



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(371)/2023/ **123**

Date: **29**/01/2024

Mrs. Pushp Lata Khanna, aged about 65 years,
w/o Sunil Khanna, Housewife,
Resident of AD-38, Shalimar Bagh,
North West Delhi, Delhi 110088
Represented herein by her attorney
Mr. Piyush Khanna, aged about 41 years,
Son of Sunil Khanna, Businessman,
r/o Penta House No. 02, Dreams Palza,
Jairam Nagar, Dabolim, Goa.

.....**Complainant**

Versus

Mr. Aniruddha Mehta, proprietor of
M/s Umiya Builders and Developers,
Aged about 55 years, son of Bhanuprasad Mehta, businessman,
Resident of Bangalore, having office at
G-01, ground floor, Umiya Quatro,
"D" commercial, Alto Dabolim,
Goa 403711.

.....**Respondent**

ORDER

(Dated 29.01.2024)

This order disposes of the complaint filed under Section 31 of the Real Estate (Development and Regulation) Act, 2016 (hereinafter referred to as 'the

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RERA Act') wherein the complainant has stated that by agreement of sale dated 13.01.2022 the respondent agreed to sell to the complainant shop no. 5 A admeasuring 157 sq. mtrs. situated on the ground floor of commercial building block in the complex known as "Umiya Quatro" along with undivided share in the land for a total consideration of ₹1,25,60,000/- (One Crore Twenty Five Lakhs and Sixty Thousand only), which amount the complainant paid to the respondent in terms of clause 14 of the agreement of sale. It is further stated that till date the respondent has not executed the title document in favour of the complainant, who has leased the said shop to her son for running a restaurant but her son is unable to process his licenses efficiently in the absence of house tax, light and electricity documents in her name. According to the complainant, the respondent has received full consideration amount but has not discharged his reciprocal obligation and hence has prayed this Authority to direct the respondent to provide clear title of the said shop to the complainant by executing the sale deed; to provide a clear occupancy certificate, house tax, electricity connection and meter in the name of the complainant pertaining to the said shop no. 5 A; to direct the respondent to pay compensation and also interest on the sale consideration amount paid as on 12.01.2022.

2. The respondent filed preliminary objection with respect to the instant complaint, stating therein that since the respondent obtained completion certificate pertaining



to the said project on 25.04.2016 i.e. prior to the commencement of RERA Act, the instant complaint is not maintainable as the said project is exempted for registration under Section 3(2)(b) of the RERA Act. It is further stated that the complainant has filed the present complaint as a counterblast as the respondent has filed a suit for permanent injunction under Section 37(2) of the Specific Relief Act before the Civil Judge Junior Division at Vasco under RCS no. 19/2022 which is still pending and wherein a contempt application is also filed. The respondent has stated that the complainant with malafide intention has concealed the fact that the project was already completed as on the date of the application of the RERA Act and falsely alleged that the respondent has not done the registration of the project. Thus, it is the case of the respondent that the said project was completed and completion certificate was received on 25.04.2016, before the RERA Act came into force and hence the instant complaint is not maintainable and this Authority lacks jurisdiction to entertain and decide the same.

3. Documents were filed by the parties. Arguments were heard from Ld. Advocate E. Mendes for the complainant and Ld. Advocate Meghna Kamat for the respondent. The only point of determination at this stage is whether the instant complaint is legally maintainable before this Authority and the answer to the same is in the negative because of the reasons stated below:-



REASONS

4. The complainant entered into an agreement for sale dated 13.01.2022 with respondent in respect of shop no. 5A admeasuring 157 sq. mtrs. situated on the ground floor of the commercial building block in the complex known as “Umiya Quatro”, plot D along with undivided share in the land situated at Dabolim, Goa. The respondent has produced on record the completion certificate dated 25.04.2016 issued by Mormugao Planning and Development Authority, Vasco and the perusal of the said completion certificate shows that it inter alia pertains to 26 shops on ground floor in the said commercial block. Thus, there cannot be any dispute over the fact that the relevant commercial block of the ground floor of the aforesaid project got the completion certificate on 25.04.2016.
5. In the case of **“Macrotech Developers Limited vs. State of Maharashtra and others”** in writ petition no. 1118 of 2021, the **Hon’ble Bombay High Court by judgment pronounced on 01.03.2021** stated as follows:-

“7. On 1st May 2017, the relevant provisions of the Act came into force. Under Section 3 of the Act, the promoters were required to register their ongoing projects with the concerned Authority (in the present case, MahaRERA) within three months from the date on which the provisions of the Act came into force on **1st May 2017** (i.e.

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by 31st July 2017). It is to be noted that the 2016 Act received the presidential assent on 25th March 2016.

8.**The Rule 4(1) of the Registration Rules clarifies that the three months window for mandatory registration for each such phase of the project shall commence from 1st May 2017 i.e. when Section 3 was brought into force.**”(emphasis supplied)

6. In the instant case the completion certificate was obtained on 25.04.2016 i.e. much before 1st May 2017. Hence, as per Section 3 of the RERA Act the instant project does not require registration under the RERA Act and does not come within the purview of the RERA Act. In this regard, it is necessary to reproduce hereunder Section 3 of the RERA Act:-

“3. Prior registration of real estate project with Real Estate Regulatory Authority.-

(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons 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, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for

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registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of 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:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.



Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

7. In the case of “**Macrotech Developers Limited vs. the State of Maharashtra and others**” (*supra*) the Hon’ble Bombay High Court held as follows:-

“55. Thus, from the plain language of Section 3(1) it is clear that registration must be in respect of any Real Estate Project or **part of it**. The window of three months in the first proviso of Section (3) (1) makes it clear that in so far as ongoing projects are concerned, the promoter has been given the said window of three months within which he can apply for registration of the said ongoing project. The ongoing project would be a real estate project and/ **or a phase of the project** which would require registration under the three months window after the commencement of Section 3 of the Act i.e. **1st May 2017**. Section 3(2)(b) would apply only to completed projects that have received the completion certificate before the commencement of the Act and thus entitled to exemption from registration. Thus, there is a clear distinction between the projects ‘that are ongoing projects’ and ‘projects which have received completion certificate before commencement of the Act’” (emphasis supplied).



8. Even in the case of “M/s Newtech Promoters and Developers Pvt. Ltd. vs State of UP and others” in civil appeal nos. 6745-6749 of 2021 arising out of SLP (civil) nos. 3711-3715 of 2021, the Hon’ble Supreme Court in judgment dated 11.11.2021 held that “Looking to the scheme of the Act 2016 and Section 3 in particular of which a detailed discussion has been made, all “ongoing projects” that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act”. The Hon’ble Supreme Court held that “the ambit of the Act is to bring all projects under its fold, provided that completion certificate has not been issued.....and, therefore, the intent of the Act hinges on whether or not a project has received a completion certificate on the date of commencement of the Act”. The following observation of the Hon’ble Supreme Court are worth reproducing herunder:-

“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”

9. In the instant case therefore since the completion certificate was obtained on 25.04.2016, the said project/ part of the project does not come within the purview of the RERA Act.

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10. The Ld. Advocate for the complainant has submitted that all the phases and/ or the entire project was not completed before the commencement of the RERA Act and even if the relevant phase of the said project in which the shop of the complainant is situated received completion certificate before the commencement of the Act, the project comes within the purview of the RERA Act. There is no merit in the aforesaid submission of the Ld. Advocate for the complainant since the same submission was made in the case of “**Macrotech Developers Limited vs. State of Maharashtra and others**”(supra) and the said submission was rejected by the Hon’ble Bombay High Court with the following observations:-

“56. Under Rule 4(1) the promoter of the ongoing Real Estate Project, where all building as per sanctioned plan have not received occupancy certificate or completion certificate, as the case may be, prior to the commencement of the Act as provided by sub-section 2(b) of Section 3 is required to submit an application for registration for each such phase of the project within a period of three months from the date of commencement certificate of Section 3. Thus, the words ‘each such phase of the project’ would include a **building or part thereof** i.e. number of floors in a multi-storey building/ wing. **This cannot be given a restricted meaning as “entire building” as**



sought to be contended by the Learned counsel for the Respondents/ Complainants.

57.According to the Learned Counsel for the respondents/ complainants, the Explanation to Rule 4 (1) makes it clear that for ongoing projects ‘the entire building’ would require registration and not part of the building. However, this interpretation would be contrary to the plain language of Rule 4 of the Registration Rules read with the Explanation to Rule 4(1). It is apparent therefrom that the phase of the project means the building or buildings in a project in respect of which the occupancy or completion certificate has not been received. It is clear from the definition of building under the Act that **it includes any structure or erection or part of a structure or erection** which is intended to be used for the purpose of any business occupation, profession or trade or for any other related purpose. Thus the word ‘building’ in Rule 4(1) and in the Explanation thereof has to be read in conformity with the definition of building under the Act. **This includes a part of a building.”** (emphasis supplied)

11. Hence, in view of the aforesaid discussion, the preliminary objection of the respondent to the effect that the present complaint is not legally maintainable since the project was completed and the completion certificate was received on

25.04.2016 i.e. before the commencement of the Act is upheld and accordingly the instant complaint is dismissed for want of jurisdiction.

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(Vijaya D. Pol)
Member, Goa RERA