



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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F. No. 3/RERA/Complaint (95)/2019/ 176

Dated: 13/02/2020

ORDER

Dated: -7/2/2020

Harita Methar,
The Misty Green- Flat FS 1,
Salvador Do Mundo,
Near Chavdeswar Temple,
North Goa, 403101.

..... Complainant

Versus

Universal Developers,
Ekta Nagar, Next to Chapel,
Housing Board,
Mapusa Goa, 403519

..... Respondent

This Order shall dispose off application filed by the respondent under Section 8 of the Arbitration and Conciliation Act, 1996, on the spacious plea that Complainant and Respondent entered into an agreement for Sale dated 24/7/2018 and the said Agreement contains Arbitration clause wherein the parties have agreed to refer the matter for Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 in the event there arises any dispute between the parties. According to respondent in view of Arbitration clause in the agreement it is mandatory for this Authority to invoke Arbitration clause by referring the matter to the Arbitrator.

The brief facts of the case is that complainant Shri. Harita Methar r/o Salvador Do Mondo filed complaint against Universal Developers, Mapusa represented by promoter Shri. Altaf Yargatti for not providing amenities to the project. "The Misty Green", Salvador Do Mundo wherein he has purchased flat no. F-S1, on second floor, admeasuring 67.88 sq. mts. pf area. According to complainant there are cracks on the wall, seepage issues and need repair works and sought compensation in the sum of Rs. 1,30,000/- and the complete repairs.

Respondent resisted the case of Complainant denying the facts and sought to invoke Arbitration clause as per the Arbitration and Conciliation Act; 1996 prior to proceeding with the matter by this Authority..

The Application under consideration was objected by the Complainant on the ground that there is no provision under RERA to file such application. According to the complainant in pursuance of Agreement for Sale 24/07/2018, the Respondent and the Complainant have executed Deed of Sale dated 12/09/2019 and as such clauses mentioned in Agreement for Sale cannot be enforced lately. It is also the case of the Complainant is that RERA is a Regulation which protects the Real Estate Sector with a aim and object to protect the interest of the consumer, and has its own adjudicating mechanism for dispute redressal and therefore Arbitrational clause in the Agreement for Sale is infructuous.

The complainant submitted that application is malafide, dishonoured, not maintainable, and not in accordance with law and therefore deserves to be dismissed with exemplary cost.

I have heard Ld. Adv. Shri. Dinesh Naik for the applicant/Respondent and Adv. Subhash Sawant for the Complainant.

I have duly considered the arguments advanced by both the parties and entire material on record.

The applicant/ respondent in support of his case placed reliance in the Authority of Apex court in the case of Management committee of Montfort Senior Secondary School, Appellant v. Vijay Kumar and other Respondent. AIR 2005 Supreme Court 3549 and of Gujarat High Court in the case of Indian Oil Corporation limited v. Prayagraj Fuel Point through its Proprietor, AIR 2016 Gujarat 57. While the advocate for the complainant Shri. Subhas Sawant placed reliance in the Authority on the decision of Apex Court in the case of M/s Emaar Mgf Land Limited vs. Aftab Singh in Civil Appeal no.23512 – 23513 of 2017 decided on 10/12/2018.

First of all it is seen that complaint was filed way back and on 18/11/2019 and the respondent put up his appearance on 9/12/2019. On 9/12/2019 Respondent put his appearance and however did not file any application invoking Arbitration clause nor same is preferred on the adjourned date i.e 13/12/2019, 18/12/2019, 13/1/2020 and 24/1/2020. The application under consideration came to be filed only on 31/1/2020 and very belately and almost after 2 months. It was expected from the respondent to file the application invoking Arbitration Act at the earliest

opportunity. The same was not done. On the converse the respondent was carrying out the work as per the violation pointed by the complainant during the course of the proceedings. Therefore filing the present application is belated and smacks of malafides.

Be that it may be, one of the functions² of the RERA enlisted in Section 32(g) of the Act is to take measures to facilitate amicable conciliation of dispute between the promoter and the allottees through dispute settlement forum set up by the consumer or promoter association. In pursuance of this duty/obligation this Authority is in process of setting of Goa RERA Conciliation and Dispute Resolution Forum with a laudable object/step towards reducing real estate dispute and of providing speedy resolution.

The RERA Act does not bars the jurisdiction of any other judicial or quasi-judicial body except the Civil Court, which creates another grey area with respect to the jurisdiction of the RERA and the AO, especially vis-à-vis an arbitration tribunal.


While the Act does not clarify whether dispute under the Act can be referred to arbitration or not, Section 88 and 89 of the Act read together create an overriding effect of the Act as Section 88 of the Act states that “ the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law” and Section 89 of the Act states that “ the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.” Thus, the intent of the legislature appears to be in favour of ousting the applicability of the Arbitration Act for disputes under the Act, as one of the prime objectives of the Act is also to create a body for speedy dispute resolution and any law being in consistent with the remedy provided under the Act, would be inapplicable to the extent.

In the light of above, the implied ouster of the Arbitration Tribunal is evident from Section 88 and 89 of the Act. Though there is an agreement between the parties invoking Arbitration clause the intent of the legislature, read in harmony with the preamble, clearly appears to be that all disputes arising under the Act are to be referred to the redressal mechanism provided under the Act and are not to be referred to Arbitration.

The Authority cited by Advocate of the Respondent Supra in the case of Indian oil Corporation Ltd. AIR 2016 Gujarat 57 has no applicability to the case at hand.

The said authority runs on the principle that a Forum or Authority may not be court in strict sense of the term and such Forum or Authority can be quasi judicial or judicial authority.

In fact the authority cited by Adv. S. Sawant on behalf of complainant in the case M/s Emaar Mgf Land Limited is quite attracted in the facts of the present case which states that an Arbitration Clause in the afore stated kind of Agreement between Complainants and the Builders cannot circumscribe the jurisdiction of a Consumer for notwithstanding the amendments made to Section 8 of the Arbitration Act and that disputes which are to be adjudicated and governed by statutory enactments, established for special public policy are not arbitrable. That being the position, the applications under consideration filed by the respondent is not maintainable and hence stands dismissed.


7/2/2020
(P.V. Kamat, Dist. Judge (Retd.))
Member, Goa RERA

Dated: - 7/2/2020

Panaji