



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA

www.rera.goa.gov.in

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

No.3/RERA/Complaint (207)/2021/482

Date: 21/06/2022

Arshi Singh and others

C 201, Bella Casa,
Madla Bhatt Road,
Siolim North-Goa-403517

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Complainant

V/s

Gautam Sabharwal,

Preeti Infratech LLP,
C-27, IInd floor, Pamposh Enclave,
New Delhi-110 048


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Respondent

ORDER

(Dated 21.06.2022)

A complaint was received on 26.08.2021 on the web portal of Authority from the complainant Arshi Singh & others in respect of project "BELLA CASA" situated in Village Panchayat of Siolim, Marna, Bardez, Goa. The notices were issued to both the parties i.e. complainant and respondent and case was fixed for hearing on 14.10.2021 and 08/12/2021.

 On 14.10.2021, both the parties were present but on 08.12.2021 only complainant was present and argued the case while respondent remained absent. After hearing the complainant and perusing the reply of respondent, the complaint was disposed by order dated 15.12.2021. The respondent (who became petitioner) filed a writ petition before the Hon'ble High Court of Bombay at Goa and the Hon'ble High Court by order dated 29.03.2022 quashed the order dated 15.12.2021 and remanded the case back to the Authority for deciding the complaint after hearing both the parties. Para 8 of the order of Hon'ble High Court is as follows:-

“(a)The impugned order dated 15.12.2021 is quashed and set aside.

(b)In the event, if the petitioner seeks to rely on additional documents in support of his defense, the compilation of such documents shall be filed on or before 08.04.2022 with copies to the respondents, prior to the date of hearing. No extension shall be granted for filing additional documents, if any.

(c)Parties shall appear before the Authority on 12.04.2022 at 10.30 a.m. so that the Authority can issue further directions as to the fixing of the date for further hearing.

(d)If the petitioner does not remain present in person or through an Advocate engaged for that purpose before the Authority, the Authority shall proceed and decide the issue on merits.

(e) There would be no occasion for the petitioner to seek any adjournment before the Authority on the scheduled date fixed by the Authority.

(f) Needless to mention, the Authority shall proceed to decide the complaint without being influenced by the observations made in this order.”

2. As per direction of Hon’ble High Court, both the parties appeared before the Authority on 12.04.2022. On that day, complainant filed brief synopsis of written submission which was taken on record. The copy of the same was given to the Advocate of the respondent. It was observed that respondent had already filed reply on 08.04.2022. The copy of the same was provided to complainant. On 05.05.2022, the case was again called for hearing. On this day Ld. Advocate for complainant filed counter reply to the reply dated 08.04.2022 filed by respondent. The same was taken up on record. Again, the case was adjourned and refixed on 26.05.2022 for arguments on merit.

3. On 26.05.2022, case was heard at length. The Ld. Advocate for the respondent raised preliminary objections to the complaint. According to the respondent, the complaint is not maintainable due to non-joinder of proper and necessary parties. The complaint is also not maintainable due to mis-joinder of proper and necessary parties. According to respondent, complaint is filed by one Arshi Singh & others and nowhere in the complaint, connection among the parties has been disclosed. Similarly, complaint has been filed against Gautam Sabharwal, Preeti Infratech LLP, C-27, II floor, Pamposh Enclave, New Delhi-110048. It has been pointed out by the respondent that Shri Gautam Sabharwal is one of the directors of Preeti Infratech LLP and Preeti Infratech LLP has a separate and distinct juridical personality independent of its directors and personnel.

4. As per Section 31 of The Real Estate (Regulation and Development) Act, 2016, complaint can be filed by any aggrieved person for any violation or contravention of the provision of this Act or Rules and Regulations made thereunder. Even if the connection of complainant Arshi Singh with other persons as complainant has not been disclosed, she is authorized to file the complaint in her behalf as she is allottee of project and respondent is promoter of the project. Similarly Preeti Infratech LLP has been made as respondent who is the builder/promoter of the project. Along with the name of the company if the name of one of directors is mentioned, it will not vitiate the proceedings. These are only technical grounds. The purpose of this Act is to address the grievances of the aggrieved parties. In this case, at least Arshi Singh is allottee and Preeti Infratech LLP is builder/promoter and both are reflected as parties to the proceedings. In personal capacity also, Arshi Singh is entitled to file this complaint and she has done this. I do

not find any substance in these objections of respondent and the same are overruled.

5. Now coming to the merit of the case, the grievances of the complainant are four fold i.e. formation of the society, sewage treatment plant, electric load and power back up of common areas. As per complaint, the builder wanted to sign an MOU to form an association for maintenance for which the allottees did not agree. The builder has now washed his hands off the project and left it to the allottees to form the co-operative Maintenance Society. Regarding STP, it is mentioned that it is not of standard quality and many times it starts stinking. Thirdly, in respect of electric load, it is mentioned in the complaint that power load in the society is far from satisfactory. Tripping is common. Fourthly, electricity is not backed on generators in many common areas like staircase, parking, gym, clubhouse and pool area. Accordingly, it is requested by the complainant to replace the STP, rectify electric load and solve the problem of the society.

6. As far as formation of Co-operative society is concerned, the grievances has been raised by the complainant in the complaint as well as in the counter reply filed by him. However, during the course of hearing, it was admitted by the complainant that residents have already taken the steps to form the co-operative society and hence the issue has been resolved. Otherwise also, promoter has pointed out that he always intended to form an association of allottees which was denied by the complainants. This aspect of the reply of respondent is corroborated with the contents of the complaint. Complainant has mentioned that builder wanted to form an association which was objected by the complainant as it has no legal standing. If this is the case,

respondent/promoter cannot be held responsible for non-formation of society as para 13 of the sale deed specifically provides that it shall be the sole discretion of the promoter to decide the form of organization to be formed. Anyway, since it has been stated by the parties that this problem is being resolved, the Authority will not like to deliberate further on this issue.

Sewage treatment plant:

7. It has been contended by the complainant that sewage treatment plant (STP) should be of standard quality. They have mentioned either motor stops working or sensor becomes faulty ever since they have started living in the premises since January, 2020. They have produced a report by 'H₂O Technologies' dated 06/10/2021 in support of their claims. Further complainant has pointed out that respondent has not provided the mandatory ventilation pipe with mosquito net which is mandatory for the sewage treatment plant. Complainant has placed on record the copy of the construction license issued by Village Panchayat dated 02/05/2017 where it is mentioned at serial No. 12 to provide the above mentioned ventilation pipe with mosquito net. Hence, as per complainant the respondent/promoter has violated the conditions imposed by Village Panchayat in respect of sewage treatment plant.
8. The respondent/promoter has denied the allegations. According to respondent, the STP installed is of standard quality and does not need to be removed or replaced. In support of this claim, respondent has submitted a certificate issued by 'H₂O Technologies' dated 02/04/2022 and as per the said certificate plant is functioning efficiently without any foul odor and

generating clear treated water which meets all the standards put forth by concerned government monitoring agencies.

9. From the above, it is observed that both the parties are relying on the reports of the agency 'H₂O Technologies' in support of their respective claims. Complainant is relying on the report dated 06/10/2021 and respondent is relying on the report dated 02/04/2022 prepared by the same agency. For further discussion, both the reports of H₂O Technologies are transcribed below.

Report dated 06/10/2021 is as below:

“ Dated: 06/10/2021

Sub: Report for STP Plant

1) JANUARY 2021

Filter feed pump was chocked and was rectified due to dirt settled in the foot valve.

2) Feb to June : No Completed

3) JULY 2021

Water level sensor was resettled again due to some minor fault.

4) August 2021

-Foot valve was replaced for filter feed pump due to dirt caught up in the foot valve

-Blower serviced & oil changed for 2 nos (every 1000 hrs)

5) September 2021

On the main panel sensor switch was rectified.

6) October, 2021

Bad smell of the STP Identified and observe within STP (Area)”

Similarly, report dated 02/04/2022 is as below:-

“Dated : 2nd April 2022

Mr. Gautam Sabharwal

Preeti Infratech LLP

New Delhi

Sub: Operation & Maintenance of STP at Bella Casa

Dear Sir

We are operating and maintaining the sewage treatment plant at Bella Casa for the last three months. A verbal contract relating to this has been given to us by the society's board.


The plant is functioning efficiently without any foul odour and generating clear treated water which meets all the standards put forth by the concerned government monitoring agencies.

The residents and board members are also well satisfied with the performance of the STP and the services being provided by us."


10. In the first report dated 06/10/2021, the agency has given its observations and action taken report on different six dates. From point 1st to 5th no major fault is observed. For example in January 2021, agency has stated that filter feed pump was choked and rectified. Similarly, from 2nd to 5th point also agency H₂O Technologies has come across some discrepancies and the same were rectified by it. Hence, the report of agency dated 06/10/2021 which has been produced by complainant reveals that on first five occasions the discrepancies noted were rectified by the agency. At point No. 6 in October 2021, agency has remarked "Bad smell of the STP Identified and observe within STP (Area)". From this remark it appears that there was bad smell in small quantities which was observed within STP area. Nowhere it has been pointed out in this report that there was a stinking smell which was spreading even to the residential colony.

11. Now let us take the report of the agency dated 02/04/2022. In this report agency has pointed out that plant is functioning efficiently without any foul odour. If we examine the issue after combining both the reports of H₂O Technologies, it will be found that there were small problems in the STP initially which were being rectified by the agency H₂O Technologies from time to time and as per their latest report there is no problem at all.
12. After perusing both the reports it is felt that issues related with STP were maintenance issues and the same were rectified by the agency 'H₂O Technologies' from time to time. No proper case has been made by the complainant regarding contraventions of the provisions of RERA Act in this regard. As far as violation of the norms incorporated by Village Panchayat is concerned. I will like to mention that same can be taken up with the Village Panchayat if the conditions imposed by them in the construction license have been violated.

Electric Load

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13. It is mentioned in the complaint that power load in the society is far from satisfactory and that there is problem of tripping. In support of the claim, complainant has submitted a letter dated 22/05/2019 issued by an Assistant Engineer, electricity Department where Assistant Engineer has put up the proposal for release of 315 KW load to Preeti Infratech LLP. Again, they have placed on record one letter dated 11/12/2019 issued by Preeti Infratech LLP addressed to Assistant Engineer to cancel their old application for load 315 KW and revise the load to 187.62 KW and hence request to install transformers of 200 KVA. Thus, according to complainant the initial proposal of the promoter/respondent was for load of 315 KW which was subsequently revised to 187.62 KW. The Problem of tripping has been

surfaced because of the inadequate load of electricity provided by the respondent. The respondent/promoter has denied the claim of complainant. Respondent has admitted that initially an application was made to the electricity department by them for electricity load of 315 KW vide application dated 22/05/2019. It has also been admitted that subsequently on 11/12/2019, respondent filed an application for cancellation of application for load 315 KW and thereafter obtained the electricity load of 200 KW. Such change with respect to electricity load was undertaken on the recommendation of Electricity Department on the ground that 200 KW load is more than sufficient for the building project of the size of Bella Casa. In support of the claim, respondent has submitted the various documents issued by Electricity Department which are as follows:-

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- 1) Letter dated 17/08/2020 issued by Sub-Divisional Engineer.
 - 2) Electricity department letter bearing number: Est 06(2021)Dept-II/TECH/Agar-III/2021/692 dated 31/07/2020
 - 3) Certificate issued by Sub-Divisional Engineer dated 24/11/2020
 - 4) Approval for energisation dated 30/11/2020.

The respondent has further submitted that 'Galaxy Electrical', which was agency for the job of applying for and providing electricity for the project Bella Casa has certified that 200 KW load of electricity was adequate for the project. The respondent has submitted the certificate issued by galaxy electrical in this regard.

14. The respondent has further stated that nothing has been placed on record by complainant to substantiate her claim that electricity is tripping. Such allegations are a figment of the complainants imagination made further for sole purpose of harassing and causing mental anguish to the respondent and for obtaining free maintenance from the respondent.

15. I have gone through the claims and counter claims of the rival parties. It is a fact that initially respondent has made application before Electricity Department for release of 315 KW load for the project and subsequently requested the Electricity Department to cancel his application for load of 315 KW and revise the same to 187.62 KW. However, only by making application initially for 315 KW load does not establish the fact that load required for the project is 315KW. Respondent has placed the document issued by the Electricity Department which are on record and mentioned in para 13 of this order. The sanction of electric load to the various projects is done by Department of Electricity, Government of Goa. It is presumed that Electricity Department assesses the requirement of a particular project and then only releases the said load of electricity. From the latest letter dated 17/08/2020, dated 31/07/2020, certificate dated 24/11/2020 and approval dated 30/11/2020-all issued by Electricity Department shows that Department has released the required Electricity load after assessing the requirement. The Department of Electricity, Government of Goa was associated in the entire process. It is mentioned that Department of Electricity, Government of Goa is a Government Department responsible for providing electricity for various projects and once it has issued it, it cannot be said that they have done without proper assessment. Anyway if concerned Assistant Engineer has not exercised proper caution in exercise of their duties then the issue may be taken up with their superior officer to resolve the same. There is nothing on record to establish that there is a problem of tripping. Based on the above observation, I feel that electricity load released to this project has been done by Electricity Department after assessing its requirements and the Department is competent to do so.

Power back up of common area

16. It has been contended by the complainant that respondent/ promoter has provided the power back for STP, Swimming pool light and garden. However, he has not provided electricity backup at parking, gym, club house and pool area. The complainant has cited the provision of Section 2(n) of The Real Estate (Regulation and Development) Act, 2016 in respect of common area. As per Section 2(n) "common areas":-

“(n) "common areas" mean—

(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

(ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;

(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;

(vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;


(vii) all community and commercial facilities as provided in the real estate project;

(viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;”

According to complainant, as per above definition, ‘common areas’ are the main area of any building and therefore the back up at the common area is

the essential part of real estate project which needs to be done. Accordingly, it has been requested to issue directions to respondent to do the needful.

17. The respondent has contested the claim made by complainant. He has agreed that electricity in common area, staircase and parking are not backed up by a generator, however, he has stated that it is not his responsibility to provide the same. In this regard, he has made a reference of the 'Deed of Sale' dated 20/08/2020 executed between the complainant and promoter. According to the respondent, the said 'Deed of Sale' does not contain any obligation/ responsibility on the part of respondent to provide electrical backup to the electricity in the common areas, staircase and parking. According to respondent, the complainant was aware that said common area, staircase and parking were not backed by generator right from the date of sale deed. He has recalled clause 3 of the said deed which is as follows:-



“Clause 3: That the Purchaser has already inspected the SAID FLAT hereby transferred and the Purchaser expresses her full satisfactory to the condition of the SAID FLAT and the she has taken possession of the same on the existing condition basis.”

Complainant having accepted these provisions and facilities at the time of entering into deed of sale dated 20/08/2020, now cannot raise objections in this respect.

18. I have considered arguments of both the parties on this aspect. The complainant has quoted the provision of Section 2(n) of the Act. This Section has defined and narrated the extent of common areas, however, nowhere in this section has been mentioned that electricity backup has to be provided by promoter in respect of this common area. Nowhere in the RERA Act and Rules made thereunder, it has been provided that electricity backup in common area is to be provided by the promoter. It is mentioned

that sale deed in respect of the premises has already been executed between the parties one year before the filing of this complaint. There is no mention in the sale deed that electricity backup in the common area is the responsibility of the promoter. Moreover, as per clause 3 of the said sale deed, purchaser has already accepted the said flat and expressed her full satisfaction about the same. So, raising the issue of providing electricity backup by promoter at this juncture is not justifiable.


19. As observed in para 12, para 15 and para 18 the case of the complainant is not established in respect of STP, electric load and power backup of common area. Apart from the observations made in those paras, the issue needs to be examined from a different angle also. As mentioned in preceding paragraphs, the deed of sale already executed between the parties and the premises have been handed over to the complainant. This complaint has been filed after one year of execution of the deed of sale. Provision in respect of premises where possession has already handed over to the allottees are governed by Section 14(3) of the Act. The said Section provides for reliefs to the allottees incase of any structural defects or any other defects relating to the premises within a period of 05 years from the date of handing over the possession. The said Section 14(3) is as follows:-

“14(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees

shall be entitled to receive appropriate compensation in the manner as provided under this Act.”

20. A plain reading of the Section 14(3) of the Act shows that any obligations of the promoter for which he is liable to rectify within 05 years should be in terms of “agreement for sale”. Agreement for sale is executed between the parties in the beginning and all terms and conditions were incorporated. In this case, no agreement for sale executed between the parties have been brought on record. In the absence of agreement for sale, the only document executed between the parties is the deed of sale dated 20/08/2020. All the three issues mentioned in the complaint i.e. STP, electric load and electricity backup are not covered under the deed of sale. Since possession of the premises have been taken over by the complainant after being satisfied with the conditions of the same and no obligations of promoter has been incorporated in the sale deed in respect of STP, electric load and electricity backup, in my opinion it is not justifiable to raise these issues after one year of the execution of the sale deed.
21. In view of the foregoing discussions, I feel that there is no substance in the complaint and the same is hereby rejected.

Order accordingly,


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

To,
1.Arshi Singh and others
C 201, Bella Casa,
Madla Bhatt Road,
Siolim North-Goa-403517

2.Gautam Sabharwal,
Preeti Infratech LLP,
C-27, IInd floor, Pamposh Enclave,
New Delhi-110 048