



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (418)/2024/ 234

Date: 26/02/2025

(BEFORE THE MEMBER SHRI VINCENT D'SILVA)

Mukul Sharma,

Director on behalf of Hansa Vanija Vyapaar Pvt. Ltd.,
241, Okhla Industrial Phase-III, New Delhi-110020.

.....Complainant

Versus

Suraj Morajkar,

Sun Estate Developers,
Miramar Beach Road, Next to Hotel
Bluebay, Caranzalem, Ilhas,
North Goa, 403403.

.....Respondent

Ld. Advocate Ms. Shweta J. Parulekar for the complainant.

Ld. Advocate Shri Somnath Karpe for the respondent.

ORDER

(Delivered on this 26th day of the month of February, 2025)

This order shall dispose of the complaint filed against the respondent under the provisions of The Real Estate (Regulation and Development) Act, 2016.

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

That the company, Hansa Vanijya Vyapaar Pvt. Ltd. jointly purchased a chunk of land with equal undivided share with the proprietorship concern of the respondent admeasuring 9975 sq. mts. in village Nerul under Survey no. 97/7 as an independent and distinct unit admeasuring 13975 sq. mts. out of which, a portion admeasuring 4000 sq. mts. was sold to some other party and the remaining was purchased by their company. The company after purchasing the property vide Agreement for development dated 24.04.2015 authorized M/s Sun Estate Developers through the respondent to carry out the construction and development of residential units/villas and the external development of the project site and decided that 15 villas and one farm house shall be developed and the same shall be sold by the proprietary concern of the respondent to the prospective buyers with the written consent of, and at a mutually consented price with the company.

3. However, the said M/s Sun Estate Developers in collusion with an alien entity which is not privy to any contract with the company and purportedly operating under the name of M/s Sun Estate Developers Limited Liability Partnership is entering into various agreements to sell the villas in the project and rampantly attempting to get the agreements register at the office of Sub-Registrar at Bardez, Mapusa. The complainant noticed the following violations under the RERA Act namely:

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- (i) Though the ESCROW Account was opened with HDFC Bank, the same has been kept non-operational and private dealings have been reportedly conducted outside the scope of ESCROW Account without the knowledge of the complainant. This is a severe violation because any money collected on account of sale of the villas under development was to be shared between the company and the accused entity M/s Sun Estate Developers through Sh. Suraj Morajkar.
- ii) In the RERA Registration, only 7 units have been disclosed, whereas actually 10 units are coming up in the project.
- iii) Total plot area is 10,000 sq. mts. but only 2960 sq. mts. is shown as plot area.
- iv) As per the RERA registration, the project was scheduled to be completed by 01.03.2022 which is nearly 2 years from now. Neither any justification of this delay is explained anywhere nor has the accused company ever filed for date extension.
- v) The project inventory is wrongly mentioned as the total carpet area mentioned is incorrect. The accused has not disclosed the correct information.
- vi) The accused has not updated any quarterly status of the project to the RERA Goa, as mandated by law.
- vii) It has been observed that the onward sales is being conducted by a third entity known as M/s Sun Estate Developers Limited Liability Partnership and not by M/s Sun Estate Developers (Proprietorship) as was mandated by the construction

agreement between the accused and the complainant. The said M/s Sun Estate Developers Limited Liability Partnership projects itself as owner cum developer of the project land, which is completely wrong and incorrect, in fact, M/s Sun Estate Developers Limited Liability Partnership is in no way connected to the transaction and the project land ownership is jointly held in equal shares between M/s Sun Estate Developers (Proprietorship) and the complainant M/s Hansa Vanijya Vyapaar Pvt. Ltd. The respondent has committed serious blatant violations and hence the registration status of the said project is liable to be struck off and suitable action including criminal action may be initiated against the respondent and its partners.

4. The respondent filed a reply inter-alia contending that the proceedings initiated by the complainant is without the authority of law and the complainant has no locus standi to raise to the issues in as much as the complainant is not the 'allottee' within the meaning of the Section 2(d) of the RERA Act. The complainant and the respondent are the co-owners in respect of the said property and the development of the said property has been entrusted by the complainant to the respondent vide agreement dated 25.04.2015. The complainant has filed a Commercial Suit bearing no. 7/2023/A in which a relief restraining the respondent from going on with the development of the suit property has been filed and the Ld. Trial Court by Order dated 10.05.2024 dismissed the application for injunction.

The grievances made by the complainant as per Para 4(i to vii) would not arise as the respondent has not violated any law. The intention of the complainant is to stall the project and as such the complainant filed the said commercial suit. The complaint therefore needs to be dismissed.

5. Argument heard. Notes of written arguments came to be placed on record by the complainant.

6. The points for my determination 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 prayed in terms of Para 4 (i to vii) of the complaint?	In the negative.
2	What order? What reliefs?	As per final order.

REASONS

Point no. 1 and 2

7. Ld. Advocate Somnath Karpe for the respondent has submitted that the complainant has no locus standi to raise the issues which are sought to be raised in the present proceedings in as much as the complainant is not the 'allottee' within the meaning of Section 2(d) of the RERA Act as both the complainant and the

respondent are admittedly the co-owners in respect of the said property and the development of the said property has been entrusted to the respondent by the complainant vide Agreement dated 25.04.2015 in which both the complainant and the respondent are equally responsible for handing over possession of the completed project with the respective prospective purchasers and therefore, the complaint is not maintainable under Section 31 of the Real Estate (Regulation and Development) Act, 2016.

8. Per contra, Ld. Advocate Shweta J. Parulekar for the complainant has submitted that the complainant as well as the respondent entered into an Agreement for development dated 25.04.2015 to carry out joint development on the said property with regard to the property admeasuring 9975 sq. mts. Ld. Advocate Shweta J. Parulekar further submitted that under Section 31(1) of the RERA Act, 'any aggrieved person' may file a complaint with the Authority for any violation or contravention of the provisions of the Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent as the case may be. The complaint is maintainable under the provisions of the RERA Act as the respondent has contravened the provisions of the Act.

9. Section 31 of the RERA Act deals with filing of complaints by an "aggrieved person" with the Authority or the Adjudicating officer for any violation or contravention of the provisions of the Act or the rules and regulations made

thereunder against any promoter, allottee or real estate agent as the case may be. The explanation to Section 31(1) provides that for the purposes of sub-section (1) 'person' shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force. The "aggrieved person" under the RERA Act could be an 'allottee' or 'real estate agent' or 'promoter' or 'association of allottees' or any 'voluntary consumer association' registered under any law for the time being in force. The phrase 'aggrieved person' has to be construed in the context and purpose of RERA Act and would encompass a person whose rights as a promoter governed by the Act is infringed. The complainant is an aggrieved party being a co-promoter and is connected and interested in the project jointly developed by them, hence he is entitled to file the complaint under Section 31 of the Act.

10. The complainant has sought for registration to be struck off and initiate suitable legal action including criminal action against the respondent for alleged violations by the respondent as referred in Para 4(i to vii) of the complaint presumably under Section 7 of the RERA Act.

11. Ld. Advocate Ms. Shweta J. Parulekar for the complainant has submitted that the ESCROW account has been kept non operational as according to Sub-Section (k) of the clause (j) on page 7 of the Agreement for Development dated 25.04.2015, the Respondent was "to collect all installment(s) and/or purchase price

towards the sale of units/villas from the prospective buyers in consultation with the party of the First Part and to deposit the same in the ESCROW ACCOUNT to be opened by the parties to the agreement in HDFC Bank". The respondent has not deposited any amount collected by it and hence, committed default in terms of the agreement.

12. Per contra, Ld. Advocate Shri Somnath Karpe has submitted and rightly so that the ESCROW account has nothing to do with the requirement of the RERA Act. The complainant has failed to give any figure regarding the money received by the respondent and utilized by it. The complainant himself has agreed to utilise the said money on construction for development of project and therefore, the above alleged grievance of the complainant cannot be looked into.

13. Ld. Advocate Ms. Shweta J. Parulekar has further submitted that the respondent had disclosed only 07 units instead of 10 units and only 2960 sq. mts. instead of total plot area in RERA registration. Nowhere in the agreement dated 25.04.2015, there is a mention of 'phase wise' development of the property. The said project needs to be developed by the promoter in accordance with sanction plan. The respondent has also failed in renewal of the project and to complete the same by scheduled date and therefore has committed various irregularities warranting deregistration of the project.

14. Ld. Advocate Shri Somnath Karpe in response has submitted and rightly so that at the time when registration was effected by the respondent, the area available for development was only 10,000 sq. mts and as such in the approved plan, an area of 2960 sq. mts. is reflected and the same was found in the RERA website, which came to be registered. The entire development was restricted to only seven units, as a result of which, the plans which were submitted shows only seven units to be constructed which were within the knowledge of the complainant. The complainant has not raised any objection to the said plan or units which falls within the settlement zone. Admittedly, the respondent has applied for renewal of the project and therefore, the above grievances of the complainant cannot sustain.

15. Ld. Advocate Ms. Shweta J. Parulekar has further submitted that the respondent has mentioned wrong project inventory as under Section 4(2)(h) of the RERA Act, it was the duty of the promoter to make full disclosure with regards to the carpet area which has not been complied by the respondent and therefore not permissible to escape liability by saying the project inventory has subsequently been correctly mentioned. As against that, Ld. Advocate Shri Somnath Karpe has submitted and rightly so that the statement of area shown in the approved plan clearly discloses the area which was to be developed at that point of time. There is no violation of the approvals granted for the construction of the villas and therefore, the above submissions cannot sustain.

16. Ld. Advocate Ms. Shweta J. Parulekar has further submitted that the respondent has failed to upload quarterly up-to-date status of the project as required under Section 11(1)(e) of the Act, which mandates entering of full details including quarterly status of the project and that onwards sales have been conducted by an alien entity, M/s Sun Estate Developers LLP thereby violating Section 4(2)(1) of the Act. On the converse, Ld. Advocate Shri Somnath Karpe has submitted that it is to the knowledge of the complainant that Sun Estate Developers Limited is comprised of respondent and his wife and that assignment was done in favour of Limited Liability Partnership on the advice of chartered accountant for taxation purpose. The said fact is not in dispute. In fact, towards part consideration of the agreement, an amount of ₹2,20,00,000/- was transferred by said Sun Estate Developers LLP to the complainant. The said issue was raised by the complainant in the said Commercial Civil Suit and therefore, the above contention of the complainant pales into insignificance.

17. Be that as it may, the complainant has not disclosed the provision under which the above complaint is filed. The complainant had filed a Commercial Suit bearing no. 7/2023/A and had sought for a relief restraining the respondent from going on with the development of the suit property inspite of the fact that the agreement for development dated 25.04.2015 is still valid and subsisting. There is also no dispute that the trial court, dismissed the application for injunction inter-

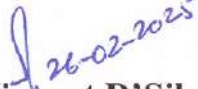
alia holding that the respondent is within its right to undertake the development of the project. The respondent filed the present proceedings on 05.03.2024 only after filing of the said commercial suit on 22.08.2023 without there being any cause or any base, as has been rightly submitted by Ld. Advocate Somnath Karpe for the respondent.

18. Moreover, the complainant has not shown that the respondent who is admittedly the co-owner in respect of the said property has violated any of the terms or conditions of the approval given by the Competent Authority or that the respondent is involved in any kind of unfair practice or irregularities as specified under Section 7(1)(a) to (c) and (A) and (B) or (d) of the RERA Act nor there is any evidence to show that the respondent has violated any of the terms or conditions stipulated in the provisions of Section 7 of the RERA Act. The complainant has also not proved that the respondent is involved in any kind of unfair trade practices or irregularities in the project or any violations of permission granted by the Authority and therefore, the reliefs sought by the complainant presumably under Section 7 of the RERA Act is devoid of any merits and therefore, the complaint deserves to be dismissed. Hence, the above points are answered in the negative.

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

ORDER

- (i) The complaint stands dismissed.
- (ii) No order as to costs.


(Vincent D'Silva)
Member, Goa RERA

Panaji, Goa.
Date: 26.02.2025