



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(333)/2022/413

Date: 15/05/2023

Peter Fernandes,

H. No. 1403, Bamon Vaddo,
Anjuna, Bardez, Goa-403509.

.....Complainant

V/s

Kara Homes,

A partnership firm registered under
The Indian Partnership Act, 1932,
With local office at H.No. 153/6, Zor Vaddo,
Anjuna, Bardez, North Goa-403509 and
Registered office at E-5,
Kailash Colony, Second Floor,
New Delhi-110048.

Represented by its partners

1. Mr. Kewal Garg, son of Mr. Chiranji
Lal Garg, aged 53 years, and

2. Mr. Shikhir Dhingra, aged 33 years,
Both Indian Nationals, having office at E-5,
Kailash Colony, Second Floor,
New Delhi-110048.

.....Respondent

ORDER **(Dated 15.05.2023)**

This order disposes of the aforesaid complaint filed under Section 31 of
The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred

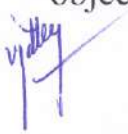
to as the 'RERA Act') wherein the complainant has prayed to impose penalty on the respondents in terms of section 61 for contraventions of the RERA Act; to revoke the registration in terms of Section 7 of the RERA Act; to impose costs on the respondent to be paid to the complainant and by way of interim order to restrain the respondents from taking any bookings and to direct the respondent to upload all the details including the fact of pendency of the civil suit.

2. In the complaint, it is stated that the property known as "Ghar Bhat" or "Ghorbhatta" admeasuring 3575 sq. mtrs., situated at Village Siolim, Bardez, north Goa was earlier owned by Mrs. Sarah Anjali Cordeiro and her husband Mr. Marc Cordeiro (hereinafter referred to as the 'earlier owners') who entered into an oral agreement with the complainant in July, 2020 whereby, in exchange for the rights of the complainant in certain properties which were taken over by the earlier owners, the complainant was to be given a three bedroom villa in the eleven villa project in the said property and a 400 sq. mtrs. plot in a property at Nachinola.
3. It is the case of the complainant that inspite of the aforesaid oral agreement, the earlier owners tried to sell the said property to third parties and before the said property was sold to the respondent, the complainant objected to the public notice for sale and by letter dated 13.08.2021 pointed out the existence of the oral agreement. According to the complainant, despite being served with the said letter and a notice dated 30.08.2021, the respondent even after knowing



about the pre existing rights of the complainant purchased the said property from the earlier owners by Deed of Sale dated 07.09.2021.

4. According to the complainant, a false statement has been made in the Deed of Sale dated 07.09.2021 to the effect that no objections were received with respect to the purchase of the said property in response to the public notice dated 10.07.2021 published in the Navhind Times. The complainant has referred to the special civil suit no. 25/2022 filed before the Court of Civil Judge Senior Division at Mapusa Goa which is pending and wherein the complainant has prayed for cancellation of the Sale Deed dated 07.09.2021 and for specific performance of the oral agreement of the complainant with the earlier owners and in which suit the respondent is also impleaded as party.
5. The complainant has submitted that the present complaint is filed seeking invocation of powers of this Authority under Section 7 to order revocation of the registration of the project of the respondent on account of the violations of the provisions of the RERA Act and rules made thereunder and also to impose penalty for violating the same.
6. According to the complainant, the respondent has not updated the details of the project on the website of this Authority and has also not shown the pendency of the aforesaid special civil suit and the Title Report does not refer to the claims of the complainant. It is stated that the Sale Deed Dated 07.09.2021 which is uploaded contains the false statements that public notice was issued and no objections were received. According to the complainant, Section 11 mandates



that the promoter shall enter all details of the project for public viewing including quarterly up-to-date, list of bookings, status of the project, list of approvals taken and which are pending but the provisions of the said section have been violated. It is also submitted that the respondent has made a false declaration to this Authority that the estimated cost of the project is Rs. 13,00,58,620/- (Rupees Thirteen Crores Fifty Eight Thousand Six Hundred and Twenty only). Hence the prayers of the complainant as stated above.

7. Reply was filed by the respondent wherein it is inter-alia stated that the complainant has no locus standi to file the present complaint as there is no privity of contract between the complainant and the respondent. It is stated that the complaint has been filed on false and concocted facts, falsely alleging some oral understanding purportedly which the complainant had with the previous owners of the property, existence of which the respondent specifically denied.
8. The respondent referred to the aforesaid civil suit against the earlier owners and in which the respondent is also a party and that in the said civil suit the injunction sought by the complainant against the respondent was dismissed by the civil court by order dated 06.01.2023 wherein it was inter alia held that the complainant failed to establish existence of a concluded contract with the earlier owners in respect of the said property.
9. The respondent has submitted that all the allegations of the complainant are false and that the vexatious complaint is filed against the respondent only to



settle his personal scores and vendetta with the respondent and with the earlier owners of the said property.

10. The respondent has stated that prior to purchase of the said property, the respondent issued public notice dated 09.07.2021 inviting objection if any from the general public as the respondent intended to purchase the said property and in the said public notice objections were invited within fourteen days along with supporting documents and it was mentioned in the said public notice that if within the specified date no objections were received then the respondent would proceed with the sale in respect of the said property and that any such claims shall be considered as waived and/ or abandoned. It is further stated that the time to raise objections got over on 23.07.2021 but the respondent did not receive any objection from any party within the time limit stipulated in the said notice and hence the respondent proceeded to execute the Sale Deed.
11. The respondent has submitted that the construction work is in process and the details are being updated as per the progress of the construction work, however, in any event, the complainant has no locus standi to institute the present complaint. It is further stated that quarterly updates are uploaded on the website on quarterly basis and the last update was on 06.01.2023. Regarding the allegation concerning the approved plan and the construction license, it is stated that the construction licenses which are uploaded are legible and that the registration was granted by this Authority on perusing the approved plan and construction licenses. It is further stated that the architect certificate and

engineer certificate are not required at the time of registration of the project and at the time of obtaining RERA registration, it was mentioned by the respondent that the brochure was under preparation. Regarding not disclosing of the special civil suit pending between the parties on the website, the respondent submitted that the RERA registration was granted much prior to the filing of the suit i.e. civil suit was filed on 09.03.2022 and RERA registration was granted on 15.11.2021. It is further stated that the application for temporary injunction filed by the complainant was dismissed by the civil court. According to the respondent, there is no mandate or requirement to disclose false and frivolous claims on the site and that the complainant who is not related to the said property has no authority to make any false allegations.

12. The respondent has stated that the very fact that the complainant has admitted in the complaint that “a couple of days back”, the number of inventory booked has been shown as five, itself proves that the respondent is updating the status of the project as per the progress of the construction work on site. According to the respondent, the draft of the agreement and the draft of the allotment letters were duly uploaded on the site at the time of RERA registration.
13. According to the respondent, quarterly updates have been loaded by the respondent on the site and there is no violation of any provision of the RERA Act. It is stated that the respondent obtained all the requisite permissions from the competent authority and thereafter obtained RERA registration. The respondent has denied that if the suit filed by the complainant is decreed the sale

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deed of the respondent will be cancelled and set aside as according to the respondent the application for temporary injunction filed by the complainant before the civil court has been dismissed by order dated 06.01.2023.

14. The respondent submits that the complainant has no privity of contract with the respondent and the complainant has no locus standi to institute the present complaint and as such the complainant is not an aggrieved person as per the RERA Act.
15. Documents and Affidavits have been filed by both the parties along with the written submissions. Oral arguments were also heard from Ld. Advocate S. Karpe for the respondent, whereas the complainant submitted that the written submissions filed by his Advocate L. Raghunandan may be considered.
16. After going through the entire records of the case, the points which come for my determination along with the reasons and findings thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the complainant has any locus standi to file the present complaint or whether the complainant is an aggrieved person as per Section 31 of the RERA Act?	In the negative.
2.	Whether the complainant has made out a case to revoke the registration granted to the respondent?	In the negative.

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3.	Whether the respondent is liable to pay penalty for violation of any provisions of the RERA Act?	In the negative.
4.	Whether any directions should be given to the respondent regarding uploading of the details on the website?	In the Affirmative.

REASONS

Point No. 1

17. At the outset it is significant to note that there is no privity of contract between the complainant and the respondent either in respect of the property known as “Ghar bhat” or “Ghorbhatta” admeasuring 3575 sq. mtrs situated at Village Siolim, Bardez, North Goa (hereinafter referred to as ‘the said property’) or in respect of the project “Zed Point Fernandes Waddo” situated on the said property. Regarding the aforesaid property, the complainant has grievance against its earlier owners by name Mrs. Sarah Anjali Cordeiro and her husband Mr. Marc Cordeiro. The complainant claims to have entered into an oral agreement with the said earlier owners in July, 2020 whereby, according to the complainant, in exchange for the rights of the complainant in certain properties which were taken over by the earlier owners, the complainant was to be given a three bedroom villa in the eleven villa project in the said property and a 400 sq. mtrs. plot in a property at Nachinola. It is the case of complainant that inspite of the said oral agreement between the complainant and the earlier owners, the said



before the court of Civil Judge Senior Division at Mapusa, Goa which is pending and in which suit the complainant has prayed for cancellation of the sale deed dated 07.09.2021 and for specific performance of the oral agreement of the complainant with the earlier owners. Unless the said sale deed dated 07.09.2021 is cancelled by the competent civil court and unless the specific performance of the oral agreement is ordered by the civil court, the complainant who has no privity of contract with the respondent herein remains a stranger to the property as well as to the project in question and hence has no locus standi to pray for any relief before this Authority. There is no relationship of an allottee and a promoter between the complainant and respondent and even otherwise no legal relationship between the complainant and respondent in respect of the said property and/ or the project in question thereon. Consequently, in the absence of any locus standi, the complainant is not an aggrieved person under Section 31 of the RERA Act. The Ld. Advocate for the complainant has argued that in terms of Section 31(1) of RERA Act, there is no restrictive meaning to the definition of an “aggrieved person” and that the said definition is wide enough to include any person who stands aggrieved with respect to a project. No definition of ‘aggrieved person’ is given in the RERA Act however, definitely the person who claims himself/ herself to be aggrieved must have some legal right over the property in question/ privity of contract with the promoter/ developer and without such legal relationship he/ she cannot be termed as an aggrieved person. RERA Authority is not a forum to file a

property was sold by the earlier owners to the respondent herein and that the respondent despite being served with the letter dated 13.08.2021 and notice dated 30.08.2021 purchased the said property from the earlier owners by sale deed dated 07.09.2021. According to the complainant, a false statement has been made in the sale deed dated 07.09.2021 to the effect that no objections were received with respect to the said property in response to the public notice dated 10.07.2021 published in the Navhind Times.

18. The sale deed dated 07.09.2021 executed by the earlier owners in favour of the respondent in respect of the said property at Siolim is still valid and subsisting in the eyes of law. The said sale deed has not been set aside till date by any competent civil court of concerned jurisdiction on any ground. This Authority has no jurisdiction to quash and set aside the said sale deed dated 07.09.2021 on any ground including the ground of any alleged oral contract between the earlier owners and the complainant or on account of any false statement made in the said sale deed. This Authority also cannot deal with the issue whether the respondent herein is a bonafide purchaser or not in view of the allegation of the complainant that the respondent had knowledge of the said oral contract between the earlier owners and the complainant prior to purchase of the said property. The issue whether the respondent is a bonafide purchaser or not is pending before the civil court. Hence, rightly the only remedy for the above grievances of the complainant is to file a civil suit before the competent civil court and the complainant has already filed a special civil suit no. 25/2022

public interest litigation by a person who is not an aggrieved person within the purview of the RERA Act. The aforesaid argument has no merit in the factual context of the instant complaint since in the instant case the complainant herein has no binding contract/ privity of contract between him and the respondent so as to establish any legal relationship between him and the respondent within the purview of the RERA Act. The case of “Edcon Real Estate Developers and others vs. M/s Despamont” LD-VC-OCW-24-2020 relied upon by the complainant does not help the case of the complainant as the aforesaid case, according to the complainant, is still pending before the Hon’ble Bombay High Court and no judgement is passed therein.

19. Even otherwise the complainant has failed to establish through any documents that he has any right over the said property or the project thereon. In his written submissions, the complainant has stated that the complainant comes under the definition of aggrieved person as the land wherein the respondent is developing the villa project is the land wherein the earlier owners had, after taking entire consideration in exchange, had entered into a concluded contract with respect to a three bedroom villa along with undivided proportionate share in the said property and the same has been sold to the respondent during the subsistence of the agreement. As stated earlier this Authority has no jurisdiction to decide whether there was such oral agreement and a concluded contract between the complainant and the earlier owners of the said property nor has jurisdiction to set aside the sale deed in favour of the respondent herein and no documents/

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order of the competent civil court is produced on record by the complainant in support of his said claim.

20. On contrary, in the special civil suit bearing no. S.C.S. 25/2022/B, the Hon'ble Civil Judge Senior Division, Mapusa while dismissing the application for temporary injunction filed by the complainant against the earlier owners and the respondent herein inter-alia observed as follows:-

“The undisputed factual position pointed out earlier, particularly the fact that none of the parties are the residents of one place, the quantum of amount of earnest money offered, the price of property etc. makes the complete case improbable to succeed. The averments made in the plaint, do not inspire the confidence, either as to the credibility of the plaintiff or as to the truthfulness of the said averments. The plaintiff has failed to establish a complete chain of events by pleading material facts and particulars. Prima facie there is no concluded contract which is established. Thus, the plaintiff has failed to make out a prima facie case.

45. In the present case the plaintiff has failed to establish a concluded oral contract. In the absence of a concluded oral contract, the affidavits of the witnesses relied upon by the plaintiff does not aid his case. Thus, the



plaintiff has failed to make out a prima facie case for grant of injunction.”

21. It is clear from the aforesaid order dated 04.01.2023 passed by the Hon'ble Civil Judge Senior Division in the application for temporary injunction that the civil court observed that the complainant herein failed to establish even prima facie any concluded oral contract between him and the earlier owners. In the instant complaint also the complainant failed to establish his legal relationship/privity of contract between him and the respondent herein either in respect of the said property or the project thereon and thus in the absence of such legal relationship between him and the respondent, the complainant does not come within the definition of an aggrieved person as per section 31 of the RERA Act and hence has no locus standi to file the instant complaint and ask for any of the reliefs as prayed therein. The instant point is therefore answered in the negative.

Points No. 2 and 3

22. Both the points are taken up together as they are interconnected and the reasons for deciding the same overlap. According to the complainant, in the said civil suit, the respondent has submitted that the cost of each villa is Rs. 3.50 Crores and if so then the cost of each villa would be Rs. 38.50 Crores to which value of land has to be added, whereas before this Authority, the respondent has given the value of the project as Rs. 13,00,58,620/- and on this ground the complainant has submitted that this Authority should investigate on the same.

There is no merit in the aforesaid submission as the chartered accountant has

given the estimated cost of the project before this Authority and such investigation is not warranted in the instant complaint entailing summary procedure whereas the civil court in the trial can ascertain the true value of the project, if required in the said civil suit. Moreover, the complainant has no locus standi to raise the issue of estimated cost of the project.

23. It is the case of the complainant that the respondent has not uploaded the entire information along with documents on the RERA website and therefore has violated the provisions of the RERA Act and rules made thereunder and consequently is liable to have the registration of the said project revoked under Section 7 of the RERA Act and also liable to pay a penalty under Section 61 of the RERA Act. There is no merit in the aforesaid claim and argument **firstly** because the complainant has no locus standi to ask for revocation of registration of the project granted in favour of the respondent, **Secondly** because at the time of registration of the project all the mandatory information and documents were uploaded by the respondent on account of which, after scrutiny, this Authority granted the registration certificate dated 15.11.2021 and **thirdly** the official website of this Authority shows that the respondent has been updating the information therein, however whatever information is left to be uploaded by the respondent can be uploaded by the respondent for which necessary direction shall be given by this Authority to the respondent and the respondent will have to comply with the same. This is not the fit case to impose penalty on the respondent for whatever information/ document is left to be uploaded on the

website and even otherwise the complainant has no locus standi to ask for any penalty to be imposed on the respondent. The instant points are therefore answered in the negative.

Point no. 4

24. Directions have to be given by this Authority to the respondent to upload all the information/ documents on the RERA website as per the mandate of the RERA Act and its rules, including the pendency of the special civil suit bearing no. 25/2022/B and the order dated 04.01.2023 passed therein on the application for temporary injunction and also to upload the judgement whenever passed in the said suit as per the mandate of section 4 (2) (b) of the RERA Act and Rule 3(2)(e) of The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017. The instant point is therefore answered in the affirmative.

Hence I pass the following:-

ORDER

Because of the reasons stated above, the prayers of the complainant to revoke under Section 7 of the RERA Act the registration of the project granted to the respondent, to impose penalty and cost on the respondent are dismissed. However, the respondent is directed to update the information and documents on the RERA website whenever required without any delay. The respondent is



also directed to upload on the RERA website the pendency of special civil suit bearing no. 25/2022/B before the Court of Civil Judge Senior Division at Mapusa, Goa and also upload the order dated 04.01.2023 passed by the Civil Court on the application for temporary injunction filed by the complainant in the said suit within a period of 15 (fifteen) days from the date of this order failing which further legal action will be taken by this Authority against the respondent. The respondent is also directed to upload the judgement passed in the said suit whenever the same is passed in future. It is made clear herein that no right is given to the complainant to file any application for execution of the instant order since the complainant has no locus standi to file the present complaint.

Vijaya D. Pol
15/5/2023
(Vijaya D. Pol)
Member, Goa RERA