



## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint( 344)/2023/ 1015

Date: 11 /10/2023

**1.Mrs. Bina Moti Karnani,**  
Wife of late Mr. Moti Karnani,  
76 years of age, housewife, widow.

**2. Mrs. Beena Naresh Karnani,**  
Wife of late Mr. Naresh Moti Karnani,  
55 years of age, widow,  
Both presently residing at 601, Sea Garden View,  
16<sup>th</sup> Road, St. Cruz West, Near Star Bucks,  
Mumbai-400054,  
Represented herein through their,  
Dully constituted POA holder  
Mr. Sunil Dhanraj Hinduja,  
r/o 101 Prestige Court, 15<sup>th</sup> Road,  
Khar West Mumbai-400052.

.....Complainants

*Versus*

**1. M/s Sun Estate Developers,**  
Through their sole proprietor,  
Mr. Surajdatta Morajkar alias Suraj Morajkar,  
Having their office at 14/387/A, Next to Hotel Blue Bay,  
Miramar Beach Road, Caranzalem,  
Ilhas, Panaji-Goa.

**2. Mr. Surajdatta Morajkar alias Suraj Morajkar,**  
Major of age, business,  
And his wife

*Handwritten signature*

3. **Mrs. Sanjana Suraj Morajkar,**  
Major of age, business,  
Both Indian Nationals, r/o H.No. 43/13,  
Saipem, Candolim, Bardez, Goa.

.....**Respondents**

**ORDER**  
**(Dated 11.10.2023)**

This order disposes of the complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'RERA Act') wherein the complainants have prayed this Authority to direct the respondents to execute the sale deed with respect to the apartment in question within a period of thirty days and to pay compensation of Rs. 30,00,000/- (Rupees Thirty Lakhs only) within thirty days; in the alternate to direct the respondents to refund a sum of Rs., 66,60,000/- (Rupees Sixty Six Lakhs Sixty Thousand only) with interest thereon @15% per annum from 27.09.2018 till date of payment but within thirty days; compensation of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) for breach of the said Agreement for Sale dated 27.09.2018; further compensation of Rs. 40,000/- per month as agreed upon from April 2020 onwards till final payment and the respondents, their agents etc. be restrained from alienating, creating third party rights and/ or encumbering in any manner the said apartment and the land appurtenant thereto and/ or from parting with its possession in favour of a third party.

2. It is the case of the complainants that the complainant no. 2 is the wife of late Mr. Naresh Moti Karnani and daughter in-law of complainant no. 1. According



to the complainants the complainant no.1 on the representation and assurances of the respondents became interested in purchasing the apartment bearing no. 306 of type 1 BHK situated on the second floor in 'B' wing in the project named 'Sol Banyan Grande' by Sun Estate Developers in the property bearing survey nos. 251/5 and 251/6 of Candolim Village, Bardez Goa and agreed to purchase the said apartment for a total consideration of Rs. 74,00,000/- (Rupees Seventy Four Lakhs only).

3. According to the complainants, an Agreement for Sale was accordingly executed on 27.09.2018 and registered on 28.09.2018 and towards the aforesaid consideration amount, a sum of Rs. 66,60,000/- has been paid and the respondent no. 1 has acknowledged the same by letter dated 04.07.2020.
4. According to the complainants, as per the terms of the said Agreement for Sale, the respondents were supposed to deliver the lawful possession of the said apartment on or before 31.03.2019 with an extension of six months i.e. on or before 30.09.2019, however the respondents failed to deliver the possession of the said apartment till date. It is stated that Mr. Naresh Karnani who was purchaser no. 2 as per the said agreement for Sale expired and therefore his wife, the complainant no. 2 is made party to this complaint, being his legal heir.
5. The complainants have stated that the respondent no.2 kept on giving oral assurances to the complainants and to the attorney holder Mr. Sunil Hinduja regarding the possession of the said apartment and finally vide letter dated



15.02.2020 informed the complainant no. 1 that they will handover the physical possession of the said apartment by 31.03.2020 and in the event of any further delay, the respondents undertook to pay Rs. 40,000/- per month from 01.04.2020 till handing over of the said apartment to the complainants, however the respondents failed to discharge their above obligation. The complainants have stated that they were constrained to issue notice to the respondents dated 06.12.2022 but the respondents failed to reply to the same. The complainants have further stated that there is just ground to apprehend that the respondents are attempting to deprive the complainants' legitimate rights in respect of the said apartments. Hence, the prayers of the complainants, as stated above.

6. In the reply, preliminary objection is raised that the relief of recovery of money sought by the complainant can be granted only by the Civil Court and that this Authority has no jurisdiction to entertain and dispose of the present complaint especially when the proceedings require substantive evidence to be led by the parties. It is also stated that the complainants are merely investors in the said property.

7. According to the respondents as per the agreement dated 27.09.2018, the complainant no. 1 and late Naresh Moti Karnani agreed to purchase the said apartment for a total consideration of ₹74,00,000/- and at the time of signing the said agreement, the complainants effected a payment of ₹51,80,000/- (Rupees Fifty One Lakhs Eighty Thousand only) thereby leaving a balance payment of ₹22,20,000/- (Rupees Twenty Two Lakhs Twenty Thousand only). It is stated



that most of the work concerning the said apartment and the building was complete as on the date of execution of the said agreement and only the work of internal tiling and painting was left, however after entering into the said agreement, entire work in respect of the said apartment was completed and occupancy certificate was obtained by the respondents on 29.11.2018. According to the respondents, from the date of the said agreement till 16.02.2019 the complainants further effected payment of ₹14,80,000/- (Rupees Fourteen Lakhs Eighty Thousand only) and hence the total payment made by the complainants is ₹66,60,000/- (Rupees Sixty Six Lakhs Six Thousand only).

8. It is the case of the respondents that they intimated the complainants that occupancy certificate has been obtained and the apartment is ready for delivery and called upon the complainants to pay the balance amount, however the power of attorney holder of the complainants by name Sunil Hinduja intimated the respondents that the complainants were not interested in retaining the said apartment as their primary interest was to invest the money in the estate and that if there are any better project of the respondent in Goa then the complainants would invest money in a slightly bigger apartment and if that is possible the amount so paid by the complainants could be utilized as an advance for the other apartment and the respondents acceded to the request of the complainants, however no further discussion took place due to covid pandemic and lockdown in Goa till 2020. According to the respondents, after obtaining the occupancy certificate, even the keys of the said apartment were given to the complainants

somewhere in the year 2019 and thereafter the complainants even commenced with furniture work, however the keys were returned by the complainants to the respondents intimating that they would not be interested in going ahead with the terms of the agreement. It is further stated by the respondents that Shri Naresh Moti Karnani passed away and therefore there was no occasion to have any meeting between the parties to finalize the terms and conditions of the new apartment.

9. The respondents have further stated that on 13.04.2021 the power of attorney holder, Shri Sunil Hinduja informed the respondents that the complainants would prefer the refund of the amount paid to the respondents and the respondents agreed to refund the same, however in order to complete the formalities, the respondents told the complainants to initiate probate proceedings so that the heirs of late Naresh Moti Karnani can be made parties to the proposed cancellation agreement and accordingly the complainants filed probate proceedings and order came to be passed by the Hon'ble High Court of Bombay on 25.03.2022 and the said order was intimated to the respondents on 02.07.2022.
10. According to the respondents, as per the request made by the complainants, draft deed of cancellation of the agreement for sale came to be finalized and was circulated to the complainants by e-mail dated 22.07.2022 and the said draft was approved by the complainant no. 1 by e-mail dated 22.07.2022 and thereafter the said draft was uploaded on 29.08.2022 on the NGDRS website under pre-



registration docket for approval of the Sub-Registrar of the Bardez and the draft was again uploaded on the said website on 25.10.2022 and it got approved by the Sub-Registrar. The respondents submitted that they waited for the complainants to pay the necessary stamp duty, as the cancellation was at the instance of the complainants.

11. The respondents further submitted that the amount was to be refunded to the complainants at the time of the execution of the cancellation deed however the complainants delayed the execution of the said cancellation deed and instead issued a false notice dated 06.12.2022 on behalf the complainant stating therein that the possession of the said apartment was not delivered and therefore calling upon the respondents to execute the sale deed and to pay compensation and on receiving the said notice, the respondents contacted the power of attorney holder of the complainants and expressed to him their anguish over the manner in which the said notice was issued, when as a matter of fact, the draft of cancellation deed was already uploaded and the complainants had to comply with their part of the contract and during that point of time Sunil Hinduja informed the respondents not to take the said notice seriously as the same was issued only for the purpose of taxation and accordingly the respondents did not reply to the same.
12. According to the respondents, they are ready and willing to refund the entire money to the complainants subject to the complainants executing cancellation



deed in favour of the respondents and the complainants bearing cost towards stamp duty and registration fee.

13. According to the respondents, the notice dated 18.12.2022 issued by the complainants is malicious and frivolous because in July 2022 itself, mails were exchanged between the parties which clearly acknowledge the fact that the complainant has terminated the agreement dated 27.09.2018. Rest of the allegations of the complainants are also denied by the respondents.
14. Ld. Advocate D. Naik appeared for the complainants and Ld. Advocate S. Vaigankar appeared for the respondents. During the course of hearing, the parties filed the following consent terms:-

- “1. That the complainants and the respondents have amicably resolved the dispute on the terms and conditions mentioned hereunder;
2. That the respondents undertook to make payment of Rs. 1,10,00,000/- (Rupees One Crore, ten lakh only) to the applicants towards the full and final settlement of the case in the following manner;
  - i. An amount of ₹40,00,000/- (Rupees forty lakh only) has been paid vide pay order bearing no. 000637 dated 03/07/2023 drawn on The Goa State C-op. Bank Ltd.
  - ii. An amount of ₹25,00,000/- (Rupees twenty five lakh only) has been paid vide RTGS on 10/08/2023 receipt of which the applicants do hereby acknowledge.
  - iii. An amount of ₹25,00,000/- (Rupees twenty five lakh only) has been paid on 25/08/2023 receipt of which the applicants do hereby acknowledge.





- iv. An amount of ₹20,00,000/- (Rupees twenty lakh only) the respondents undertake to transfer to the complainants within 2 days from today.
3. That upon receipt of the said total amount of ₹1,10,00,000/- (Rupees one crore, ten lakhs only) the complainant shall not have any lien over the said flat which is subject matter before this Hon'ble Authority and the said Agreement of Sale dated 27/09/2018 stands cancelled.
4. The complainants have agreed to cancel the said Agreement for Sale dated 27/09/2018, the cost involved in Cancellation of the said Agreement for Sale shall be borne by the respondents. The respondents undertake to do all the formalities of cancellation of the said Agreement for Sale and the complainants shall not be responsible and liable for any eventualities with respect to the said flat.
5. The complainants undertake to withdraw the present case.
6. In case the respondents fails or defaults in making the payments to the complainants as specified herein above, notwithstanding anything contained herein, the complainants are entitled initiate such legal proceedings as may be available to them and the amount so received till date shall stands forfeited in favour of the complainants.
7. It is expressly agreed by the respondents that the amount so paid to the complainants till date, they shall not adjust against the claim of the complainants incase the respondents fail to make payment as agreed hereinabove and the applicants are constrained to approach the court of law.
8. The complainants undertake not to enter into any agreement, deed and or any such instrument to transfer and or convey the Said flat/ apartment with any other person or persons nor they shall create any third party rights in the said flat hereinafter.
9. The parties hereto undertake to fulfil their respective obligations as agreed upon under this consent terms.



10. It is humbly prayed that the present case may be disposed off in terms of this consent terms.”

15. Perused the consent terms. The present complaint is disposed of as per the above consent terms.

*vijaya 11/10/2023*  
**(Vijaya D. Pol)**  
**Member, Goa RERA**