



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint(346)/2023/ 1205

Date: 28 /11/2023

1. Mr. Vinesh Varghese,

S/o late Mr. Pappy Varghese,
43 years of age, service,
Indian National.

2. Mrs. Asha Susan John,

Wife of Mr. Vinesh Varghese,
38 years of age, Business,
Indian National
Both r/o Flat no. F-4, Block II,
Rich Builder's, Hill view Apartment,
Alto Santacruz, Bambolim, Goa.

.....Complainants

Versus

M/s Expat Projects & Development Private Limited,

Pvt. Limited Company,
Incorporated under Indian Companies Act, 1956,
Having office at A2, 213, Expat Vida Uptown,
Pavelim Village, Kadamba Plateau,
Goa, 403402.

.....Respondent

ORDER
(Dated 28.11.2023)

This order disposes of the applications for amendment of the complaint wherein the complainants have prayed this Authority to allow them to amend the

complaint by incorporating the schedule of the payment made by the complainants to the respondent in respect of the row house no. 053 which is the subject matter of the complaint and also to add the director of the respondent by name Mr. Lancel Victor D'Souza. According to the complainants, they have paid an amount of ₹83,49,674/- (Rupees Eighty Three Lakhs Forty Nine Thousand Six Hundred and Seventy Four only) towards the total consideration of ₹95,00,000/- (Rupees Ninety Five Lakhs only) for the said row house. In the application for amendment, the complainants have given in chart form the manner of paying the said amount of ₹83,49,674/- to the respondent towards the consideration amount.

2. Replies have been filed by the Respondent objecting to the said applications for amendment mainly on the ground that there is no provision under the RERA Act to amend the complaint. It is also stated that the said amount of ₹83,49,674/- paid by the complainants to the respondent cannot be considered as having paid towards the total consideration of the said row house since the complainants have wrongly included GST, service charges etc. in the said amount.
3. Upon the consideration of the statutory scheme of the RERA Act, it is clear that there is no provision which expressly confers the power to permit amendment of complaint on this Authority. However, such power to amend the complaint, if the same is necessary and required under the changed circumstances as in the instant case, must be considered as incidental and ancillary to the power to decide the



complaint. Though in a different context, the Hon'ble Supreme Court in the case of

“S. M Banerji Vs. Sri Krishna Agarwal” AIR 1960 SC 368 held as follows:-

“At this stage we must guard against one possible misapprehension. Courts and Tribunals are constituted to do justice between the parties within the confines of statutory limitations, and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted. We must make it clear that within the limits prescribed by the decisions of this court that discretionary jurisdiction of the Tribunals to amend the pleadings is as extensive as that of a civil court. The same well settled principles laid down in the matter of amendment to the pleadings in a suit should also regulate the exercise of the power of amendment by a Tribunal.”

4. In the case of **“Bidi Leaves and Tobacco Merchants Association Vs. The State of Bombay” AIR 1962 SC 486**, the Hon'ble Supreme Court considered the scope and effect of the doctrine of 'implied power' and made the following observations:-



“23. “One of the first principles of Law with regard to the effect of an enabling act”, observes Craies, “is that if a legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view [Craies on Statue Law]whenever anything is authorized and especially if as a matter of duty, required to be done by law and it is found impossible to do that thing unless something else not authorized in express terms be else done, then that something will be supplied by necessary intendment. This doctrine can be invoked in cases “where an Act confers a jurisdiction it also confers by implication the power of doing all such acts, or employing such means as are essentially necessary to its execution [Maxwell on interpretation of Statues]”. In other words, the doctrine of implied powers can be legitimately invoked when it is found that a duty has been imposed or a power conferred on an Authority by a Statue and it is further found that the duty cannot be discharged or the power cannot be

Y. K. Singh

exercised at all unless some auxiliary or incidental power is assumed to exist. In such a case, in the absence of an implied power the statute itself would become impossible of compliance.”

5. The Hon’ble Bombay High Court in the **writ petition nos. 302 & 300/2010, 3, 409 and 435/2011 in the case of “Major (Retd.) Keher Singh Vs. Mr. Velentino Xavier Pereira and others”** also relied upon the aforesaid rulings of the Hon’ble Supreme Court.
6. In the instant case, by way of amendment, the complainants merely want to highlight the schedule/ manner of payment of ₹83,49,674/- to the respondent and also to add the director of the respondent and it is significant to note that the respondent has not denied having received the aforesaid payment, though it is the case of the respondent that the complainants have wrongly included GST, service charges etc in the said payment nor the respondent has disputed the identity of the said director. The said issue of other charges has to be decided on merits at the time of the final order in the instant complaint. However, at present no prejudice would be caused to the respondent if the amendment is allowed since opportunity would be given to the respondent to file additional reply to the amended complaint.
7. The power of allowing such amendment by this Authority must be considered as incidental and ancillary to the power to decide the instant complaint. Thus,



invoking the doctrine of implied powers, the instant amendment is allowed. The complainants are directed to carry out the necessary amendments in the complaint within one week by following the required procedure.

Vijaya 28/11/23
(Vijaya D. Pol)
Member, Goa RERA