazer had handed over two blank papers on which each of them have affixed signatures to the Respondents. The said signed blank papers, if any, are from this date non est and deemed to be destroyed for all purposes.”

7. Perused the consent terms. The instant complaint is disposed of as per the aforesaid consent terms.


(Vijaya D. Pol)
Member, Goa RERA