



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (381)/2023 | 1527

Date: 06/11/2024

BEFORE THE MEMBER SHRI VINCENT D'SILVA

1. Mr. Joseph Bonaventure Rodrigues,

82 years of age, son of Mr. Anthony Rodrigues,
Indian National, married, retired, and his wife

2. Mrs. Brenda Barbara Rodrigues,

79 years of age, married, retired,
Indian National, Both residents of
Flat No. 202, Krishna Kripa, Jay Bharat CHSL,
3rd Road, Khar West, Mumbai-400052.

.....Complainants

Versus

PRESCON HOMES PRIVATE LTD.,

A company registered under the Companies Act,
Having its registered office at 201, 2nd Floor,
Prestige Precinct, Almeida Road,
Panchpakhadi, Thane (West), 400601 and
Its Goa office at Prescon, Office No. 207,
2nd Floor, Edcon Mindspace,
Behind Campal Trade Centre, Campal,
Panaji-Goa, 403001, represented by its Directors, namely:
Director No. 1, Mr. Nirmal Bhagirathprasad Kedia
Director No. 2, Mr. Vijay Kumar Puranmal Khowala.

.....Respondents

Ld. Advocate J. Fernandes for the complainants.

Ld. Advocate Jonathan George for the respondents.

ORDER

(Delivered on this 6th day of the month of November, 2024)

This order shall dispose of application for amendment filed by the complainants.

2. Briefly stated, the case of the complainants is as follows:-

That the complainants initiated present complaint through online website of this Authority and thereafter filed the complaint manually. Presently, the matter is fixed for evidence of the complainants and at that time, it was realized that the material pleadings concerning the reliefs are inadvertently omitted.

3. The proposed amendment is as follows:-

“After Para 21 of the complaint, following Para needs to be added as ‘Para 21(A).

Para 21(A) “The Respondents demanded and accepted from the complainants sum of Rs. 42,52,500/- (Rupees Forty Two Lakhs Fifty Two Thousand Five Hundred only) which was 62.50% of the consideration amount of Rs. 68,04,000/- (Rupees Sixty Eight Lakhs Four Thousand Only) more than ten percent (10%) of the booking amount prior to registration of the Agreement for Sale with the complainants in contravention of Section 13 of The Real Estate (Regulation and Development) Act, 2016 and therefore, respondents are liable to a penalty which may extend up to five percent of the estimated cost of the real estate project as determined by the authority”.

In prayer clause, after Prayer Clause (v) below mentioned prayer clause to be added as Prayer Clause (v) (A):

Prayer Clause (V)(A) “Respondents are liable and be punished with a penalty which may extend up to five percent of the estimated cost of the real estate project

as determined by the Authority on account of contravention of Section 13 of The Real Estate (Regulation and Development) Act, 2016”.

4. No prejudice would occasion to the respondent, if the application is granted. The proposed amendment is very much relevant for decision in the present complaint and in no manner will change or alter the complaint.

5. The respondent filed a reply inter-alia contending that the application is untenable both in law and in facts. The complainants have not established any grounds of necessity, relevance or error in the original pleadings in the present amendment. The application is at belated stage and reflects a lack of diligence on the part of the complainants. The application is an afterthought desiring to introduce new allegations and contentions that the complainants failed to raise earlier despite having ample opportunity to do so. The application may therefore be dismissed.

6. Argument heard.

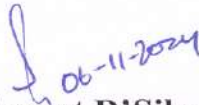
7. It is well settled in the case of *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & anr., in Civil Appeal No. 5909 of 2022 dated 01.09.2022* that amendment is to be allowed if the amendment is required for effective and proper adjudication of the controversy between the parties; to avoid multiplicity of proceedings provided the amendment does not result in injustice to the other side, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side; the prayer for amendment is malafide or by the amendment the other side loses a valid defense and where amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint.

8. In the instant case, the complainants merely seek to add additional prayers at Para 21 and 28 of the complaint as according to complainants the respondent demanded and accepted ₹42,52,500/- which was 62.50% of the consideration amount of ₹68,04,000/- more than the ten per cent of the booking amount prior to the registration of the agreement for sale and that the complainants inadvertently and by oversight failed to seek relief of penalty to the extent of 5% to the estimated cost of the real estate project in the prayer clause and in the body of the complaint to include material pleadings which the complainants seek to add. No prejudice would cause to the respondent, if the proposed amendment is allowed as the respondent would get an opportunity to file a reply and rebut the pleadings made in the present complaint. Moreover, the amendment sought is only with respect to the relief in the complaint and to include material pleadings. Great loss would occasion to the complainants, if the application is not allowed as it is relevant and material for just decision of the complaint. The submission of Ld. Advocate Jonathan George therefore cannot be accepted.

9. Having said so, I pass the following :-

ORDER

The application for amendment stands granted. Amendment to be carried out forthwith. The respondent is at liberty to file additional reply/written statements, if so desire.


(Vincent D'Silva)
Member, Goa RERA

Panaji, Goa.
Date: 06.11.2024