



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (368)/2023 11538

Date: 08/11/2024

(BEFORE THE MEMBER SHRI VINCENT D'SILVA)

1. Mr. Rajendra R. Shirodkar,
2. Mrs. Sangeeta R. Shirodkar,
Both r/o H.No. 105/C, Xell Bastora,
Bardez, Goa-403507.

.....Complainants

Versus

M/s Prabhu Constructions,
Rep. by Mr. Venkatesh Narayan Prabhu Moni,
r/o Villa No. G-4, La Ocean Mist,
Near Amar Hotel, Dona Paula-Goa, 403004.

.....Respondent

Ld. Advocate Shri Neelesh Takkekar for the complainants.
Ld. Advocate Shri Suhas M. Walawaikar for the respondent.

ORDER

(Delivered on this 8th day of the month of November, 2024)

This order shall dispose of application filed by the respondent at exhibit 504/c for cross examination of the complainant(s) and the summoning of the witnesses.

2. Briefly stated, the case of the respondent is as follows:-

The complainants have suppressed the material facts as to the delivery of the subject premises to them much before the stipulated time in the contract. The

respondent has denied the material statements of the complaint as well as in the affidavit-in-evidence filed by the complainants. The complainants have also suppressed many material aspects in their affidavit that they have not complained as to the deficiencies of services after taking over the possession of the suit premises before the date of filing of the complaint. The respondent in that context desires to cross examine the complainant to unfold the truth and enable the Authority to dispose the complaint in a fair manner.

3. The respondent besides cross examining the complainant desires to examine the witnesses namely (1) Ms. Manali Subash Parsekar, (2) Ms. Shabana Azmia Shaik, (3) Ms. Suhasini Subash Kerkar, (4) Ms. Rosie Mascarenhas and (5) Ms. Deepti Pednekar. The Authority may therefore direct the complainant to submit himself for cross examination as against his affidavit and summon the above said witnesses.

4. The complainant filed a reply inter-alia contending that the application filed by the respondent is untenable in law and non maintainable. The said application is baseless which is filed by respondent with a malafide intention to delay the proceedings which are summary in nature and has to proceed with what has been produced before it as evidence. The respondent also failed to make out a case warranting cross examination of the complainants and summoning of the witnesses and therefore, the application be dismissed.

5. Arguments heard.

6. Rule 6 of the Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeals etc.) Rules, 2017 brings out the manner of filing a complaint with the Authority and the manner of holding an inquiry by the Authority. Rule 6(2) mandates the

Authority to follow the following procedure for the purpose of deciding any complaint filed under sub-rule (1):-

- (a) The Authority shall, upon receipt of the complaint, issue a notice along with the copy of such complaint and the relevant documents to the respondent. Such notice shall specify a date and time for further hearing of the case;
- (b) In case the Authority is satisfied on the basis of the submissions made that the complaint does not require any further inquiry, it may dismiss the complaint.
- (c) In case the Authority is satisfied on the basis of the submissions made that there is need for further hearing into the complaint, it may order production of documents or other evidence on a date and time fixed by it.
- (d) On the date so fixed, the Authority shall require the applicant and respondent to give evidence or to produce any document which in the opinion of the Authority, may be useful for or relevant to the subject matter of the inquiry. Thereafter, the Authority shall have the power to carry out an inquiry on the basis of documents and submissions.
- (e) The Authority upon consideration of the evidence produced before it and other records and submissions is satisfied that,—
 - (i) the respondent is in contravention of the provisions of the Act or the rules and regulations made thereunder it shall pass orders, adjudging the quantum of compensation as it thinks fit in accordance with the provisions of the Act, the rules and regulations made thereunder with reasons to be recorded in writing; or
 - (ii) the respondent is not in contravention of the provisions of the Act, the rules and regulations made thereunder, the Authority may, by order in writing, dismiss the complaint, with reasons to be recorded in writing.



(f) If any person fails, neglects or refuses to appear, or present himself as required before the Authority, the Authority shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.

7. Ld. Advocate S. M. Walawaikar for the respondent has submitted that under Section 35(2) of the Real Estate (Regulation and Development) Act, 2016 the Authority has same powers as vested in a civil court under the Code of Civil Procedure, 1908 for trying a suit in respect of matters namely (ii) summoning and enforcing the attendance of persons and examining them on oath; (iii) issuing commissions for the examination of witnesses or documents. He further submitted that the complainants have suppressed the material facts as to the delivery of subject premises to him much before the stipulated time in the contract and that is the reason the respondent desires to cross examine the complainant and summoning the said witnesses.

8. Per contra, Ld. Advocate Shri. N. Takkekar for the complainants has submitted that the application under consideration is not maintainable and baseless and filed with an intention to delay the proceedings pending before the Authority. He further submitted that the proceedings are summary in nature and as much the Authority has to proceed with what has been produced before it as evidence and therefore, no case is made out for any relief by the respondent. Relying upon the case of *The State of Maharashtra and another vs. Ishwar Piraji Kalpatri, AIR 2002 Bom 423*, he submitted that a party has no right in the procedure prescribed so long as it does not interfere or alter with any of his vested or substantive rights and therefore, the application under consideration be dismissed.

9. Admittedly, Section 35 of the Act confers powers on the Authority to call for information and conduct investigations. Section 38 relates to the power of the

Authority. Clause 2 of Section 38 states that the Authority shall be guided by principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedures. The Rules under the Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeals etc.) Rules, 2017 prescribe summary procedure for inquiry before the Authority. Rules 6 provide for manner of holding an inquiry by the Authority. Rule 6(2)(c) states that in case the Authority is satisfied on the basis of submission made that there is need for further hearing into the complaint, it may order production of documents or other evidence on a date and time fixed by it and Rule 6(2)(d) states that on the date so fixed, the Authority shall require the applicant and the respondent to give evidence or to produce any document which in the opinion of the Authority, may be useful for or relevant to the subject matter of inquiry and thereafter, the Authority shall have the power to carry out the inquiry on the basis of the documents and submissions.

10. It is therefore manifestly clear that it is for the Authority to decide whether the parties are required to give evidence or to produce documents and thereafter carry out summary inquiry on the basis of documents and submissions and dispose of the matter. The complainants and the respondent have filed their respective documents and affidavits and the matter was fixed for written arguments of the complainants on 28.10.2024, on which day, the above said application came to be filed by the respondent. Admittedly, it is the case of the complainants that the respondent has carried out sub-standard work due to which there is water logging and has not executed a sale deed so also that the developer has not obtained occupancy certificate by complying the requirement under the Building Regulation Act and that the respondent has failed to register the projects as such, they have

prayed for requisite reliefs in the complaint, which has been denied by the respondent.

11. The respondent has not specified the provision under which he is seeking the above relief and the necessity to cross examine the complainant. He has also not specified which complainant, out of two, he desires to examine and the reason thereof. The averments made in the application are not germane nor will it entitle the respondent to submit the complainants for cross examination as the materials on record and the documents produced by both the parties are sufficient in deciding the complaint. The respondent has also not shown any justification as to why he desires to examine the so called witnesses and its relevancy in deciding the complaint. Section 31 of the Act stipulates that any aggrieved party can approach the Authority for any violations or contravention of the provisions of RERA Act or Rules and Regulations made thereunder, Chapter III of RERA Act, which contains Section 11 to 18 casts various obligations upon the promoter as promised to the allottees. Under Section 29 of the Act, the Authority shall endeavour to dispose of the complaint as expeditiously as possible but not later than 60 days from date of filing the same. The pleadings are complete and the matter is fixed for arguments. It therefore appears that the respondent is bent upon delaying the matter, when such matters have been already disposed of by my predecessor. There is also no allegation that the principles of natural justice have not been complied with in the present proceedings. The respondent has therefore failed to substantiate the basis on which he is seeking the prayer of cross examination of the complainant and summoning of the witnesses.

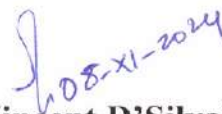
12. Both the parties have placed on record comprehensive and detailed documents along with the affidavits which are sufficient for disposing of the matter on merits and therefore, cross examination of complainants and summoning of the

so called witnesses are not warranted. The respondent has also no vested right to be tried by a particular procedure except in so far as there is any constitutional objection by way of discrimination or violation of any other fundamental right is involved, which is held in the case of *The State of Maharashtra and another*, supra. There are admittedly no grievances in that regard by the respondent. The respondent therefore does not have any vested right as claimed by him in the application, other than the procedure contemplated under Rule 6 of the Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeals etc.) Rules, 2017, according to which the complaint filed by the party for any violation under the Act or the rules and regulations made thereunder can be decided based on documents and submissions of the parties. The submission of Ld. Advocate S. M. Walawaiker and the application filed by the respondent therefore cannot be granted.

13. Having said so, I pass the following:-

ORDER

The application filed by the respondent at exhibit 504/c for cross examination of the complainants and summoning of witnesses stands dismissed.


(Vincent D'Silva)
Member, Goa RERA

Panaji, Goa.
Date: 08.11.2024