



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

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F.No.3/RERA/Complaint(266)/2021/856

Date: 18/11/2022

Dawood Ismail Shaikh,
Jasmin Complex, Villa No. 1
Chandra Waddo, Fatorda,
Goa - 403602.

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Complainant

V/s

Prabhu Constructions
Proprietor Shri Venkatesh Narayan Prabhu Moni,
705 B Dempo Trade Centre,
EDC complex, Patto Panaji-403001.

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Respondent

ORDER
(Dated 17.11.2022)

This order is passed due to non compliance of the order dated 25.08.2022 by the respondent passed in the instant complaint whereby the respondent was directed to obtain occupancy certificate and give possession of the unit bearing No. GS-12A to the complainant within two months from the date of the said Order. For ready reference, the relevant part of the aforesaid order is reproduced hereunder:-

“The respondent is directed to give possession of unit bearing No. GS-12A to the complainant after obtaining occupancy certificate as per the terms of the Agreement for Construction Cum Sale executed on 14.10.2014 with all the essential facilities/supplies/connections and the quality of work as mentioned in the said Agreement, within two months from the date of this Order ” .

2. It is material to note that the respondent has till date not complied with the said order dated 25.08.2022. For the recovery of the interest imposed under Section 18(1) of the said Act as well as for recovery of penalties imposed under Section 61 and 63 of the said Act, a recovery letter has to be sent to the Revenue Authority to recover the interest and penalty. However, for compliance of the direction to the respondent to obtain occupancy certificate and give possession of the said unit to the complainant as mentioned in the above order dated 25.08.2022, Section 40 (2) of the said Act read with Rule 4 of the said Rules is squarely attracted in the instant case. **Section 40** of the said Act is reproduced hereunder:-

“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 maybe, 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 may be, 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.”(emphasis supplied)

3. It is also significant to note that Rule 3 of the said Rules relating to the manner of recovery of interest, penalty and compensation by way of arrears of land revenue under the provision of the Goa Land Revenue Code, 1968 corresponds to Section 40 (1) of the said Act, whereas **Rule 4**



of the said Rules, which is relevant for the instant order, corresponds to Section 40 (2) of the said Act. Thus, the aforesaid Rule 4 of the said Rules is reproduced hereunder:-

“4. Manner of enforcement of the order, direction or decision of the Adjudicating Officer or Authority.-Every order passed by the Adjudicating Officer, Authority or Appellate Tribunal which it is empowered to do under the Act or the Rules and regulations made thereunder, shall be enforced by the Adjudicating Officer or Authority in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court. In the event such Adjudicating Officer or Authority is unable to execute the order, it shall send a copy of such order to the principal civil court, to execute such order either within the local limits of whose jurisdiction the real estate project is located or in the principal civil court of original jurisdiction within the local limits of whose jurisdiction the person against whom the order is being issued, resides, or carries on business, or personally works for gain



alongwith a certificate stating that such an order has not been executed by it.”

4. Since this Authority is unable to execute the aforesaid order interalia directing the respondent to obtain occupancy certificate and give possession of the unit to the complainant as mentioned in the order dated 25.08.2022 and since the respondent has not complied with the aforesaid order till date, matter has to be sent to the Principal Civil Court of original jurisdiction as per Rule 4 of the said Rules.
5. In **Section 5** of the **Goa Civil Courts Act, 1965**, under the Chapter “District Court”, Part II, it is mentioned that the District Court shall be the principal court of original civil jurisdiction in the district. The aforesaid Section 5 of the Goa Civil Courts Act, 1965 is reproduced hereunder for ready reference:-

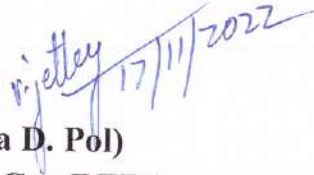
“5. Original Jurisdiction of District court.-The District Judge shall be the Principal Court of original civil jurisdiction in the District, within the meaning of the Code of Civil Procedure, 1908 or any other law for the time being in force.”

6. The same interpretation concerning the Principal Court of original jurisdiction was given by the Hon’ble Bombay High Court (Full Bench) in the case of **“Fountain Head Developers vs. Maria ArcangelaSequeira”** 2007 (3) Mh. L. J. 744 under the Arbitration and



Conciliation Act (26 of 1996), wherein the Hon'ble High Court referred to the Bombay Civil Courts Act, wherein Section 7 states that the District Court shall be the Principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure and held that the District Court is the Principal Court of original jurisdiction for the purpose of a petition under Section 34 of the Arbitration and Conciliation Act and it does not include any other court inferior to the District Court.

7. Hence, for execution of the order dated 25.08.2022 inter alia directing the respondent to obtain occupancy certificate and give possession of the unit to the complainant, as mentioned in the aforesaid order, a letter for execution under Section 40 (2) of the said Act read with Rule 4 of the said Rules has to be sent to the District Court, North Goa, within the local limits of whose jurisdiction the real estate project is located and the respondent resides along with a certificate from this Authority stating that such an order has not been executed by it.


(Vijaya D. Pol)
Member, Goa RERA