



# GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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

www.rera.goa.gov.in

Tel: 0832-2437655; e-mail: goa-rera@gov.in

F.No.3/RERA/Complaint(121)/2020/137

Date: 05/03/2021

**Dr. Mrs. Minoo Ratan**  
1001, Tulip Dosti Acres,  
SM Road, Wada East,  
Mumbai-400037

...

Complainant

V/s

**Ryago Hotels Private Limited**  
**Represented by**  
**Mr. Varun Nagpal**  
97-B, Manekshaw Road, Anupam Garden,  
Sainik Farms,  
New Delhi-110062

...

Respondent

## ORDER

The Order shall dispose off the complaint dated 20/07/2020 filed by the complainant before this Authority. Complainant has booked a Villa to be constructed by Respondent Builder and as per agreement the same was to be completed and handed over to Complainant by May 31, 2019. Later, promoters/Builder registered the Project under RERA and filed date of completion as March 31, 2020. The subject matter of Complaint is three fold- first – as per project plan, no structure was shown in front of their Villa but promoters have constructed a facility for their staff with a public/staff toilet right outside the said Villa. Hence, Complainant has requested for the removal of the same. Secondly, there is delay in handing over the possession of the Villa. Complainant has stated that they have opted for construction linked payment plan but have received payment demand letters for payment of phases very quickly. For example, the first demand letter came for commencement of construction as early as 31 December, 2016 while their plans were still under finalization. Though there was delay in construction on their part right from the beginning and Villa was not complete even by March 2020, they have demanded the interest for delayed payment to the tune of Rs.1407643/-. Thirdly, promoters are claiming Maintenance Charges from 15<sup>th</sup> April, 2020 though neither the project is completed in all respect nor

possession have been handed over to Complainants. Accordingly, Complainant has requested for demolition of structure outside their Villa, waiver of interest claimed by promoters and no maintenance charges without possession.

2. Opposite party i.e. Respondent has filed the reply on 9/9/2020. In this written reply, Respondent has denied all the charges levelled against and prayed to dismiss the complaint. The Respondent has stated that Villa was booked by Complainant in terms of construction linked payment plan and the instalment of the said Unit to be made in the following phases which excluded taxes:-

Phases	Percentage payment	Amount ( In Rs. )
At the time of Booking	5%	1144077
At the time of start of construction	15%	3432231
At the time of completion of foundation	10%	2288154
At the time of completion of Ground Floor slab	10%	2288154
At the time of completion of First Floor slab	10%	2288154
At the time of completion structure	10%	2288154
At the time of completion of masonry work	10%	2288154
At the time of completion of conduit work, plumbing, plastering	10%	2288154
At the time of completion of flooring	10%	2288154
At the time of start of paints, polish etc.	5%	1144077
On Possession	5%	1144077

3. Respondent has further stated in Reply that Unit was agreed to be purchased for an amount of Rs. 2,30,00,540 ( Rupees Two Crores Thirty lakhs five hundred and forty) excluding taxes and Complainant failed to pay in time installments raised from time to time. For example, first demand at the time of commencement of construction was raised for payment on or before 31/12/2016 but Complainant made payment only on 6/04/2017, resulting interest amount of Rs. 1,12,390/-. Likewise, Complainant defaulted many times and made delayed payment. Again, as per Respondent, Unit was duly completed and ready for possession on 30/03/2020 subject to clearance of all pending dues but Complainant never came forward for making final payment. Respondent has pointed out that he demanded maintenance charges only from 1/08/2020 and not from 1/04/2020 as stated by Complainant. As per Respondent, Complainant is not entitled for waiver of any amount and hence complaint must be dismissed.

4. Both the parties were heard. Both parties have also filed written arguments which are on record. Respondent also filed additional written submissions.



### **Structure constructed in front of Villa -**

5. The first point of complaint is related with the illegal construction of a structure along with toilet in front of his Villa. In the written submission, Complainant has pointed out about construction of illegal structure in front of Villa and narrated the same in detail. Accordingly, he has requested for removal of the same.

6. In the written submission, Respondent has denied about allegation. He has mentioned that the structure was temporary in nature and has been removed. Para 17 of the written submission of Respondent which has been filed on 24/11/2020, is as follows:-

“ The opposite parties have not constructed any illegal structure in the proposed project. The Opposite Parties state that a temporary structure was erected outside the project land. The said temporary structure was a resting room for the maintenance staff who are assigned to as the housekeeping services of the Units situated in the project land. The contention of the Complainant that the structure was erected by the Opposite Parties depreciated the value of the villa is highly misconceived to say the lease. Even otherwise, the said structure was only temporary in nature and has now been removed by the Opposite Parties”.

From the above, it is clear that the Respondent is admitting about temporary structure but have stated that the same has been removed. However, the Complainant from time to time has pointed out that the structure has not been removed completely but only partly. In any way, the said temporary structure is subject of removal and it should be removed completely if it is not removed so far.

### **Delay in construction and interest charges -**

7. The second part of complaint is related with delay in construction and interest charges. As per Complainant, construction was delayed and the Villa was not completed even by March 2020 but the Respondent have demanded interest for delayed payment. I have considered the arguments of both the parties on this point and gone through the ‘Applicant Ledger’ as well as the ‘Interest Ledger’ submitted by the Respondent. It is seen that the Villa was booked under Construction Linked Plan and the Respondent was supposed to raise demands as per progress of the construction mentioned in para 2 of this Order. As per this, there are 11 stages of the construction activities. Demands for payment was to be raised by Respondent accordingly. First stage was at the time of booking which was done on 12<sup>th</sup>

August, 2016. Debit Note has been raised on 12<sup>th</sup> August, 2016 and the Respondent has cleared the payment on 19<sup>th</sup> August, 2016. In this case, there is no delay claim made by either of the parties. Second stage demand was to be raised at the time of start of construction. This demand has been raised by Respondent on 31<sup>st</sup> December, 2016 for Rs. 35,008,76/-. The payment against this demand has been made by Respondent on 6<sup>th</sup> April, 2017 to the tune of Rs. 34,32,231/-. Apparently, there is a delay of around three months in making payment. Similarly, next 9 stages of demand have been raised on the following dates:-

Sr.No.	Date	Phases	Amount
3.	17/04/2017	At the time of completion of foundation	23,33,917/-
4.	10/05/2017	At the time of completion of ground floor slab	23,33,917/-
5.	30/06/2017	At the time of completion of first floor slab	23,33,917/-
6.	25/09/2017	At the time of completion of structure work	25,62,732/-
7.	4/11/2017	At the time completion of masonry work.	25,62,732/-
8.	1/01/2018	At the time of plastering/ conduit work, plumbing etc.	25,62,732/-
9.	20/04/2018	At the time of completion of flooring	25,62,732/-
10.	13/06/2019	At the time of start of painting/polish and electrical work	12,81,367/-
11.	18/07/2019	On possession	15,47,255/-

8. Against above 9 stages i.e. from 3 to 11, the Complainant had made payment in 35 installments of which 12 payments are minor in nature i.e. less than Rs.10,000/- and hence I will not like to mention the details of those payments. Remaining 23 installments of payment have been made on the following dates:-

Sr.No.	Date	Amount
1.	29/06/2017	10,30,000/-
2.	30/06/2017	13,03,970/-
3.	31/08/2017	10,50,000/-
4.	31/08/2017	10,00,000/-
5.	31/08/2017	2,38,154/-
6.	17/11/2017	22,88,154/-
7.	5/01/2018	10,00,000/-
8.	15/02/2018	5,00,000/-
9.	16/02/2018	5,00,000/-
10.	19/03/2018	1,30,824/-
11.	5/05/2018	9,90,000/-



12.	11/07/2018	9,90,000/-
13.	18/09/2018	4,95,000/-
14.	19/09/2018	4,95,000/-
15.	1/11/2018	5,00,000/-
16.	30/11/2018	4,95,000/-
17.	1/02/2019	10,00,000/-
18.	28/03/2019	4,95,000/-
19.	9/04/2019	4,95,000/-
20.	29/04/2019	4,95,000/-
21.	31/05/2019	5,00,000/-
22.	31/05/2019	5,00,000/-
23.	20/06/2019	5,00,000/-

9. As mentioned above, first stage of raising of demand by respondent and payment by the complainant was within the time limit. There is no controversy about the same. As far as second stage of demand at the time of start of construction raised by the respondent is concerned, the same have been raised on 31/12/2016. While going through the records and proceedings of the case, it is seen that the respondent has obtained Construction License from the village panchayat only on 17/03/2017. No construction activity can be started without getting Construction License. Respondent should have obtained Construction License before raising any demand at this stage, which has not been done by the respondent. Respondent got Construction License on 17/03/2017 and complainant i.e allottee made payment on 06/04/2017. In my opinion there is no delay payment in this. Again third stage demand i.e at the time of completion of foundation has been raised on 17/04/2017. Respondent must have started the work after 17/03/2017. This stage is crucial as excavation etc. is involved and hence completing this stage within a months' time i.e. before 17/04/2017 is not possible. In my opinion this third demand also has been raised prematurely. Fourth demand has been raised after 23 days of third demand, which was supposed to be raised at the time of completion of ground floor slab. Similarly 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> demand has been raised within 6 months' time after 4<sup>th</sup> demand. The 7<sup>th</sup> demand is raised at the time of completion of masonry work. By this stage entire structural work as well as major portion of the construction is completed. If this was the case, after this stage how two and half years were taken for plastering, plumbing, flooring, painting, etc. is not known. Hence I agree with the complainant that the demand letters for

various stages were raised very quickly without reaching to that stage. Complainant has placed an email received from the respondent on 01/07/2020 where the respondent has admitted that the final touch-ups in building are going on. Earlier, complainant has sent an email on 30/06/2020 inquiring about the status of the villa. The text of the mail is as follows:

“With reference to our mails back and forth till now we have not received confirmation whether the villa 11 is ready for possession nor we received any pictures of the villa.”

In response to this email of complainant, respondent has sent following email on 01/07/2020 to the complainant:

“ Have checked with the team the final touch-ups are going on. Kindly allow us some time and we will share the picture at the earliest.”

10. From the above exchange of emails, it is clear that the respondent himself has admitted that the villa was not ready till 01/07/2020. Though the respondent has got the Completion Certificate and Occupancy Certificate earlier, but he was supposed to handover the villa after completing the entire work as per the terms of agreement which was not done till 01/07/2020.

11. Apart from this delay, there is one more ground which I would like to mention. This point is elaborated by the complainant also. If at all any interest was due from the complainant, respondent would have claimed the same at the time of every demand letter of the respective installment containing interest of previous installment which the respondent has never done. I would like to mention that the first installment of interest amounting to Rs. 1,12,390/- became due as the concern installment was delayed by three months and payment was made on 06/04/2017. Demand for this interest amount also should have been raised along with the next installment which has not been done. From this it is clear that there was understanding between the allottee and the respondent at that particular time and hence no demand for interest has been raised till 31/03/2020. From the above observation it is very clear that the respondent has not done the construction work at the stages provided in time and demand letter have been raised in advance before completing the previous stage. If this is the case, then the respondent is not entitled for any interest.



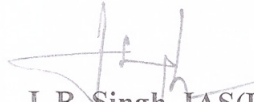
## Maintenance Charges -

12. The third and last point of the complaint is related with the payment of Maintenance Charges for the Villa from 15/04/2020. Complainant has stated that the Respondent intends to take Maintenance Charges of the Villa from the said date of 15/4/2020 which is completely unreasonable, since the Project was not complete. According to the Complainant, Respondent can charge Maintenance fees from the day they grant possession after verifying completion of the property. The claim of the Complainant is backed with the photographs and e-mail communication between Complainant and Promoters. In the written reply, Promotor has stated that the opposite party has demanded Maintenance Charges from 1/08/2020 and the claim of the Complainant for the maintenance charges computed from April, 2020 is erroneous and false. It has been pointed out by the Respondent that the Villa was completely ready and the same could have been handed over to the Complainant after clearing the dues. But the Complainant have not cleared the dues. So maintenance Charges will be applicable from the date when the Villa is ready.

13. I have considered this point. Though Respondent is claiming about completion of Villa right from the middle of 2019, their e-mail response dated 1/07/2020 which has been cited in para 9 of this order clearly states that the Villa was not fully ready till that time and they had requested to allow some more time to share the pictures of the same. Along with the demand for final instalment, they have also charged the interest amounting approximately to Rs.14.00 lakhs, which the Complainant has disputed. This Authority have come to the conclusion in para 11 that the Respondent is not entitled for any interest. In view of above, it is felt that the Maintenance Charges should be collected only from the date of possession. To make clear, I feel that Respondent should demolish the structure in front of the Villa and after that the Complainant should pay arrear amount to the Respondent and take the possession. It is mentioned that the Villa was booked for the amount of around Rs.2,30,00,000/- excluding the tax and including the tax, the total amount comes to around Rs.2,48,26,719/-. Complainant has so far paid the amount of Rs.2,16,64,899/-. Hence the balance amount should be paid by the Complainant to the Respondent.

14. In view of above observations, I pass the following order:-

1. The Respondent is directed to demolish the temporary structure in front of the Villa completely if he has not done so far within 15 days of this order;
2. The Complainant is not required to pay interest charges as claimed by the Respondent. Complainant is also directed to clear the remaining amount as stated in previous para within next 15 days after demolition of the Villa. Respondent is directed to hand over possession of Villa after receipt of the final payment.
3. The Respondent will charge Maintenance Charges from the date of possession. However, if Complainant fails to clear the arrears within stipulated time mentioned in this order, Respondent will be free to charge the Maintenance Charges after the date on which Complainant is required to pay the arrears.
4. Order accordingly.

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

To,  
All Concerned.