



# GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

101, 1<sup>st</sup> Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA

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Case no.3/RERA/Complaint(20)/2018/65

Date:27/01/2022

**Shri Kashinath Jairam Shetye & others,**

A-102, Raj Excellency, Patto,

Ribandar, Goa.

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**Complainant**

V/s

**M/s Riviera Constructions Pvt. Ltd.,**

0-104, 2<sup>nd</sup> Floor, Gomes Catao Complex,

Near Cine Alankar,

Mapusa, Bardez-Goa, 403507.

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**Respondent**

## ORDER

This order decides the complaint dated 13.07.2018 filed by Shri. Kashinath Jairam Shetye, resident of A-102, Raj Excellency, Patto, Ribandar, Goa and Shri. Munkundraj Mudras, resident of Building 6C-9, Kenkre Estate, Cabesa, St. Cruz, Tiswadi, Goa (Complainant) against Shri. Agnelo M. Braganca, Chairman and Managing Director of the M/s Riviera Constructions Pvt. Ltd. (Respondent), that an ongoing real estate project belonged to him, namely 'Riviera Gardenia' in survey no. 31/4 of Revora, Bardez (Project) was not registered with the Goa Real Estate Regulatory Authority (Goa RERA) had contravened various provisions under the Real Estate (Regulation and Development) Act, 2016 and Rules there off (Act).

2. The brief description of the complaint is that the complainant desired to book a flat in the aforesaid project of the respondent over telephone. An unknown person purportedly acting as real estate agent for the project without registered as real estate agent in the Goa RERA has informed the complainant that there were two flats remain unsold available for sale. The complainant alleged that the respondent had violated various provisions under Sections 3, 4, 5, 9 and 10 of the Act and rules in force there off and hence, liable for penalty under Sections 59, 60, 61 and 62 of the Act.
3. The complaint was forwarded to the respondent for reply, the respondent vide replies dated 04.10.2018; 01.10.2020; 23.09.2021 and affidavit dated 05.10.2018 respectively, stated that the project under survey no. 31/4 was an ongoing project, construction started on 01.07.2016; obtained conversion sanad on 01.11.2013; technical clearance order from the Town and Country Planning Authority on 23.02.2015; and construction licence from the Village Panchayat of Revora on 12.11.2015; constructing with its own funds and the same were not put up for sale and also not sold or agreed to sell any unit.
4. The respondent countered the allegations of the complainant as given under:
  - a) That the complainant is not an allottee as defined under Section 2(d) in survey no. 31/4 and therefore has no locus standi to file complaint against the respondent. b) There is no offer or agreement entered with the complainant in the said project and hence no locus standi under Section 3(1) of the Act. c) Section 3(1) is attracted only where a “Promoter shall advertise, market, book, sell or offer for sale or invites any person to purchase any apartment or building as the case may be in any real estate project”. d) The complainant has no locus standi to file complaint as the project is self financed with no apartment put up for sale to the public. e) Denied that the complainant had

contacted the respondent for purchase of flats. f) The complainant furnished no evidence on record to show that he is an allottee or aggrieved person. g) The respondent sought to dismiss the complaint under proviso (b) to Rule 6(2) of the Goa Real Estate (Regulation and Development) Rules, 2017. It states as follows, “In case the Authority is satisfied on the basis of the submissions made that the complaint does not require further inquiry it may dismiss the complaint”.

5. The following questions emerged for consideration as under:
  - i. Whether the complainant has locus standi in the project where there is no agreement for sale entered into between the complainant and the respondent?
  - ii. Whether the ongoing project required to have had been registered with the Goa RERA even though it is constructed with own funds?

**Question -1: whether the complainant has locus standi in the project where there is no agreement for sale entered into between the complainant and the respondent?**

6. Section 31 (1) of the Act states that any person may file a complaint with the Authority or the Adjudicating Officer, as the case may be, for any violation or contravention of the provision of this Act or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case maybe. The explanation to the above Section define ‘Person’ shall include-the association of allottees or any voluntary worker association registered under any law for the time being in force.
7. Section 2(d) of the Act defined “allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has

been allotted, sold (whether as freehold or lease hold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building as the case may be, is given on rent.

8. Section 31(1) read with Section 2(d) of the Act clearly establish the relationship between an aggrieved person or an allottee as an essential requirement to qualify as an aggrieved person or as an allottee provided the promoter sold the plot or apartment or building or transferred it which also includes secondary sale or transfer to an another person duly executed with agreement for sale under Section 13(2) of the Act.

9. The complaint filed by the complainant has not shown such a relationship that exists between him and the respondent. By mere telephone enquiry expressing desire to purchase a flat squarely fails to pass the test laid down under the above provisions of the Act. Therefore, the complainant can neither be claimed to be an aggrieved person nor an allottee in the said project within the ambit of above provisions as there is no monetary loss to him and no breach of any promises made by the respondent.

**Question-2 :whether the ongoing project required to have had been registered with the Goa RERA when it is constructed with own funds?**

10. In the light of findings in the aforesaid paragraphs 6, 7, 8 and 9 and above as regards to the local standi of the complainant in the ongoing project under survey no. 31/4, this Authority would proceed under Section 35 of the Act whether the ongoing project required to have had been registered with the Goa RERA when it is constructed with own funds. Under Section 35 of the Act, the Authority can either on a complaint or suo moto by an order, call upon any

promoter or allottee or real estate agent to furnish in writing such information or explanations relating to its affairs as the Authority may require.

11. Section 3(1) and (2) of the Act mandates prior registration of a real estate project in the Goa RERA, if the area of the 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, prior to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building as the case may be in any real estate project or part of it, in any planning area or even beyond the planning area as decided by the Authority including both ongoing as well as new real estate projects.
  
12. Further, the Rule 4 of the Goa Real Estate (Regulation and Development)Registration Real Estate project Rules, 2017 states that the promoter of an ongoing real estate project, for which completion certificate as provided by first proviso to sub Section (1) of Section 3 has not been received shall submit application for registration of such project not later than three months from the date of commencement of Rules and to furnish relevant details such as, extent of development carried out, original time period for project completion including delay if any, allotment done, amount already received along with pending receivables, separate bank account details to park money to be received, etc.
  
13. The Authority has issued notice to the respondent for reply. The respondent vide replies dated 04.10.2018; affidavit dated 05.10.2018; replies dated 01.10.2020 and 23.09.2021 respectively stated that the project under survey no. 31/4 was an ongoing project; construction started on 01.07.2016; obtained conversion sanad on 01.11.2013; technical clearance order from the Town and Country planning

Authority on 23.02.2015 and construction licence from the Village Panchayat of Revora on 12.11.2015 ; constructing with its own funds and the same were not put up for sale and also not sold or agreed to sell any unit, and further stated that the construction is on hold due to pandemic and inadequate funds.

14. The replies furnished by the respondent forwarded to the complainant. The complainant filed a rejoinder dated 11.10.2020. He stated that the respondent's construction company sells flats, shops, houses, row houses, bungalows etc is not a private individual who builds building with his own money which are intended for commercial sale. The respondent is building the said project in survey no. 31/4 and 32/1 which are next to each other and if such a situation allowed there will be tendency to hide commercial projects under the garb of residential in nature to escape from the purview of the Act. The complainant also annexed purported digital advertisements issued in the year 2014 and 2015 by the respondent about some ongoing and completed projects to rebut the claims of the respondent.

 15. The respondent has furnished reply dated 23.09.2021 to the re-joinder of the complainant. He reiterated the points already raised in earlier replies dated 04.10.2018, affidavit dated 05.10.2018 and reply dated 01.10.2020. He stated that the project under survey no. 32/1 was completed on 26.05.2015 much before the Act implemented the State of Goa. It is supported by the receipt of Completion Certificate issued by the Town and Country Planning Authority dated 26.05.2015 and Occupancy Certificate issued by the Village Panchayat Revora dated 07.09.2015, the said project therefore not require registration under the Section 3(1) of the Act.

16. The respondent further stated that Riviera Constructions Pvt. Ltd. is a construction company involved in the construction of holiday homes, staff quarters and hotels. He stated that the digital advertisements issued were for those projects completed before the Act came into force; the project under survey no. 31/4 has not been advertised and put up for sale and no agreement has been entered into with any third party. The respondent company not only build residential houses for commercial sale but also build hotels, staff quarters which are exclusively used by the company. The project under survey no. 31/4 was started by the respondent and it was neither advertised nor put up for sale. That the said project will be completed with its own funds without putting it up for sale before its completion. He also stated the said project under survey no. 31/4 has been stopped due to pandemic and lack of funds.

17. The digital advertisements issued by the company in the year 2014 and 2015 have been examined. The advertisements are generic in nature, issued prior to the Act enforced in the State. There is nothing in the advertisement to show that the ongoing project in the survey no. 31/4 is actually put on sale and further supported with a sworn affidavit dated 05.10.2018 from the respondent that the project is not put up for sale, neither it is sold nor any agreement signed with any allottee and the project currently suspended due to inadequate funds and pandemic. As per Section 3(1) of the Act, a real estate project required to be registered with the Goa RERA prior to issue of advertisement for sale, booking, offer for sale or transfer in any manner. As the respondent has not yet put up for sale of the project, neither sold nor offered to anyone. The complaint stating that the respondent offered to sale flat in the survey no. 31/4 to him has not been proved succinctly. Similarly, the complainant failed to prove allegations of unregistered real estate agent employed by the respondent for marketing of the project under survey No. 31/4.

18. In the light of above, the complaint dated 13.07.2018 filed by the complainant finds no merit in the allegation of violations under Section 3, 4, 5 and 9 and 10 of the Act. The complaint is decided accordingly.

  
27/01/2022  
**(S. Kumaraswamy, IAS (Retd.))**  
Chairperson (Goa RERA)

**To,**

**1. Shri Kashinath Shetye & others,**  
A-102, Raj Excellency, Patto,  
Ribandar, Goa.

**2. M/s Riviera Constructions Pvt. Ltd.,**  
0-104, 2<sup>nd</sup> Floor, Gomes Catao Complex,  
Near Cine Alankar,  
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