



GOA REAL ESTATE REGULATORY AUTHORITY

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 Goa
www.rera.goa.gov.in

Tel: 0832-2437655; e-mail: goa-rera@gov.in

F.No:3/RERA/Complaint(345)/2023/ 1092

Date: 31/10/2023

Ganpat Singh Bishnoi,

UG-1, Venkatesh Annapurna Sankul,
Nr. Pandav Chapel, Aquem-Alto,
Margao, Goa-403601.

..... Complainant

Versus

1.M/s Expat Projects and Development Private Limited,

Represented by Mrs. Vizbel Vaz,
Client Relationship Executive (Project),
A2-213, 2nd floor,
Expat VIDA Uptown Commercial,
Kadamba Plateau, Goa-403206.

2. Naiknavare Construction Pvt. Ltd.,

Represented by Mr. Satyawan Gorakh Ghadge,
1204/4, Ghole Road, Shivajinagar, Pune,
Maharashtra-411004.

.....Respondents

ORDER

(Dated 31.10.2023)

This order disposes of the application for amendment of the complaint wherein the complainant has prayed this Authority to allow him to make the Director of Respondent No. 1 as party in the complaint. According to the

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complainant, the Respondent No. 1 is represented by its Director Mr. Lancel Victor D Souza and accordingly the said Director is required to made party in the instant complaint.

2. Reply has been filed by the Respondent No. 1 objecting to the said application for amendment mainly on the ground that there is no provision under the RERA Act to amend the complaint and also that the complainant has already filed his affidavit in the complaint.
3. Upon the consideration of the statutory scheme of the RERA Act, it is clear that there is no provision which expressly confers the power to permit amendment of complaint on this Authority. However, such power to amend the complaint, if the same is necessary and required under the changed circumstances as in the instant case, must be considered as incidental and ancillary to the power to decide the complaint. Though in a different context, the Hon'ble Supreme Court in the case of **"S. M Banerji Vs. Sri Krishna Agarwal"** AIR 1960 SC 368 held as follows:-

"At this stage we must guard against one possible misapprehension. Courts and Tribunals are constituted to do justice between the parties within the confines of statutory limitations, and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very



purpose for which they are constituted. We must make it clear that within the limits prescribed by the decisions of this court that discretionary jurisdiction of the Tribunals to amend the pleadings is as extensive as that of a civil court. The same well settled principles laid down in the matter of amendment to the pleadings in a suit should also regulate the exercise of the power of amendment by a Tribunal.”

4. In the case of **“Bidi Leaves and Tobacco Merchants Association Vs. The State of Bombay” AIR 1962 SC 486**, the Hon’ble Supreme Court considered the scope and effect of the doctrine of ‘implied power’ and made the following observations:-

“23. “One of the first principles of Law with regard to the effect of an enabling act”, observes Craies, “is that if a legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view [Craies on Statue Law]whenever anything is authorized and especially if as a matter of duty, required to be done by law and it is



found impossible to do that thing unless something else not authorized in express terms be else done, then that something will be supplied by necessary intendment. This doctrine can be invoked in cases “where an Act confers a jurisdiction it also confers by implication the power of doing all such acts, or employing such means as are essentially necessary to its execution [Maxwell on interpretation of Statues]”. In other words, the doctrine of implied powers can be legitimately invoked when it is found that a duty has been imposed or a power conferred on an Authority by a Statue and it is further found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. In such a case, in the absence of an implied power the statue itself would become impossible of compliance.”

5. The Hon’ble Bombay High Court in the **writ petition nos. 302 & 300/2010, 3, 409 and 435/2011 in the case of “Major (Retd.) Keher Singh Vs. Mr. Velentino Xavier Pereira and others”** also relied upon the aforesaid rulings of the Hon’ble Supreme Court.



6. In the instant case, the Respondent No. 1 in the written submissions had inter-alia raised the following objection:-

“Other objection is that the Respondent is a company which is a legal entity which has to be sued through its Directors and not by Client Relationship Executive (Projects) employees who has no power to take decision. It is stated that the said service of notice and the proceedings against the company is defective and prayers against the legal entity without the Director being brought on record is null and void.”

7. In the instant case the respondent no. 1 had raised the objection to the effect that the respondent no. 1 which is a company and a legal entity has to be sued through its directors and therefore the instant complaint is defective being filed without making director as party thereto. Since, the complainant is merely rectifying the said complaint by adding director of respondent no. 1, no prejudice would be caused to the respondent no. 1 in case the amendment is allowed. It is significant that the respondent no. 1 has not disputed the identity of the proposed director of respondent no. 1. The power of allowing such amendment by this Authority must be considered as incidental and ancillary to the power to decide the instant complaint. Thus, invoking the doctrine of implied powers, the instant amendment



is allowed. No prejudice will be caused to the respondent who will be given liberty to file reply after the said amendment. The complainant is directed to carry out the necessary amendment in the prayer clause of the online complaint within one week by following the required procedure.

vijaya 3/10/23
(Vijaya D. Pol)
Member, Goa RERA