



GOA REAL ESTATE REGULATORY AUTHORITY
DEPARTMENT OF URBAN DEVELOPMENT
GOVERNMENT OF GOA

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F.No.3/RERA/Complaint(273)/2021/ 548

Date: 28/07/2022

Aditya Pansari,

H wing, Flat No.801,
Greenwoods CHS Ltd,
Chakala, Andheri Kurla Road,
Andheri East, Mumbai Suburban,
Maharashtra-400093.

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Complainant

V/s

Bhaven Parikh,

Company name Diagrams Realty LLP
2nd floor, Golden Bungalow,
Near police station, off link Road, Santa Cruz West,
Mumbai Suburban,
Maharashtra-400055.

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Respondent

ORDER
(Dated 28/07/2022)

This order disposes of the online complaint filed under section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act') in respect of the project La Vida situated at Arpora Village, Goa. In the said complaint, the complainant has referred to the agreement for sale of the year 2014 and stated that inspite of paying the entire amount to the respondent, the respondent has failed to register the sale deed and transfer the house tax in his favour and hence prayed this Authority to order the respondent to register the sale deed in favour of the complainant.

2. In the submissions made by the complainant, the complainant has also prayed the Authority to direct the respondent to allot one car parking in favour of the complainant in the said project, to direct the respondent to give no objection to enable the complainant to change the name in the house tax records before the Village Panchayat Arpora and before the Electricity Department and also to direct the respondent to form an association of the members in respect of the said project. Documents in support of his case have been filed by the complainant.
3. The respondent has filed reply/preliminary objection towards the maintainability of the instant complaint. According to the respondent, the agreement for sale regarding the said project was executed in the year 2014 and the whole project was completed in the year 2014 i.e. before the said Act came into force and hence, this Authority has no jurisdiction to entertain the present complaint.
4. After going through the entire records of the case and after hearing the arguments advanced by Ld. Advocate R. Rivankar for the respondent and the power of attorney holder Shri Shivratn Pansari for the complainant, the point which comes for my determination before going into the merits of the case is **whether the present complaint is legally maintainable.**
5. The complainant has produced on record the completion order dated 13.11.2014 and the occupancy certificate dated 28.11.2014. It is therefore clear that the respondent obtained both completion order as well as occupancy certificate in the year 2014, whereas the said Act came into force on 25.03.2016.



6. At the outset it is worth reproducing hereunder section 3 of the said 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 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.”

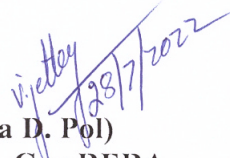
7. It is clear therefore, that the projects that are ongoing on the date of commencement of the said Act and for which the completion certificate has not been issued on the date of commencement of the Act, come within the purview of the said Act and for such projects, registration is required. Thus, no registration of the real estate project is required where the promoter has received completion certificate for the real estate project prior to the commencement of this Act.

8. Even the Hon’ble Supreme Court in the case of “**M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS ETC.**” **CIVIL APPEAL NO(s). 6745-6749 of 2021 arising out of SLP (Civil) No(s). 3711-3715 of 2021** has stated inter alia that the said Act was enacted in the year 2016 with effect from 25.03.2016 and that “Looking to the scheme of 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”. It is further stated by Hon’ble Apex court that, “Therefore, the ambit of Act is to bring all projects under its fold, provided that completion certificate has not been issued.....From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the project 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. Since, in the instant case, the completion order and the occupancy certificate have already been obtained by the respondent in the year 2014 i.e. prior to the commencement of the said Act, the project in question does not come within the purview of the said Act. Since, the instant complaint before this Authority is not legally maintainable, the merits of the case are not taken into consideration.

Because of the reasons stated above, the instant complaint being legally not maintainable is dismissed.


(Vijaya D. Pol)
Member, Goa RERA