



GOA REAL ESTATE REGULATORY AUTHORITY
DEPARTMENT OF URBAN DEVELOPMENT
GOVERNMENT OF GOA

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Case no.3/RERA/Complaint(18)/2018/327

Date: 27/04/2022

Shri Kashinath Jairam Shetye & others,
A-102, Raj Excellency, Patto,
Ribandar, Goa.

Complainant

V/s

L&B Associates & Builders & developers
1st Floor, Jewel Heights,
Opposite Mapusa Court Garden ,
Altino, Mapusa, Goa-403507.

Respondent

ORDER
Dated: 27/04/2022

This order decides the complaint dated 30.04.2018 filed by Shri. Kashinath Jairam Shetye, resident of A-102, Raj Excellency, Patto, Ribandar, Goa and Shri. Mukundraj Mudras, resident of Building 6/C-9, Kenkre Estate, Cabesa, St. Cruz, Tiswadi, Goa (complainant) against L&B Associates & Builders & Developers, 1st Floor, Jewel Heights, Opposite Mapusa Court Garden, Altino, Mapusa, Goa (Respondent) against an ongoing real estate project, namely 'SAPPHIRE APARTMENTS' project under Survey No. 22/2-B and 22/2-C, Village Revora, Bardez Taluka, Goa, not registered with the Goa Real Estate Regulatory Authority (Goa RERA), had violated various provisions under


the Real Estate (Regulation and Development) Act, 2016 and Rules there off (Act & Rules).

2. The brief description of the complaint was that the complainant when contacted on phone, that an unknown person purportedly acting as real estate agent to the said project without registered as real estate agent in the Goa RERA has informed the complainant that there were five flats on first floor remain unsold which were available for sale, and alleged that the respondent had violated various provisions under Sections 3,4,5,9 and 10 of the said Act and Rules inforce there of and hence, liable for penalty under Sections 59,60,61 and 62 of the said Act.
3. The complainant side was represented by the complainant's Advocate Ms. Sonia Sapatdekar, Shri. V. Pacheco, Advocate Vishal Sawant, Shri. Kartik, Advocate Gauresh Malik and Advocate Ms. B. Andrade during hearings. The Respondent side was represented by Smt. Leena D'Souza, Shri. Brendon D'Souza along with their Advocate Shri. S. Sarmalkar during hearings.
- 4.1. The complaint was forwarded to the respondent for reply. The respondents vide reply dated 23.07.2018; affidavit dated 19.09.2018; replies dated 20.11.2018; 28.12.2018 and 17.12.2020 respectively stated that the said project has been located in two plots, namely, plot No. 26 admeasuring 799 sq.mts. under Survey No. 22/2-B and plot No. 1 admeasuring 854 sq.mts. under Survey No. 22/2-C of Viilage Revora; the respondents developing the said project obtaining two separate Construction Licenses.

- 4.2. The respondent further stated with regard to the project under Survey No.22/2-B is concerned, has obtained technical clearance order from Senior Town Planner, Mapusa on 08.02.2019; No Objection Certificate from the Directorate of Health Services on 14.03.2019; revised construction license on 03.05.2019 from the Village Panchayat Revora; construction started with effect from 08.06.2019; completion certificate obtained on 22.05.2020; awaited occupancy certificate; never advertised or marketed the project.
- 4.3. The respondent further stated with regard to the project under Survey No. 22/2-C is concerned, construction license was issued by the Village panchayat on 16.09.2014 which was expired on 16.09.2017; technical clearance order was also expired; the project was kept under hold; the respondent desired to register the project under both Survey Nos; project under Survey No. 22/2-C cannot be registered due to want of renewal of license; the project under Survey No. 22/2-B would be registered with the grant of the Authority and forwarded a cheque bearing registration fees to the extent of Rs. 50,000/- (Rupees Fifty Thousand only). The said cheque however, not accepted by the Authority and hence lapsed.
- 4.4. The respondent further stated that the complainant has no locus-standi to file complaint as he has not purchased the flats; grievance of non-registration of project could be raised by the persons who have agreed to buy the flats for the delay attributed; the project initially started as self-financed out of own funds; never advertised for market the project; however, few buyers who have purchased the flats have not raised any grievance so far, as they were aware of non-renewal of licenses; and ready to register the project.

5. The replies furnished by the respondent vide date 23.07.2018, affidavit dated 19.09.2018, replies dated 15.10.2018, 28.12.2018, 20.11.2018 and 17.12.2020 have been provided to the complainant side on 17.12.2020 and 05.09.2021 for rejoinder. However, no written replies received from the complainant side.
6. In the light of above factual matrix of this complaint, the following questions arised for consideration as under:-
 - i. Whether the complainant has locus-standi in the project where there is no agreement for sale is entered between the complainant and the respondent?
 - ii. Whether the ongoing project required to have had been registered with the Goa RERA even though it is constructed with own funds?
 - iii. Whether non-registration of on-going project with the Goa RERA violates the provision under Section 3 of the Act?

Question 1: Whether the complainant has locus-standi in the project where there is no agreement for sale entered into between the complainant and the respondent?

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7. Section 31(1) of the Act states that any person may file a complaint with the Authority or the Adjudicating Officer, as the case may be, for any violation or contraventions of the provision of this Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be. The explanation to the above section define 'Person' shall include the association of allottees or any voluntary worker association registered under any law for the time being in force.

8. Section 2(d) of the Act defined "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as free hold or lease hold) or otherwise transferred by the promoter, and includes the person who subsequently acquire the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building as the case may be, is given on rent.
9. The learned Advocate Ms. B. Andrade representing the complainant has argued that the definition of the aggrieved person under Section 31(1) is inclusive but not exclusive and hence, the complainant should be treated as an aggrieved person. The learned Advocate Shri. S. Sarmalkar representing the respondents expressed strong reservation to treat the complainant as an aggrieved person as there was lack of Agreement for Sale entered between the complainant and the respondents and suffered no monetary loss of any kind.
10. Section 31(1) read with Section 2(d) of the Act clearly establish the relationship between an aggrieved person or an allottee as an essential requirement to qualify as an aggrieved person or as an allottee provided the promoter sold the plot or apartment or building or transferred it which also includes secondary sale or transfer to an another person duly executed with agreement for sale under Section 13(1) and (2) of the Act.
11. The complainant has not shown such a relationship that exists between the complainant and the respondent. By mere telephone enquiry expressing desire to book a flat squarely fails to pass the test laid down under the above provisions of the Act. Therefore, the complainant can neither be claimed to be an aggrieved person nor an allottee in the said

project within the ambit of above provisions as there is no monetary loss suffered by him and no breach of any promises made by the respondent. Therefore, the contentions of the complainant to treat him as an aggrieved person has no merits, and rejected.

Question No.-2: Whether the ongoing project required to have had been registered with the Goa RERA when it is constructed with own funds?

12. As there is no locus-standi between the complainant and the respondent as brought out in the paragraphs 7,8,9,10 and 11 above, this Authority would proceed under Section 35 of the Act, whether the ongoing project required to have had been registered with the Goa RERA when it is constructed with own funds. Under Section 35 of the Act, the Authority can either on a complaint or suo moto by an order, call upon any promoter or allottee or real estate agent to furnish in writing such information or explanations relating to its affairs as the Authority may require.
13. Section 3(1) and (2) of the Act mandates prior registration of a real estate project in the Goa RERA, if the area of the land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases, prior to advertise, market, book, sell or offer for sale, or invite person to purchase in any manner any plot, apartment or building as the case may be in any real estate project or part of it, in any planning area or beyond the planning area as decided by the Authority including both ongoing as well as new real estate projects.

14. Further, the Rule 4 of the Goa Real Estate (Regulation and Development) Registration of Real Estate Project Rules, 2017 states that 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 and to furnish relevant details such as, extent of development carried out, original time period for project completion including delay if any, allotment done, amount already received along with pending receivables, separate bank account details to park money to be received, etc.
15. The respondent vide reply dated 23.07.2018; affidavit dated 19.09.2018; replies dated 20.11.2018; 28.12.2018 and 17.12.2020 respectively stated that the said project has been located in two plots, namely, plot No. 26 admeasuring 799 sq.mts. under Survey No. 22/2-B and plot No. 1 admeasuring 854 sq.mts. under Survey No. 22/2-C of village Revora and the respondent developing the said project obtaining two separate construction licenses.
16. The respondent further stated that the project under Survey No. 22/2-B was started on 08.06.2019 and completion certificate obtained on 22.05.2020. It clearly indicated that the project started after the deadline of cut of date of 23.03.2018 was over, there by the respondents breached provisions under Section 3(1) and (2) of the Act read with Rules thereof. The project ought to have registered with the Goa RERA as an ongoing project. The respondent further stated that the project under Survey No. 22/2-C could not be pursued further due to expiry of Licenses period and the project was kept under hold. Thus, the respondents violated the

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provisions under Section 3(1) and (2) of the Act by not registering the project under Survey No. 22/2-B.


Question No. 3: Whether non-registration of ongoing project with the Goa RERA violates the provision under Section 3 of the said Act and liable for penalty?

17. Section 59 of the Act prescribed punishment for non-registration of real estate project under Section 3(1). If any promoter contravenes the provisions of Section 3, he shall be liable to a penalty which may extend upto ten percent of the estimated cost of the real estate project as determined by the Authority.

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of Section 3, he shall be punishable with imprisonment for a term which may extend upto a three years or with fine which may extend upto a further ten percent of the estimated cost of the real estate project, or with both.

18. Taking into totality of circumstances of the case under examination, such as small size of the project under Survey No. 22/2-B, self funding, no advertisement issued for marketing, respondents forthcoming to register the project, a penalty of Rs. 50,000/- (Rupees Fifty thousand only) imposed against the Respondents. The Respondents are directed to pay the said penalty to the Authority within one month from the date of receipt of this Order and register the project under Survey No. 22/2-B as 'completed project' simultaneously within the same period. The Respondents further directed to register the project under Survey No. 22/2-C prior to revival/ restart of the project after taking necessary clearances.

19. In the light of above, the complaint dated 30.04.2018 has been decided accordingly.


27/04/2022
S. Kumaraswamy, IAS (Retd.)
Chairperson, Goa RERA

To,

- 1. Shri Kashinath Jairam Shetye & others,**
A-102, Raj Excellency, Patto,
Ribandar, Goa.
- 2. L&B Associates & Builders & developers**
1st Floor, Jewel Heights,
Opposite Mapusa Court Garden ,
Altino, Mapusa, Goa-403507.