



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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F.No:3/RERA/Complaint(95)/2019/568

Date: 06/10/2021

Harita Methar,

The Misty Green-Flat FS1,

Salvador Do Mundo,

Near Chavdeswar Temple,

North Goa.

403101.

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Complainant

V/s

Universal Developers,

Ekta Nagar, Next to Chapel,

Housing Board, Mapusa-Goa.

403519.


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Respondent

ORDER

Dated: 06/10/2021

- 1) This order disposes of the online complaint filed before this Authority on 08/11/2019 against the Project "The Misty Green" at Salvador Do Mundo, Goa which is registered under Real Estate (Regulation and Development) Act, 2016, (hereinafter referred to as the said Act).
- 2) In the said complaint, it is stated that in the block of the complainant cracks have developed fourth time inspite of repairs done within a period of two months; that seepage issues on roof and side walls are not resolved by the promoter; that the promoter has sold the common terrace with the block wall of the complainant to adjacent owner and gave the said owner permission to build a room on top causing prejudice to the common rights of the complainant over the said terrace and further the common amenities like parking are not completed though the status of the project is shown as completed project. The Relief sought from this Authority is "Monetary Compensation and Guarantee for construction".

- 3) Supplementary complaint was also filed wherein it is stated that the complainant has purchased the flat No. F-S1 on second floor of the project named "The Misty Green" admeasuring 67.88 sq.mts. by sale deed dated 12/09/2019, however, after taking possession of the flat when she started residing there, she noticed that the promises made by the promoter in its prospectus were not fulfilled. It is stated that several misrepresentation were made by Universal Developers regarding the said project. According to the complainant, the promoter promised to complete the project with all the amenities on 31/05/2019 but the promoter failed to complete the project and falsely updated on official RERA site that the project has been completed; that the promoter made representation of project description of 10 one BHK flats but constructed 12 one BHK flats; that the promoter failed to provide all the amenities mentioned in the prospectus such as Community Centre, swimming pool, ample parking provision, Generator Backup for common areas and elevators, gated complex with security, video door phone and CCTV surveillance; that the said flat has developed cracks and though the cracks were repaired, within two months cracks developed again; that water is seeping from the roof and walls; that the Developer has constructed a structure with the toilet on the terrace above the flat of the complainant which is in clear violation of Building Rules as mentioned by Town and Country Planning Department. According to the complainant, the promoter informed her that third party right has been created with respect to the terrace as the promoter has sold the same to another person by name Sunil D'Costa and the construction on the terrace has been done by the said third person, which act, according to the complainant is in violation of the Agreement for sale where it is mentioned that terrace is common for all. It is stated that the Developer has violated the conditions of the sale deed without taking any consent/ permission from any of the owners or from the statutory authorities.
- 4) The complainant has further submitted that she has already filed a complaint before the Panchayat of Salvador do Mundo in respect of illegal construction of structure/ toilet on the terrace and show cause notice has been issued by the Panchayat in this regards. 

- 5) Hence, the prayers of the complainant as follows:-
- (a) The Developer be restrained from constructing or making any further alteration on the terrace.
 - (b) The Developer be directed to remove all the impediment illegally erected on the terrace.
 - (c) The developer be directed to complete the incomplete work at the project "The Misty Green".
 - (d) The Developer be directed to carry out necessary repairs with respect to the seepage issues and cracks on the walls or any other places.
 - (e) That prior intimation be given to the complainant before making repairs in the said flat, in order to make necessary arrangements.
 - (f) The Developer be directed to pay the compensation of Rs. 30,000/- per month to the complainant till the necessary repairs are carried out.
 - (g) The Developer be directed to pay a compensation of Rs one lakh to the complainant towards mental agony and hardship caused to the complainant.
- 6) Reply has been filed by the respondent wherein it is stated that the main relief sought by the complainant is monetary compensation; that the terms and conditions are clearly spelt out in the Agreement for Sale dated 27/07/2018 and it is denied that the respondent has made any false representation; that the amenities as mentioned in the said agreement are provided and complete in the said project; that the complainant failed to make the payments as per the schedule mentioned in the offer letter dated 07/06/2018 and had made a booking amount of only Rs. 50,000/-; that the respondent failed to make the payments, towards maintenance fee from February 2019 till date; it is denied that the promoter has violated any provision of the said Act; it is denied that the Developer has made representation of project description of 10 one BHK flats and converted into 12 on BHK flats; respondent has constructed the project as per the revised approved plan by TCP; it is denied that any cracks developed because of poor craftsmanship and it is denied that there are any seepage issues on the roof; it is submitted that the complainant has not filed any expert report regarding the aforesaid cracks and seepage; it is denied that the respondent

has constructed any structure with the toilet on the terrace above the flat of the complainant; it is denied that terrace is common to all the purchasers; it is stated that the terrace above the flat of the complainant is sloppy and roof tiles are fixed on the said terrace ; it is stated that all terrace area is not common to all unit holder; that the respondent has not constructed toilet on the terrace and it is denied that the complainant has right to the terrace of the complex under sale deed.

Written submissions were filed by the complainant’s advocate who also argued orally. No arguments were advanced by the respondent’s advocate.

7) After going through the entire records of the case, the points which come for my determination alongwith the reasons and findings thereon are as follows:-

Point of determination	Findings
1. Whether the promoter has violated any provision of the said RERA Act/Rules.	In the negative
2. Whether the complainant is entitled to any relief as prayed from this authority	In the negative

Reasons

8) **Point No. 1** – According to the complainant, the developer respondent created third party rights on the terrace by selling the terrace to another party, who has constructed a structure/toilet on the terrace and “such structure on the terrace has given rise to cracks on the walls of my flat and the Developer by creating such third party rights has violated right to freedom and access to common amenities such as terrace where my rights are suspended and it is made inaccessible for me to enjoy such right which I have acquired vide Deed of Sale” (para 22 of affidavit of complainant).

9) **Firstly**, at the outset it is necessary to reproduce hereunder section 11(4) (a) of the Act pertaining to the Functions and Duties of promoter which reads as follows:-

“The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this

Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

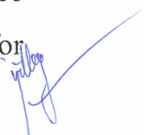
- 10) From the aforesaid it is clear that the promoter is responsible for all the obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees/ association of allottees **as per the agreement for Sale, “till the conveyance of all the apartments, plots or buildings, as the case may be”** to the allottees, or **“the common areas to the association of allottees”**. It is further clear that after the execution of conveyance deed the obligations, responsibilities and functions of the promoter are restricted within the framework of section 14(3) of the Act, which is reproduced hereunder for ready reference:-

“Section 14(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”.

- 11) In the instant case, the possession of the flat alongwith “common areas” is already given to the complainant, with whom sale deed is also executed on 12/09/2019. Hence, whatever obligations and responsibilities remain with the promoter now, they are strictly within the purview of section 14(3) i.e regarding structural defect or any other defect in workmanship, quality or provision of services or any other obligation of the promoter as per the agreement for sale “relating to such development” and under which section obligation is imposed upon the promoter to rectify such defects within thirty days. This necessarily implies that if after handing over the possession of the said flat alongwith the common areas, to the allottee and after execution of sale deed, if the promoter does any mischief/cheating by again selling the said flat and/or any common area or any common areas like terrace to a third party without the knowledge of the previous vendee/ allottee, then the remedy is not with this Authority but with the Civil Court.
- 12) There is no affidavit or Certificate of Report of any Expert/Civil Engineer showing that the cracks in wall and roof seepage in the flat are due to any structural workmanship/ quality of service provided by the respondent. Thus, even section 14(3) is not attracted in the instant case, especially when it is clearly submitted by the complaint that the cracks in the wall and floor seepage are the result of construction of structure/ toilet by a third party to whom terrace is sold by the respondent.
- 13) **Secondly**, the photographs relied upon by both the complainant and the respondent and produced on record show that the terrace over the flat of the complainant is sloppy and roof tiles are fixed on the said terrace, which necessarily implies that the construction of the structure/ toilet on the terrace cannot be above the flat of the complainant though it may be above the flat of some other purchaser/ adjoining owner.
- 14) **Thirdly**, if some terrace space is sold by the developer/ the respondent herein to some third party and it is the third party who has constructed the structure/ toilet on the terrace resulting in cracks in walls and roof

seepage issues in the flat of the complainant, then the respondent cannot be held liable for the said construction even if illegal and/or even for the resultant cracks/ seepage in the flat of the complainant. The authority cannot resolve such dispute between the purchaser and the third party, who is not party to the instant proceedings and who is not a promoter under the said Act. Thus the issues of cracks/ seepage due to construction by a third party can be resolved only in Civil Court and not by this Authority.

- 15) **Fourthly**, regarding the alleged illegal construction of toilet/ structure by a third party on the terrace of said premises, the complainant has already filed a complaint before Panchayat of the Salvador do Mundo and the Panchayat has already issued a showcause notice dated 11/11/2019 to the respondent, conducted site inspection, though the complainant has not produced on record the site inspection Report, as according to the complainant copy of the said Report has not been provided to her by the said Panchayat. Suffice it to say that the above statutory body is seized of the matter regarding the alleged illegal construction on the terrace.
- 16) **Fifthly**, the respondent has produced the photographs clicked in January and February 2020 showing that all the amenities as mentioned in the agreement have been complete and provided in the said project. On the contrary, the photographs produced on record by the complainant are without producing the newspaper seen in said photographs. The respondent has produced on record completion order dated 04/10/2018 and occupancy certificate dated 19/10/2018. During oral arguments, the Id. Advocate for the complainant conceded that all the amenities are now provided in the premises.
- 17) **Sixthly**, the complainant has alleged that the respondent has not provided her a proper access to go to the terrace as only an opening of 24 inches x 24 inches manhole has been provided in order to climb upstairs with a temporary ladder, however the mode of going to terrace for maintenance of water tank, lift room, etc. is not specified either in the agreement for



sale or in the sale deed so as to hold the respondent responsible for violating any terms and conditions of the said documents.

- 18) In the premises aforesaid it is clear that there is nothing on record to come to any conclusion that the respondent has violated any provision of RERA Act. The alleged illegality/ mischief of selling any portion of common area/terrace to a third party by the developer after handing over possession of the premises to the allottee and after execution of sale deed with the allottee comes within the jurisdiction of the Civil Court and not within the jurisdiction of RERA, when no case is made out to attract Sec 14(3) of the Act. Further the construction on the terrace done by a third party, not by the developer, resulting in cracks in the wall and roof seepage in the flat of the allottee falls within the jurisdiction of Civil Court and not this Authority. The documents on record show that the construction has been done by the respondent as per revised approved plan by TCP. Hence, the instant point is answered in the negative.

Point No. 2 – This Authority, as stated above, has come to a conclusion that the respondent has not violated any provision of RERA and the issue of alleged illegality of selling the terrace by the developer to a third party after execution of sale deed with the allottee falls within the jurisdiction of Civil Court. Even otherwise, the power to decide the compensation, if any, is vested with the Adjudicating Officer and not with this Authority. Hence, this point is answered in negative.

In view of the aforesaid the instant complaint is dismissed.

Vijeta
6/10/2021
(Vijaya D. Pol)
Member, Goa RERA