



GOA REAL ESTATE REGULATORY AUTHORITY

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Case No. 3/RERA/Complaint (368)/2023 | 832

Date: 11/06/2024

1. **Mr. Rajendra R. Shirodkar**
2. **Mrs. Sangeeta R. Shirodkar**
H.No. 105/c, Xell Bastora,
Bardez, Goa-403507

..... Complainant(S)

Versus

M/s Prabhu Constructions,
Mr. Venkatesh Narayan Prabhu Moni,
Villa No. G-4, la Ocean Mist,
Near Amar Hotel, Dona Paula,
Goa-403004

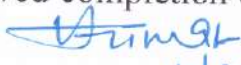
..... Respondent

ORDER **(Dated 11.06.2024)**

This order disposes the application dated 01.02.2024 filed by the respondent M/s Prabhu Constructions, Mr. Venkatesh Narayan Prabhu Moni, Villa No. G-4, la Ocean Mist, Near Amar Hotel, Dona Paula, Goa-403004 in case No. 3/RERA/Complaint (368)/2023, praying dismissal of the instant complaint on the ground of non-maintainability. The Respondent Applicant has stated that since the project in which the complainant executed an agreement for sale in respect of the subject premises has still not been registered under the Real Estate (Regulation and Development) Act, 2016, neither the Complainant can be treated as allottee nor the Respondent as the Promoter within the

meaning of the said Act and as such the complaint filed by the Complainant is not maintainable at law. It was further stated that as the Complainant has got the possession of the subject premises after obtaining occupancy certificate and as such the Complainant becomes the exclusive owner of the subject premises and also the very fact that the Complainant has got the possession of the subject premises without mentioning any defect or deficiencies otherwise by any kind of document or letter to the Respondent, it is not open for the Complainant to make any demand u/s 13, 18 or Section 71 or for that matter under any provisions of the Real Estate (Regulation and Development) Act, 2016 (the Act). The Applicant Respondent has further pointed out that the agreement for sale relied upon in the instant case by the Complainant, has not been registered in accordance with the Act or the 2017 rules framed by the State of Goa under the said Act and also denied each and every content of the online complaint as well as supplementary complaint. Respondent Applicant while praying for dismissal of the complaint, has further submitted that in the event his prayer for dismissal of the complaint is not allowed, then the Respondent be given opportunity to file his detailed reply to the complaint.

2. In response, the complainant submits that the present application moved by the Respondent is baseless and made with an intention to delay the proceedings. Also that the complaint filed by the Complainant before the Authority is very much maintainable in terms of the provisions of the Act as the Builder has not received completion certificate prior to the Act coming into force. Accordingly,

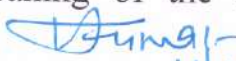

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the Promoter is compulsorily required to register the said project in terms of the Real Estate (Regulation and Development) Act, 2016, and the ground raised by the Respondent in this regards is totally absured and he cannot take the said defence. The Complainant has also submitted that Mapusa Municipal Council has not granted Occupancy Certificate to the subject project and also, till date the Complainants have not received possession of the subject premises from the developer. It was further stated that the agreement which is relied by the Complainants in their complaint before this Authority is duly registered before the Sub Registrar Office of Bardez between the developer and the Complainants and thus is a valid and binding document on the parties thereto.

3. The Complainant further to his reply to the application also placed copies of the Order dated 17.03.2020 pertaining to application for registration of the project to which the complaint relates to and levy of penalty on the promoter in this regard in file no 3/RERA/Completed Proj. (533)/2019/268 dated 18.03.2020. Besides, copies of order dated 17.03.2022 in file no. 3/RERA/ Complaint (Comb. Prabhu Chambers)/2019/186 dated 17.03.2022 and Order of The Principal District Judge, North Goa, Panaji in Execution Application No. 283/2022, GANG010022792022 have also been placed on record.
4. During the course of the oral arguments, Applicant Respondent reiterated his contentions made in the application for dismissal of the instant complaint. It was further submitted that in case Authority is of the view that case falls under its jurisdiction, suppression of facts and also the delay in making the complaint

before the Authority besides non-availing of arbitration clause available in the agreement would also constitute relevant considerations. The respondent also submitted that this Authority has dismissed complaints in two other such complaints but did not provide any details as to the similarity of factual matrix of the instant complaint with those 02 cases. In response the complainant reiterated the contentions made by him in reply to the application moved by the Respondent and also stated that the dismissed complaint cases referred by the Respondent differed with the instant complaint in as much as sale deed was executed in those cases and in the instant case sale deed is yet to be executed. He also pointed out that occupancy certificate is yet to be issued for project for which he has placed the copy of order of the Principal District Judge, North Goa, Panaji on record. He also referred to clause 3 of the agreement for construction cum sale dated 08.04.2013.

5. I have gone through the application for dismissal of the instant complaint moved by the Respondent, reply and documents filed by the complainant as well as have heard the oral arguments made by both the parties.
6. It is evident that the essential argument made by Applicant Respondent as to non-maintainability of the instant complaint before the Authority is that the project under construction has still not been registered under the Real Estate (Regulation and Development) Act, 2016 and thereby neither the complainant can be treated as allottee nor the Respondent becomes the promoter with the meaning of the said Act. With regard to the other issue raised by the


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Respondent i.e. suppression of facts and also the delay in making the complaint before the Authority besides non-availing of arbitration clause available in the agreement, it is observed that the Respondent besides making oral submission has not placed any documents on record to support his contentions and in any case would require further consideration once the issue of maintainability of this application is decided.

7. The said argument of the Applicant Respondent has been vehemently opposed by the complainant stating that since the builder was not issued completion certificate prior to the Act coming into force, the project is compulsorily required to be registered under the Real Estate (Regulation and Development) Act, 2016. In support the Respondent also placed the documents referred to hereinabove on record.
8. The legal position on the issue involved was clarified by their Lordship of the High Court of Judicature, at Bombay in SA/209/2022 vide order dated 23rd April, 2024 passed in the case of “Mohammed Zain Khan vs Emnoy Properties India A Limited...on 23.04.2024”. The para 25 and 26 of the said order passed by the Hon’ble High court in the said case reads as follows:-

“25. Thus, failure to register a project amounts to violation or contravention of provisions of the RERA, which act can be punished under Section 59. Therefore, in strict sense, registration of a project is not a pre-condition for maintaining a complaint under section 31 of the REAR. If section 31 of the RERA is read to mean

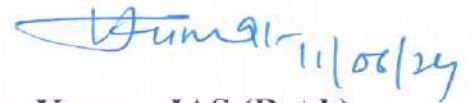
that complaints only in respect of registered projects can be entertained by Regulatory Authority or Adjudicating Officer, this would mean that no action can be taken by Regulatory Authority against a person who contravenes section 3 of the RERA. In fact, contravention of section 3 necessarily takes place in respect of unregistered project. I am therefore of the view that even in respect of unregistered projects, complaint under section 31 of the RERA would be maintainable.

26. Though complaint under section 31 of the RERA can be filed even in respect of unregistered project, the next issue for consideration is whether the same can be filed and entertained in respect of every unregistered project. Section 3 of the RERA applies to a person who markets or sales plot or apartment in respect of real estate projects, which is capable of being registered. The same cannot apply to a project which is incapable of being registered. This is so because when the project itself is incapable of being registered, there is no question of taking action against a person under section 59 of the RERA for non-registration of the project under section 3 of the RERA. Such person obviously would take a defence in proceedings filed for violation of section 3 of the RERA or for imposition of punishment under section 59 of the


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RERA that the project is not liable or capable of being registered which is why the same is not registered.”

9. The project under reference is admittedly not registered so far under the provision of the Real Estate (Regulation and Development) Act, 2016 and this Authority had observed vide its Order dated 17.03.2020 that in this case construction has been started much before 23rd March 2018 and applicant has not obtained Completion Certificate of the project before that. Hence, it comes under preview of Registration under the Act.
10. In view of what has been noted hereinabove, the application moved by the Respondent is hereby dismissed. The case is now fixed for hearing on 02.07.2024 at 12:00 p.m. for further hearing. Pursuant to the request made by the Respondent in the instant application, Respondent is hereby granted an opportunity of filing detailed reply to the complaint on or before the next date of hearing after serving a copy of the same upon complainant.

 11/06/24

Virendra Kumar, IAS (Retd.)
Member, Goa RERA