



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (429)/2024/163

Date: 05/02/2025

(BEFORE THE MEMBER SHRI VINCENT D'SILVA)

1. Siddhartha Gupta
2. Naresh Gupta,
R/o House No. A-5,
Maharani Bagh, Srinivaspuri,
South Delhi, Delhi-110065.

.....Complainants

Versus

1. Mr. Suraj Morajkar
2. Mrs. Sanjana Suraj Morajkar
Both resident of H.No. 1679-A,
Saipem, Candolim,
Bardez, Goa-403515.

.....Respondents

Ld. Advocate Sarvesh Kalangutkar for the Complainants.

Ld. Advocate Dajvip Patkar for the Respondents.

ORDER

(Delivered on this 5th day of the month of February, 2025)

This order shall dispose of application filed by the respondents at exhibit 392/c for framing issues and holding a full-fledged trial for deciding the case.

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

The respondents have filed their reply to the complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 made by the complainants and in view of the reply, several issues, including factual issues arise in the matter. None of these factual issues can be decided based on affidavit, and a full-fledged trial allowing the parties to lead evidence by examining witnesses and affording the other party to cross-examine such witnesses is imperative. The same is also a requirement of due procedure. Hence, the Hon'ble Authority be pleased to frame issues and hold a full-fledged trial for deciding the present matter.

3. The complainants filed a reply stating that the intention of the application is to delay adjudication of the present complaint. The RERA in terms of Section 38(2) shall be guided by the principles of natural justice and subject to the provisions of the Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure. The Authority is not bound by the procedure laid down by the Code of Civil Procedure, 1908 and that 'Right to Speedy Trial' is a fundamental right implicit in Article 21 of Constitution of India and protected by numerous landmark judgments of Hon'ble Supreme Court of India.

4. Arguments heard.

5. 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.

6. Admittedly, Section 38 of the Act 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. The Authority is not bound by the procedure laid down by the Code of Civil Procedure, 1908 and that 'Right to Speedy Trial' is a fundamental right implicit in Article 21 of Constitution of India. 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.

7. 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 respondents have filed their respective documents. The complainants have also filed written submissions on 13.1.2025, on which day, the above said application came to be filed by the respondents.

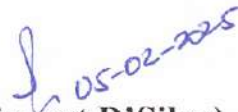
Needless to mention, the Authority is required to dispose of the complaint as expeditiously as possible as they prescribe summary procedure for inquiry before the Authority. The pleadings are complete and the matter is fixed for arguments. The materials on record and the documents produced by both the parties are sufficient in deciding the complaint and therefore, a full-fledged trial is not warranted. There is also no allegation that the principles of natural justice have not been complied with, in the present proceedings. The respondents have therefore failed to substantiate the basis on which they are seeking for framing issues and holding a full-fledged trial for deciding the case.

8. Moreover, the respondents have 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 case of *The State of Maharashtra and another vs. Ishwar Piraji Kalpatri*, AIR 2002 Bom 423. Needless to reiterate, 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.. There are admittedly no grievances in that regard by the respondents. The respondents therefore cannot have any vested right, 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 D. V. Patkar and the application filed by the respondents therefore cannot be granted.

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

ORDER

The application filed by the respondents at exhibit 392/c for framing issues and holding a full-fledged trial for deciding the case stands dismissed.


(Vincent D'Silva)
Member, Goa RERA

Panaji, Goa.
Date: 05.02.2025