



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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F.No.3/RERA/Complaint (119)/2020/148

Dated:-12/03/2021

Sunita Naik/Digamber Naik,
H.No.660, Near Cemya Bar,
Gaddemand, Adpai Durbhat,
Ponda-Goa, 403401

... Complainant(s)

V/s

Libania Gomes and Andre Gomes
H.No.251, near Sai Service Station,
Chicalim, Vasco-Goa 403711

... Respondent(s)

ORDER

This is to dispose off the complaint filed by the Complainants dated 30/06/2020. Complainants have agreed to purchase a flat bearing Flat No.302 admeasuring an area of 57 sq.mts. on the second floor of the Building 'Damien Residency' on the plot No.39 under survey No.132/1 with an area of 443 sq.mts. for total consideration of Rs.21,37,500/-. Agreement to this effect was registered vide Agreement of Sale dated 29/5/2017 between Complainants and Respondents. The said Agreement for Sale is read with Deed of Rectification dated 14/09/2017 and 23/02/2018. As per complainants, this project 'Damien Residency' had 8 single bed room flats and one multi purpose room attached with two open terraces and 9 parking, as per the sanctioned plan attached to the Agreement for Sale. Multi purpose room along with both the terraces was offered for sale as room and kitchen to the complainants for total consideration of Rs.19.00 lakhs and hence it shows that there were more than 8 apartments for sale. Since the number of apartment exceeded 8, the project should have been registered under RERA which has not been done by the Respondents, as per the Complainant. The Complainants have narrated the dispute between them and Respondents in detail and hence finally requested to refund the entire amount to be paid to them with interest and compensation for the loss including the expenditure upon cancellation of agreement dated 29/05/2017.

2. Upon receipt of the complaint, a notice was issued to the Respondents and Respondent has filed the reply. The Respondent has raised issue of jurisdiction in this matter, as the total area of the plot where the project is situated is less than 500 sq.mts. and number of apartments doesn't exceed 8.
3. Opportunity of hearing was given to both the parties. Both the parties have filed written arguments which are on records. Oral arguments were also heard from both the parties.
4. As the matter of jurisdiction and applicability of the RERA Act has been raised, it will be desirable to discuss and decide the issue. Complainants have pointed out that though the number of flats have been shown as 8 by the Respondent, the Respondent was also authorized to construct multi purpose room attached with two open terraces. This portion is in addition to the 8 flats and makes it the total number of units as 9. Complainants have also pointed out this portion was also offered for sale at the cost of Rs.19.00 lakhs and hence it should be taken that the total number of flats in the said project are 9 and not 8. Accordingly, it has been pleaded by the Complainant that the matter comes under the jurisdiction of RERA and the project should have been registered under the Act.
5. Ld. Advocate for the Respondent pointed out that the area of the project is 443 sq.mts., which is less than 500 sq.mts. As far as number of flats are concerned, since beginning it has been 8 flats in the project. He has pointed out that the Occupancy Certificate dated 13/06/2019 was issued by the Village Panchayat of Quelossim which clearly shows that there are only 8 flats in the project 'Damien Residency'. It has been pointed out that the plan of the building which is approved by the concerned authorities also show that there are only 8 flats in the project. According to Respondent since area of the plot is less than 500 sq. mts. and number of apartments are not exceeding 8, the project does not come within the purview of RERA. Accordingly, complaint should be dismissed for want of jurisdiction.
6. Section 3(2) of the Real Estate (Regulation and Development) Act, 2016 is transcribed below:

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required-

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

As per this provision, there are two conditions for applicability registration under the Act;

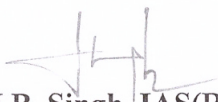
First - Area of the plot should not be more than 500 sq.mts., and

Second – The number of apartments should not exceed 8.

7. In this case, it is admitted position by both the parties that the area of the plot is 443 sq.mts. which is less than 500 sq.mts. As far as second condition is concerned, it is stated that documents on the record show that there are only 8 flats in the project. In the Construction License, 8 flats have been shown and Occupancy Certificate for 8 flats have been granted. The claim of the Complainant that the multi purpose room along with kitchen was offered for sale has no meaning, as there is no documentary evidence available on record. Provision of multi purpose room and its construction in the project can't be said to be another flat, unless and until it is specified in Construction License or Occupancy Certificate.

8. Under the circumstances, it is clear that the area of the plot is less than 500 sq.mts. and number of apartments are not exceeding eight in this case and hence no registration under the RERA will be required in this case. Since the project is not subject matter of registration under the Act, it will be beyond jurisdiction for this Authority to proceed further in the matter.

Complaint is hereby disposed off.


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

To,
All Concerned.