



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(354)/2023 | 957

Date: 28/09/2023

Sujoy Arun Das,
B 8 Dreamwoods, Pateapur,
Nuvem, Margao, Goa, 403601.

.....Complainant

Versus

Santa Fe Realty,
Santa Fe Realty, Dreamwoods Office,
Pateapur, Nuvem, Margao,
Goa- 403601.

.....Respondent

ORDER **(Dated 28.09.2023)**

This order disposes of the complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act'), wherein the complainant has stated that he along with his wife is the owner of Bungalow no. B8 in the building 'DREAMWOODS' situated at Village Nuvem, Salcete Taluka, South Goa constructed by the respondent and that he had purchased the said villa with the proportionate share of land. It is stated therein by the complainant as follows:-

“The builder has started the phase 2 of the project with villas and bungalows being built in the remaining area of the

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complex. The new project has the same access road and gate, uses the same internal road and the same club house, gym etc. as well as the open spaces. RERA approval has been taken for the new project phase 2 but we the owners of phase one are not covered under RERA and the builder just recently sold a villa in the old project bypassing RERA. As per recent Madras High Court judgement even old projects which have been extended with new phases should come under RERA.”

Hence, the complainant has prayed this Authority that “the entire project to be RERA approved so as to enable us to avail of the benefits and the advantages of the RERA Act.” In support of the aforesaid complaint, the complainant produced on record the sale deed dated 29.11.2013 which was registered on 06.12.2013.

2. Reply has been filed by the respondent wherein it is stated that the complaint is not legally maintainable in terms of the provisions of the RERA Act since the project which is granted occupancy certificate issued by the competent authority prior to the coming into force of the RERA Act, is not required to be registered and as such the villa purchased and occupied by the complainant being complete in all aspect does not come within the purview of the RERA Act. It is stated that since the occupancy certificate of the project in which the villa is purchased by the complainant is dated 03.08.2013, the complaint is not legally maintainable.



3. According to the respondent, a distinct villa premises in the said project of the respondent was sold to the complainant by sale deed dated 29.11.2013 and registered on 16.12.2013. In this regard the respondent referred to para 17 of the said sale deed wherein it is stated that “The purchaser under an agreement dated 05.04.2011 executed with the vendor agreed to purchase the “villa” having super built up area of 199.46 sq. mtrs. together with an area of 246.94 sq. mtrs. of land underneath and around the said villa, as shown in the plan annexed hereto in blue colour which villa and land underneath and around is better described in schedule (V) hereinunder and hereinafter referred to as “the said area” forming part of the said plot being “plot X” on the terms and conditions stipulated in the said agreement which agreement is hereinafter referred to as “the original agreement” at a total price of Rs.60,00,000/- (Rupees Sixty Lakhs only) which also represents its market value.”
4. The respondent has stated that the complainant has no right of whatsoever nature in the remaining portion of the property except in respect of the said villa along with the said area of 246.94 sq. mtrs. land underneath and around the said villa which is conveyed to the complainant by the respondent. According to the respondent, the common amenities i.e. “the admin Block –D and the Club House” in the said property is the exclusive property of the respondent and the purchaser is merely permitted by the respondent to use the said facilities in accordance with the rules and regulations formed by the respondent. It is also

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stated that the complainant by no stretch of imagination is entitled to claim any right concerning the property of the respondent and/ or the proprietary right of the respondent to undertake developmental works in terms of law. Thus, according to the respondent, the complainant has no right of whatsoever nature in the plot and/ or the property of the respondent except to the extent of the villa as enumerated in the deed of sale dated 29.11.2013.

5. The respondent has stated that the respondent is the lawful owner of the remaining property and is entitled to undertake the development activities in terms of law and accordingly has taken all the requisite approvals/ permissions from the competent authorities and the new project of the respondent is registered in RERA. It is further stated that the Madras High Court judgment on which reliance is placed by the complainant is not attracted in the instant case. Hence, the respondent has prayed this Authority to dismiss the complaint.
6. Affidavits have been filed by both the parties. The complainant has relied upon the sale deed dated 29.11.2013 which was registered on 06.12.2013. Arguments were heard from the complainant, who relied upon the judgment of the Hon'ble Madras High Court dated 16.02.2021 in C.M.S.A no. 27 of 2020 "M/S SARE Shelters project Pvt. Ltd. vs. SARE Squires and other" and from Ld. Advocate S. Sarmalkar for the respondent.
7. After going through the entire records of the case, the point which comes for my determination along with the reasons and finding thereon is as follows:-



Point for determination	Finding
Whether the project 'Dreamwoods' of phase one situated in plot 'X' in survey no. 254/2 B of Village Nuvem, South Goa in which the complainant's villa bearing no. B 8 is situated requires registration under the RERA Act and comes within the purview of the RERA Act?	In the negative.

REASONS

8. As admitted by the complainant, the aforesaid project 'Dreamwoods' of phase one in which the complainant's villa bearing no. B 8 is situated was completed before coming into force of the RERA Act. Sale deed dated 29.11.2013 was executed between the complainant and the respondent and the same was registered on 06.12.2013 and since then the complainant is the owner in possession of the said villa bearing no. B 8 admeasuring 199.46 sq. mtrs. in super built area along with an area of 246.94 sq. mtrs. of land underneath and around the said villa , as per schedule V of the said sale deed.
9. Since, the aforesaid project/ complex "Dreamwoods' in which the complainant's villa is situated was complete in all respect and the villa bearing no. B 8 in the said complex was sold to the complainant prior to coming into force of the RERA Act, the said project did not require registration and even till

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this date does not require registration as per **Section 3** of the RERA Act, the relevant portion of which is reproduced hereunder for ready reference:-

“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 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.”

10. From the aforesaid Section 3 it is clear that where the promoter has received completion certificate for a real estate project prior to commencement of the RERA Act, the said project does not require registration under the RERA Act. Even the Hon'ble Supreme Court in the case of **“M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others” in Civil appeal no(s). 6745-6749 of 2021 arising out of SLP (civil) no(s) 3711-3715 of 2021** stated that the

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RERA Act was enacted in the year 2016 “with effect from 25th March 2016” and that under Section 3(1) of the RERA Act, it was mandated that such of the projects which are ongoing on the date of the commencement of the Act and more specifically the projects to which the completion certificate has not been issued, such promoters shall be under obligation to make an application to the Authority for registration of the said project within a period of three months from the date of commencement of the Act, with certain exemptions being granted to such of the projects which are covered by sub section (2) of Section 3 of the RERA Act.

11. **Section 3(2)(b)** specifically excludes the projects where completion certificate has been received prior to the commencement of the RERA Act and hence as pointed out in the aforesaid judgment of the Hon’ble Supreme Court, “the intent of the Act hinges on whether or not a project has received a completion certificate on the date of the commencement of the Act”. The Hon’ble Supreme Court observed that the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the RERA Act. The following observations of the Hon’ble Supreme Court in the aforesaid case of “M/s Newtech Promoters and Developers Pvt. Ltd.” are worth reproducing hereunder:-

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“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.”

12. The aforesaid ruling of the Hon’ble Supreme Court is significant as the ratio therein is squarely attracted in the instant complaint. In the instant case not only the project ‘Dreamwoods’ in phase one is already completed and completion certificate already granted and even occupancy certificate dated 22.11.2011 issued by the Village Panchayat of Nuvem but also the villas therein are sold by the respondent including the villa bearing no. B 8 to the complainant herein way back in the year 2013 by executing a sale deed dated 29.11.2013 which was duly registered before the Sub Registrar on 06.12.2013 and since then the complainant has been the owner in possession of the same. As stated by the Hon’ble Supreme Court such aforesaid project does not come within the purview of the RERA Act and therefore, “vested or accrued rights, if any, in no manner are affected”.

13. It is material to note that phase 2 of the said project is registered under the RERA Act. In his affidavit, the complainant has stated his grievance inter alia as follows:-

“2. The builder started the new phase of the same project using the same access road, the same entry and exit gates, the same

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internal road, club house gym, pool as well as the open spaces which are presently being used by us. The common amenities that is the admin block, the club house, the pool, gardens, the office belongs to the builder as he has not transferred the same to the society or to their present resident owners Dreamwoods.”

14. Regarding the aforesaid grievance of the complainant, the terms and conditions mentioned in the aforesaid sale deed dated 29.11.2013 are relevant and significant. From the sale deed it is clear that the property bearing survey no. 254/2-B of Village Nuvem, South Goa has been divided into two portions i.e. plot ‘X’ and plot ‘Y’ as shown in the plan annexed thereto and that the project ‘Dreamwoods’ in which the complainant’s villa bearing no. B 8 is situated is in plot ‘X’.
15. As per the said sale deed, what is sold to the complainant as per schedule V is as follows:-

“All the villa bearing no. B 8 admeasuring 199.46 sq. mtrs. in super built area along with an area of 246.94 sq. mtrs. land underneath and around the said villa, which villa and land area forms an integral part of the complex under the name and style of ‘Dreamwoods’ constructed on the property better described in schedule III hereinabove and which villa and land area are for better understanding and identification marked in blue in the plan annexed hereto.”

16. It is specifically mentioned in the said sale deed that the aforesaid project ‘Dreamwoods’ is restricted to the area of plot ‘X’ and the complainant shall not



have any right to the remaining part of the said property/ other plot 'Y'. In this regard it is relevant to reproduce hereunder recital (A) of the sale deed on page 13 thereof:-

“That the said project is restricted to the area of plot 'X' as described in the schedule (III) hereunder written and does not extend beyond the same and the purchasers shall not have or claim any rights to the remaining part of the said property as described in the schedule (II) which is and shall always belong and be owned by the vendor or his nominees exclusively and absolutely and the vendor or his nominees shall as such as exclusive owners be entitled to develop the said other plot-'Y' of the said property and to sell, transfer, assign or mortgage or the developments thereof as an independent and separate property or project and the purchaser has no objection to the same”

17. In recital (I) on page 17 of the sale deed, it is mentioned as follows:-

“The common amenities “the Adm. Block D and Club House Block” in the said plot shall remain the exclusive property of the vendor and though the purchaser may be allowed user thereof in accordance with the Rules and Regulations formed with respect thereof by the vendor or its successors in title, the purchaser shall at no time be entitled to claim any right of whatsoever nature thereto.”

18. In recitals (V) and (W) on page 20 and 21 of the sale deed, it is mentioned as follows:-



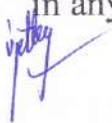
“(V) It is expressly agreed and understood that except for the said villa agreed to be sold to the purchasers and the area underneath and around as herein provided, the purchasers shall not be entitled to have or claim any rights to or interests in any area/s in any of the other buildings or the said plot except the right to the user of common amenities. It is also agreed and understood that the said villa and the said area shall be a part of a Group Housing Scheme, limited to the said plot ‘X’ as described in schedule (III) and shall not extend beyond the same.

(W) That a right of access of 6 mts width is reserved through the said plot ‘X’ to the Plot ‘Y’ and to the neighbouring land bearing Plot NO. A-1 which is surveyed under No. 254/3C which access is also shown on plan annexed hereto with yellow coloured lines and the Purchasers have given consent for the same and shall at no time raise any dispute about the same or obstruct the same in any manner. The vendor shall be entitled to amalgamate any neighbouring land/s with the said plot if so deemed proper by the vendor and design a joint project on such amalgamated land or even otherwise have or agree for a joint/ common water and electricity supply system with the neighbouring plot/s identified as plot ‘Y’ and/ or the other plot A-1 and the purchasers shall not be entitled to raise any objections thereto.”

19. From the aforesaid recitals and other recitals/ terms and conditions of the sale deed dated 29.11.2013 it is clear that the complainant by virtue of the aforesaid sale deed has become the owner in possession of the villa bearing no. B 8



admeasuring 199.46 sq. mtrs. in super built area along with an area of 246.94 sq. mtrs. of land underneath and around the said villa, which villa and land area forms an integral part of the complex by name 'Dreamwoods' constructed on the plot 'X' which forms the part of the property bearing survey no. 254/ 2B of Village Nuvem, South Goa; that the said project is restricted to the area of plot 'X' as described in schedule (III) of the said sale deed and does not extend beyond the said plot 'X'; that the complainant does not have or can not claim any rights to the remaining part of the property described in the schedule (II) which remaining part is and shall always belong and be owned by the respondent/ his nominees who are/ shall be exclusive owners and hence entitled to develop the other/ remaining plot 'Y'; that the remaining plot 'Y' is an independent and separate property/ project; that the common amenities like "the admin Block-D and Club House Block" in the said property are in the exclusive ownership and possession of the respondent, **"though the purchaser may be allowed user thereof in accordance with the Rules and Regulations formed with respect thereof by the vendor or its successors in title and the purchaser shall at no time be entitled to claim any right of whatsoever nature thereto"** (emphasis supplied). Thus, as per the said sale deed except for the said villa B 8 and the area underneath and around as provided therein, the complainant is not entitled to have or claim any right to or interest in any area/s in any of the other buildings or the remaining plot except the right to the user of



the common amenities. Hence, the right to use the common amenities is already provided under the said sale deed dated 29.11.2013.

20. In this regard, it is also relevant to refer to the “DREAMWOODS MAINTENANCE SCHEME MEMBERSHIP AGREEMENT” dated 26.11.2013 executed between the complainant and the respondent wherein the devised scheme for maintenance and management of the common holdings, amenities and other common matters relating to the said residential resort is mentioned. In the said agreement also it is specifically mentioned as follows:-

“It is clearly agreed and understood that the ownership of all the amenities and all other open spaces or common area/s in the entire residential resort shall always and perpetually said vested in the Developer.

However, all the villa owners shall be entitled to user and have perpetual user rights to all of these common amenities at all times subject strictly however to the restrictions, rules and regulations and on payment of prescribed fees as may be framed or in vogue and in force at a particular time with respect thereto.”

21. In the premises aforesaid, it is clear that the project ‘Dreamwoods’ in which the villa of the complainant is situated is exempted from registration under the RERA Act and consequently this Authority has no jurisdiction to direct the respondent in any manner as prayed by the complainant. The Ld. Advocate for the complainant has relied upon the case of “**M/s SARE Shelters project Pvt.**



Ltd.” (supra) wherein the Hon’ble Madras High Court dealt with a case where the completion certificate granted to the project was held invalid by the Hon’ble High Court since the certificate issued therein was without conducting a proper inspection and since there was no substantial completion of the project like providing of approach road, water facilities, including drainage etc. In such circumstances the Hon’ble High Court held that in view of the fact that the completion certificate issued in the said case by the Executive Officer, Town Panchayat is not in consonance either with the provisions of the Town and Country Planning Act as well as the building plan approval sanctioned by the Director of Town and Country Planning or in accordance with the provision of the RERA Act, the same cannot be construed as a valid certificate for the purpose of grant of exclusion under Section 3(2)(b) of the RERA Act and therefore the said completion certificate was construed as insignificant and irrelevant under the RERA Act and the project was treated as ongoing project.

22. The aforesaid ruling is not attracted in the instant case since the project in question in the instant complaint is already completed, occupancy certificate received and the villa B 8 is even sold to the complainant prior to coming into force of the RERA Act and hence the project ‘Dreamwoods’ is exempted from registration under Section 3(2) (b) of the RERA Act and accordingly the instant complaint does not come within the purview of the RERA Act and consequently



this Authority has no jurisdiction to give any directions to the respondent as prayed in the complaint.

In view of the aforesaid, the instant point is answered in the negative and accordingly the instant complaint is dismissed.

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(Vijaya D. Pol)
Member, Goa RERA