



## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (420)/2024/ 512

Date: 28/04/2025

(BEFORE THE MEMBER SHRI VINCENT D'SILVA)

**The Rastroli Residency Co-operative Housing Society Ltd.**

Through its Secretary,

Mr. Lachman Mohanty

R/o Flat No. A-101,

Upper Ground Floor,

Rastroli Residency,

Rastroli Temple Road,

Karaswada, Mapusa, Bardez, Goa-403507.

.....Complainant

*Versus*

**M/s AXR Realtors,**

A Partnership Firm,

Having registered office at Nirmiti

Tiwali Wadi, Opp. Depot Vasai (W)-401201

.....Respondent

Ld. Advocate Ms. Prachi Sawant for the Complainant.

Ld. Advocate Clayton Fonseca for the respondent.

### **ORDER**

**(Delivered on this 28<sup>th</sup> day of the month of April, 2025)**

This order shall dispose of the complaint filed under Sections 31 of The Real Estate (Regulation and Development) Act, 2016.

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

The complainant is Rastroli Residency Co-operative Housing Society Ltd. The respondent 'M/s AXR Realtors' is a Partnership Firm. The "Rastroli Residency" is a residential premises having two residential buildings, being Block 'A' and Block 'B', each having stilt plus 4 floors, consisting of 28 units, which have been purchased by the members of the complainant society from the respondent/builder. The respondent actively marketed the project in the name of "Rastroli Residency" situated in the land admeasuring 1456 sq. mts., bearing Chalta No. 14, PT Sheet No. 30 of City Survey Mapusa, admeasuring 1456.00 sq. mts. The members of the complainant society in furtherance to an advertisement approached and contacted the respondent as regards interest in purchasing flat/flats in the said project. The members of the complainant society and the respondent entered into an Agreement for sale/purchase of their respective flats, which spelt out their terms and conditions to be obliged by both the parties.

3. The respondent has blatantly ignored the clauses of the agreement. The complainant has sent various communications to the respondent regarding the pending works and the conveyance deed on many occasions, but on one frivolous pretext or another, the respondent has completely failed to oblige with the duties as envisaged under the Agreements for Sale and Sale deeds with various buyers, who are the members of the society. The complainant has sent several letters to the respondent making it aware of the dilapidated conditions of the building, but the respondent has not bothered to reply to any of the letters.

4. The complainant after having purchased the units from the respondent found that there were several deficiencies in the project of the respondent to be complied with, such as pending works were not completed despite several intimations to the respondent. There were structural defects which were pointed out by the complainant to the respondent on several occasions, including soak pit and septic tank, which started to overflow causing a lot of foul smell and created unhygienic conditions for residents/neighbours and general public. Water proofing has not been executed in a proper manner, due to which, the members of the complainant society suffer leakage in the building, since its inception.

5. The rain water seepage through the walls/toilets of the flats is damaging the paint and structure of the building. Most of the flats are moist. The driveway pavers have yet not been repaired. Due to the inaction of the respondent, the complainant has received warning letters from the Department of Health due to waste water from septic tank/soak pit overflowing on the road/others' property. Repeated notices are being sent to the complainant from the Directorate of Health Services, Urban Health Centre, Mapusa Goa on complaint filed by one Sailesh Rao. The complainant issued a legal notice dated 23.08.2023 through its advocate, to which the respondent sent a reply dated 27.09.2023 refuting and denying all of the contentions and claims raised by the complainant and giving vague reasons. The respondent claimed that all the work is complete but the ground reality is different. It is therefore necessary relief be granted.



6. The respondent filed a reply inter-alia contending that the respondent has commenced the process of causing the transfer of the said apartments in favour of complainant society. The complainant has blatantly ignored the clauses of the Agreement dated 25.01.2018. There are no pending works on the part of this respondent. The falsity and malafide of the allegations made by the complainant are belied by the completion certificate of the North Goa Planning and Development Authority. The respondent has undertaken an extensive waterproofing of the said building and a ten years warranty has been given by the waterproofing consultant for the said works carried out by the respondent.

7. The grievances raised by the unit holders collectively were prior to the constitution of the society. However, in pursuance of the formation of the society, the maintenance of the said building is the sole responsibility of the complainant society. The delay in executing the deed of conveyance in the favour of the complainant Co-operative Housing Society is for procedural reasons. The grievances in respect to the deficiencies in the project of the respondent alleged by the complainant, have no relation to any defects or bad workmanship or quality or any other obligation on behalf of the respondent and the same are matters of regular maintenance, which is the responsibility of the complainant society. The claim of structural defects in the septic tank/soak pit are baseless and are belied by the NOC issued by the Health Officer, Urban Health Centre, Mapusa vide letters dated 27.08.2019 and dated 28.08.2019. Soak pit provided was of a larger capacity

that was applicable and meant for the said development, therefore the grievance of the complainant is not only misplaced and baseless, but is also malafide, being contrary to facts and records.

8. The development in question has received an occupancy certificate dated 26.09.2019 from the Mapusa Municipal Council. The said occupancy certificate was in turn issued based upon the completion certificate of the North Goa Planning and Development Authority dated 13.06.2019. The society is otherwise bound to carry out and oversee the regular maintenance of the building. The complainant society has sought to make the respondent responsible and liable towards the alleged defects, which is a highly erroneous. The respondent would not be responsible or liable towards regular maintenance related functions which are the responsibility of the complainant having been duly constituted for the said purpose. The complaint therefore lacks merit and substance warranting the dropping thereof.

9. Arguments heard. Notes of written arguments came to be placed on record by the parties.

10. 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 proves that there were structural defects in the septic tank/soak pit as per the complaint?	In the negative.

2.	What order? What reliefs?	As per final order.
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## **REASONS**

### **Point no. 1 and 2**

11. Ld. Advocate Ms Prachi Sawant for the complainant has submitted that the soak pit which was constructed had started overflowing causing a lot of foul smell and creating unhygienic condition for the residents and others and that inspite of pointing out the said defects to the respondent, the respondent has not acted and as such, the complainant has received warning letters from the Department of Health due to the waste water from septic tank overflowing on the road and others property. Several notices were sent to the complainant by the Urban Health Centre, Mapusa and due to the said notices, the complainant had to empty the soak pit every two days, which cost a lot of financial burden on the society. The Health Department also disconnected the electrical supply of the complainant, which was reconnected later on, with a direction to empty the main waste collector tank and the soak pit/septic tank once/twice a week under intimation to the Health Officer. The said overflowing of the soak pit is a structural defect and the complainant was forced to make a new temporary soak pit, although it is for the promoter to rectify the said structural defects within 30 days in terms of the provisions of the Act.

12. Per contra, Ld. Advocate Shri Clayton Fonseca for the respondent has submitted that the complainant has failed to prove that there was any structural defect nor the complainant has pointed out nature and the type of repairs required



to be undertaken by the respondent nor obtained expert opinion in respect of such demand for repairs nor considered the issue of redesign as it is beyond the purview of the Authority. The respondent has commenced the process of transferring all common areas and executing a deed of conveyance in favour of the complainant. The respondent has provided water, electricity and other utility services to all the allottees in accordance with the terms of the agreement and therefore, the complaint cannot be allowed.

13. The present complaint is apparently filed under Section 14 of the Real Estate (Regulation and Development) Act, 2016. Section 14 states as follows:-

Adherence to sanctioned plans and project specifications by the promoter:

(1).....

(2).....

(3) *In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.*

14. Admittedly, it is the case of the complainant that there are structural defects in the septic tank/soak pit constructed by the respondent in terms of clauses

of the agreement dated 23.10.2018, maintenance of which is the responsibility of the respondent, before handing over the building to the complainant society. Needless to mention, the complainant is duty bound to prove that there are structural defects as the 'structural defects' refer to flaws or failures in a building construction that compromises its stability, safety or functionality, often stemming from poor design materials or workmanship.

15. It is the case of the complainant that the septic tank is overflowing and therefore respondent is duty bound to repair/redesign the septic tank/soak pit and due to the said problem, the Health Officer had issued a show cause notice and disconnected the electricity supply, which was however reconnected subsequently. It is in such circumstances, relevant to uncover whether there is a structural defect in the septic tank/soak pit and whether the complainant has proved the same. No doubt, the complainant formed the Co-operative society on 12.05.2021 however, the complainant has not provided any evidence as to the nature or type of repairs required to be carried out by the respondent nor obtained any expert opinion in respect of such demands for repairs.

16. The respondent has produced on record the NOC issued by the Urban Health Centre, Mapusa dated 28.08.2019 along with a plan, wherein it is stated that there was no objection from sanitary point of view for occupancy and the NOC is liable to be withdrawn, if conditions are not complied with. The plan attached to the said NOC indicates that the septic tank and the soak pit constructed in the said



plot is for 100 capacity users, which is of a larger capacity than that usually prescribed for such project in question. No evidence has been produced that the construction of the septic tank/soak pit as per the NOC was poor and that due to the said issue, the septic tank is overflowing. The complainant has also failed to attribute any structural defect on the part of the respondent. There is also nothing on record that the septic tank and the soak pit constructed by the respondent is of a lesser capacity than the one approved by the authorities concerned and that due to the lesser capacity of the septic tank, it resulted in overflowing.

17. Needless to mention, overflowing septic tank is not necessary a sign of structural defect, but it can indicate other problems with the system. The most common causes of overflow in septic tank are overuse of the system, excessive water usage, a clogged drain field, or failure of the septic tank component. If the home buyers are using more water than the septic tank is designed to handle, it can overflow. Septic tank issues can range from slow draining fixtures and foul odours to backing up of water and sewage. These problems can be caused by a variety of factors, including clogs, blockages, tree roots, poor maintenance, and excessive water flow. Early detection and addressing these issues are crucial for preventing further damage and potential health hazards. The septic tank itself can develop problems, such as damaged inlet/outlet pipe, a blocked chamber, or a failing tank that can no longer hold the waste water. In rare cases, excessive ground water or heavy rainfall can create hydrostatic pressure that forces the septic tank upwards,

potentially causing it to pop out of the ground. Water from rain can infiltrate the septic system, increasing the volume of water in the tank and potentially leading to overflow.

18. There is no disputation on the part of the complainant that the drain was clogged or the tank is overflowing due to excessive water usage or the tank was damaged or that the septic tank was not installed appropriately or that the installation of the septic tank was not in terms of law or that the appropriate authority has failed in their duty to grant the permission or that the respondent had not constructed the septic tank as per the standard specified by the health authorities. Nowhere, it is stated by the complainant that septic tanks are being emptied and maintained on regular basis and that the residents are careful of not flushing wet wipes, toilet papers, oil, grease and food, etc which can all cause issues to the septic tank and the easiest way to avoid these septic tank issue is to stick to a regular maintenance schedule and getting tank pumped. It therefore cannot be said that it is an issue of structural defect requiring the respondent to act upon it.

19. It is the duty of the complainant, once it fails to establish that there are structural defects in the construction of the septic tank/soak pit, to put efforts towards the maintenance of septic tank/soak pit. The complainant has claimed that they have dug another soak pit in the said premises, however it does not work. The complainant therefore ought to have produced evidence on record pinpointing the

defects/flaws in the construction of septic tank on the part of the respondent. It is therefore in such circumstances, would be unfair to direct the respondent to rectify the alleged structural defects, in the absence of any pleadings or materials to substantiate the nature or the type of structural defects in the building.

20. The complainant has not produced on record any document pointing out to the alleged defects in the septic tank/soak pit nor produced on record any minutes of the society to suggest deliberation of the issues by the complainant society regarding the overflowing of the septic tank/soak pit and seeking redressal thereof through the present proceedings and for that purpose adopting resolution to file the present complaint. There is also nothing on record including the photographs and expert report pointing out to the alleged structural defects in terms of Sub-Section 3 of Section 14 of the RERA Act, which would warrant action against the respondent. It is therefore the claim of the complainant of structural defects with respect to overflowing of the septic tank/soak pit cannot be said to have been proved by the complainant and therefore, no relief as prayed for by the complainant society can be granted.

21. The complainant has also sought recovery of ₹78,200/- from the respondent deposited towards water, electricity and other utility and services, which according to the complainant has not been refunded to the complainant, till date. However, no documentary evidence with respect to the above issue has been adduced by the complainant. It is also an admitted that the process of executing a Deed of

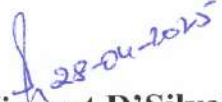


Conveyance in the favour of the complainant society is underway. The complainant has also sought for rectification of other structural defects which grievances like water proofing etc. have already been fulfilled, through M/s Parker Construction and therefore, no obligations or responsibility have remained to be fulfilled on the part of the respondent. Hence, above points are answered accordingly.

22. Hence, I pass the following:

**ORDER**

- i. The complaint stands dismissed.
- ii. No order as to cost.

  
(Vincent D'Silva)  
Member, Goa RERA

Panaji, Goa.  
Date: 28.04.2025