



# GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

101, 1<sup>st</sup> Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA

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No.3/RERA/Complaint (300)/2021/494

Date: 23/06/2022

**Selwyn Lobo,**

104 Tudor House,  
Assagao Anjuna Mapusa Road,  
North Goa-403507.

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**Complainant**

v/s

**Sunil Kumar,**

M/s Eclectic Developers Pvt. Ltd.,  
Survey No. 108/3A-Part,  
Near Mataji Mandir (Hostel)  
Tembewada, Canacona  
South Goa-403702.

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**Respondent**

## ORDER

(Dated 23/06/2022)

This is to dispose of the complaint received on 17/03/2022 from Selwyn Lobo i.e. complainant u/s 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) against the promoter/respondent "Eclectic Developers Pvt. Ltd.". The respondent is the promoter of the project "Palolem Hills" situated within the limits of Canacona Municipal Council, South Goa District. The complainant booked an apartment in the said project of "Palolem Hills" and entered into an Agreement of Construction and Sale with the respondent dated 08/10/2012. As per this agreement, the complainant agreed to purchase flat No. F-1A-203 in Tower No. F situated on the second floor in the said building having built up area of 81.78 sq. mtrs. The complainant agreed to pay purchase price of Rs.36,96,000/- along with stamp duty of Rs. 20,000/-. In terms of

the said agreement the possession was to be delivered to the complainant within 14 months from the date of signing of the agreement. The complainant has already paid the entire amount to respondent for the said project. However, possession of the premises have not been delivered to the complainant till now. Accordingly, complainant has requested for refund of the entire amount along with interest and compensation.


The copy of the complaint was served to respondent/promoter by a notice dated 04/04/2022 with direction to file the reply. The respondent/promoter has filed the reply dated 12/04/2022 which is on record.

2. The opportunity of hearing was given to both the parties and the case was finally argued on 26/05/2022.
3. In his written reply, respondent has pointed out that present complaint is not maintainable before the Authority as the Real Estate (Regulation and Development) Act, 2016 is not applicable in this case. He has submitted a copy of order dated 01/10/2018 issued by Interim Authority, Goa RERA wherein the project was exempted from Goa RERA. He has also submitted the copy of subsequent orders dated 29/07/2020 and 24/03/2022 issued by this Authority where it has been held that complaint in these cases are not maintainable.
4. During the course of hearing, Ld. Advocate for the complainant stated that respondent has been taken the plea that complaint is not maintainable on the ground that the said project has received the Completion Certificate before commencement of the Act. He pointed out that this completion certificate is not proper as the entire project is yet to be completed. He placed on record the various citations from the High Court, in particular two citations issued by the Hon'ble High Court of Madras. One citation is of a case Adinath



Srinivasa Foundations LLP Vs. The Secretary, Serene Kshetra Owners Associations wherein Hon'ble High Court of Madras has delivered the judgement on 03/02/2020. The second citation is in respect of case SARE Shelters Project Pvt. Ltd. Vs. Sare Squires and Ors. The order in this case has been delivered by Hon'ble High Court of Madras on 16/02/2021. In these cases particularly in second case of SARE Shelters Project Pvt. Ltd. Vs. Sare Squires and Ors., Hon'ble High Court of Madras has mentioned that "Completion Certificate" issued by the concerned Authorities was not proper as the said project was not completed in terms of the Town and Country Planning Act as well as RERA Act. The Hon'ble High Court has held in the para 35 of the order dated 16/02/2021-

*"In view of the fact that the completion certificate issued by the Executing 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 provisions of the RERA Act, the same cannot be construed as a valid certificate for the purpose of grant of exclusion u/s 3(2)(b) of the RERA Act."*

 As per Ld. Advocate of complainant, the project is still not complete in all the respect and hence the Completion Certificate issued by Dy. Town Planner, Canacona is not proper.

5. I have considered the arguments and gone through the facts and proceedings of the case and various orders placed on record. The said citations of Hon'ble High Court of Madras are not applicable in this case as the facts and circumstances mentioned in those orders are different. In this case, matter of applicability of RERA Act has already been decided by Interim Authority, Goa RERA by its order dated 01/10/2018. The Interim Authority by this order dated 01/10/2018 in case No. 3/RERA/Complaint(13)/2018 has

accepted the completion certificates issued by Dy. Town Planner, Canacona Goa and exempted the project from Registration. Jurisdiction of the Interim Authority, Goa RERA has been the same as this Regulatory Authority and accordingly this Authority cannot decide the same matter again just like Appellate Authority. The relevant portion of the said order dated 01.10.2018-

*“Whereas a complaint has been filed before the Interim Authority, Goa RERA by Atul Gupta, Director, M/s Kriti Build tech Pvt. Ltd., Flat no. 109 Sadar Apartments. Mayur Vihar-1 Extn, of the Real Estate (Regulation and Development) Act, 2016;*

*Whereas it has been stated that the project ‘Palolem Hills’ by Electic Developers Private Limited is not registered with Goa RERA;*

*Whereas it has been seen that the Project ‘Palolem Hills’ by Electic Developers Pvt. Ltd has already received completion certificates for all the blocks/buildings (Block A, B C and D) from the Office of the Deputy Town Planner, Town & Country Planning Department, Canacona, Goa on 3<sup>rd</sup> May, 2017 and 30<sup>th</sup> June, 2017 (Block F).*

*In view of this the project is exempted from Goa RERA”*

From the above, it is clear that Authority has already decided that registration is not required in respect of this project as ongoing project and the same is exempted from Goa RERA. Once this has been decided, there is no scope under the Act to file the complaint against this project before this forum.


6. The Hon’ble Supreme Court in a recent judgement in case M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS. ETC. has expressed the same view. Para 54 of the said judgement is transcribed below:-



*“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. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016”*

7. In view of the above observations, the complaint dated 17/03/2022 filed before this Authority is not maintainable and the same is rejected.

Order accordingly,

  
**J. B. Singh, IAS(Retd.)**  
Member, Goa RERA.

**To,**

**1.Selwyn Lobo,**

104 Tudor House,  
Assagao Anjuna Mapusa Road,  
North Goa-403507.

**2. Sunil Kumar,**

M/s Eclectic Developers Pvt. Ltd.,  
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