



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
www.rera.goa.gov.in

Tel: 0832-2437655; e-mail: goa-rera@gov.in

No.3/RERA/complaint (Comb. Prabhu Chamber)/2019/447

Date: 09/06/2022

Mr. Jitesh kamat and ors. **Complainants**

v/s

M/s Prabhu Constructions **Respondent**

ORDER

Dated 09/06/2022

- (1) This order disposes of the application dated 07.04.2022 filed by the complainants for recovery of interest/penalty from the respondent as per order dated 17.03.2022, wherein the complainants have prayed this Authority to invoke the provisions of Section 40 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act') and enforce the payment of interest and penalty amount imposed in terms of the order dated 17.03.2022 and also to direct the Canara Bank, Mapusa branch to reserve a sum to the extent of Rs. 4,50,00,000/- which includes the interest granted along with penalty imposed in terms of order dated 17.03.2022 after adjusting the securitized amount which is due and payable to the bank upon sale of securitized assets.
- (2) Reply has been filed by the respondents on the aforesaid application and in the said reply the respondent has referred to his review application filed before this Authority on 16.05.2022 and also referred to the criminal cases between the parties and prayed this Authority to review its order dated 17.03.2022 and recall the same and to dismiss the instant application filed by the complainants.
- (3) Oral arguments were heard from Ld. Advocates Shri N. Takkekar for the complainants and Ld. Advocate Shri Ankur Kumar for the respondent.

- (4) It is material to note herein that the review application filed by the respondent has been dismissed by this Authority by passing a separate order dated 09.06.2022 on the same. It is also significant to mention that criminal cases/incidents between the complainants and respondent have no bearing on the instant case/the impugned order and the same cannot be considered by this Authority under the said Act, being beyond the purview of the same.
- (5) From the reply of the respondent it is clear that the respondent has not complied with the order dated 17.03.2022 passed by this Authority and therefore Section 40 of the said Act is squarely attracted in the instant case. **Section 40** of the said Act is reproduced herein below for ready reference:-

“40. Recovery of interest or penalty or compensation and enforcement of order, etc.-

(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case maybe, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case maybe, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.”

- (6) **Rule 3** of the Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal etc.) Rules, 2017 states as follows:-

“3. Manner of recovery of interest, penalty and compensation.-

Any interest or penalty or compensation imposed on a promoter or an allottee or a real estate agent shall be recoverable under section 40 of



the Act, from such promoter or allottee or real estate agent, as the case maybe, as an arrears of land revenue under the provision of the Goa Land Revenue Code, 1968 (Act No.9 of 1969).”

- (7) The limitation period for filing appeal against the order dated 17.03.2022/ corrigendum dated 21.03.2022 is over and hence it is a fit stage to invoke Section 40 read with Rule 3 of the said Act, as prayed by the complainants.
- (8) However, the prayer of the complainants to direct Canara Bank, Mapusa Branch to reserve a sum of Rs.4,50,00,000/- which includes the interest and the penalty imposed in terms of order dated 17.03.2022 is legally not maintainable **firstly** because no document has been produced on record by the complainants to substantiate the claim of the complainants regarding the said attachment by the bank over the house and office premises of the respondent, **secondly** no details of the financial transactions, agreements etc. between the respondent and the said bank are specified in the application or produced on record by the complainants especially when it is well established by the Hon’ble Supreme Court in the case of **“Union Bank of India vs. Rajasthan Real Estate Regulatory Authority and Ors.”** (petition for Special Leave to Appeal (c) Nos 1861-1871/2022, that **“RERA would not apply in relation to the transaction between the borrower and the banks and financial institutions in cases where security interest has been created by mortgaging the property prior to the introduction of the Act unless and until it is found that the creation of such mortgage or such transaction is fraudulent or collusive.”**(emphasis supplied) and thus, it is not known whether the transaction between the borrower respondent and the aforesaid bank or the security interest created by mortgaging any property of the respondent took place prior to the introduction of the Act or not. **Thirdly**, according to the complainants, the said bank has not attached the building /project which is the subject matter of the instant complaint but have attached the house and the office premises of the respondent and therefore it is clear that there is no conflict of interest between RERA and SARFAESI Act and as stated by the Hon’ble Supreme Court in the aforesaid judgment, the provisions contained in RERA would prevail over SARFAESI Act only in case of such conflict.

(9) Since, the respondent has not paid the interest and penalty as ordered by this Authority vide order dated 17.03.2022, Section 40 (1) of the said Act read with Rule 3 of the Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeals etc.) Rules, 2017 are invoked and the legal assistant of this Authority is directed to take steps to recover the said amount from the respondent as arrears of Land Revenue. Thus, the instant application is partly granted i.e. the prayer of the complainants to invoke Section 40 of the said Act and enforce the payment of interest and penalty amount imposed in terms of the order dated 17.03.2022 is granted whereas the prayer of the complainants to direct the Canara bank, Mapusa branch to reserve a sum of Rs. 4,50,00,000/- which includes the interest and penalty amount imposed in terms of order dated 17.03.2022 is rejected.

vijaya 9/6/2022

(Vijaya D. Pol)
Member, Goa RERA