



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(40)/2018 / 620

Date: 30/04/2024

Allottees of Associate Florencio,

Flat No. A202, A wing, Associate Florencio,
Behind Mahalaxmi Steel, Gigne Mall,
Curti, Ponda Goa-403401.

..... **Complainant(S)**

V/s

1. Associate Township Builders Private Limited

Represented herein by its Director,

Mr. Zakaria Farouk Darvesh,

Having office at Hoor Manzil,
7th Perry Cross Road, off Carter Road,
Bandra (West), Mumbai-400050.

..... **Respondent No. 1**

2. MAHA-GOA Realtors (P) Limited,

↪ A company under the India Companies Act,

Having its registered office at
Shubh Vaibhav, Shantinagar,
Aquem, Baixo, Navelim,
Margao- Goa-403707

..... **Respondent No. 2**

ORDER
(Date: 30/04/2024)

A complaint dated 04.12.2018 had been filed before the Goa Real Estate Regulatory Authority (**Authority**) by an unregistered **Association of Allottees**

of **Associate Florencio** of residential real estate project in the name and style of “**Associate Florencio**” (**Project**), having address at Flat No. A-202, A wing, Associate Florencio, Behind Mahalaxmi Steel, Ginge Mall, Curti, Ponda Goa-403401 (**Complainants**) against the **Associate Township Building Private Ltd.**, represented through its Director, Shri Zakaria Farouk Darvesh, having office at Hoor Manzil, 7th Perry Cross Road, Off Carter Road, Bandra West, Mumbai-400050 (**Respondent No. 1**) and **Maha Goa Realtors Pvt. Ltd,** (**Respondent No. 2**) a company having its registered office at Shubh Vaibhav, Shantinagar, Aquem, Baixo, Navelim, Margao, Goa- 403707 (**Respondents**). The Respondent No. 2 has entered into an Irrevocable Power of Attorney with respondent No. 1 to represent in all forums on behalf of them vide duly registered with Sub- Registrar of Ponda on 28.05.2013.

2. The Complainants have alleged several violations committed by the Respondents in executing the said ongoing project, inter alia stated : Project was ongoing at the time of commencement of the Real Estate (Regulation and Development Act,2016 (**the Act**) but not registered, developed over an area of 5416 sq. mtrs. consisting of 56 flats in four wings and two blocks. Completion Certificate for two wings was received on 27.12.2017 much after the commencement of the Act; the promoters have not adhered to the construction of amenities incorporated in the Agreement for Sale; violated various provisions under the Goa Land (Development and Building Constructions) Regulations

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2010 of Town and Country Planning Department; possession handed over without forming society, without registering conveyance deed, and hence, pleaded before this Authority to issue direction to complete the project, register it, impose penalty and sought compensation.

3. The Complainant has been represented by Advocate, J. Ramaiah, Advocate, Jonathan Geroje and Advocate, Omkar V. Kulkarni during hearings, whereas, the Respondent side has been represented by Advocate Satish S. S. Pilgaonkar, Advocate N. Jalmi from time to time.
4. The Respondent No. 1 has filed reply on 26.11.2019. The Learned Advocate to the Respondent No. 1 has stated that his client is exempted from registration of the project by the Authority. He further stated that the entire project is consisting of two blocks, that is Block A and Block B. Each block is consisting of two wings. Block A consisting of 32 flats were completed in the year 2015, and obtained completion order dated 14.10.2015. Block B consisting of remaining flats received completion certificate on 27.12.2017. He also stated that the Authority, vide letter dated 28.12.2018 has informed to his client as the project is completed on or before 23.03.2018 has been exempted from registration as ongoing project. The respondent has already handed over possession to allottees and they are in the process of facilitating formation of Society and thereafter to execute the Conveyance Deed. He pleaded for dismissal of the complaint.

5. The Complainant in response to the reply of the Respondent dated 26.11.2019 has filed reply dated 20.01.2020, seeking rectification of exemption conveyed vide letter dated 28.12.2018 issued by the Authority. The Learned Advocate to the complainants resubmitted that the said project has been developed in an area of land admeasuring 5416 sq. mtrs., under survey no. 4/1-L situated at Curti, Ponda; sanad was issued on 17.09.2012; Joint Development Agreement dated 04.04.2012 entered between Respondent No.1 and 2 for developing the project; Technical Clearance from Town and Country Planning was obtained on 19.07.2013 for entire project comprising Block –A and Block -B having four wings with common amenities; Agreement for Sale entered into between the unregistered association members in different dates; respondents failed to provide substantial amenities as per agreement for sale; the applicants organised themselves into an unregistered association to fight for their cause.
6. The Complainant also stated that completion order obtained for Block- A on 14.10.2015 and for Block-B on 27.12.2017, hence, the entire project consisting of four blocks were not completed prior to the Act came into effect from 01.05.2017; that the exemption accorded for non-requirement of registration of the project on 28.12.2018 needs to be rectified in the interest of justice. There is a statutory liability upon respondents to register the ongoing project, as the project was ongoing on the date of commencement of the Act. The Respondents failed to provide amenities as per Agreement for Sale, such as, formation of society, registration of conveyance deed, sewage system, rain water harvesting

system, solar connection, passenger elevators, power back up for lifts, common area development and construction of main gate, etc.

7. The Learned Advocate for the Complainant has filed written arguments on 10.05.2022, argued that unregistered association of allottees in the name and style of Allottees of Associate Florencio is covered under definition of "Person" under Section 2(zg)(vi) of the Act, includes an association of persons or a body of individuals whether incorporated or not can come together and espouse an issue under the Act without registering with some statutory authority. The real estate project was ongoing and full completion certificate not received on the date of commencement of the Act. The promoter had not made any application to the authority for registration of the project within a period of three months from the date of commencement of the Act. The promoter has contravened provisions of Section 4 of the Act and shall be liable for penalty upto five percent of estimated cost of the project.
8. The Learned Advocate for the Complainant further argued that the promoter has not provided amenities for the common areas of the said project as per Annexure-III of the Agreement for Sale, stipulation No.12, such as, passenger elevator in each wing; rain water harvesting system; power back up for lifts and common area; main gate with security cabin; paver blocks in drive way and solar connection. The promoter has not enabled formation of co-operative society of the allottees as per provisions of Section 11(4) (e) of the Act and liable for penalty. The promoter has not paid all outgoings until transfer of

possession to the allottee. The promoter has also failed to register conveyance deed. The construction of all four wings in two blocks will be considered as complete. The completion order dated 27.12.2017 for Block B was obtained by the promoter much after the Act and Rules came into force. The occupancy certificate was obtained on 19.11.2018.

9. The Learned Advocate to the Respondent No. 1 in their written argument dated 29.06.2022 has contended that the Authority has no jurisdiction to rectify or review its own order dated 28.12.2018. Section 39 of the Act not empowers the Authority to amend substantive part of its order passed under the provisions of the Act, except rectifying certain factual mistakes apparent on record. He further contended the claim of the unregistered organisation of the allottees of the project as they failed to show as to who are the members of the said alleged unregistered organisation except for only four persons signed the complaint, although, the project consists of two blocks of two wings consisting of fifty six apartments. The project has been exempted by the Authority from registration as completion certificate of the said project was issued on 14.10.2015 with respect to Block-A and on 27.12.2017 with respect to Block-B on or before 23.03.2018.

10. The Learned Advocate to the Respondent No. 1 further submitted that the entire project was completed on 27.12.2017. The buyers have already taken over possession without any protest after paying entire amount as per the Agreement for Sale. The Respondent has completed the project in all respects and only after

getting themselves satisfied that the buyers of the flat have taken possession of the flat. That there is no question of hearing allottees arises as the exemption is granted based on the receipt of completion certificate. The only prayer in the complaint was that the respondent should register the project and stated that there is no provision nor there is any scope to review, rectification or recall of the letter/ communications dated 28.12.2018 as the entire project is completed before 23.03.2018.

11. The Authority has conducted regular hearing of the matter from 17.12.2019 onwards, though there were few protracted hearings earlier held. Both parties agreed to meet and discuss pending issues for resolution between themselves on the hearing held on 06.02.2022. Both parties agreed to settle the issue of formation of co-operative society and finalising Conveyance Deed on the hearing held on 19.01.2023. Both parties reported that society registration has been completed and are working together to finalise Conveyance Deed. Further, both parties have confirmed on 07.12.2023 regarding registration of conveyance deed by all members.

12. Pursuant to the above, complainants have filed an affidavit dated 26.02.2024. The complainant stated that their main complaint was on following grounds (a) Rain water harvesting facilities (b) Power back up for lifts (c) Sewage Treatment plant (d) Development of open space (e) Sloping roof with Mangalore Tiles and (f) Formation of Co-operative society and execution of Conveyance Deed. The complainant further stated that during the period of

proceedings, the developer has provided with following: (a) Sewage Treatment Plant (b) Formation of Co-operative Society and execution of Conveyance Deed in the name of Society. The complainants further stated that due to delayed execution of conveyance deed, they have spent Rs. 53,00,000/-(Rupees Fifty three lakhs only) for registration which includes contribution from corpus fund.

13. After having heard both parties pertaining to claims and counter claims the following questions needs consideration for redressing the complaint are as under:

- i) Whether the real estate project “Associate Florencio” is an “ongoing project” on the date of commencement of the Real Estate (Regulation and Development) Act, 2016 which required registration with the Goa Real Estate Regulatory Authority?
- ii) Whether the unregistered Association of Associate Florencio has jurisdiction to espouse the cause of violation of terms in the Agreement for Sale entered between the members and the promoters?
- iii) Whether communication dated 28.12.2018 issued by the Goa Real Estate Regulatory Authority with respect to exemption from registration of the project can be rectified?

Question 1: Whether the real estate project “Associate Florencio” is an “Ongoing Project” on the date of commencement of the Real Estate

(Regulation and Development) Act,2016 which required registration with the Goa Real Estate Regulatory Authority?

14.The real estate project” Associate Florencio” has been jointly developed by the Associate Township Builders Private Limited, headquarters at Mumbai as “ Developers” and Maha- Goa Realtors Private Limited, headquarters at Margao are “ Land Owners”. Both parties entered into a Joint Development Agreement on 04.04.2012 to develop the said project. The area of the project admeasuring 5416 sq. mtrs., under survey no. 4/1-L situated at Curti, Ponda. Sanad was issued on 17.09.2012. Technical Clearance from Town and Country Planning Department was obtained on 19.07.2013 for entire project comprising Block-A and Block-B, each having two wings with common amenities.

15.In addition to the Joint Development Agreement entered into between the said developer and land owner dated 04.04.2012, both parties further entered into an Agreement of Irrevocable Power of Attorney in which the land owner, Maha-Goa Realtors Private Limited authorised the Developers Associate Township Developers Private Limited as lawful attorney to conduct all proceedings including sign, execute, affirm, complaints, vakalatnama, claims, written statements, undertakings, appeals, petitions, affidavits, to deal with all legal matters, to execute the project as per permission obtained and to execute all such activities. The said Agreement



for Irrevocable Power of Attorney has been duly registered with the Sub-Registrar of Ponda on 28.05.2013.

16.As per provision under **Section 3(1) of the Real Estate (Regulation and Development) Act, 2016**, prior registration of real estate project with the Real Estate Regulatory Authority is mandatory before undertaking advertising, marketing, booking or selling or offer of sale, or invite persons to purchase any plot, apartment or building, in any real estate project or part of it, in any planning area. Further, projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of the Act. As per provisions **under Section 3(2) of the Act**, no registration of the real estate project shall be required (a) where the area of land proposed to be developed does not exceed five hundred square metres or the number of apartments proposed to be developed does not exceed eight inclusive of all phases. (b) Where the promoters have received completion certificate for a real estate project prior to commencement of the Act. Further, as per **Clause 4(1) Disclosure by promoters of ongoing real estate project of the Goa Real Estate (Regulations and Development) (Registration of Real Estate Projects), Rules 2017**, the promoter of an ongoing real estate project, for which completion certificate as provided by first proviso to Sub-section (1) of Section 3 has not been received shall

submit application for registration of such project not later than three months from the date of commencement of Rules.

17. The Real Estate Project “Associate Florencio” has been developed in an area of about 5416 sq. mtrs., under survey no. 4/1-L consisting of Block- A and Block-B having two wings each registered as one project. As stated by the Learned Advocate to the Respondent in reply dated 26.11.2019, Block -A consisting of 32 flats were completed in the year 2015 and obtained completion order dated 14.10.2015, whereas, completion certificate for Block -B was obtained on 27.12.2017 thereby entire project was not completed prior to the commencement of the Act, i.e. before the date of 01.05.2016 as per notification dated 26.04.2016 and 01.05.2017 as per notification dated 19.04.2017. Completion certificate was partially issued for Block-A on 14.10.2015 prior to commencement of the Act, whereas completion certificate was issued for Block-B on 27.12.2017 after the commencement of the Act. Hence, the Real Estate Project “Associate Florencio” is an “ongoing project” when the commencement of the Act came into being in.

18. The Hon’ble Supreme Court of India in **Civil Appeal No(s) 6745-6749 of 2021 in M/s New Tech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Others** has categorically decided the retroactive applicability of the Real Estate(Regulation and Development) Act, 2016 for on going real estate projects, **“that even the terms of the agreement for sale or home buyers**

agreement in variably indicates the intention of the developer, that any legislation, rules and regulations issued by Competent Authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/ allottee and either of the parties, promoters/ home buyers or allottees, can not shirk from their responsibilities/ liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contentions advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.” Meaning thereby ongoing projects which have not received completion certificate prior to the commencement of the Act are required to be registered.

19. As the real estate project “ Associate Florencio” even though registered as single project have received partial completion certificate for Block-A on 14.10.2015 prior to the commencement of the Act and on 27.12.2017 for Block-B after the commencement of the Act, thereby the project is an ongoing project mandated registration.

Question 2: Whether the unregistered Association of Associate Florencio has no jurisdiction to espouse the cause of violation of terms in the Agreement for Sale entered between the Members and the Promoter?

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20. The Learned advocate to the Respondent No. 1 contended in their reply dated 04.03.2020 that there is nothing called unregistered organisation of the allottees of the construction/ housing project and hence the applicants does not have any legal entity, that merely four persons have signed the complaint although the project consists of two blocks of two wings each consisting 56 apartments. As per provisions under **Section 31(1) of the Real Estate (Regulations and Development) Act, 2016, filing of complaints with the Authority or adjudicating officer-** Any aggrieved person may file a complaint with the Authority or adjudicating officer, for any violation or contravention of the provisions of the Act or the rules and regulations made there under against any promoter, allottee and in **explanation-** For the purpose of this Sub- section “ Person” shall include the association of allottees or any voluntary association registered under any law for the time being in force. Further, as per provisions under **Section 2(zg)** of the said Act “person” includes an individual; a Hindu undivided family; a company; a firm under the Indian Partnership Act, 1932; or limited Liability Partnership Act, 2008; an association of persons or a body of individuals whether incorporated or not; a co-operative society registered under any law relating to co-operative societies; any such other entity as the appropriate Government, may, by notification, specify in this behalf. In the light of above, the unregistered association of the project Associate Florencio, who are actually the buyers of the apartments are clearly within the purview of

law. Therefore, the contention of the respondent that the unregistered association of the project has no legal standings does not hold merit and the contention rejected.

Question 3: Whether the communication dated 28.12.2018 issued by the Goa Real Estate Regulatory Authority with respect to exemption from registration of the project can be rectified?

21. The Learned Advocate to the Respondent No. 1 has contended that as per communication dated 18.12.2018 issued by the Goa Real Estate Regulatory Authority, the project is not mandated for registration as it was already completed on or before 23.03.2018 as Completion Certificate has been obtained for all four wings before the said date. The Learned Advocate further contended that the Authority cannot recall or review its own order under **Section 39 Rectification of orders**. It may be noted that the Authority has conveyed to the respondent vide communication dated 28.12.2018 for exemption from registration of the project based on the facts submitted by the respondent without subjecting it into detailed scrutiny. The Hon'ble Supreme Court ruling in the Civil Appeal No(s). 6745-6749 of 2021 in M/S New Tech Promoters and Developers Pvt. Ltd. Vs State of U.P and others regarding applicability of the Act retroactively supercedes the said communication issued by the Authority on 28.12.2018. In the light of above, it may be safely concluded that it is not tantamount to recall or review of its own order and hence contention of the respondent is rejected.



22. The real estate project "Associate Florencio" is ongoing before the commencement of the Real Estate (Regulation and Development) Act, 2016. Completion Certificate has been issued for Block A on 14.10.2015 and for Block B on 27.12.2017. Occupancy Certificate was obtained on 19.11.2018. Since then, the respondents failed to formation of society and transfer of title under **Clause (e) of Sub- section (4) of Section 11 of the Act (Co-operative society) and Rule – 9 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects) Rules, 2017**. The respondent failed to provide amenities as per terms of Agreement for Sale, such as, rain water harvesting system, solar connection, power back up for lifts, functional sewerage treatment plant, development of open space, sloping roof with tiles. In addition, conveyance deed has been registered on 17.12.2023 after more than five years of receipt of occupancy certificate after nudging by the Authority, even though this process has consumed nearly two years which resulted in excess payment to be incurred by the complainants for registration and stamp duty to the extent of Rs. 53,00,000/- (Rupees Fifty three lakhs only) for no fault of theirs.


23. In the light of foregoing conclusion arrived under aforesaid paragraphs 14 to 22, above. The Authority hereby order as follows:

- (i) Respondent No. 1 is hereby directed to register the project with the Goa Real Estate Regulatory Authority within two months from the date of receipt of this order. Failing which, the Authority would initiate



proceedings ^{under} Section 59(2) of the Real Estate (Regulation and Development) Act, 2016.

- (ii) The complainants have undergone enormous delay, suffering and stress for incurring exorbitant expenditure for delayed registration of society, conveyance deed, in addition to incomplete works executed by the Respondent violating terms and conditions of Agreement for Sale. Complainants may file/ claim compensation before the Adjudicating Officer under Section 19(4) of the said Act.


30/04/2024
S. Kumarasawamy, IAS (Retd.)
Chairperson, Goa RERA