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GOA REAL ESTATE REGULATORY AUTHORITY
DEPARTMENT OF URBAN DEVELOPMENT
GOVERNMENT OF GOA

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F.No:3/RERA/New Proj.(468)/2019/451

Date: 08/09/2021

Mrs. Deepa R.,
w/o Rajesh Gopalkrishnan
Major in age,
R/o 2D/FO3,
Models Millenium Vistal, Caranzalem,
Panaji-Goa, 403002

..... **Applicant**

V/S

M/s Rajiv Builders
Through its proprietor Shri. Rajiv Pillai,
Major in age
R/o T-1, A-B, Near Essar Gallery,
3rd floor, Shankarwadi, Taleigao,
North Goa - 403002

..... **Respondent**

ORDER

Dated: 08/09/2021

- 1) Brief facts of the case are that on 29/05/2019, RERA Authority issued Registration Certificate to Mr. Rajiv Raghavan Pillai for the project "Engineer's Club" located at survey No. 83/1-B, Village-Colvale, Bardez, North Goa and the said registration has been valid from 29/05/2019 to 02/03/2022
- 2) On 09/01/2020, this Authority received an application for change in details of promoter from Smt. Deepa R. requesting therein to change the name of the Promoter in the aforesaid RERA Certificate dated 29/05/2019 from Rajiv R. Pillai to Deepa R. on the ground that she purchased the said land with said on-going Project "Engineer's Club" vide sale deed dated 18/12/2019 from Mr. Carmino Agnelo D'souza and Mrs. Thereza Carmino D'souza, both residents of H.No. 123, St. Roque Vaddo, Colvale Bardez-Goa. This Authority allowed the said application of Smt. Deepa R., however in Writ Petition No. 22 of 2021 filed by Mr. Rajiv Raghavan Pillai against Deepa R.

and others, Hon'ble Bombay High Court directed this Authority to withdraw the substitution of Mr. Rajiv Raghavan Pillai with that of Mrs. Deepa R., hear the parties and decide the matter afresh.

- 3) After appearances before this Authority, both the parties filed Affidavits and documents. Thereafter written submissions were filed. Oral arguments were also heard.
- 4) After going through the entire record of the case, the point which comes for my determination alongwith the reasons and findings thereon is as follows:-

Point of determination	Findings
Whether Deepa R. is entitled to substitute her name in place of Mr. Rajiv Raghavan Pillai as a promoter of the said project "Engineer's Club"	In the negative

Reasons

- 5) An agreement for Development cum Sale dated 18/01/2019 was entered into between the "owners", (1) Mr. Carmino Agnelo D'Souza (2) Mrs. Theresa C. D'Souza and M/s Rajiv Builders, a proprietary concern of Mr. Rajiv Raghavan Pillai referred to therein as the "Developer" in respect of the plot of land admeasuring 1350 sq.mts bearing Survey No. 83/1-B of village Colvale, Bardez, Goa. The perusal of the aforesaid agreement reveals that the aforesaid "owners" entrusted their right in the said plot to the "Developer" for development in consideration i.e to construct multi-storied buildings comprising of three blocks 'A' 'B' and 'C' and the consideration of Rs. 78,00,000/- (Rupees Seventy Eight lakhs only) to be paid to the "owners" was agreed to be paid by the Developer in the manner that the Developer shall construct for the owners and transfer in favour of the owners the Block 'A' building consisting of eight flats totally admeasuring 264.16 sq.mts. build up area. It is very material to note that it is specifically mentioned in para 3 of the said Agreement for Development cum Sale that **"the owners hereby handover peaceful, vacant, public possession of the said plot to the Developer** in order to carry out the commencement and completion of the project as contemplated in this

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Agreement” (emphasis supplied). Thus, the possession of the said plot was given by the “owners” to the “Developer” for the aforesaid purpose.

- 6) Further, in para 22 of the said Agreement, it is mentioned that “By virtue of the Development Agreement the Developer shall have sole and exclusive right to sell the Apartments/ Built up areas/ commercial premises in Block “B” and “C” buildings to be constructed by the Developer on the said plot and to enter into Agreements with the purchasers of the Apartments and to receive the sale consideration in respect thereof.” Para 26 of the said Agreement states that **“The Developer shall be entitled to enter into Agreements for Sale of the units namely flats/ shops in the said project (except the said Building Block “A” to be allotted to the owners as per Schedule II hereto) with perspective purchasers by receiving moneys and further giving receipts for the same with or without the concurrence of the owners which shall constitute good and valid discharge for every purpose of law and equity. These agreements shall be executed by the Developer at its sole discretion and risk if any and the owners shall in no way be liable to any extent whatsoever for any money or moneys received by the Developers”**(emphasis supplied).
- 7) From the aforesaid presents/ recitals it is clear that though it is mentioned in para 30 of the said Agreement that “these presents shall not be treated as a conveyance or demise or transfer of any right or title or interest in the said property of the owners to the Developers excepting the right to develop, enter into agreements for sale, construct multistoried building”, the possession of the said plot has been given to the Developer; development right in the said plot is given by the owners to the Developer; the onus lies on the developer to construct for the owners and deliver to the owners free and vacant possession of Block “A” building consisting of eight flats; full right is given to the Developer to enter into agreement for sale of other flats in Block “B” and “C” or other premises to be constructed in the said plot; full right given to the Developer to sell the Apartments/ Built up areas/ commercial premises in Block “B” and “C” buildings and to receive the sale consideration in respect thereof with or without the concurrence of the owners.

- 8) It is material to note that prior to the aforesaid Agreement dated 18/01/2019 with the respondent herein, the aforesaid owners had entered into an agreement of sale dated 22/02/2018 with “M/s Engineer’s Club, a proprietary concern of Mrs. Deepa R.” wherein the said M/s Engineer’s Club agreed to purchase the said plot for the total consideration of Rs.47,25,000/-. However, in the aforesaid Agreement for Development cum Sale dated 18/01/2019 there is no whisper about the earlier agreement for sale dated 22/02/2018 between the said owners and M/s Engineer’s Club.
- 9) Later on, by Deed of sale dated 18/12/2019 the said owners sold the aforesaid property to M/s Engineer’s Club and in the said sale deed there is no mention of the earlier aforesaid Agreement for Development cum Sale dated 18/01/2019 between the aforesaid “owners” and the “Developer” i.e the respondent herein M/s Rajiv Builders, a proprietary concern of Mr. Rajiv Raghavan Pillai. On the contrary, in the sale deed dated 18/12/2019 it is mentioned in recital one inter alia to the effect that the vendors therein **“hereby transfer by way of sale and the vendors do hereby grant, transfer, assign and convey by way of sale unto the purchasers free from all encumbrances, charges and liens whatsoever the “said plot” described in Schedule and delineated on the plan annexed hereto TO HAVE AND TO HOLD the same unto the purchasers as its absolute owner forever.”**(emphasis supplied). In fact the possession of the plot was with the respondent herein when the aforesaid sale deed dated 18/12/2019 was executed with the applicant herein. Further M/s Rajiv Builder through its Proprietor Shri. Rajiv Pillai had already entered into an Agreement for Sale dated 27/06/2019 with Shri. Sahadev Bala Kavathankar wherein the said “owners” Mr. Carmino Agnelo D’Souza and Mrs. Theresa C D’Souza were the confirming parties and wherein it is clearly mentioned that the ‘Promoter’ M/s Rajiv Builders is in possession of the said property; that the Promoter has registered the project with RERA; that the said allottee is offered a shop bearing number 01 on the Ground Level Floor in “C” wing of the building being constructed by the promoter; that the promoter M/s Rajiv Builders has sole and exclusive right to sell the shops in the said building to be constructed by the promoter; that the said Allottee has paid to the promoter a sum of Rs. 2,50,000/-(Rupees two lakhs fifty thousand

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only) being part payment of the sale consideration of the shop agreed to be sold by the Promoter to the said Allottee as advance payment and that the promoter has accordingly commenced construction of the said building.

- 10) From the aforesaid it is clear that prior to sale deed dated 18/12/2019 executed between the said “owners” and Engineer’s Club, the possession of the property was not with the said “owners”/ vendors but with the respondent herein M/s Rajiv Builders, a proprietary concern of Mr. Rajiv Pillai; that the third party right was already created on the said property as not only the respondent herein started construction thereon but also agreement of sale of a shop thereon was entered by the respondent with Mr. Sahadev Bala Kavathankar who also paid advance amount of consideration to Mr. Rajiv Pillai towards the sale of a shop in the said property. So at the time of sale deed dated 18/12/2019, the possession of the property was not with the vendors and third party rights were already created thereon and even construction thereon has been started by Rajiv R. Pillai, who has taken part consideration amount from Mr. Sahadev Bala Kavathankar by executing an agreement of sale in respect of a shop thereon.
- 11) It is material to note that there is no privity of contract/ agreement/ any arrangement between Deepa R. and Rajiv Pillai/ M/s Rajiv Builders.
- 12) The applicant Deepa R. has produced on record a copy of the Deed of Cancellation of Development cum Sale Agreement dated 30/11/2019 but the said Deed of Cancellation though signed by the “owners” Mr. Carmino Agnelo D’Souza and Mrs. Theresa C. D’Souza is not signed by the respondent, M/s Rajiv Builders/ Mr. Rajiv Raghavan Pillai its sole proprietor and hence it is not legally tenable and has no value in the eyes of law. Thus, the Agreement for Development cum Sale dated 18/01/2019 still subsists and is valid in the eyes of law since the same is not cancelled by the aforesaid “Deed of Cancellation of Development cum Sale Agreement”. **This necessarily implies that the respondent M/s Rajiv Builders is still the promoter of the said property in view of the Agreement for Development cum Sale dated 18/01/2019, which is neither cancelled nor set aside by a Civil Court.**

- 13) According to Deepa R., she is now the owner of the said property in view of the sale deed dated 18/12/2019. However, this Authority cannot decide the title of any party and cannot declare applicant Deepa R. as the owner of the said property and the applicant has not produced on record any declaration of ownership in favour of Deepa R. by any Civil Court.
- 14) The applicant Deepa R. relies upon the Circular dated 13/02/2018 of Goa RERA wherein it is interalia observed as follows:-

“It is observed that several developers (who actually obtain building permissions and construct) of the real estate project, have entered into arrangement with individuals/ organizations like land owners or investors, by which the said individuals/ organization are entitled to a share of the total revenue generated from sale of apartments or share of the total area developed for sale which are also marketed and/or sold by such individual organizations.

Such individuals/ organizations are covered within the aforesaid definition of the term ‘Promoter’. They are therefore jointly liable for the functions and responsibilities specified in the Act in the same manner as the promoter who actually obtains building permissions and carries out construction”
(emphasis supplied)

However, the aforesaid Circular does not help the case of Deepa R. because the respondent M/s Rajiv Builders/ Mr. Rajiv Pillai has not entered into any arrangement with Deepa R. in respect of the said project nor there is anything on record to show that Deepa R. is entitled to a share of the total revenue generated from sale of apartments or share of the total area developed for sale which are also marketed and/or sold by such individual / organizations. **As stated earlier there is no agreement/ privity of contract or arrangement between Deepa R. and M/s Rajiv Builders/ Mr. Rajiv Pillai and there is no declaration of ownership of Deepa R. from a competent Civil Court.**

- 15) Even Section 15 of RERA Act is not attracted in this case as sub-section(1) of Section 15 of the Act states that,

“The Promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority”.

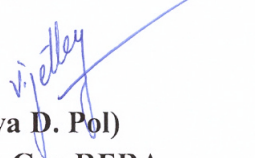
In the instant case, the promoter M/s Rajiv Builders has not transferred or assigned his rights and liabilities in respect of the said project to any third party.

16) In view of the aforesaid, the affidavits filed by the “owners”, Mr. Carmino Agnelo D’Souza and Mrs. Theresa C. D’Souza do not help the case of the applicant, Deepa R. Similarly, the affidavit filed by Mr. Sahadev Bala Kavathankar does not change the position of the case. Similarly the undertaking given by Mr. Rajiv R. Pillai to the effect that he would sign “the cancellation deed of development agreement dated 18th day of 2019” once the value of work executed by him till 31/08/2019 is finalized and then he would also not raise any claim under the said development agreement after cancellation and would have no objection to continue the project by other agency in particular site/ project is no help to the applicant, Deepa R. because the Agreement for Development cum Sale dated 18/01/2019 is not cancelled till date, nor set aside by any competent Court and still subsists in the eyes of law.

17) Even otherwise, from the definition of Promoter as envisaged in Section 2(zk) of RERA Act, it is clear that **Promoter need not be the owner of the land in respect of real estate project.** The Sale deed dated 18/12/2019 executed between the “owners” and Deepa R shows that the “owners” “hereby transfer by way of sale”, the plot described in the schedule thereto:- land admeasuring 1350 sq.mts. surveyed under No. 83/1-B of village Colvale and no ownership right is conferred on her in respect of the project being constructed thereon. Infact there is no mention of commencement of construction of any project by M/s Rajiv Builders or the stage of such construction in the aforesaid sale deed dated 18/12/2019. As stated above even otherwise, by merely being the owner of the plot on which the project is being constructed by a “developer”/ promoter, the

owner does not become the promoter in the eyes of law as per the provisions of RERA Act.

In view of the foregoing, the application moved by Deepa R. to substitute her name as a promoter and land owner is dismissed.


(Vijaya D. Pol)
Member, Goa RERA