



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patta Plaza, Panaji 403 001 GOA

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F.No:3/RERA/Complaint(152)/2020/561

Date: 05/10/2021

**Arun Porob Mambro and
Wides properties and Holdings**
F2 Navelkar Trade Centre,
Panaji-Goa, 403001.

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Complainant

V/s

GERA Development Pvt. Ltd.,
G 18 GERA Imperium,
Patto, Panaji-Goa, 403001.

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Respondent

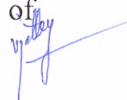
ORDER

Dated: 05/10/2021

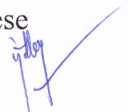
- 1) This order disposes of the objections to the maintainability of the complainant under Section 7 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).
- 2) The present complaint was filed online under Section 7 of Act regarding the property described under number one thousand three hundred and thirty five in the land Registration Office of Ilhas and Folio number 105 reverse of Book B27 new and named as "Anexio do Oitero" within the limits of village Paneli, Parish of Sam Pedro.
- 3) According to the complainant, the title report furnished by the respondent, "Gera's River of Joy" in false, fabricated and is fraud on this authority as well as prospective purchasers/ investors and that the respondent has secured RERA registration fraudulently. The complainant states that the declaration by the respondent that it has clear title is false and amounts to cheating and will lead to further litigations and hence registration before this Authority is liable to be revoked.

- 4) The complainant has stated that since there is no legal title in favour of the respondent, the same cannot be passed to its purchasers. Complainant states that in the sale deed dated 14/08/2017, land registration number is not mentioned intentionally. It is the case of the complainant, that the respondent is selling the property of the complainant by using the present survey record and old cadastral survey numbers. The complainant has given the details in the complaint as to how the title of the said property devolved on the complainant and fraud done by Barbosa family came to the knowledge of the complainant in March 2019 and hence the following extract from the complaint is reproduced hereinbelow for ready reference:-

“Title of the complainant property flows from eighteen hundred and sixty one by virtue of gift deed of three parcel of the land by Sadashiv Bhaguna Vaga to his grandson Vasudev P. Mambro and first registration of these parcel was done under numbers ten thousand two and twenty one, ten thousand two and twenty two and ten thousand two and twenty three in the name of said done Vasudev and the property was known as Cuxal Gall or Kuxal Gal or Mollans. This property Cuxal Gal or Kuxal Gal was devolved unto the family and was ultimately developed unto the present generation including complainant no. one by virtue of deed of succession dated sixteenth April two thousand and six. Original donee had only one son Shirdhar Porob Mambro and Shridhar Porob Mambro had three sons Vasudev Porob Mambro junior, Narayan Porob Mambro and Raghunath Porob Mambro. Inscription are till date in the name of Shridhar Porob Mambro in nineteen hundred and nine. This property was also surveyed under Old Cadastral survey number thirty four and it has regist de Agrimensor. There is also a certificate issued DSLR showing survey number thirty four (part) corresponds to present survey number thirteen/ one (part), fourteen/one(part) and fifteen/one (part). For the sake of convenience, the descendants of Vasudeva Porob Mambro will be referred to as the Mambro Family. There was some survey dispute between one Barbosa family claimed to be pre-decessors of respondent and Mambro family and on the strength of documents in question the decision was in favour of

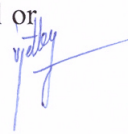


Barbosa family that is when the survey record were changed in the year one thousand nine hundred and eighty eight. Complainant had no clue as to how and what manner the Barbosa family was claiming property of the Mambro family and as such the complainant no. two, who had an agreement with Mambro family started investigation and finding about the original of the title of Babosa family. The complainant engaged services of expert to trace the documents and these documents were secured or furnished only by two thousand seventeen eighteen and based on which only after these documents, complainant realized that fraud was played by Barbosa family in their inventory proceeding in nineteen seventy two to nineteen seventy four. Barbosa family in nineteen seventy four under item five listed the property under one thousand three hundred thirty five, at pages hundred and five reverse book-B twenty seven new which is the suit property and in the said chart they added the name of suit property and property Gauchi Xir besides added old Cadastral survey number of the property of the property Mambro family and property Gauchi Xir as thirty four and thirty three when they had rights title share or interest either in of there property and that is how they succeeded on this basis before the revenue authority. This facts was not known as their title to property no ten thousand three hundred fifty five was not known. Belarmino A.C. Dsouza had purchased the suit property from Amelia Dsouza . It is also seen that suit property was listed in inventory proceeding for the first time one thousand eight hundred and ninety one. Boundaries of suit property in first land registration in December one thousand nine hundred and three and inventory proceedings of one thousand eight hundred and ninety one are same. During Inventory of eighteen ninety one suit property belonged to family of Amalia D?Souza. In the year December nineteen hundred and three family of Amelia Dsouza sold some of their property to one Belarmino A C Dsouza including suit property. In nineteen twenty nine Belarmino A C Desouza sold only the suit property to Barbosa family and nothing else. It is only after discovery of these



documents and securing of old Cadastral survey no. thirty three in March two thousand and nineteen that the fraud came to light fraud vitiate all legal proceedings/judgment decrees, orders or ministerial acts there for the claim of Barbosa is null, void and non-est as such claim of respondent is also a fraud null and void and non-est and hence intervention of this authority is urgently required.”

- 5) From the complaint, objections filed by the respondent, reply to objections and written submissions alongwith documents, it is clear that the complaint has been filed for revocation of registration of the respondent’s project on the grounds that the complainant is the owner of the property in question; that the respondent has no title over the said property, that the title report furnished before this authority by the respondent is false and a fraud on this Authority as well as prospective purchasers/ investors and that by playing such fraud, the respondent is trying to sell/ selling the said property belonging to the complainant. In nutshell, it is the case of the complainant that the construction is being carried out by the respondent on the property belonging to the complainant.
- 6) The perusal of Section 7 reveals that the Authority may revoke the registration granted under Section 5, after being satisfied that “(a) promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder; the promoter violates any of the terms or conditions of the approval given by the competent Authority; (c) the promoter is involved in any kind of unfair practice or irregularities; (d) the promoter indulges in any fraudulent practices.” The explanation to Section 7 reads that the term “unfair practice” means a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the practices like:-
- “(A) the practice of making any statement, whether in writing or by visible representation which (1) falsely represents that the services are of a particular standard or grade; (ii) represents that the promoter has approval or



affiliation which such promoter does not have; (iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered.”

7) Though the complainant has stated in the complaint that the title report submitted by the respondent is false, fabricated and a “fraud” on this Authority as well as prospective purchasers since the property on which the construction is going on belongs to the complainant and since the respondent is selling the property belonging to the complainant and in this regard produced on record many documents in order to show this Authority the owner of the said property is complainant, **yet it is material to note that the complainant has not produced on record any declaration of ownership of the said property in favour of the complainant from any competent Civil Court which can decide the ownership of the complainant. This Authority cannot decide the title of the complainant in respect of the property in question as this Authority has no power to decide the ownership of any party.**

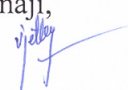
8) The complainant has right to challenge the revocation of registration of the project of the respondent on the ground of “fraudulent practices” only if the complainant has in his favour declaration of ownership in respect of that property from any Civil Court. On the contrary by producing on record various documents the complainant claims the ownership of the said property but as stated earlier, this Authority cannot decide the ownership of complainant. Similarly, by various documents on record, the complainant has stated in the reply to the objections of the respondent that the sale deed dated 14/08/2017 contains false and fraudulent statements and hence, “the very sale deed spells a fraud”, however this Authority has no power to declare the said sale deed as illegal and on that ground set it aside though such declaration is not sought directly but by necessary implications. Unless there is a declaration from a competent Civil Court to the effect that the complainant is the owner of the said property on which construction is carried out by the respondent and that the aforesaid sale deed relied upon the respondent is illegal, the instant complaint that fraud is being played by the

respondent on this authority and purchasers is not maintainable. In para 17 of the aforesaid reply, the complainant has stated as under:-

“Just by including the name of the property without any title and/ or old survey numbers **one cannot project property of complainant to be that of the respondents.** The complainant are not asking for any title from this Authority, their title is by law, inscription and description has its own force in law as title and which is supplemented by the old Survey Cadastral record of 1904 which is a complete exercise under law as there is record of registo de agremissior”.
(emphasis supplied)

Though the complainant has stated that in the present complaint, the complainant is not asking for any declaration of title from this Authority, yet unless the title of the complainant is decided by a competent Civil Court, the complaint filed on the ground of fraud committed by the respondent is not legally maintainable as this Authority cannot decide the ownership of the complainant based on “land registration both description and inscription and if the said property is identified in old Cadastral Survey which is done in the year 1904 and which corresponds to the new survey numbers 13,14 and 15” as stated by the complaint in the reply to the objections. In the reply the complainant has further stated that **“the complainants do not need any title certificate, as it is the law of the land that the owner in possession is the person in whose name the property is inscribed”** (emphasis supplied) however, this Authority cannot decide the title of the complainant based on the inscription document and only the Civil Court can apply the above concept of law and decide the title of the party based on inscription. As stated above, even the sale deed dated 14/08/2017 cannot be considered as illegal by this Authority and the said decision/ conclusion can be arrived at only by a competent Civil Court. Since no Civil Court has declared the said sale deed dated 14/08/2017 as illegal, this Authority cannot decide the legality of the said sale deed.

- 9) The respondent, in the objections raised referred to special civil suit number 14/2008/A filed before the Court of Civil Senior Division, Panaji,



interalia against the complainant No. 1 and Predecessor in-title of the respondent viz: Inorbit Malls (India) Pvt. Ltd. and in the said first civil suit, the complainant No. 2 specifically interalia sought a declaration that the sale deed dated 09/10/2006 whereby Mrs. Irene Barboza had sold property bearing survey No. 12/1(part), 13/1(part), 14/1(part) and 15/1(part) of Panelim Village be declared as null and void. According to the respondent, the property which is the subject matter of the sale deed is “Aneixo Do Oiteiro or Gauchixire Fuxal Galle” also known as “Kuxal Gally Moll”, also known as “Gaunchi Sheer” or “Gaunchi Xir”. According to the respondent, the complainant No. 2 had applied for an order of temporary injunction for restraining the predecessor in title of the respondent from carrying out any further construction pursuant to the Deed of Sale dated 09/10/2006 and the Ld. Civil Senior Division Judge rejected the said application for temporary injunction, which order was never challenged by complainant No. 2 and hence attained finality, though the said special civil suit No. 14/2008/A is still pending.

- 10) The respondent further refers to another special civil suit bearing No. 17/2019/A filed by complainant No. 1 along with some other members of Mhambro family pending before the Court of Civil Judge Senior Division, Panaji wherein the respondent herein is arrayed as defendant No. 40. It is stated that in the aforesaid special civil suit, the relief sought is that the property belonging to Smt. Irene Barboza, the defendant No. 1 therein and Mrs. Ithel Minna Baboza, the defendant No. 4 therein, is the property described in the Land Registration Office bearing number 10335 and that all additions of further boundaries, additions of the name of other properties on “Gaunchi Xir e Fuxalgale” and mentioning of the old Cadastral Survey No. 33 and 34 to item No. 5 in Inventory Proceedings 14/1972 be declared as null and void having secured fraudulently. It is further stated that predecessor in title of the respondent herein is arrayed as defendant No.2.
- 11) According to the respondent, the complaint therefore, is a complete abuse of the process of law and court as the complainants by crafty and misleading drafting have also sought to give an impression to this Authority that complaint pertains to the properties with description

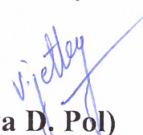
numbers 10221, 10222 and 10223 and that no proceedings are filed in any court in respect of property bearing description number 10335, however upon enactment of the Goa, Daman and Diu Land Revenue Code, 1968, the properties are surveyed and described by the survey numbers. According to the respondent, after not getting any success from the Civil Court, the complainants have brought the entire dispute of title before this Authority despite knowing full well that the Civil Court is the only Forum to decide issues of title, possession and interest in the property after conducting full fledged trial. It is stated that misleading submission has been made by the complainants to the effect that no suit has been filed which pertains to description number 10335 even though it is mentioned at 150 places in the First Suit and a specific prayer regarding 10335 is made in the second Civil Suit. Hence, according to the respondent, a fraud is being played by the complainants on this Authority, due to which the complaint ought to be rejected with exemplary costs.

- 12) In nutshell, it is case of the complainant that since construction is being carried out by the respondent in the property belonging to the complainant, the respondent provided illegal sale deed and false title report and by fraudulent and unfair practice obtained the registration, which therefore, should be revoked. In the written submissions, the Id. Advocate for the complainant has reiterated that under Article 953 of Portuguese Civil Code the inscription in the registration of a title conveying ownership operates as transfer of possession of such property in favour of the person in whose name the inscription stands and “so, therefore, the title to the property is of the complainants”. However, as stated above the complainant has not obtained/ provided any declaration from the competent Civil Court to the effect that the property on which the respondent is doing construction belongs to the complainant and/ or that the complainant is the owner of the said property and/ or that the sale deeds in question are illegal and hence null and void. Unless the complainant establishes his title over the property on which construction is being done, the complaint before this Authority is not legally maintainable because in order to come to any conclusion that the registration was obtained by the respondent by following fraudulent practice, it has to be decided first whether the complainant has title over

the said property and the said issue of title cannot be decided by this Authority.

- 13) Thus the rulings relied upon by the complainant like that of the Hon'ble Bombay High Court i.e. (Vaman Govind Raut and others v/s Sitaram Narayan Raut & ors 2014 o supreme (Bom) 227)"interalia relating to old Cadastral Survey Plan and its presumptive value; that of "A.V. Papayya Sastry and ors v/s Govt. of A.P and others (2007) 4 SCC 221" stating that judgement, decree or order obtained by fraud has to be treated as non-est and nullity; that of "Bhaurao Dagolu Paralkar v/s State of Maharashtra AIR 2005 SC 3330" stating interalia that fraud and collusion vitiate even most solemn proceedings; "Balwant Singh & ors. v/s Daulat Singh (dead) by Lrs. 1997(6) Supreme 385 interalia relating to legal effect of Mutation that is the mutation entries do not convey or extinguish any title; that of "Jitendra Singh v/s The State of Madhya Pradesh and ors in special leave Petition No. 13146/2021 wherein the Hon'ble Supreme Court upheld the order passed by the High Court setting aside the order passed by the revenue authorities directing to mutate the name of the petitioner in the revenue records based on a will and wherein the Hon'ble High Court relegated the petitioner to approach the appropriate Court to crystalize his rights on the basis of the alleged will, do not help the case of the complainant, as it is for the complainant to approach a competent Civil Court to crystalize his ownership rights over the premises first so as to make out his case of fraud by the respondent, before this Authority.

In the premises aforesaid, the instant complaint is dismissed as inadmissible in law/ legally not maintainable before this Authority.


(Vijaya D. Pol)
Member, Goa RERA