



**GOA REAL ESTATE REGULATORY AUTHORITY**

**DEPARTMENT OF URBAN DEVELOPMENT**

**GOVERNMENT OF GOA**

101, 1<sup>st</sup> Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA

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No.3/RERA/Complaint (276)/2021/987

Date: 21/12/2022

**Mrs. Sugandha Pravinkumar Shirodkar,**

H.No. 1038/3, Situated on Ground Floor at Zosswado,

Succorro, Bardez-Goa, 403501.

.....Complainant

*Versus*

**Shri Viresh Kamalanath Nadkarni**

Partner of Nadkarni Libra Developers,

C/o K.V. Nadkarni & Associates,

L-45/46, 4<sup>th</sup> Floor, Alfran Plaza,

M.G. Road Panaji, Goa, 403001.

.....Respondent

**ORDER**

**(Dated 21.12.2022)**

This Order disposes of the application for amendment filed by the complainant whereby the complainant wishes to substitute the prayer clause in the online complaint. In the online complaint, the complainant had prayed for the refund of the amount of ₹37,10,320/- (Rupees Thirty Seven Lakhs Ten Thousand Three Hundred and Twenty only) along with the statutory interest and the compensation. In the application for amendment, it is stated that the complainant

had recently learnt from the affidavit in sur rejoinder dated 29.08.2022 filed by the respondent that the respondent has completed the construction of the subject apartment. It is further stated that on site inspection, the complainant learnt that for want of amenities like electricity, water connection and other sanitary provisions, occupancy certificate was not issued to the respondent. In such circumstances the complainant wishes to carry out the amendment to the prayer clause in the complaint by substituting and replacing with the following reliefs:-

“That this Hon’ble Authority maybe pleased to direct the respondent to deliver the subject apartment, along with occupancy certificate and along with interest for every month of delay till the handing over of the possession, at such rate as may be prescribed, in terms of the provisio to Section 18 (1) of the Real Estate (Regulation and Development ) Act, 2016”

2. It is submitted by the complainant that the aforesaid amendment would not change the nature and character of the present complaint and that the amendment is required in view of the subsequent development i.e. completion of construction at loco. According to the complainant, no prejudice will be caused to the respondent as the present application has been filed by the complainant based on the affidavit in rejoinder and on the site inspection carried out in the presence of both the



parties, whereas irreparable loss will be caused to the complainant if the present application for amendment is refused.

3. Say was given on the said application by the Ld. Advocate for the respondent, objecting the said application. Oral arguments were heard from Ld. Advocate Sushma Mandrekar for the complainant and Ld. Advocate P. Kharbe for the respondent. The Ld. Advocate for the respondent objected the said application for amendment mainly on the ground that there is no provision of amendment in the complaint in the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act').
4. 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.”

5. 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]

Widby

.....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.”

6. 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.

7. In the instant case because of the change in circumstances from the time when the online complaint was filed, the complainant wishes to amend the prayer clause and instead of asking for refund of money along with interest, the complainant seeks prayer of possession of the premises. 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.

*v. jethay 21/12/2022*  
**(Vijaya D. Pol)**  
**Member, Goa RERA**