

**BEFORE THE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL, MUMBAI**

**Appeal No. G-1/2022  
alongwith  
Misc. Appln. No. 457/22 (Stay)**

**Avez Azim Shaikh**

Address :

O-1, 1<sup>st</sup> Floor, Commerce Center,  
Next to Old Bus Stand,  
Vasco Da Gama,  
Goa – 403802.

... Appellant

**VERSUS**

**The Goa Real Estate Regulatory Authority  
through its Registrar**

Address :

Department of Urban Development,  
Government of Goa,  
101, 1<sup>st</sup> Floor, 'SPACES' building,  
Plot No. 40, EDC, Patto Plaza,  
Panji, Goa – 403 001.

... Respondent

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*Adv. Mr. Saket Mone for Appellant*

*Adv. Mr. Deep Shirodkar for Respondent*

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**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &  
S. S. SANDHU, MEMBER (A)**

**DATE : 18<sup>th</sup> October, 2022.**

**(THROUGH VIDEO CONFERENCING)**



**JUDGMENT**

**[PER: S. S. SANDHU, MEMBER (A)]**

This Appeal challenges Order dated 22.04.2022 whereby the Goa Real Estate Regulatory Authority has rejected the Application of Appellant for registration of the project under RERA.

2. Appellant and Respondent will hereinafter be referred to as Promoter and the Authority respectively.

3. Heard learned Counsel for the parties.

4. Promoter submitted that being desirous of developing real estate project namely "Mohidin's Hamlet by the Bay" on Survey No.194/1-A-3 which is a part of Survey No. 194/1-A in Village Sancoale, Taluka Mormugao, South Goa, Application was made for registration of project under Section 3 & 4 of RERA prior to undertaking advertisement, marketing and sale in respect of the project. Alongwith Application dated 28.01.2022, Promoter uploaded all necessary and relevant documents and approvals as specified under Section 4 of RERA. The Authority sought various clarifications and requests which Promoter duly complied with. Vide Notice dated 24.03.2022. The Authority asked Appellant to appear for hearing on 28.03.2022 and furnish information amongst others with regard to para 'F' of the MOU dated 27.07.2021 which mentions that larger property has been earmarked as provisional



private forest by the Department of Forest, Goa which needs to be denotified.

5. It is submitted that as also mentioned in the impugned order, Promoter suitably provided all information and also placed on record the report of the Review Committee on Review of Private Forest Area by North Goa and South Goa District Committee (Review Committee) which is submitted at pages 105 to 149. It is further submitted that this report prepared after extensive ground verification and detailed analysis of various factors, Court cases, etc. described that the area under Survey No. 194 of which the project is proposed to be registered including the area under the Project did not qualify the criteria of private forest. It is further contended that the report had been accepted by the State Government, published and uploaded on the website of Forest Department of Goa Government. Promoter submitted that in its Report dated 31.03.2022 (page 328 – 330) the Authority observed that documentation for the project is completed and since it has no necessary expertise to deal with the issue of private forest land it would require 'No Objection Certificate' (NOC) from the Forest Department. It is submitted that accordingly the Authority vide e-mail dated 05.04.2022 sought information from Promoter



purportedly under Section 11(1)(f) of RERA that the land under the project did not qualify as private forest.

6. It is further submitted that in response to the above, vide e-mail dated 11.04.2022 Promoter submitted a clarification from the Forest Department to the Authority which stated that the entire Survey No. 194 is found to be not qualifying the criteria of private forest. Promoter contended that it also apprised the Authority that as per an affidavit already submitted on record, the project land was not notified as private forest. Promoter submitted that the Authority rejected the Application vide impugned order on the ground that NOC from Forest Department had not been submitted despite directions to that effect. It is vehemently contended that the impugned order is illegal, improper and without jurisdiction for the following reasons:

- (i) The Promoter had already obtained and uploaded with Application all requisite permissions and approvals to develop the project land. In the circumstances, while exercising its jurisdiction under Sections 3, 4, and 5 of RERA for grant of registration, the Authority had no jurisdiction to initiate an enquiry into the permissibility



of development on a particular land which is the remit of the statutory planning authorities.

- (ii) By enquiring into the issue of private forest land the Authority has assumed the role of custodian of private forest which role already has been entrusted to a specific statutory authority under the relevant statutes and therefore could not be a part of the powers and functions of the Authority.
- (iii) Section 4 of the RERA nowhere either expressly or impliedly requires NOC from the Forest Department as one of the mandatory documents to be submitted along with application for registration. When the land under project is actually not a private forest land, the Authority has clearly exceeded its jurisdiction by issuing directions to appellant to obtain NOC from the Forest Department.
- (iv) Section 4(2)(c) of the RERA categorically mandates that only such approvals as are "in accordance with the laws as may be applicable" need to be submitted to the Authority. The Authority cannot impose extra conditions and demand additional documents apart



from those specified under Section 4(2) for grant of registration. In the absence of any law requiring an NOC from the Forest Department in respect of the said project, the Authority by insisting upon such a NOC has read into the statute a requirement which is otherwise absent. The Authority has no powers to direct Promoter to obtain NOC when land is actually not a private forest land and thus has exceeded its jurisdiction by issuing such directions.

- (v) Under section 5(1)(b) of RERA, the Authority is competent to reject an application for registration only if the application did not conform to the provisions of RERA or the Rules or Regulations made thereunder. The impugned order dated 22.04.2022 does not specify in writing as to which provisions of the RERA the rejected application was not in conformity with. Therefore, the said order is unreasoned and the same is not only contrary to the Section 5(1)(b) of RERA but also catena of judgements holding that an unreasoned order is unsustainable in law.



(vi) The requirement to obtain an NOC from the Forest Department was imposed vide email dated 05.04.2022 in exercise of powers under Section 11(1) (f) of RERA. This Section in fact deals with the documents required to be shown for public viewing, after registration has been granted under Section 5(1)(a) of the RERA. It provides for furnishing of such other information and documents as may be specified by the regulations. However, regulations framed under RERA nowhere provided for furnishing of NOC from the Forest Department. By asking Promoter to submit the said NOC, the Authority has applied the provisions of Section 11 (1)(f) prior to even grant of registration which is not permissible as per law.



(vii) In the impugned order, on the one hand the Authority has admitted that it did not have the requisite expertise to deal with the issue of forest land and yet on the other hand refused to be guided by the view and findings of the experts who after a detailed analysis recorded in the Report of the Review Committee placed before it. The Report stated categorically that area

under S. No.194 did not qualify the criteria of private forest. The said report has been accepted by the Government, published and uploaded on the website of the Forest Department of Goa. Further, the office of Deputy Conservator of Forest, Goa had categorically clarified that the S. No.194 of which the project land is a part had been found to be not qualifying the criteria of private forest and had not been notified as such. The impugned order is in the teeth of such categorical clarification and the apprehensions expressed therein by the Authority are therefore completely misconceived.

- (viii) The impugned order has been purportedly passed keeping in view the public interest at large which is nowhere provided in provisions of RERA as a requirement empowering the Authority to reject application for registration of the project. The Authority is not the only authority to protect the public interest in a project already approved by the competent authorities. On the contrary, by granting registration the Authority would have ensured transparency and



regulation of the project to further the public interest. Thus, the Authority appears to have acted against the public interest.

- (ix) As held in **M/s. Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh** [Civil Appeal Nos. 5745, 6749 and 6750 to 6757 of 2021] the registration of a project under RERA helps the contractor in raising funds from banks and that the buyers express their satisfaction in an approved project. It may be noted that Promoter has already commenced the project and completed 30% of the roads, drains, utilities infrastructure of the plotted development etc. and is facing severe cash crunch which is compromising the ability of Promoter to meet its financial liabilities qua the lenders from whom the Promoter has availed project finance as also in making timely payments to landowners. The delay in carrying out further construction is also adversely affecting the viability of the project. In such circumstances, impugned order has put an embargo on the Promoter



from selling plots/Units in the said project by rejecting the application for registration.

With submissions and contentions inter alia as above, Promoter urged the Tribunal to quash and set aside the order.

7. Contentions of Promoter as above have been rebutted by learned Counsel for the Authority. He justified the impugned order and submitted as follows :

(i) Registration under RERA cannot be granted as Promoter did not have following requisite permission/approvals to develop the project.

(a) NOC as per clause 25 of the Conversion Sanad, from Naval authorities as the property falls in the funnel area.

(b) Tree cutting permission as per relevant clause of the Sanad.

(c) MPDA's approval dated 29.11.2021 is provisional for land sub-division only. Necessary NOCs from the electricity, PWD and Naval authorities are also not obtained.



- (d) Panchayat's NOC is provisional for sub-division of land only and not for construction and development of the project.
- (ii) RERA statutorily mandates to ensure protection of the prospective buyers and for that purpose the Authority is empowered under Section 4(2)(c) to ensure that all requisite approvals are submitted alongwith Application for registration. Section 4(1) and (2) read with Rules 3(1) and 3(2), etc. provides that Promoter shall submit all information and documents listed therein alongwith registration Application. More importantly, Rule 3(2)(c) provides that Promoter shall provide such other information and documents as may be required by the Authority. Sections 34(f) and 37 also empower the Authority to ensure respectively compliance of obligations cast upon Promoter and to issue such directions from time to time as the Authority may consider necessary.
- (iii) The Authority insisted for NOC of the concerned Department considering the very serious and sensitive issue of identification of private forest land the matters relating to conversion of which are seized of by the Hon'ble Supreme



Court, National Green Tribunal (NGT), the Hon'ble Bombay High Court at Goa, etc. The High Court of Bombay at Goa and the Hon'ble Supreme Court vide orders dated 26.03.2012 and 04.02.2015 (pages 365–367) have restrained the State Government authorities not to issue NOC for any plot having natural vegetation with tree canopy density in excess of 0.1 and area above 1 hectare. It is seen from order dated 27.01.2022 (pages 401-405) passed in public interest litigations that, the Hon'ble High Court is seized with the alleged violations relating to conversion and development of private forest lands and in such circumstances the Authority is mandated under RERA to secure and protect interests of allottees of real estate projects.

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- (iv) Considering sensitivity manifested in the above orders (pages 365-367) whereby the Hon'ble Courts have restrained the authorities from granting NOC for conversion of lands with the prescribed canopy density, the Authority with no expertise on the issue sought Promoter to submit NOC from the Forest Department to avoid circumvention of the aforesaid restraint orders of the Hon'ble Courts. The

letter issued under RTI by the Forest Department as submitted by Promoter does not amount to NOC of the Forest Department and thus does not fulfill the requirement as sought by the Authority on the sensitive issue in the public interest at large.

(v) RTI information is not a NOC in terms of the law which requires the Authority to consider Application and decide accordingly. The Promoter was required to apply for NOC so that Forest Department could examine Application in terms of law and the orders passed by the Hon'ble Courts as mentioned above. Mere a reference in the RTI reply to the Report of Review Committee uploaded on Government website mentioning that Survey No. 194 involved in the project did not qualify as private forest is not sufficient for considering and deciding application for granting registration under RERA in the larger public interest.

(vi) The Authority has produced on record (page 399) an instance where eventhough plot in Survey No. 128 is said to be not qualifying as private forest in terms of Interim Report of the Review Committee, the Forest Department has revoked NOC vide letter dated 11.02.2022 (page 399)

on the ground that the said land was provisionally identified as private forest by Thomas Committee. The matter is sub-judice before the NGT. It may be noted that four Interim Reports including Interim Report of the Review Committee relied upon by Promoter have been challenged before NGT by Goa Foundation and the same are still pending.

(vii) While considering the prayer of Promoter to issue directions to the Authority to grant registration, the Tribunal has to consider that larger public interest and protection of innocent consumers is of paramount importance. It has to satisfy itself that all requisite approvals as mentioned hereinabove are obtained by the Promoter. The Tribunal also has to consider settled position of law that there cannot be an estoppel against law which mandates certain compliances on the part of Promoter while seeking registration of the project and thus can not escape such compliance on the plea that rejection of Application was not on that ground.

(viii) Application for registration therefore was rightly rejected for want of NOC of the Forest Department taking into account larger public interest and interest of consumers. The

preamble and statement of objects and reasons of the RERA envisage effective protection of interests of consumers. As the registration enables the Promoter to raise funds and Allottees would book the units, the RERA mandates the Authority to ensure that project is legally constructed after obtaining all necessary permissions. In case the project after booking of units is stopped due to land classified as private forest it would severely jeopardise the interests of Allottees. The Authority therefore is well within its powers under Section 4 of RERA and Rules framed thereunder to seek Promoter to submit NOC from Forest Department in public interest at large stating that land under the project is not classified as private forest.

The Authority therefore sought dismissal of Appeal with heavy costs.

8. Having considered rival contentions of the parties, it is pertinent to observe that there is no dispute as far as factual aspects of the matter on hand are concerned. Facts relating to proceedings, communications between the parties etc. right from making Application for registration till rejection thereof vide impugned order are not denied or disputed. The bone of contention

between the parties appears restricted only to the rejection of Application on the ground that the Promoter failed to submit NOC of the Forest Department to the effect that land under the project did not fall under the private forest. The controversy in the Appeal therefore appears to be narrow in its scope giving rise to the points for our consideration as to (i) Whether the Authority is right in rejecting Application for registration for want of NOC of Forest Department? and (ii) Whether impugned order calls for interference? The answers to both the points are in the affirmative for the following reasons.

**Points (i) and (ii)**

9. From contentions of the parties, grievance of Promoter in Appeal primarily appears to be on two counts. One, having come to the conclusion in its report dated 31.03.2022 that documentation for registration of project is complete and despite Promoter furnishing all requisite approvals/documents with Application as mandated under Section 4(2)(c), the Authority insisted for NOC from the Forest Department which is not specified anywhere in any law and Rules and Regulations framed thereunder. Two, the Authority imposed requirement to obtain NOC of Forest Department purportedly in exercise of powers under

Section 11(1)(f) applicable only in the post registration period and rejected the Application for want thereof in the name of public interest by completely ignoring the letter dated 08.04.2022 of the Forest Department and Report of the Review Committee which categorically mentioned that the project land did not qualify the laid down criteria of private forest.

10. The Authority on the other hand has justified its view by contending that as per the mandate of RERA envisaged in its preamble, objects and purpose etc. read inter alia with provisions of Sections 4, 34, 37, etc. of RERA and the Rules, particularly Rule 3(2)(1) framed thereunder, the Authority was fully competent to impose the said requirement which it considered necessary for registering the project in the interest of buyers and public interest. The Authority also justified the rejection of Application in the larger public interest as the Promoter failed to submit the required NOC from the Forest Department.

11. It is observed that the contentions of the parties as above revolve around the provisions relating to registration of the project under Section 4 and the challenge is also raised by Promoter to the powers of the Authority in imposing the requirement for NOC of Forest Department purportedly under Section 11(1)(f). It is

therefore necessary to examine and appreciate the controversy in the Appeal in the light of relevant provisions of RERA.

12. By now, it is well recognized that RERA is a beneficial and welfare legislation enacted primarily to safeguard the interests of buyers/consumer of real estate. As per Preamble of RERA the Authority is established with a mandate to regulate and promote the real estate sector in an efficient and transparent manner and *'to protect the interests of consumers'*. Statement of objects and reasons of RERA states that RERA was necessitated *'in the interests of effective consumer protection'* and further to ensure greater accountability towards consumers and to significantly reduce frauds and delays.

13. Accordingly, as a first step towards ensuring consumers' interests, it is made mandatory to register the project under Section 3 prior to undertaking advertisement, marketing or sale of the real estate units therein. Section 4 inter alia lays down the procedural requirements that are required to be complied with for registration of the project. The much emphasized Section 4(2)(c) by Promoter mandates the requirements to be complied with as follows:



"An authenticated copy of approvals and commencement certificate from the competent authority obtained **in accordance with the laws as may be applicable** for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases."

14. Promoter has sought to contend that the above Section mandates only those documents as are '**in accordance with the laws as may be applicable**' for the real estate project and the Act nowhere provides for NOC from the Forest Department. The Promoter therefore has alleged that by asking the said NOC, the Authority has acted without or beyond law. In this regard, it is observed that the provisions of Section 4 are procedural in nature. They are not cast in stone and the requirements provided thereunder are illustrative and not exhaustive in nature. Minimum requirements expressly provided thereunder no doubt are required to be mandatorily complied with. However the illustrative nature thereof provides sufficient flexibility and scope for adding further requirements if the circumstances so demand. The exigency determines the scope for adding further requirements if the

Authority considers it necessary to serve the envisaged mandate of the statute. Therefore, we do not find any force in the argument of Promoter that the Authority cannot go beyond the requirements/documents as illustrated under Section 4(2)(c).

15. In our considered view, the Authority would be justified in seeking compliance of a requirement even if the same is not expressly specified but relates to the scope of the statute and the same is sought to be imposed as necessitated in the given circumstances in furtherance of objects of the legislation. The justifiability and reasonableness of a requirement has to be considered in the context of circumstances in the background of which a requirement is insisted upon. Therefore, in the case on hand it is to be seen whether the Authority it was justifiable in seeking NOC of Forest Department from the Promoter for registering the project.

16. In regard to above, it is observed that though during the oral arguments and in the written submissions, the Authority has also contended that Promoter has not obtained several approvals particularly as per Conversion Sanad or otherwise, the main reason for rejection of application as stated in the impugned order is the lack of NOC from the Forest Department to the effect that land

under the project did not fall under private forest. It appears from observations made in paras 9 and 10 of the impugned order that controversy relating to the private forest lands as prevalent widely in the State of Goa being also a matter of multiple public interest litigations has outweighed all other considerations with the Authority while rejecting the Promoter's application. To appreciate the nature of the controversy and the reasonableness of the requirement for NOC from the Promoter, the said observations are extracted as under:

*"9. The Applicant has relied upon "Interim Report" of the Review Committee with Chief Conservator of Forests as Chairman to show that S. No.194 of Mormugao Taluka does not qualify the criteria of private forest. Firstly, nothing is produced on record by the Applicant to show that the said "Interim Report" has attained finality and/or has been confirmed/approved by the competent Authority and secondly, no NOC has been produced by the Applicant from the Forest Department to the effect that the Forest Department to the effect that the Forest Department has no objection for the construction to be done in S. No. 194/1-A-3 since the same does not come within Private Forest land.*

*10. The aforesaid NOC from the Forest Department is material taking into consideration the fact that similar issue of declaration of Private Forest land is pending before the Hon'ble High Court of Bombay at Goa in Public Interest Litigation Writ Petitions No.2631 and 2718 of 2021 "Edwin Mascarenhas and 4 ors. vs. State of Goa and 13 ors." And "Chicalim villagers Action Committee Vs. The District Collector, South Goa and Ors." wherein one of the grounds for the petitioners to ask for the reliefs of setting aside the conversion Sanads, development permissions, construction license, completion and occupancy*

*certificates regarding the properties in question therein is that the said properties come within the Private Forest Land and in the said Writ Petition, order is passed by the Hon'ble Bombay High Court on 27.01.2022 inter-alia to the effect that the respondents herein shall not carry out any construction or development on the plots in question without the leave of the Hon'ble High Court and that the occupancy of the structures constructed thereon will be subject to the final orders in the said petitions. The aforesaid order of the Hon'ble Bombay High Court in the aforesaid Writ Petitions is referred herein to show the seriousness of the issue of declaration/demarcation of Forest Land in the State of Goa, especially when in the instant case, the public interest is involved and has to be protected. It is the statutory duty of this Authority to protect the interests of the Allottees would be Allottees of all the Real Estate Projects which come within the purview of the Real Estate (Regulations and Development) Act, 2016. Thus, keeping in view the public interest at large, the Applicant was directed to produce on record the NOC from the Forest Department but inspite of opportunities given, the Applicant failed to submit the same. Since, the Applicant failed to comply with the aforesaid direction of this Authority, the instant Application for registration of the said project is rejected."*

17. It is evident from above that the Hon'ble Courts at various levels are actively and seriously seized of the matters concerning violations of private forest lands and hence repetitively issued restraint orders to prevent such violations. In the aforesaid circumstances the Authority was completely justified in seeking NOC of the Forest Department from the Promoter to ensure protection of public interest even though the said requirement is not expressly provided under Section 4(2)(c) of RERA. It is rightly

argued by learned counsel for Authority that in case the project is registered without proper verification and NOC about its status as private forest and sale of units is allowed, it would be detrimental to buyers' interests in case the land later on turns out to be a private forest.

18. Moreover, the Hon'ble Courts who are seized of the matters may also come down heavily if the Authority indulges in uncalled for adventurism by registering the project without NOC from the competent Authority. It has to tread cautiously and satisfy itself that the land under the project to be registered is not a private forest land. Considering the sensitive and serious nature of the issue relating to the private forest lands and its larger implications for the prospective buyers of the units in the project, the Authority cannot afford to be indifferent and insensitive to the gravity of issues concerning the interests of consumers which the RERA contemplates the Authority to overzealously protect. It is observed that the Authority has accordingly and appropriately recorded its concern in the impugned order considering the sensitivity of the issue in the prevailing circumstances and has rightly mandated NOC of the Forest Department. The said requirement therefore was not only justifiable in the given circumstances but reasonable also.

Accordingly, act of the Authority suffers from no illegality whatsoever.

19. The Promoter has also sought to argue that Forest Department's letter dated 08.04.2022 and the report of the review committee as accepted by the government and uploaded and published on the government website categorically stated that the project land was not a private forest and hence there was no requirement for NOC of the Forest Department. This self-serving contention cannot be accepted for the reason, as rightly argued by Authority, that letter dated 08.04.2022 obtained under RTI cannot substitute the NOC which the concerned department is required to give conforming to the decision of the government. The said letter also appears to be based apparently on the report of the Review Committee.

20. We further observe that it was wrong on the part of the Promoter to claim that the report of the Review Committee is accepted by the government. Mere putting the report in the public domain does not tantamount to its acceptance by the Government. Such reports may be academic or at best recommendatory in nature until they are accepted and acted upon by taking final decision by the government for implementation of the accepted

recommendations. Therefore, neither the letter obtained under RTI nor the Report of Review Committee have any evidentiary value to satisfy the requirement which the Authority justifiably sought the Promoter to comply with. Therefore, submission of the said documents cannot be considered as a sufficient compliance of the requirement sought by the Authority vide email dated 05.04.2022.

21. Promoter also contended that the requirement for NOC of Forest Department was imposed under Section 11(1)(f) which is applicable for compliance only after the registration. This argument is highly technical and not of much relevance for the controversy on hand. It is undeniable that the Authority being the sole agency to regulate the affairs of the real estate sector and is entrusted with the responsibility to protect the interests of consumers. In the said pursuit, the Authority is competent to seek necessary compliances from the Promoter. In this process it is not material under which provision the compliance is sought. What is material is the nature of compliance, its justifiability and reasonableness. A justifiable and reasonable compliance sought, if any, even without reference to a particular provision cannot be held as invalid or not compliant as long as it falls within the scope of the statute. We have already held above that in the prevailing circumstances, to



protect interests of Allottees, the Authority was justified in mandating requirement of the NOC. Therefore, the requirement for NOC as imposed vide email dated 05.04.2022 under Section 11(1)(f) suffers from no material infirmity and the Promoter is not entitled to take advantage of such a technical or flimsy ground.

22. In view of the aforesaid discussion and observations, we conclude by reiterating that the Authority having the mandate to protect the interests of buyers in the public interest as per objects and purpose of RERA was justified in seeking NOC of the Forest Department with regard to status of the land under the project. The requirement was legal, justifiable and reasonable in the background of prevailing circumstances and the Promoter was liable to comply with the same while seeking registration of its project. As the Promoter failed to submit the required NOC, the Authority was fully justified in rejecting the application. We find absolutely no infirmity in the said view taken by the Authority in the impugned order and the same therefore does not call for interference in Appeal.

23. We answer the points accordingly and pass the following order.

**ORDER**

1. Appeal No. G-1/2022 is dismissed.
2. Misc. Application No. 457/22 (Stay) also stands disposed of.
3. Parties to bear their own costs.
4. Copy of this order be sent to the respective parties as per Section 44(4) of RERA.

  
(S. S. SANDHU)

SPK/-

  
(SHRIRAM R. JAGTAP)