



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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F.No:3/RERA/Complaint(45)/2018/478

Date: 17/09/2021

Tridib R. Dasgupta,
c/o Adv. Neelesh A. Manerkar,
G-6 Pinto Chambers,
Menezes Braganza Road
Panaji-Goa, 403001

..... **Complainant**

V/S

**Niche Developers Goa/ Divine Realtors
and Developers /Niche Construction**
F-3, First floor, Sacred World
Above KFC and McDonald's
Jagtap Chowk
Wanawadi, Pune 411040.

..... **Respondent**

ORDER

Dated: 17/09/2021

- 1) Online complaint was filed by Tridib R. Dasgupta against the respondent/ promoter M/s Niche Developers, Goa in respect of the project "Sky Waters" in Jairam Nagar, Dabolim and in the said complaint it is stated that the said project till 10-12-2019 did not receive occupancy certificate nor NOC from Health Department or Directorate of Fire Emergency Services and the respondent/ promoter has not registered the said project with Goa RERA. The relief prayed in the said complaint is to enforce the registration of the said project and "initiate action".
- 2) In the reply the respondent submitted that The Real Estate (Regulation and Development) Act, 2016 is not applicable to the said project since the Completion Certificate relating to the said project is dated 03/05/2018, whereas Goa RERA is applicable to the projects which came to be saleable from November 2018. It is further submitted by the respondent that the dispute between the complainant and the respondent is pending before the Consumer Forum and hence deciding the present complaint will amount to double jeopardy.

- 3) Written submissions have been filed by both the Parties. Oral arguments have also been heard. After going through the entire record of the case, the point which comes for my determination along with the reasons and finding thereon is as follows:-

Point of determination	Findings
Whether the respondent has violated section 3 of The Real Estate (Regulation and Development) Act, 2016 read with Rule 4 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate agents, Rates of Interest and Disclosures on website Rules, 2017)	In the affirmative

Reasons

- 4) At the outset, Section 3 of The Real Estate (Regulation and Development), Act, 2016 (hereinafter referred to as RERA Act) is reproduced herein below:-

“3. (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.”

- 5) The complainant has requested this Authority to direct the respondent to register the project with this Authority and to impose Penalty for non-registration. According to the Ld-Advocate for the Complainant, 1st October 2018 was the final deadline fixed for registration of such ongoing projects in Goa but the respondent received Occupancy Certificate dated 21/05/2019 for “Sky Waters” project i.e. more than 07 months after the aforesaid deadline set for registration. The Ld-Advocate for the complainant referred to Rule 4 of The Goa Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017 (which shall hereinafter be referred to as the 'Goa RERA Rules') and argued that under the said Rule 4, it is made clear that the term 'Completion Certificate' means such Certificate, by whatever name called,

which is issued by the Competent Authority under the provisions of the Goa Land Development and Building Construction Regulations 2010 or any other law for the time being in force, after the Completion of real estate project.

- 6) The Ld-Advocate for the Complainant read Section 3.11 of The Goa Land Development and Building Construction Regulations, 2010, which is reproduced hereinbelow for ready reference:-

“ Section 3.11 - Occupancy Certificate – (a) No building hereafter erected, re-erected or altered materially, shall be occupied in whole or in part, until the issue of completion order by planning and Development Authority (PDA) in whole or in part, as per Appendix – C5 or completion order by Town and Country Planning Department (TCP) in whole or in part, as well as an occupancy certificate by the Municipal Council in whole or in part, as per Appendix – C7 or by the Village Panchayat in whole or in part, as per Appendix – C8, after making such scrutiny, site inspection and affirming that such a building conforms in all respects the requirements of these Regulations and as per the approved plans and any conditions laid down by the PDA/ Council/ Village Panchayat on the Development Permission/ Building Permit.

- (b) clearance from Directorate of Fire and Emergency Services before issue of occupancy certificate shall be required for High Rise Buildings.”

- 7) The Ld. Advocate for the complainant has argued that Registration with RERA is not required if on the date of commencement of the RERA Act, Completion Order and Occupancy Certificate as well as a clearance from Directorate of Fire and Emergency Services are obtained in case of High Rise Buildings and that mere receiving of Completion Certificate before the cut-off date is not enough. On the other hand, the Ld Advocate for the respondent submitted that what is required under Section 3 of RERA Act to escape the liability of registration is interalia the receipt of only Completion Certificate by the promoter for the real estate project prior to the commencement of the Act and that Occupancy Certificate and other certificate/ clearance certificate are immaterial.

8) Persual of Section 3 of RERA Act makes it clear that only those projects that are ongoing on the date of commencement of the Act and for which the **Completion Certificate** has not been issued, are required to be registered. Sub-Section (2)(b) of Section 3 of the Act states interalia that no registration of the real estate project shall be required “where the promoter has received **Completion Certificate** for a real estate project prior to the commencement of this Act”. Explanation to Rule 4 of The Goa Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interests and Disclosures on website) Rules, 2017 states that the term “**Completion Certificate**” means such certificate, by whatever name called, which is issued by the Competent authority under the provisions of the Goa Land Development and Building Construction Regulations 2010 or any other law for the time being inforce, after completion of real estate project.

Thus, one of the requirements to escape the liability of registration of the project is the receipt of the Completion Certificate as envisaged in first proviso to sub-section(1) of Section 3 of the Act.

The requirement of Occupancy Certificate or other clearance from the Directorate of Fire and Emergency Services is not envisaged in RERA Act or its Goa Rules in respect of registration of the project.

Section 3.11 of the Goa Land Development and Buildings Construction Regulations 2010 talks about the Occupancy Certificate and states that no building shall be occupied until the issue of Completion Order as well as Occupancy Certificate and in case of High Rise Buildings, a clearance from Directorate of Fire and Emergency Services before issue of Occupancy Certificate.

However, Completion Certificate which is the first step is different from the Occupancy Certificate which is the next step for the builder. As stated above, the RERA Act and its Rules makes mandatory to obtain Completion Certificate before its commencement to escape registration and not the Occupancy Certificate. Thus, there is no merit in the argument of the Ld Advocate for the complainant that for the builder even occupancy certificate is required before the commencement of the Act to escape registration of the project.

- 9) The Ld. Advocate for the complainant further argued that though the complainant states that he has received the completion certificate, yet the work is not completed and to show that work has not been completed, produced on record various photographs.

However, this Authority is not the forum to challenge the Completion Certificate issued by Statutory Authority. The Ld. Advocate for the complainant is at liberty to challenge the Completion Certificate before the proper Forum. This Authority has no power to lift the veil of the Completion Certificate issued by the Statutory Authority and to set it aside or to declare it as invalid or illegal.

- 10) **Thus, the only issue which remains to be decided by this Authority is whether the Completion Certificate was obtained by the respondent within the deadline set by Rule 4 of Goa Rules 2017.**

Rule 4 states that “The promoter of an ongoing real estate project, for which Completion Certificate as provided by first proviso to sub-section (1) of Section 3 has not been received shall submit application for registration of such project **not later than three months from the commencement of these Rule.**”(emphasis supplied). The Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017 came into effect in Goa on 24-11-2017 and hence as per Rule 4 the deadline for registration of ongoing real estate project for which Completion Certificate was not issued was three months from 24-11-2017 i.e 24-02-2018. It is a fact admitted by the respondent that the respondent did not have the Completion Certificate on or before 24-02-2018. The Government of Goa extended the deadline for registration of the project without paying any penalty before 23rd March 2018. The respondent failed to register the project before 23rd March 2018 though the respondent did not have the Completion Certificate till that date as the Completion Certificate was issued by Mormugao Planning and Development Authority on 03/05/2018. Thereafter the Government of Goa kept on extending the dates for registration of the projects with penalty i.e. from 24/03/2018 to 31/03/2018 with penalty of Rs. 50,000/-; from 01/04/2018 to 30/04/2018 with penalty of Rs. One lakh; from 01/05/2018 to

01/07/2018 with penalty of Rs. Two lakhs and from 02/07/2018 to 01/10/2018 with penalty of Rs. Three lakhs. The deadline/ last date of registration without penalty was before 23/03/2018 which deadline was not respected/ complied with by the respondent though he did not have the Completion Certificate till 23/03/2018. After 23/03/2018, the Government of Goa started imposing penalties till different deadlines for the builders/ promoters who violated Section 3 of RERA Act read with Rule 4 of The Goa Rules 2017. The respondent though did not have the Completion Certificate before 23/03/2018 did not get his project registered and hence violated the aforesaid provisions of RERA Act/Rules 2017 and is therefore liable for penalty under Section 59 of RERA Act.

11) Sub Section (1) of Section 59 of RERA Act states that

“ if any promoter contravenes the provisions of Section 3, he shall be liable to a penalty which may extend upto ten percent of the estimated cost of the real estate project as determined by the Authority.”

The estimated cost of the project is not available on record.

12) The Ld. Advocate for the respondent has prayed the court to take a lenient view in this case as the respondent was guided by other Advocate, whose legal opinion is placed on record to the effect that this project does not require registration. It is well settled that wrong opinion or ignorance of law is no excuse in the eyes of law and hence not a ground for leniency. The ruling of the Hon'ble Bombay High Court in Writ Petition No. 1118 of 2021 “Macrotech Developers Ltd. Vs The State of Maharashtra” relied upon by the Ld. Advocate for the respondent is not attracted in the instant case. Further, the argument of the Ld. Advocate for the respondent that since the project has received Completion Certificate, the same does not require registration is not legally tenable. Further even if any case is pending before the Consumer Forum Court between instant parties, the issue of non-registration of project, the penalty to be imposed and the direction to get the project registered can be dealt with / given only by this Authority.

13) From the aforesaid it is clear that the respondent has not till date registered the said project which had not received the Completion Certificate till 23rd March 2018 and was an “ongoing project” in the eyes of law requiring registration. Thus, the respondent violated Section 3 of RERA Act read with Rule 4 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017. The respondent did not pay the penalty of Rs. 50,000/- and get his project registered before 31/03/2018; did not pay the penalty of Rs One lakh and get his project registered before 30/04/2018; did not pay the penalty of Rs two lakhs and get his project registered before 01/07/2018 and thereafter did not pay the penalty of Rs. Three lakhs and get his project registered before 01/10/2018 – all the above dates being the dates of registration with different penalty amount. The deadline for registration of the ongoing project not received Completion Certificate was 23rd March 2018 which was not availed by the respondent. Hence, Section 59 of RERA Act is attracted in this case, the sub-Section (1) of which states that if any promoter contravenes the provisions of Section 3, he shall be liable to a penalty which may extend up to ten percent of the estimated cost of the real estate project as determined by the Authority. The estimated cost of the project is not available on record as none of the parties filed CA’s report regarding estimated cost of the project and hence notional penalty has to be fixed taking into consideration penalties provided for different dates of registration as enumerated above and hence Rs Five lakhs would be the reasonable penalty under Section 59 of the Act.

14) In view of the aforesaid, the respondent is hereby ordered to deposit in this Authority a penalty of Rs Five lakhs for non-registration of the project “Sky Waters” in village Dabolim, Taluka Mormugao, Goa within two months of passing of this Order and to get the said project registered with this Authority within two months of passing of this Order, failing which further legal action will be initiated against the respondent as per RERA Act/ Rules.

Vijeta
17/9/2021
(Vijaya D. Pol)
Member, Goa RERA