



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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Date: 03/02/2020

1) F.No.3/RERA/Complaint (42)/2018/138

**Swaroop S. Natekar, Sandeep S. Tople,
Dattatray Dalvi,**

Natekar General Store, Near Fish market,
Saliawada, Maharashtra Sindhudurg.

Complainants

V/s

M/s Hrija Construction,

C/o Sankalp Gold Palace, Shop No.12-A,
New Municipal Market, Bicholim-Goa.

Respondent

2) F.No.3/RERA/Complaint (60)/2019/138

Andrio Dcosta, Sulbha Mishal,

H.No. 26, Laxmi Smruti,
Behind Maruti temple,
Dattawadi Road,
Mapusa-Goa.

Complainants

V/s

M/s Hrija Construction,

C/o Sankalp Gold Palace, Shop No.12-A,
New Municipal Market, Bicholim-Goa.

Respondent

Order

This is to dispose off above mentioned two complaints. These two complaints were received by the Authority on different dates in respect of the same project and respondent. The subject matter of both the complaints are that respondent has committed undue delay in delivering the apartments to complainants and also Respondent has been unable to register the project under Goa- RERA. Matter of inferior quality of construction has also been brought to the notice of Authority. Since, subject matter of both the complaints are similar, both have been clubbed together for the purpose of disposal.

- (2) First complaint was received online from Swaroop S. Natekar, Dattatray Laxman Dalvi and Sandeep Sharad Tople. They have also submitted complaint date 26/12/2018 in hard copy to the Authority. As per complainants, M/s Hirja Construction has got a plot admeasuring 557 sq. meters at Karaswada, Mapusa Goa. The said plot is surveyed under No. 29-A, 29-B and 29-C of P.T. Sheet No. 16, City survey, Mapusa. The Respondent is constructing a Building on the said plot to be known as 'SAI ISHWARI' comprising of ground and four upper floors. The developers have got the building plans sanctioned from the concerned Authorities and commenced the construction of the said building and completed the same upto RCC work. The Developer/Respondent has sold the flats to complainants after entering into agreements. As per terms of Agreement, Respondent had agreed to handover possession of the flats on or before January 2018 after procuring O.C from the concerned Authorities. However, till date Respondent has failed to hand over the same. Also Respondent has not registered the said project under RERA which is required after coming into force the Real Estate (Regulation and Development) Act, 2016.
- (3) The first complainants have also sent letters dated 8th August 2019, dated 27th August 2019 and dated a18th November 2019 addressed to Authority. In these letters the complainants have pointed out that interim Authority had taken a hearing of the case on 5th July 2019 and directed the Respondent to complete the project and handover the possession to the complainants on or before 31st July 2019. Even after direction of the Authority to handover possession to the purchasers, the Respondent has not done the same.
- (4) The second complainant Andrio D'Costa and Sulbha Mishal has sent the complaint online on 17/9/2019 against Hirja Construction for project 'Sai Maheshwari' wherein they have pointed out delay in handing over possession of flats as well as inferior quality of work. These complainants have sent another letter dated 24/12/2019 in which again they have highlighted that project has not been registered and Respondent have not finished the work till date.
- (5) Notices in both the cases were issued to Respondent. In first case, the case was heard even by Interim Authority. On 5/7/2019, Interim Authority directed the Respondent to complete the project by 31st July failing which penalty will be imposed. Before me, the case was heard on 16/12/2019,

3/1/2020 and finally 13/1/2020. Respondent filed reply dated 11/11/2019 and additional reply date 2/1/2020.

- (6) There are two Agreements for construction cum sale dated 18/12/2015 and dated 13/07/2016 entered between promoter/respondent and complainants. It has been agreed between the parties that promoter shall handover the completed flat to the purchasers/ complainants in two years with grace period of six months. Including grace period of six months' time for delivery of flats come to an end in December 2017 and July 2018. However Respondent has not handed over the possession of the flat so far.
- (7) In his written reply Respondent has pointed out that Construction and marketing of project started before RERA came into existence. An agreement was entered between the parties and terms of agreement should be strictly adhere to. It has been pointed out that Agreement for construction cum sale contains an arbitration clause for resolution of all disputed and differences arising between the parties, in connection with the enforcement of clauses, conditions etc. of the terms of their respective Agreements. Accordingly, complainants should have gone for arbitration provided under the Agreement. It has also been submitted by Respondents that clause 4 (d) of the said agreements provides that the Developers shall not incur any liability if he is unable to deliver the said apartment within the stipulated date of completion if the same is delayed due to reasons of non-availability of material, water supply, electric power, drainage, sewage connection or any 'force-majeure' situation etc.. In such situations, the Agreement itself provided that Developer was supposed to be entitled to extension of time.
- (8) It has been stated by the Respondent that since year 2018, there has been a ban on mining of sand in the state of Goa as a result of which, it was nearly impossible for the Respondent to get the required raw- material for completion of the structural works and the civil interior such as plastering of the subject construction. In the circumstances, the Respondent informed all the flat purchasers including the complainants about the aforesaid difficulty.
- (9) I have gone through the contents of complaints as well written reply and arguments of the parties and facts and proceedings of the case. The Real Estate (Regulation and Development) Act came into force in 2016. Rules were framed by Government of Goa in 2017 and 23rd March 2018 was fixed as last date for receipt of completion project. The ongoing projects which have not got Completion Certificate till due date i.e 23rd March 2018

are subject matter of Registration and they must apply for registration and get it.

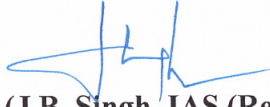
(10) I have considered the case. There are three alleged irregularities. One, the project is not registered under RERA, secondly, project is not completed and handed over to complainants within time limit provided under the agreements and thirdly, construction is of inferior quality. Regarding first irregularity, it is admitted position that project is not registered under RERA. It is ongoing project and till 23rd March 2018, it has not received Completion Certification. Hence it was incumbent upon the Respondent to get the project registered under the Act which respondent has not done so far. He has not even bothered to apply for Registration till date. As regards second irregularity i.e. not delivering the flat to complainant within time limit mentioned in the agreement, the respondent has pointed out that as per clause 4(d) of the said Agreement, he is not responsible to deliver the flat in time due to prevailing circumstances of non- availability of sand etc. I do not agree with contention of respondent in this regard, I may mention that after coming into force of RERA, these aspects are to be seen in the spirit of RERA. Respondent did not deliver the flat as per timing mentioned in the Agreement including grace period. Even before Interim Authority on 5/7/2019, Respondent agreed to deliver, the flats to complainant by 31st July 2020. A direction was issued by Interim Authority in that respect. Respondent failed to do so. During the course of hearing before me, he requested for four months' time to complete the project. Hence, Respondent is found responsible for non- delivery of flat to the complainant despite being agreed before Interim Authority on 5th July 2019. Regarding third irregularity of inferior quality, no proper case has been made by complainant and hence, it cannot be considered at this juncture.

(11) In view of above, it is established that Respondent has contravened the provision of section (3) of the Act and hence liable for penalty under section (59) of the Act. Since no cost of project is available and at the time of commencement of the Act, it was ongoing project, after taking a lenient view, I impose a penalty 10 lakhs for contravention of section 3 of the Act. Similarly, for not handing over Possession despite being agreed before Interim Authority on 5/7/2019, I impose additional Penalty of 5 lakhs to the Respondent.

(12) Therefore, Respondent is directed to pay the penalty of total 15 lakhs. The amount of penalty should be paid to the Authority within 30 days. Respondent is also directed to complete the project and hand over the possession of

respective flats within 3 months i.e. by 30th April 2020 failing which he will be liable for punishment and fine in terms of section 59(2) of the Act.

Order accordingly,



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

To,

- 1) M/s Hrija Construction, C/o Sankalp Gold Palace, Shop No.12-A, New Municipal Market, Bicholim-Goa.
- 2) Swaroop S. Natekar, Sandeep S. Tople, Dattatray Dalvi, Natekar General Store, Near Fish market, Saliawada, Maharashtra Sindhudurg.
- 3) Sulbha Mishal, Andrio Dcosta H.No. 26, Laxmi Smruti, Behind Maruti temple, Dattawadi Road, Mapusa-Goa.