



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:1/RERA/ Enfor. Auth. Comp (135)/99/2020 / 368

Date: 28/02/2024

Jitendra Kumar Agarwal,

235/P, Karle River Ville,

Ward 2, Pulwaddo,

Benaulim, South Goa- 403716.

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Complainant

Versus

1. M/s Umiya Holding Pvt. Ltd.

2. M/s Umiya Builders and Developers

29/3, HM Stafford, 2nd Floor,

7th Cross Road Vasant Nagar,

Banglore-560 052

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Respondents

ORDER

(Dated 28.02.2024)

This order disposes of the application dated 12.02.2024 moved by the applicant/ the complainant in complaint no. 3/RERA/Complaint(135)/2020 wherein the complainant has prayed this Authority to “pass an order certifying that the contents of the sale deed are as per the direction issued by this Hon’ble Court vide its order dated 06.05.2022 and the sale deed can be executed”. In the said application the complainant has requested this Authority “to kindly decide the issue of reference at the earliest so that the sale deed can be executed within time”.

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2. The instant complaint was disposed of by Goa Real Estate Regulatory Authority (hereinafter referred to as Goa RERA) by order dated 06.05.2022 whereby the respondents were directed as follows:-

“The respondents are directed to form a society /Co-operative society/ an association of allottees in respect of the aforesaid project, without any additional charges from the complainant other than those mentioned in the Agreement for Construction and Sale dated 11/12/2015 and Agreement for Assignment and Sale dated 30/03/2017 within two months from the date of this order and handover to its members within the said period all the necessary documents including plans related to the common areas of the said building.

The respondents are further directed to execute a sale deed of the said commercial shop in favour of the complainant along with the undivided proportionate title in the common areas to the association of allottees within two months from the date of this order.

The respondents are further directed to pay a penalty of Rs. 1,00,000/- (Rupees One Lakh only) for violation of Section 11 (4) (e) of the Act within two months from the date of this order and also to pay a penalty of Rs. 1,00,000/- (Rupees One Lakh only) for violation of Section 11 (4) (f) of the Act within two months from the date of this order.”

3. As per the provisions of **Section 40(1) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the RERA Act), read with Rule 3 of The Goa Real Estate (Regulation and Development)**

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(Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of complaints and Appeal etc.) Rules, 2017, for recovery of penalty from the respondents, the matter was referred for execution to the Revenue Authority/ the concerned Collector for recovering penalty as arrears of land revenue. Since, the respondents also failed to form a society/ co-operative society/ an association of allottees in respect of the project and also failed to execute a sale deed in favour of the complainant, as per the above order dated 06.05.2022 of RERA Authority, the matter was referred to “the Principal Civil Court of original jurisdiction” for its execution as per **section 40(2)** of the RERA Act read with **Rule 4** of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of complaints and Appeal etc.) Rules, 2017. As per **Section 5 of the Goa Civil Courts Act 1965**, the District Court is the Principal Court of original civil jurisdiction in the district. For ready reference Section 5 of the Goa Civil Courts Act 1965 is quoted below:-

“5. Original Jurisdiction of District court.-The District Judge shall be the Principal Court of original civil jurisdiction in the District, within the meaning of the Code of Civil Procedure, 1908 or any other law for the time being in force.”

4. Since, Section 40(2) of the RERA Act read with Rule 4 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation,



Fine Payable, Forms of complaints and Appeal etc.) Rules, 2017 was invoked for referring the aforesaid non-monetary part of the order dated 06.05.2022 of this Authority to the Court of the Hon'ble Principal District Judge for its execution under the aforesaid provisions of the RERA Act, it is significant to reproduce hereunder Section 40(2) of the RERA Act along with Rule 4 of the said Rules:-

Section 40:-

“40. Recovery of interest or penalty or compensation and enforcement of order etc.

(1) ...

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.”

Rule 4:-

“4. Manner of enforcement of the order, direction or decision of the Adjudicating Officer or Authority.-

Every order passed by the Adjudicating Officer, Authority or Appellate Tribunal which it is empowered to do under the Act or the Rules and regulations made thereunder, shall be enforced by the Adjudicating Officer

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or Authority in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court. **In the event such Adjudicating Officer or Authority is unable to execute the order, it shall send a copy of such order to the principal civil court, to execute such order either within the local limits of whose jurisdiction the real estate project is located or in the principal civil court of original jurisdiction within the local limits of whose jurisdiction the person against whom the order is being issued, resides, or carries on business, or personally works for gain alongwith a certificate stating that such an order has not been executed by it.**” (emphasis supplied)

5. Thus, the above non-monetary part of the order dated 06.05.2022 of this Authority was sent to the Hon'ble Principal District Judge for its execution by letter bearing no. 3/RERA/Enfor. Auth. Comp. (135)/99/2020/742 dated 10.10.2022, wherein it was clearly mentioned that the matter was being sent to the Hon'ble Principal District Judge for execution of part order dated 06.05.2022 since this Authority is unable to execute the aforesaid order dated 06.05.2022 inter alia directing the respondents to form a society/ co-operative society/ an association of allottees in respect of the project and also to execute a sale deed in favour of the complainant.
6. The Hon'ble Principal District Judge, South Goa on receiving the said letter dated 10.10.2022 of this Authority **started the execution proceedings under**



Section 40(2) of the RERA Act read with Rule 4 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of complaints and Appeal etc.) Rules, 2017 and by order dated 14.09.2023 directed the respondents to execute the sale deed within a period of ten days from the date of the said order, failing which the Superintendent of the District Court would sign the sale deed on behalf of the respondents. The Hon'ble Principal District Judge while executing the reference from this Authority, again passed an order dated 19.10.2023, mentioning as follows:-

“Inspite of the order passed on 14.09.2023 the judgment debtors/ the respondents have not executed the Deed of Sale. Hence, the Superintendent of this Court namely Smt. Alice Sequeira is authorized to sign the Deed of Sale on behalf of M/s Umiya Holding Private Limited and M/s Umiya Builders and Developers within 20 days from today”

7. **Hence, not only the request letter dated 10.10.2022 was rightly sent to the Hon'ble Principal District Judge under Section 40(2) of the RERA Act read with Rule 4 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of complaints and Appeal etc.) Rules, 2017 for execution of the aforesaid non-monetary part of the order dated 06.05.2022 of this Authority but also the Hon'ble Principal District Judge rightly initiated the execution proceedings by invoking the relevant provisions of the Code of Civil Procedure, 1908,**



“in the same manner as if it were decree of the court” (as per the language of the aforesaid Rule 4).

8. During the course of hearings of the execution proceedings before the Hon’ble Principal District Judge submission was made by the Ld. Advocate of the complainant to the effect that the Court of Hon’ble Principal District Judge was not the executing court and the said submission is clear from the relevant paragraph 4 (1) of the order dated 05.12.2023 of the Hon’ble Principal District Judge, which is reproduced hereunder:-

“4. Heard arguments. Learned Advocate Ms. S. Mordekar, appearing for the applicant/ decree-holder, submitted as under:

1. This Court could not have passed any stay order staying the order dated 14.09.2023 or order dated 19.10.2023 because this court is not the Executing Court”

9. During the pendency of the execution proceedings before the Hon’ble Principal District Judge, controversy arose between the parties as regards the ingredients/ recitals of the sale deed to be executed between the parties. The respondent had filed an appeal before the Maharashtra Real Estate Appellate Tribunal bearing appeal no. G-24 of 2022 wherein the Hon’ble Tribunal inter alia passed the following order on 19.10.2023:-

“We have heard Learned Counsel appearing for respective parties. Learned Counsel Mr. Anwar Landge submits that appellant is ready to comply with the order to the extent of



execution of sale deed of the commercial shop. However, the allottee/ respondent has shared his agreement for sale and the ingredients of the draft of sale deed shared by allottee are not agreeable to the appellant. He further submits that appellant has also shared draft of sale deed to the other side. **Considering the facts and circumstances of the case, we are of the view that executing court to decide the controversy between the parties with regard to the ingredients/ recitals of the sale deed.** It is significant to note that Learned Adv. Anwar Landge has submitted that appellant is ready to execute sale deed. Therefore, we are of the view that there is no point in staying the impugned order to the extent of execution of sale deed.”
(emphasis supplied)

10. From the aforesaid order of the Maharashtra Real Estate Appellate Tribunal, Mumbai, it is clear that as per the direction of the Appellate Tribunal, which directions are binding on Goa RERA as well as the executing court, which in the instant case is the court of Principal District Judge, the executing court has to decide the controversy between the parties with regard to the ingredients/ recitals of the sale deed. Neither Goa RERA nor the executing court of Principal District Judge can flout the aforesaid direction of the Maharashtra Real Estate Appellate Tribunal, Mumbai. **It is relevant and significant to note that after sending the matter to the Hon’ble Principal District Judge for execution of the part order dated 06.05.2022 of Goa RERA Authority under Section 4(2) of the RERA Act read with Rule 4 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty,**

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Compensation, Fine Payable, Forms of complaints and Appeal etc.) Rules, 2017, it is the court of the Hon'ble Principal District Judge which is the executing court and which court accordingly rightly initiated and pursued the execution proceedings by invoking the relevant provisions of Civil Procedure Code.

11. Thus, the submission of the Learned Advocate for the complainant before the Hon'ble Principal District Judge to the effect that the court of the Hon'ble Principal District Judge is not an executing court is without any merits being contrary to the provisions of the RERA Act.
12. The Hon'ble Principal District Judge in the order dated 23.01.2024 referred to the request made by both the Advocates to refer back the execution proceedings to Goa RERA on the ground that it was the domain of the Goa RERA to decide the terms of the sale deed and in this regard it is relevant to mention the following observations of the Hon'ble Principal District Judge:-

“2. Both the Advocates who were present before the court namely Ms. Sapna Mordekar for the decree holder and Ms. M. Kamat for the Judgment Debtors have stated that the proceedings be referred to the RERA court.

3. In view of above, the request letter dated 10.10.2022 is referred back to the concerned authority...”

13. However, Goa RERA cannot entertain and decide the execution proceedings and/ or the terms of the sale deed in the execution proceedings after referring the part order dated 06.05.2022 for execution to the Hon'ble Principal District



Judge under Section 40(2) of the RERA Act read with Rule 4 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of complaints and Appeal etc.) Rules, 2017, not only because it is the court of the Hon'ble Principal District Judge which is the executing court under the aforesaid provisions of RERA Act/ its Rules after Goa RERA sends the part order for execution to the Hon'ble Principal District Judge by following the due process of law but also because neither Goa RERA nor the executing court can flout the order dated 19.10.2023 passed by Maharashtra Real Estate Appellate Tribunal, Mumbai passed in appeal no. G-24 of 2022. Moreover, it is well settled that the consent/ request of the Advocates/ litigants cannot give jurisdiction to any Authority/ Court/ Tribunal or any other Forum for redressal, if otherwise legally the said Forum/ Court etc. does not have jurisdiction to entertain and decide any matter/ issue. Hence, the request of both the Advocates before the executing court of Hon'ble Principal District Judge to refer the execution proceedings back to Goa RERA is irrelevant and contrary to the directions given by Maharashtra Real Estate Appellate Tribunal.

14. In view of the aforesaid, since Goa RERA has not received back the original reference from the court of the Hon'ble Principal District Judge, both the parties are directed to appear before the Hon'ble Principal District Judge on 04.03.2024 at 2:30 p.m. and participate in the execution proceedings sent to that court for compliance of the aforesaid order dated 19.10.2023 passed by Maharashtra Real

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Estate Appellate Tribunal, Mumbai. In case, this Authority receives back the reference for execution from the Hon'ble Principal District Judge, the same would be referred again to the Hon'ble Principal District Judge as per the aforesaid provisions of RERA Act.

v. jethay 28/2/24.

(Vijaya D. Pol)
Member, Goa RERA