



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

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No.3/RERA/Complaint (260)/2021/195

Date: 24/03/2022

Vivek Datta,

F-501, Skytech Matrott Sector 76,

Gautam Buddh Nagar, Uttar Pradesh-201301

.....

Complainant

V/s

Eclectic Developers Pvt. Ltd.,

108/3A, Part , Near Mataji Mandir,

Tembewada Canacona South Goa- 403702

.....

Respondent

ORDER

This is to dispose of the complaint received on 15/11/2021 from Vivek Datta i.e. Complainant u/s 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the Act) against the respondent/promoter "ECLECTIC DEVELOPERS PVT LTD". The Respondent is the promoter of the project "Palolem Hills" situated within the limits of Canacona Municipal Council, South Goa District and the complainant booked an apartment in the said project of "Palolem Hills" and entered into an Agreement for Sale with the respondent dated 14/05/2012. As per this Agreement the complainant/ purchaser agreed to purchase the flat No. A-1 A-302 in Tower A for the total price of Rs. 42,68,000/- (Rupees Forty-Two Lakhs Sixty-Eight Thousand only). This was fully furnished flat and in terms of Agreement, the possession was to be delivered to the complainant/purchaser within 02 years. The complainant has already paid an amount of Rs. 37,19,733/- (Rupees Thirty-Seven Lakhs Nineteen Thousand Seven Hundred and Thirty-Three only) to the respondent for this project. Since respondent /promoter have not delivered the possession of the said flat to complainant, the present complaint has been filed before this Authority. By this complaint, purchaser has requested the Authority to give direction to

the respondent to deliver the possession of the unit after the completion of all the furnishings along with the compensation and interest.

2. The copy of the complaint was served to the respondent/promoter by a notice dated 20/12/2021 with direction to file the reply. The respondent /promoter have filed the reply dated 10/01/2022 which is on record.
3. The opportunity of hearing was given to both the parties and the case was finally argued on 16/03/2022.
4. In his written reply, respondent/promoter has pointed out that present complaint is not maintainable before the Authority as The Real Estate (Regulation and Development) Act, 2016 is not applicable in this case. He has submitted a copy of order dated 01/10/2018 issued by Interim Authority, Goa RERA wherein the project was exempted from Goa RERA.
5. As the issue of maintainability of this complaint has been raised, it will be essential to discuss this. Under the scheme of the Act, every project has to be registered under Section 3. Under this Section, there are two kinds of project-i.e. new project as well as ongoing project. Registration under the Act is required for both kinds of the project. All the new projects with the exception of projects coming under Section 3(2) (a) are subject matter of registration. However, in case of ongoing project, the Section 3 (1) provides that only those cases where completion certificate has not been issued at the time of commencement of this Act will be coming under the purview of registration.
6. Admittedly, this project is not registered under the Act as ongoing project. The issue of non-registration of this project was raised before this Authority earlier also. This Authority by order dated 01/10/2018 has decided that this project is exempted from the Goa RERA. The relevant portion of the said order is as follows:-

“Whereas a complaint has been filed before the Interim Authority, Goa RERA by Atul Gupta, Director, M/s Kriti Build tech Pvt. Ltd., Flat no. 109 Sadar Apartments. Mayur Vihar-1

Extn, of the Real Estate (Regulation and Development) Act, 2016;

Whereas it has been stated that the project '**Palolem Hills**' by Electic Developers Private Limited is not registered with Goa RERA;

Whereas it has been seen that the Project '**Palolem Hills**' by Electic Developers Pvt Ltd. has already received completion certificates for all the blocks/buildings (Block A, B C and D) from the Office of the Deputy Town Planner, Town & Country Planning Department, Canacona, Goa on 3rd May, 2017 and 30th June, 2017 (Block F).

In view of this the project is exempted from Goa RERA”


From the above, it is clear that Authority has already decided that registration is not required in respect of this project as ongoing project and the same is exempted from Goa RERA. Once this has been decided, there is no scope under the Act to file the complaint against this project before this forum.

7. The Hon'ble Supreme Court in a recent judgement in case **M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS. ETC.** has expressed the same view. Para 54 of the said judgement is transcribed below:-

“54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016”

8. In view of above observations, the complaint dated 15.11.2021 filed before this Authority is not maintainable and the same is rejected.

Order accordingly,


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

To,

1. Vivek Datta,

F-501, Skytech Matrott Sector 76,
Gautam Buddh Nagar, Uttar Pradesh-201301

2. Eclectic Developers Pvt. Ltd.,

108/3A, Part , Near Mataji Mandir,
Tembewada Canacona South Goa- 403702