



## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (Comb. Prabhu Chamber)/2019/1307

Date: 26/12/2023

**Venkatesh Prabhu Moni,**

Major age, businessman

Both residing at R-4 Ocean Mist,

Near Amar Hotel,

Dona Paula, Tiswadi, Goa.

.....Applicant  
(Original Respondent)

*Versus*

**1. Mr. Neelesh Anant Takkekar,**

Major age, Advocate by profession,

7 A 6, Gawans Waddo, Mapusa, Bardez,

Goa-403507.

**2. Mr. Kishore Uttam Bhaidkar,**

Major age, A/7, Haldankar Residency,

Near Rashtroli Temple, Karaswada,

Mapusa, Bardez, Goa-403507.

**3. Mr. Devkinadan Madhusudan Prabhu,**

Major age, r/o Flat No. 780/7, Green Hill Apts,

Alto Betim, Bardez, Goa-403521.

**4. Mr. Xekh Hussien,**

Major age, r/o G-1, Sushila Apts, Taliegao,

H.No. -427, Dr. Gama Pinto Road,

Sant-Inez, Goa-403002.

**5. Mr. Tony Victor,**

Major age, r/o H.No. 21/A, Moica Waddo,

Pilerne, Bardez, Goa-403114.

**6. Mr. Tushad Deepak Kannekar,**

Major age, r/o H.No. 319/1, Brahmadeep,  
Walkeshwarwada, Sirsain, Tivim, Bardez, Goa-403502.

**7. Mr. Harshat Sonu Pednekar,**

Major age, r/o H.No. 142/f, Chandanwadi, Bastora,  
Bardez, Goa-403507.

**8. Ms. Deepti Pednekar,**

Major age, r/o H.No. 142/f Chandanwadi, Bastora,  
Bardez, Goa-403501.

**9. Mr. Bashir Ahmad Shaik,**

Major age, r/o H.No-1502/44, Goa Housing Board,  
Mael, Tivim, Goa-403502.

**10. Munir Ibrahim Shaik,**

Major age, r/o Dempo Plaza Centre, 705 7<sup>th</sup> Floor,  
EDC Complex, Patto Plaza, Panjim,  
Goa-403001.

**11. Ms. Viona Sherly Monteiro,**

Major age, r/o H.No. 38/1 at Cruz Wada, Bastora,  
Bardez, Goa -403507.

**12. Ms. Rosie Mascarenhas,**

Major age, r/o H.No. 20, Moica Vaddo, Reis Magos,  
Pilerne, Goa-403114.

**13. Ms. Pooja Ratnadeep Mayekar,**

Major age, r/o H.No. 310, Borvonwaddo, Nachinola Post,  
Aldona, Goa-403508.

**14. Ms. Suhasini Subhas Kerkar,**

Major age, r/o H.No. 194, Boa-Vista, Bastora,

*V. V. V.*

Bardez, Goa-403507.

**15. Mahesh M. Shetty,**

Major age, r/o H.No. 1503/1 Shantaee, Mangirish Colony,  
Madel, Tivim, Goa-403502.

**16. Ms. Manali Subash Parsekar,**

Major age, r/o Zft 7 Sunset Boulevard  
Alto Dueler Mapusa, Goa-403507.

**17. Mr. Subash Sawant,**

Major age, r/o 224 Rajwaddo,  
Bardez, Mapusa, 403507.

**18. Mr. Girish Gajanan Pednekar,**

Major age, r/o H.No. 764, SBI Colony,  
Behind Bhales Hospital,  
Porvorim, Bardez, Goa-403521.

**19. Mr. Suresh K. Pednekar,**

Major age, r/o H.No. 142/10, Dueler,  
Near Milan Hotel, Mapusa,  
Bardez, Goa-403507.

**20. Ms. Shabana Azmia Shaik,**

Major age, r/o G1, Sushila Apts, Amrai Waddo,  
Taliegao, Goa-403206.

**21. Mr. Rakesh Ramesh Kadam,**

Major age, r/o Chamunda Garden, Indira Nagar,  
Karaswada, Mapusa, Goa-403507.

**22. Mr. Deepak Kolambkar,**

Major age, r/o 601 Nathaline Apts, Kevni Gaothan Lane,  
Andheri (W), Maharashtra, Mumbai City, 400058.



**23. Mr. Kunal Rajendra Shirodkar,**  
Major age, r/o H.No. 105/C, Xellwado, Bastora,  
Bardez, Goa-403507.

**24. Mr. Daniel Agnelo Dsouza,**  
Major age, r/o House No. 159, Pirazona Moira,  
Bardez, Goa-403507.

**25. Suryakant Anant Naik,**  
Major age, r/o H.No. 4/95/E Shri Girjatmaj,  
AcoiPeddem, Mapusa,  
Goa-403507.

**26. Mr. Jitesh J. Kamat,**  
Major age, r/o Karraswado, Mapusa,  
Tivim Industrial Estate, Goa-403526.

**27. Ms. Shubhada Chandrakant Desai,**  
Major age, r/o H.No. 38, Khalcha, Waddo,  
Sal, Bicholim, Goa-403503.

**28. Mr. Kishore Pundalik Ajgaonkar,**  
Major age, r/o H.No. 103, Bhavkai, Mayem  
Bicholim, Goa-403504.

**29. Mr. Dasharath Shantaram Petkar (deceased)**  
Since deceased through his LRS

- (1) Mrs. Kanchan Dasharath Petkar (wife)
- (2) Ms. Sweta Dasharath Petkar (daughter)
- (3) Mr. Snehankit Dasharath Petkar (son)

All are major age, r/o H.No. 683/4, Sai Sneh,  
Atta fondem, Moira, Bardez, Goa-403507.

**30. Oscar Gomes,**  
Major age, r/o H.No. 1104, Volvonnem, Tivim,  
Bardez, Goa-403502.

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**31. Mr. Mahesh Narvekar,**

Major age, r/o B & F Magnolia Housing Co-Op,  
Ft-C 1, Opp. Yashoda, Bar, Flt C-1. Alto Dueler,  
Mapusa, Goa-403507.

**32. Mr. Anand Kumar Singh,**

Major age, r/o Reis Magos, Somnath Apts. Fs-3,  
Verem, Mapusa, Goa, 403516.

**33. Mr. Jesus Barreto,**

Major age, r/o H.No. 1020/F1, Premeiro Bairro,  
St. Cruz, Goa-403007.

**34. Mr. Ashiya Arajo,**

Major age, r/o Nandanvan Complex,  
Mathurabld, Ft-203,  
Caranzalem, Goa-403001.

**35. Ms. Krutika K. Tari,**

Major age, r/o S-1, Desai Apartment, Gopalnagar,  
Porvorim, Bardez, Goa -403521.

**36. Mr. Raaj Chodankar,**

Major age, r/o H.No. 209/1, Raint Moira,  
Bardez, Goa-403507.

**ORDER**

**(Dated 26.12.2023)**

This order disposes of the application dated 02.09.2023 filed by Shri Venkatesh Prabhu Moni who was the original respondent in case no. 3/RERA/Complaint (Comb. Prabhu Chambers)/ 2019, in which order dated 17.03.2022 (corrigendum dated 21.03.2022) was passed by this Authority, the operative part of which is reproduced hereunder for ready reference:-

“The respondent is directed to obtain occupancy certificate and give possession of the respective units to the respective complainants as per the chart given above in para 83 and as per the area/ revised area given in the respective agreements for sale/ addendums/ demand letters etc. and with all the essential facilities/ supplies / connections and the quality of work as mentioned in the agreements for sale executed with the complainants, within two months from the date of this order.

Further, under Section 18(1) of RERA Act, the complainants are entitled and the respondent is liable to pay to the complainants interest for every month of delay till the handing over of the possession, at such rate as may be prescribed. As per Rule 18 of “The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017, the rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent. On enquiry from the State Bank of India, it is revealed that at present such Lending Rate of interest by SBI is 7.30% per annum. Adding two percent to the said interest as per Rule 18, it comes



to 9.30% per annum. Hence, the respondent is directed to pay 9.30% per annum interest for every month of delay to each complainant on the amount paid by each complainant as mentioned in the chart above in para 83 from the date of delivery of possession including extended date as mentioned in the respective agreements for sale with the complainants and also as mentioned in the above chart, till the handing over of the possession to each complainant. However, no such interest to be paid to the complainants who have not paid any amount to the respondent towards sale consideration—the details of such complainants are mentioned in the above chart in para 83.

Further, though for violation of Section 63 of RERA Act, the respondent is liable to a penalty for every day during which such default continues, which may cumulatively extend up to five percent of the estimated cost of the real estate project as determined by the Authority, and as stated above, the estimated cost of the project, as per Chartered Accountant's Certificate submitted by the respondent for registration of the instant project is Rs. 142,502,973.00/- however, for violating this Authority's order dated 07/02/2020, order dated 25/11/2019 and order dated 24/09/2021, the ends of justice will be met if the respondent pays



the penalty of Rs. 30,00,000/-. The respondent is, therefore, further directed to deposit in this Authority, penalty of Rs. 30,00,000/- (Rupees Thirty Lakhs only) under Section 63 of RERA Act within two months from the date of this order.

Further, though for violation of Section 61 of RERA Act, the respondent is liable to a penalty which may extend to five percent of the estimated cost of the real estate project as determined by the Authority, however, for violating Sections 11(4) (a), 11 (4) (b) and Section 14 (1) of RERA Act, the ends of justice will be met if the respondent pays the penalty of Rs.20,00,000/- (Rupees Twenty Lakhs only). The respondent is, therefore, further directed to deposit penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs only) in this Authority under Section 61 of RERA Act within two months from the date of this order.

All the instant complaints are now referred to the Adjudicating Officer to adjudge compensation, if any, as per Section 71 of RERA Act.”

2. In the instant application, the applicant/ the original respondent has prayed this Authority to (a) clarify the date of delivery of possession of respective shops/offices to the respondent in para 83; (b) hold that the order dated 17.03.2022 stands complied with by recovery of money from the sale of the applicant's

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property and that no further amount is due and payable to the respondents under the said order; (c) recall the process of execution of the said order from the office of the Collector and the Mamlatdar and (d) pending hearing and final disposal of the present application, the proceedings of execution order be stayed. The applicant also filed application for stay of execution proceedings pending before the Ld. Mamlatdar.

3. Reply has been filed to the said applications by the Ld. Advocate for the respondents/ the original complainants, whereas the respondent no. 13 Pooja Mayekar appeared in person and filed reply to the application for stay of execution proceedings. Arguments were heard from Ld. Advocate S. M. Walwaikar for the applicant/ the original respondents and Ld. Advocate S. Mandrekar for the respondents/ the original complainants except respondent no. 13 who did not argue.
4. In the instant application, the applicant/ the original respondent has inter alia stated “that non-mentioning of date of delivery of possession of their respective units in the body of the order dated 17.03.2022 has given a chance for the respondents to take under advantage and inflate the amount of interest which is not granted to them by this Hon’ble Authority” and “Therefore clarifying of the date of actual possession to the respondents as to their respective units are absolutely necessary to meet the ends of justice”.



5. Though the aforesaid prayer for clarification is a Review in disguise and it is also known to the applicant that there is no provision of Review for this Authority in the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') or in its Rules/ Regulations and the same was upheld by the Hon'ble Bombay High Court in the order dated 09.01.2023, whereby the Hon'ble High Court inter alia stated that this "Authority does not have any power to review its own order." However, the order dated 17.03.2022 passed by this Authority clearly directs the applicant/ the original respondent to obtain occupancy certificate and give possession of the respective units, which are described in para 83 thereof to the respective complainants **"within two months from the date of this order."** Thus, the order dated 17.03.2022 clearly directs the applicant/ original respondent to give possession of the respective units to the respective complainants within two months from the date of the said order and till the possession is given to the respective complainants, to pay 9.30% per annum interest for every month of delay to each complainant on the amount paid by each complainant from the date of delivery of possession as mentioned in the respective agreements for sale with the respective complainants till the handing over of possession to each complainant-which date of possession is within two months from the date of the said order. Since the said order is clear and unambiguous, no further clarification is required.



6. The next prayer of the applicant/ original respondent is to hold that the order dated 17.03.2022 stands complied with by recovery of money from the sale of the applicant's property and that no further amount is due and payable to the respondents/ the original complainants and thus to recall the process of execution of the order dated 17.03.2022 from the office of the Collector / the Mamlatdar. In this regard, the Ld. Advocate for the respondents has rightly submitted that the amount which has been recovered by the Mamlatdar pertains to the compensation awarded by the Ld. Adjudicating Officer and the said recovery is not pertaining to the amount towards interest and penalty as ordered by this Authority in the order dated 17.03.2022. In this regard, it is also significant to refer to the letter dated 09.08.2023 addressed to this Authority by the Ld. Mamlatdar of Bardez Taluka, Mapusa, Goa, wherein the Ld. Mamlatdar clarified as follows:-

“1. That vide order dated 24/02/2023 under reference no. F.No.1/RERA/Enfor. Auth. Comp (Comb. Prabhu Chambers)/99/2020/148 your office had issued a letter to the Collector North requesting to do the recovery of interest and compensation under rule 40 of the Goa Real Estate Regulatory Authority Act (GRERA). The copy of the order is annexed as Exhibit A.

2. In the said order the properties against which the process may be executed were mentioned in the column (e) of the chart depicted out of which Plot No. 11/1 admeasuring an area of 3475 sq. mts. Situated at Village Socorro, Bardez Goa was also mentioned which falls under the jurisdiction of this office.



3. That pursuant to the same a memorandum dated 01/03/2023 No. RB/ Recovery/Compensation Accused/ 2022/671 from the Dy. Collector (Revenue) North Goa was sent to this Office to take necessary action in the matter. The copy of the Memorandum is annexed as Exhibit B.

4. Thereafter this office started the process of Attachment by following the due process of law and attached the plot bearing survey no. 11/1 admeasuring 3475 sq. mts. of Socorro Village Bardez Goa as it falls under the jurisdiction of this office.

5. The said plot was later auctioned and the amount was disbursed to the decree holders in a ratable manner so that all the unit holders receive their shares equally.

Hence, the recovery amount is disbursed as per the order dated 30/11/2022 passed by the Hon'ble Adjudicating Officer RERA.”

7. Hence, it is clear that the Ld. Mamlatdar in the execution proceedings referred by this Authority under Section 40(1) of the RERA Act read with 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 has adjusted the amount recovered towards the compensation as per the order dated 30.11.2022 passed by the Ld. Adjudicating Officer. There is nothing in the records of this Authority that any amount has been adjusted by the Ld. Mamlatdar towards the interest and penalty as per the order dated 17.03.2022 of this Authority. Thus, the order dated 17.03.2022 of this Authority has yet to be executed and fully complied with by the Ld. Mamlatdar.



8. The Ld. Advocate for the applicant/ the original respondent has submitted that since the Ld. Mamlatdar has recovered the amount towards compensation, there is no need for further recovery of the amount ordered towards interest on delayed possession as according to the Ld. Advocate interest amount should be considered to have merged in the compensation amount. There is no merit in the aforesaid submission of the Ld. Advocate as the compensation amount was ordered by the Ld. Adjudicating officer by order dated 30.11.2022, whereas the applicant was ordered to pay interest on the delayed possession and penalty by this Authority by order dated 17.03.2022. It has been held by the Hon'ble Supreme Court in the case of "**M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and Others**" (civil appeal nos. 6745-6749 of 2021)" as follows:-

".....there is a complete delineation of the jurisdiction vested with the regulatory authority and the adjudicating officer. If there is any breach or violation of the provisions of Sections 12, 14, 18 and 19 of the Act by the promoter, such a complaint straightaway has to be filed before the regulatory authority. What is being referable to the adjudicating officer is for adjudging compensation, as reflected under Section 71 of the Act and accordingly rules and regulations have been framed by the authority for streamlining the complaints which are made by



the aggrieved person either on account of violation of the provisions of Sections 12, 14, 18 and 19 or for adjudging compensation.....The procedure for inquiry is different in both the set of adjudication and as observed, there is no rule for any inconsistency and the power of adjudication being delineated, still if composite application is filed, can be segregated at the appropriate stage.”

9. It is also worth reproducing the following observations of the Hon’ble Supreme Court in the case of **“M/s Newtech promoters and Developers Pvt. Ltd.”** (supra):-

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’ ‘penalty’ and ‘compensation’, a conjoint reading of sections 18 and 19 clearly manifests that when it comes to refund of the amount and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon , it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the



same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of section 71 read with section 72 of the Act”

10. From the aforesaid observations of the Hon’ble Supreme Court, it is clear that there is a complete delineation of the jurisdiction vested with the Regulatory Authority and the Adjudicating Officer and that the power to examine and determine refund, interest on the refund amount, payment of interest for delayed delivery of possession or penalty and interest thereon is exclusively with the Regulatory Authority whereas the relief of granting compensation and interest thereon under Sections 12, 14,18 and 19 can exclusively be granted by the Adjudicating Officer as per Sections 71 and 72 of the RERA Act. Thus, under no circumstances the interest on the delayed possession ordered by this Authority vide order dated 17.03.2022 can be merged with the compensation awarded by the Adjudicating Officer vide order dated 30.11.2022.
11. The Ld. Advocate for the applicant has submitted that the Ld. Mamlatdar erred in adjusting the amount recovered towards compensation as ordered by the Adjudicating Officer by order dated 30.11.2022 as according to the Ld. Advocate, the amount recovered should have been adjusted by the Ld, Mamlatdar on priority basis towards the penalty ordered by this Authority by



order dated 17.03.2022 since according to the Ld. Advocate Government dues should have been given priority by the Ld. Mamlatdar. There is no merit in the aforesaid submission of the Ld. Advocate since this Regulatory Authority while referring the matter for execution to the revenue authority never directed the revenue authority to adjust the recovered amount on priority basis firstly towards the penalty.

12. The Ld. Advocate for the applicant has made allegations against the Ld. Mamlatdar and in the nutshell has stated in the instant application that the execution process initiated by the Ld. Mamlatdar “is fully tainted with fraud and manipulation of the respondents”. The Ld. Advocate for the applicant has given in the instant application, various instances of the alleged misdeeds, misconduct, fraud and illegal acts of the Ld. Mamlatdar and also pointed out that the Ld. Mamlatdar violated the Rule of Law audi alteram Partem as no opportunity of being heard was given to the applicant in the execution proceedings. It is worth mentioning herein that on the application moved by the applicant dated 26.07.2023, this Regulatory Authority vide letter dated 08.08.2023 directed the Ld. Mamlatdar as follows:-

“ .....with reference to the above letter, you are hereby instructed by this Authority to follow the due process of law in the said execution proceedings and to take further necessary action in the same as per law”





13. However, inspite of the directions of this Regulatory Authority, if the Ld. Mamlatdar is executing the order dated 17.03.2022 of this Authority in illegal manner, as alleged by the applicant in the instant application, the applicant is at liberty to approach the appropriate forum to challenge the alleged illegal acts, misconduct, fraud etc. of the Ld. Mamlatdar as this Regulatory Authority is not an appellate authority over the revenue authority.
14. Infact, the applicant has disclosed in the instant application that the applicant has already approached the other forums/ higher authorities to challenge the alleged illegal acts of the Ld. Mamlatdar. The applicant has stated that in the execution process, the Ld. Mamlatdar in arbitrary manner attached different sold and unsold properties of the applicant and his wife Mrs. Veena and aggrieved by the order of auction sale of her property, applicant's wife filed a civil suit no. 96/2023 before the Hon'ble District Court at Mapusa. It is further stated by the applicant that when despite pendency of the said civil suit, the Ld. Mamlatdar conducted unlawful sale of the property, **the applicant filed a writ petition no. 1066/2023 before the Hon'ble High Court of Bombay at Goa "challenging the entire execution proceedings of the Ld. Mamlatdar of Bardez"**.
15. The applicant has further submitted that in the aforesaid writ petition, the Hon'ble Bombay High Court by order dated 28.07.2023 directed the applicant to pursue his remedy under section 188 of the Land Revenue Code, 1968 and



**accordingly the applicant has challenged different orders/ Demand Notices issued by the Ld. Mamlatdar before the Ld. Collector and the matter is pending before the Ld. Collector.**

16. In para 15 (Q) of the instant application, the applicant has stated as follows:-

“Q. That the misconducting of the execution proceedings by the Ld. Mamlatdar deserves disciplinary action as against him by the **Vigilance Department** and that the applicant has also moved the department of vigilance for appropriate investigation in the present matter”

17. As stated above, this Regulatory Authority is not an appellate authority over the revenue authority and therefore the alleged illegal acts of the Ld. Mamlatdar cannot be challenged by the applicant before this Authority. Further, as pointed above, the applicant has already approached the higher authorities/ Hon'ble Bombay High Court as well as the Ld. Collector before whom challenge to the different orders/ demand notices of the Ld. Mamlatdar is pending and also has approached Vigilance Department for appropriate investigation into and action for the “misdeeds” of the Ld. Mamlatdar.

18. The Ld. Advocate for the applicant has submitted that some of the complainants were already in possession of their respective units before passing of the order dated 17.03.2022 by this Regulatory Authority and produced on record some

documents in support of the said plea. The said plea of the Ld. Advocate for the applicant cannot be considered at this stage i.e. after passing of the final order dated 17.03.2022 by this Authority and moreover the said order dated 17.03.2022 does not mention if any complainant was already in possession of the unit in the project of the applicant. It is worth mentioning that the records of the instant case do not show any challenge to the aforesaid order dated 17.03.2022 passed by this regulatory Authority before the Appellate Tribunal/ higher authority.

19. As rightly pointed out by the Ld. Advocate for the respondent, this Regulatory Authority after passing the final order dated 17.03.2022 and sending the execution proceedings to the concerned Revenue Authority as well as to the Hon'ble Principal District Judge, North Goa has become *functus officio*. In this regard, the Ld. Advocate for the respondent has rightly relied upon the case of **“State Bank of India and others vs. S. N. Goyal” (2008) 8 SCC 92** wherein the Hon'ble Supreme Court *inter alia* held as follows:-

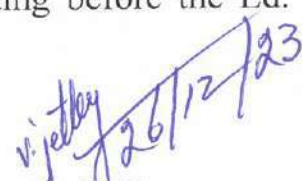
“Therefore, a judge becomes *functus officio* when he pronounces, signs and dates the judgment (subject to section 152 and power of review). The position is different with reference to quasi-judicial authorities.....A quasi judicial authority will become *functus officio* only when its order is pronounced, or published/ notified or communicated (put in the



course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. **But once the order is pronounced or published or notified or communicated, the authority will become *functus officio*" (emphasis supplied).**

20. Thus, this Regulatory Authority after pronouncing the order dated 17.03.2022 and referring the matter for execution of the said order to the concerned Revenue Authority and the Hon'ble Principal District Judge, North Goa has become functus officio, especially when there is no provision for Review in the RERA Act. As stated above, any challenge to the order dated 17.03.2022 of this Regulatory Authority or any order/ action of the Revenue Authority in the execution proceedings has to be before the proper legal forum.

In view of the aforesaid, the instant application dated 02.09.2023 for clarification of order dated 17.03.2022 and recall of execution process as well as the application for stay of the execution proceedings pending before the Ld. Mamlatdar are dismissed.

  
(Vijaya D. Pol)  
Member, Goa RERA