GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT
GOVERNMENT OF GOA
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No.3/RERA/Complaint (227)/2021/770 Date: 23/12/2021

Ms. Pooja Naik
(for M/s. Prestige Constructions)
Prescon, Office No.207, second floor,
Edcon Minds, behind Campal Trade Center,
Campal Panaji-Goa, 403001 ..... **Complainant**

V/s

Mr. Vinay Bhasin
M/s. Palaceio Property Developers Pvt. Ltd.
1st floor, Diamond Place,
Bandra (W), Mumbai City,
Mumbai Suburban, Maharashtra, 400050 ..... **Respondent**

ORDER

This complaint was received on 04/09/2021 on the web portal of the Authority filed by Ms. Pooja Naik for project by name 'Golden Retreat Glenwood Gardens' against Respondent/ Promoter Shri. Vinay Bhasin, Director, M/s. Palaceio Properties Developers Pvt. Ltd., for delay in handover of flats. The complainant Ms. Pooja Naik has filed the complaint on behalf of M/s. Prestige Constructions (as later on clarified by her in rejoinder dated 20/11/2021 filed before the Authority). Again as per submissions of Complainant, Shri. Vinay Bhasin has been made Respondent inadvertently instead of M/s. Palaceio Property Developers Pvt. Ltd., hence, as per Complainant Ms. Pooja Naik, M/s. Prestige Constructions should be treated as Complainant and M/s. Palaceio Property Developers Pvt. Ltd. as Respondent. There is a property admeasuring 42,625 sq.mt. (forty-two thousand six hundred twenty five square meters) situated at Goa Velha within the jurisdiction of village panchayat of St. Andre, Goa having survey numbers 181/1(part), 181/2, 181/3, 181/5, 184/3, 182/7 and 183/9. This property has been acquired by one Shri. Kamal Jadhwani and Shri. laljee Patel. Subsequently, by way of agreement, M/s. Palaceio Property Developers Pvt. Ltd.,

acquired the rights to develop and construct a building project admeasuring 2,39, 922 sq. ft. (Two lakh thirty nine thousand nine hundred twenty two square feet). As per the said agreement which was entered into by Shri. Kamal Jadhwani and Shri. Laljee Patel on one part and M/s. Palaceio Property Developers Pvt. Ltd. on the other part, it was agreed that M/s. Palaceio will construct and allot 25% of build up area in the project to Shri. Kamal Jadhwani and Shri. Laljee Patel. Accordingly, Shri. Kamal Jadhwani and Shri. Laljee Patel became entitled to have an equal share of 12.5% each in the said project. Now, an agreement dated 21/07/2010 comes in picture where Shri. Kamal Jadwani has assigned his 12.5% share to M/s. Prestige Constructions (complainant herein).

2. For convenience sake, it will be desirable to describe the agreement dated 21/07/2010 which has been mentioned time and again in the complaint. There are 04 partied to the said Agreement which are as follows:

   a) Shri. Kamal Jadhwani hereinafter referred to as the 'ASSIGNOR'
   b) M/s. Prestige Constructions hereinafter referred to as the 'ASSIGNEE'
   c) M/s. Palaceio Property Developers Pvt. Ltd. hereinafter referred to as the 'CONFIRMING PARTY-I'
   d) Shri. Laljee Patel hereinafter referred to as the 'CONFIRMING PARTY-II'.

By this agreement, Shri. Kamal Jadhwani, ASSIGNOR assigned his 12.5% share in the project to M/s. Prestige Pvt. Ltd., ASSIGNEE. Hence, by way of this agreement, M/s. Prestige Constructions is entitled to be allotted such revised list of apartments, as was to be handed over to the ASSIGNOR. However, till date certain apartment in the project has not been handed over to the M/s. Prestige Constructions. Such apartments are titled as "Regalo", wing A. The Respondent herein had agreed to deliver possession of all the apartments within 24 months from the date of entering into agreement dated 21/07/2010, however, till date, the pending apartment have not been handed over to the complainant. The present complaint has been filed highlighting that despite valid consideration being advanced by the Complainant under the above-mentioned agreement dated 21/07/2010, the Respondent herein has not delivered the possession of the pending apartments to the Complainant. Hence, Complainant is entitled for interest and

compensation as per Real Estate (Regulation and Development) Act (hereinafter referred as 'Act'). It has also been requested by the Complainant to issue directions to the Respondent to handover the said pending apartments to the Complainant.

3. A notice dated 29/09/2021 was issued to Respondent to file the reply within 10 days. The Respondent has filed the reply dated 11/10/2021 and subsequently, Complainant has filed the rejoinder to the reply filed by the respondent dated 20/11/2021. Both the parties were heard on the subject matter on 09/12/2021.

4. In the reply dated 11/10/2021, Respondent has raised objections on the maintainability of the Complaint. As per Respondent, the present complaint is filed by one Ms. Pooja Naik, alleging non delivery of some premises in the constructions carried out by the Respondent. Nowhere in the complaint the so called complainant has disclosed as to what is her connection with the M/s. Prestige Constructions or for that matter what is her authority to file the complaint. As per Respondent, the complaint is also bad for nonjoinder of parties who were the actual parties to the Agreement. It is mentioned in the reply that, Complainant is not Consumer/ Buyer/ Purchaser/ Customer of any premises from the Respondents. Mere reading of the Complaint, it can be ascertained that the said Prestige has purchased the land owners share of premises from the land owners i.e. Mr. Laljee Patel and Mr. Kamal Jadhwani by various transferred documents and Palaceio/Respondent is the only contractor who have agreed to carry out constructions for and on behalf of the land owners. The said Prestige has no deal with Palaceio for any direct purchase of premises nor Palaceio has received any monetary consideration from the Complainant. Accordingly, it has been highlighted in the reply of the Respondent that the subject matter of the agreement doesn't fall within the scope and jurisdiction of RERA. Similarly, it is contended in reply that misjoinder is not only restricted to Complainant but the answering Respondent has been arrayed as party Respondent in personal capacity when the Respondent is only one directors of M/s. Palaceio Property Developers Pvt. Ltd. against whom allegations of delay in handing over possession of premises is made.

5. In its rejoinder dated 20/11/2021, the Complainant has clarified the position in respect of Ms. Pooja Naik. It has been stated that compliant has been filed by Ms. Pooja Naik on behalf of M/s. Prestige Constructions Ltd. as she was authorized by way of letter of authority dated 16/08/2021. By this letter of authority dated 16/08/2021, Ms. Pooja Naik was authorized by M/s. Prestige Construction to sign, file and/or execute any complaint etc. It has been submitted in the rejoinder that due to certain technical glitches and difficulties that were encountered while filing the complaint dated 04/09/2021 on the Goa RERA website, the name of the complainant, i.e. M/s. Prestige Constructions could not be added and hence the Complainant was compelled to enter the name of Ms. Pooja Naik.

6. On 09/12/2021, the day fixed for arguments before this Authority, the Respondent contested the case on the basis of issue raised in the reply dated 11/10/2021. The Ld. Advocate for the Respondent submitted a circular dated 13/02/2018 issued by Director of Urban Development. Attention has been drawn in the circular in respect of Promoter. As per this circular, the person owning the land and the person who under an agreement with the owner constructing real estate project- both are promoter in terms of the Act.

7. I have gone through the complaint, reply filed by the Respondent, counter reply (rejoinder) filed by the complainant. Respondent has raised objections about the complaintant Ms. Pooja Naik stating that in entire complaint there is no mention in what capacity she has filed the complaint. Though the name of Ms. Pooja Naik appears as complainant, it has been observed from the contents of the complaint that the same has been filed for and on behalf of M/s. Prestige Constructions. Everywhere in the complaint, case of M/s. Prestige Construction have been pleaded. Subsequently, it has also been clarified by the Complainant that name of the Prestige Constructions did not come in the Complainants column due to technical glitches. It has been clarified that the said complainant Ms. Pooja Naik is working with M/s. Prestige Constructions and she was properly authorized to perform such acts as per letter of the authority dated 16/08/2021 and authority letter dated 16/08/2021 has also been placed in the file which substaintiates this fact. From the above mentioned observations, I feel that Ms. Pooja Naik has filed the complaint on behalf of M/s. Prestige Constructions and she has been duly authorized for the same. Again, as far as name of Shri. Vinay Bhasin as

Respondent is concerned, the Complainant clarified the position and admitted that it was due to inadvertence. It has been clarified that actual Respondent is M/s. Palaceio Property Developers Pvt. Ltd. and name of Shri. Vinay Bhasin was mentioned as Authorised Representative of M/s. Palaceio Property Developers Pvt. Ltd. In view of this submission of the Complainant, M/s. Prestige Constructions is treated as Complainant and M/s. Palaceio Property Developers Pvt. Ltd. as Respondent for the purpose of disposal of this Complaint.

8. Now, the complaint has to be examined under the provisions of the Act. The claim of Complainant has originated from the agreement dated 21/07/2010 mentioned in para 2 of this order. It is mentioned that Complainant M/s. Prestige Constructions is the 'ASSIGNEE' in the said agreement while Respondent M/s. Palaceio Property Developers Pvt. Ltd. is 'CONFIRMING PARTY-I' in the said agreement. Before proceeding further, it will be essential to determine the status of Complainant as well as Respondent under the Act. The Respondent is promoter in this case. The term "Promoter" has been defined in section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 as follows:

"Promoter means,-

(i) A person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees;"

A Plain reading of this definition shows that any person who constructs or cause to be constructed a building etc, comes within the purview of definition of promoter. Here it is undisputed fact that Respondent which is 'CONFIRMING PARTY-I' under the agreement dated 21/07/2010 is constructing the apartments and hence, he comes clearly under the definition of promoter. Now, the 'ASSIGNOR' Shri. Kamal Jadhwani is the owner of the building and it can be concluded that he is the "causes to be constructed" in terms of the Act and hence, he is also a promoter. Similarly, M/s. Prestige Constructions being 'ASSIGNEE' also becomes promoter under the Act. The definition of promoter is very clear - A person who constructs or causes to be constructed . . . . . .and includes his assignees. Hence, in view of this definition both the parties i.e. Complainant who is

ASSIGNEE under the agreement dated 21/07/2010 and Respondent who is CONFIRMING PARTY –I under the said agreement becomes promoters.

9. Under the scheme of the Act, the complaint can be filed against any promoter, any allottee or Real Estate agent as per section(31) of the Real Estate (Regulation and Development) Act, 2016. However, relevant provisions of the Act show that dispute should be basically between Promoter and Allottee. Chapter III of the Act deals with the functions and duties of Promoter and Chapter IV of the Act deals with rights and duties of allottees. These provisions have been given from section 11 to section 19 of the Act and dispute in respect of any violation under these sections are covered under the complaint under section 31. These sections primarily deals with the relationship of promoter and allottees and dispute arising between them. Nowhere dispute between promoter and promoter has been discussed under these sections or other provisions of the act. If Complaint is filed by promoter, it should be against Allottee and vis-à-vis. In this case, since both the parties are coming under the category of 'Promoter', any dispute between them does not come within the purview of the Act.

10. In view of abovementioned observations, the complaint dated 04.09.2021 is not maintainable and the same is rejected.

Order accordingly,

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

To,

1.Ms. Pooja Naik,
(for M/s. Prestige Constructions)
Prescon, Office No.207, second floor,
Edcon Minds, behind Campal Trade Center,
Campal Panaji-Goa, 403001.

2. Mr. Vinay Bhasin
M/s. Palaceio Property Developers Pvt. Ltd.,
1st floor, Diamond Place,
Bandra (W), Mumbai City,
Mumbai Suburban, Maharashtra, 400050.