



# GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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No.3/RERA/Complaint (207)/2021/747

Date: 15/12/2021

**Arshi Singh and others**

C 201, Bella Casa,  
Madla Bhatt Road,  
Siolim North-Goa-403517

.....

**Complainant**

V/s

**Gautam Sabharwal,**

Preeti Infratech LLP,  
C-27, IIInd floor, Pamposh Enclave,  
New Delhi-110048

.....

**Respondent**

## ORDER

This is to dispose of the Complaint received on 26/08/2021 from Arshi Singh and others on the web portal of the Authority in respect of project "BELLA CASA" situated in village Panchayat of Siolim Marna, Bardez, Goa. The Complaint is related with the issues of the Society, Sewage Treatment Plant and electric load. It has been mentioned in the complaint that the builder wanted to sign an MOU to form an association of maintenance for which the allottees did not agree as it has no legal standing. The builder has now washed his hands off the project and left it to the allottees to form the Co-operative Maintenance Society. Regarding STP, it is mentioned that it should be of a standard quality and long lasting with a minimum of 05 years guarantee. They have mentioned either the motor stops working or the sensor becomes faulty and issues keep coming up for the past two months. STP has been stinking ever since they started living in January, 2020. Thirdly, it is mentioned in the complaint that power load in the society is far from satisfactory. MC are tripping with normal load. On full load, transformer can blow up. Electricity is not backed on generators at common areas, staircase or landing, parking, gym, club house, pool area and hence CCTV will not capture people walking in. Accordingly, it is requested by the complainant to replace the STP, rectify electric load and solve the problem of the society.

2. Notice dated 17/09/2021 was issued to the promoter to file the reply and promoter has filed the reply dated 24/09/2021 wherein he has denied the charges.
3. Case was fixed for hearing on 14/10/2021 and the case was discussed partly. Respondent/ Promoter was asked to form Co-operative Society/RWA of apartment owners. Again, the case was adjourned and next date was fixed on 08/12/2021. On the next date, complainant was present and argued the case, while Respondent remained absent. In the absence of Respondent, case is proceeded on the basis of arguments of the Complainant as well as reply dated 24/09/2021 of the Respondent. Complainant in their arguments reiterated the facts which is mentioned in the 1<sup>st</sup> para of this order.
4. In his reply dated 24/09/2021, respondent has narrated all the three issues raised by the Complainant. In respect of formation of society, the Respondent has clarified that he always wanted to form an association of members which is more of an ease in terms of rules and regulations. He has referred point No. 13 of the Sale Deed where it is mentioned that it is the sole discretion of the Promoter to decide the form of organization to be formed. In respect of STP, the promoter has mentioned that guarantee of the building for structure is 05 years as mentioned in the Sale Deed. The STP is not part of structure, it is an independent plant and machinery unit itself. Hence, it is the responsibility of the flat owners to look into the matter by giving AMC(Annual Maintenance Cost) to the STP company, so that their people can come on regular basis to check & service the motors, sensors and the entire plant. According to the Respondent, the bad odour comes because some chlorine/chemicals have to be put in STP regularly which was not being put once the builder had stopped with the free maintenance. In respect of electric load, Respondent had clarified that they had provided adequate load as per the size of the apartment. It is also mentioned by the Respondent that they have committed to do new earthing to the members for which they have to dig atleast 10ft of minimum ground which will be done after monsoon only when water level recede. Currently, due to excessive rain in our state and water being found at just 1 meter below the level, the engineer along with local electricians have told to get it done during December-January time. Respondent has also pointed out that electricity of common areas, staircase, parking's was never to be backed up. The main concern of the generators is for



the STP, swimming pool lights and Guard room. CCTV cameras are all working when electricity goes off since they are backed on the generator.


5. I have gone through the contents of the complaint, arguments of the complainant, reply filed by Respondent and facts and proceedings of the case. As far as formation of society is concerned, Promoter has pointed out that he always intended to form an association of allottees which was denied by the complainants. This aspect of the reply of Respondent is corroborated with the contents of the complaints. Complainants have also mentioned that builder wanted to form an association of maintenance which was objected by the Complainant as it has no legal standing. If this is the case, Respondent/Promoter cannot be held responsible for non formation of society.

6. Para 13 of the Sale Deed which has been relied upon by the Promoter is given below:

“that it shall be at the sole discretion of the PROMOTER to decide the form of organization to be formed of the Purchaser/occupants of the various premises in the complex viz. whether such organization would be co-operative society or a Limited Company or any other Legal Entity”.

Sale Deed is the document which is signed by both the parties and if it is given and incorporated in the sale deed that form of organization to be formed has to be decided by the promoter, that has to be followed by both the parties.

7. Apart from Sale Deed, the legal provision mentioned under RERA act, 2016 also supports this view. Clause (e) of sub section 4 of section 11 is illustrated below:



“The Promoter shall enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:”

Hence, in the statutory provision of the Act also it is clear that promoter has to form one of the organization i.e association or society, or co-operative society as the case may be of the allottees. Here, since complainants themselves have objected for the formation of association, promoter cannot be held responsible for the same.

8. Regarding STP, the Respondent has stated that guarantee of the building for structure is 05 years but STP is not part of the structure as it is independent of the building. In this respect, I would like to draw attention on the definition of the building given under the Act. The building is defined in section 2 (j) of the Real Estate (Regulation and Development) Act, 2016 which is as follows:

“building includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes”.

This definition clarifies the statutory provisions of the building under the Act. It clearly mentions that building includes any structure or erection which is intended to be used for residential, commercial or for any other related purposes. I may mention that STP has a prominent role in maintenance of sanitation in the society, so it must be of standard quality so that its durability can be assured atleast for 05 years. The contentions of the Respondent that STP is not part of the building is not acceptable. Though continuous maintenance of the STP should be done by the association of allottees but original STP installed should be of good quality and durable by nature. Hence, in the interest of the justice, I feel that existing STP should be replaced with good quality and standard STP which should be durable in nature.

9. Next issue which has been highlighted in the complaint is related with the supply of electricity. As per complaint, power load is not sufficient, MCB trips when overloaded and there are earthing issues also. It has also been highlighted that back up for electricity provided by Promoter is not sufficient to cover common areas, staircase, etc.,. So there are 03 issues related with electricity i.e. MCB tripping, new earthing and backup of common areas. Promoter has stated that he has provided adequate load as per the size of the apartment. However, if additional gadgets of high watt are installed, there is possibility MCB will trip. If that is the case, the quality of the load should be increased. In respect of earthing, Promoter has committed that action will be taken to do new earthing after rainy season in the month of December-January. In view of categorical admission and commitment of the promoter, I feel no more direction in this matter is required. Only thing I would like to mention in this respect is that new earthing should be done properly so as to solve the problem of the society. The



third issue is related with the backup. As per Promoter, the electricity of common area, staircase, parking's was never to be backed. The Promoter has pointed out that the main concern of the generator is for the STP, swimming pool lights and guard room. I don't agree with the contention of the promoter in this aspect. The facilities related with the common areas had to be created by the Promoter in the project and proper arrangement of electricity backup should be created by the Promoter. For convenience sake, Common areas has been defined in section 2(n)of the Act as

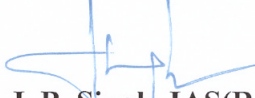
"common areas mean— (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase; (ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings; (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces; (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel; (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy; (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use; (vii) all community and commercial facilities as provided in the real estate project; (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;".

10. One of the main requirements of the present day Real Estate project is concern about common areas. While day to day maintenance of the common areas should be the responsibility of the residents or society of allottees, whichever may be, but the creation of the facility in common areas is responsibility of the promoter as per terms of the agreement. In any case, proper arrangement of satisfactory load in respect of electricity and backup must be created by the promoter, as promoter himself as admitted in his reply that his electricity backup is only for the generator of STP, swimming pool lights and guard room.

11. In view of the above discussions and observation, the following directions are issued to the Promoter for strict compliance:

- a) The present STP should be replaced with good quality and standard STP which should be durable in nature and works satisfactorily for a minimum of 05 years.
- b) Promoter is directed to increase the power load for minimum 1.5 times to 02 times, so as to avoid tripping in future. Promoter is also directed to increase the capacity of generators so that staircase, lift, parking, gym, club house, swimming pool area and CCTV can be completely covered with the backup system.
- c) Promoter must initiate and complete earthing work as per commitment given by him in the para 4 of his reply dated 24.09.2021.
- d) Promoter shall rectify and comply the directions given in sub para (a), (b) and (c) of this para within 30 days and in the event of failure to rectify and comply within such time, the matter will be referred to Adjudicating Officer for determination of adequate compensation under section 14(3) of the Act read with section 71 of the Act.

Order accordingly,

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

**To,**

**1.Arshi Singh and others,**

C 201, Bella Casa,  
Madla Bhatt Road,  
Siolim North-Goa-403517

**2.Gautam Sabharwal,**

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