



GOA REAL ESTATE REGULATORY AUTHORITY

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001Goa
www.rera.goa.gov.in

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

F.No:3/RERA/Complaint (420)/2024/1077

Date: 08/08/2024

The Rastroli Residency Cooperative Housing Society Ltd.

Through its secretary

Mr. Lachman Mohanty

R/o. Flat No. A-101,

Upper Ground Floor,

Rastroli Residency,

Rastroli Temple Road,

Karaswada, Mapusa, Bardez,

Goa, 403507.

.....Complainant

Versus

M/s. AXR Realtors,

A Partnership Firm,

Having Registered Office at Nirmitti

Tiwali Wadi, Opp. Depot Vasai (W)

401201.

.....Respondent

ORDER

(Dated 08.08.2024)

This order shall dispose of an application dated 17.07.2024 filed by the complainant for site inspection dated 17.07.2024. The respondent contested application by filing reply dated 30.07.2024.

2. Ld. Advocate Ms. P. Sawant argued on behalf of the complainant and Ld. Advocate Ms. O. Fernandes argued on behalf of the respondent. The submissions

4

of learned Advocates were in line with the application and reply respectively. Being so, the contents of the application and reply are not reproduced separately.

3. The short point that arises for my determination is:-

Whether the complainant has made out a case for site inspection?

Ans: No.

REASONS

4. Ld. Advocate Ms. P. Sawant submitted that the septic tank and soak pit is currently overflowing on alternate days. The Deputy Director of Health by judgment dated 11.07.2024 has directed complainant to empty the main waste collector tank and soak pit / septic tank once a week and if needed twice a week under intimation of the Urban Health Centre Mapusa. If no steps are taken to abate the nuisance, the said order will put huge financial pressure on the complainant. The fact that the tank is filled almost every week shows that this is a structural defect and not a maintenance work. In these set of facts, learned Advocate submitted that this is a fit case that this Authority shall visit the suit premises along with the officers of Goa Town & Country Planning, Junior Engineer of Mapusa Municipal Council, Health Officer of Urban Health Department Mapusa, Architect who has sanctioned the plans, the respondent and the complainant and hold site inspection to verify whether the construction of the soak pit and septic tank is done as per the approved plan. Ld. Advocate urged to grant the relief prayed in the application.

5. Ld. Advocate Ms. O. Fernandes submitted that the application for site inspection is in complete deviation from the original complaint, as nowhere in the complaint it is alleged about the defect in the septic tank in respect of which site

inspection is sought in the application. The order of Deputy Director of Health has exposed the falsity of the complainant's case. The fact that the septic tank is required to be emptied twice a week shows that it is a matter of maintenance and not of the structural defect as alleged by the complainant. The application is based on conjectures and surmises. The complainant is seeking indulgence of this Authority for collection of evidence through site inspection. Ld. Advocate prayed to dismiss the application.

6. It can be ascertain from the submissions of the learned advocate Ms Sawant that the complainant wishes this Authority to visit the premises for a site inspection to elucidate if there is structural defect in the workmanship or quality of the services rendered by the respondent with respect to the soak pit/ septic tank and also if is the soak pit/septic tank is constructed in accordance with the approved plan.

7. Section 14(3) of The Goa Real Estate (Regulation and Development) Act, 2016 is relevant. It provides:-

“(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.”

8. It can be seen from the plain reading of the above sub-section that the structural defect etc, referred to in the section has to be as per the agreement for sale relating to such development and it is obligation of the allottee (complainant) to bring such defect to the notice of the promoter. It appears that the complainant through this application wishes this Authority to discharge complainant (Allottees) obligation, which this Authority in the facts and circumstances of the case is not inclined to discharge.

9. This Authority by inspecting the premises by physically visiting the site will become a witness to the dispute. It is a trite law that whether it is Judicial or Quasi Judicial Authority, it should be slow in adopting such recourse.

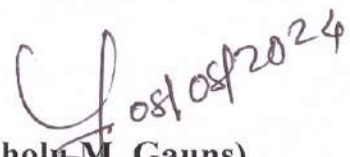
10. As rightly submitted by Ld. Advocate Ms. O. Fernandes if site inspection request if allowed, it will help complainants to collect the evidence with respect to the dispute over the soak pit / septic tank.

11. The complainant did not indicate any provision in RERA Act, enabling this Authority to hold site inspection in a manner it is prayed in the application.

12. In view of the above reasons my answer to the point for determination is negative and following:-

ORDER

The application for site inspection dated 17.07.2024 stands dismissed.


(Cholu M. Gauns)
Member, Goa RERA