



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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F.No:3/RERA/Complaint(comb. Prabhu Chambers)/2019/ 98

Date: 15/02/2021

ORDER

Dated: 04/01/2021

This Order disposes of the application filed by the respondent under section 35 of the RERA Act, 2016 praying therein to issue notice to and call for the present Status Report regarding the Building in question, from (i) The Chief Officer, Mapusa Municipal Council, (ii) Member Secretary, North Goa Planning and Development Authority, Rua-de-Ourem, Panaji-Goa, (iii) Chief Engineer, Electricity Department, 'Vidhyut Bhavan', Panaji-Goa, (iv) Director, Directorate of Fire & Emergency Services, Campal, Panaji-Goa.

The records show that separate complaints have been filed by the complainants before this Authority seeking redressal of grievances pertaining to the non-completion of essential works with respect to the building, sub-standard and defective works which have been carried out by the developers in the building which is known as "Prabhu Chambers" situated within the limits of Mapusa Municipal Council. Mainly, the disputes raised by the complainants interalia are as follows:-

- (a) Water logging in the basement of the building due to defective construction of the basement by not taking appropriate steps/ employing proper methods and procedures by providing a raft in the basement.
- (b) Arresting the water from entering the duct which is provided for operation of the lifts of the said building.
- (c) Installation of Transformer so as to avail electricity supply for the said building.
- (d) Obtaining a fresh occupancy from the Mapusa Municipal Council pursuant to the revocation of the earlier Occupancy Certificate granted by the said authority vide its communication dated 29/05/2019, bearing ref No. MMC/ENGG/06/3217/2019

- (e) Obtaining Fire NOC from the Department of Fire Safety for the entire building.
- (f) Clearing the set back areas with respect to the said building.
- (g) Registration of the project in terms of the RERA Act as directed by this Authority in the complaint filed by Mr. Sanjay Raut.
- (h) Shortfall in the areas of units allotted to some of the complainants.
- (i) Damage and compensation for non-providing of items as listed/mentioned in the subject agreements.

From the Final Order dated 12/09/2019, issued by the Chief Officer, Mapusa Municipal Council, it is clear that the said Statutory Authority had directed the respondent to “initiate immediate action/steps within 48 hours from the date of receipt of this order” (emphasis supplied) for the following works:-

- (1) Water logging in the basement and in the lift duct to be abated
- (2) Shifting of electrical panels and installation of transformer should be done in coordination with Electricity Department
- (3) The set back area should be cleared by demolishing the kiosk as per NGPDA approved plan
- (4) The Parking area should be made functional
- (5) Submission of Final NOC from Fire Department,

however, since, according to the Municipal Council, the respondent failed to “take steps”, “initiate the above mentioned works” within 48 hours from the date of receipt of the said order, the Council revoked Part Occupancy earlier granted to the respondent.

The records further show that since the respondent agreed before this Authority to carry out the works in compliance with the aforesaid Order dated 12/09/2019 of Mapusa Municipal Council, the respondent was directed by this Authority by Order dated 25/11/2019 to complete all the works within 30 days of the said Order and as per the request of the Id Advocate for the respondent the commencement date of work was fixed on 25/11/2019. The fact remains that in spite of the aforesaid order of this Authority wayback in November 2019, the respondent has not complied the same.

In the instant application, the respondent has interalia submitted that 22 occupants out of total 120 purchasers filed a complaint dated 11/07/2019 addressed

to PI, Mapusa P.S making various allegations against the respondent which are mentioned in para 13 of the instant application and alleged commission of offences under Section 420 and 336 of IPC and Breach of Contract under Section 73 of the Indian Contract Act and thereafter the police registered the said complaint and issued Notice under Section 41(a) Cr.P.C to the respondent. It is further stated that in the said Notice, since the respondent was restrained from interfering at the site, the respondent could not take “any corrective steps” at the building.

It is further stated in the instant application that since the complainants approached the Mapusa Municipal Council with the copy of the aforesaid complaint submitted to the police, the Chief Officer, based on the said complaint, issued a Show Cause Notice to the respondent as to why the occupancy certificate granted in his favour should not be revoked, to which the respondent filed a reply but despite his reply, the Chief Officer passed an Order dated 30/08/2019 directing the respondent to initiate immediate action/steps within 48 hours to carry out the works mentioned therein, though the Chief Officer knew very well that the said order was not possible to be complied with in 48 hours at all. According to the respondent, the time frame given in the order was unreasonably short, that the issue of water logging could not be resolved unless the rains had subsided; that the electricity connection could not be restored and lift could not be made operational unless the occupancy was restored; that the NOC from the Fire Department was not required for occupation of the first four floors, that the respondent took many steps (as mentioned in para 18 of the application) for resolving the specified defects of the building including that of water logging in the basement but the Municipal Council wrongly revoked the occupancy certificate; that except for taking cognizance of the complaint and issuing Notice under Section 41(a) Cr.P.C., police has not undertaken any investigation.

In the nutshell, in the instant application the respondent has alleged that the complainants filed false complaint before Mapusa Police; that the Mapusa Municipal Council passed wrong order dated 30th August 2019; that the Mapusa Municipal Council again wrongly revoked the occupancy certificate by Final Order dated 12th September 2019; that the omission of the Chief Officer of Mapusa Municipal Council or of Municipal Engineer to visit the site to confirm the genuineness of the work being undertaken by the respondent was wrong; that the Chief Officer of the Mapusa Municipal Council is sitting over the issue of restoration of the occupancy certificate for the basement and first four floors of the

building; that the action of the police in taking cognizance of the complaint and issuing Notice under Section 41(a) Cr.P.C without making any investigation is wrong and that the Chief Officer of the Municipal Council is required to explain the delay in restoration of occupancy certificate.

It is seen that the respondent has challenged the aforesaid acts or omissions of the statutory authorities and of Mapusa Police in a wrong forum as this Authority has no power/jurisdiction to set aside the same, nor this Authority can usurp their jurisdiction and substitute its own views/orders over their orders. This Authority is not the proper forum to challenge the aforesaid orders passed by the statutory authority or the Notice issued/action taken by the Mapusa Police.

During the oral arguments, the Id. Advocate for the respondent also submitted that those Statutory Authorities need to be parties in the instant complaints, however there is no force in the said arguments as the presence of those statutory authorities is not required for decided “effectively and completely the questions involved” in the instant complaints and hence the Order dated 17th August 2020 passed by the Hon’ble Bombay High Court in “**Xavier Fernandes & Anr. v/s State of Goa & Ors.**” is not applicable in the instant matter.

Even otherwise the reliefs sought by the respondent in the instant application i.e to issue Notice to and call for the present Status Report regarding the Building from the Chief Officer, Mapusa Municipal Council; Member Secretary, North Goa Planning and Development Authority; Chief Engineer, Electricity Department; Director, Directorate of Fire and Emergency Services do not come within the preview of Section 35 of RERA Act, which is reproduced herein for ready reference.

“35. Powers of Authority to call for information, conduct investigations.- (1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefore call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have

the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

- (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) issuing commissions for the examination of witnesses or documents;
- (iv) any other matter which may be prescribed.”

Thus under Section 35 sub Section(1) of the Act, the Authority may by order call upon any “**Promoter**” or “**allottee**” of “**real estate agent**” to furnish in writing such information or explanation relating to its affairs as the Authority may require and hold an inquiry in this regard. Sub Section(2) of Section 35 of the Act is not independent or separable from sub Section (1) of Section 35 but both subsections have to read conjointly or in other words, as rightly pointed out by Id Advocate for the Complainants, sub Section(2) of Section 35 naturally flows from sub section (1) of section 35. The operation of sub Section(2) of Section 35 is not distinct from sub Section(1) but is necessarily linked to or connected with Sub Section(2) of Section 35. The Id. Advocate for the respondent emphasized on the opening words of Sub Section(2) i.e. “Notwithstanding anything contained in any other law for the time being in force”, however the said words have meaning for the Authority only “while exercising the powers under subsection(1)”.

Thus, while exercising its powers under sub Section(1) of Section 35 of the Act i.e. calling upon the promoter or allottee or real estate agent to furnish information or explanation and while holding an inquiry, the Authority shall have the same powers as are vested in a civil court under the Code of Civil procedure while trying a suit in respect of matters namely (i) the discovery and production of book of account and other document, at such place and at such time as may be specified by the Authority, (ii) summoning and enforcing the attendance of persons and examining them on oath (iii) issuing commissions for the examination of witnesses or documents (iv) any other matter which may be prescribed. Thus Section 35 of the Act nowhere envisages issuing notices and calling for the information / explanation from any person/entity other than the promoter or allottee or real estate agent.



The language of Section 35 of RERA Act is clear and unambiguous and therefore does not require the lifting of veil of any ambiguity or reading and interpreting the lines beyond the express grant of statutory powers of this Authority.

The Id. Advocate for the respondent has further relied upon the judgement dated 17/08/1990 passed by the Hon'ble Supreme Court in Civil Appeal No. 3955 of 1990 "**Union of India (UOI) and Ors. v/s Paras Laminates (P) Ltd.**" wherein it is mentioned that:

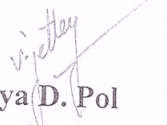
"There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognized as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised, the powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes, (eleventh edition) "where Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution."

Applying the aforesaid ruling, it is clear that the implied grant of incidental and ancillary powers is subject and subservient to the express grant or powers conferred expressly by the Statute. In the Section 35 of the RERA Act, express power is given by the Statute to call for information / explanation from any promoter or allottee or real estate agent and to hold an inquiry and while exercising

such powers, the Authority shall have the same powers as are vested in a civil court under Code of Civil procedure while trying a suit in respect of the specific matters mentioned therein. Thus this Authority can use incidental and ancillary powers only to make fully effective the express grant of statutory powers i.e of calling information / explanation form promoter or allottee or real estate agent. Any other interpretation is beyond the scope of Section 35 of the Act. Hence, the aforesaid ruling of the Apex Court does not help the respondent in deciding the application in question.

The other ruling of the Hon'ble Supreme Court i.e "**Union of India v/s R. Gandhi and ors**" 2010 (5) SCALES 14" pertains interalia to the difference between Courts and Tribunals and their powers and the procedures adopted by them. No doubt, as stated therein, Tribunals generally regulate their own procedure applying the provisions of the Code of Civil procedure only where it is required and without being restricted by the strict rules of Evidence Act, however, in the instant case, there is no scope for challenging the acts or omissions of the Statutory Authorities or that of Police and hence there is no scope for regulating the procedure of this Authority in order to issue notices or call for the status report from them, which is de hors any legal provision in RERA Act.

In view of the foregoing, there is no merit in the instant application, which is therefore dismissed.


Vijaya D. Pol
Member, Goa RERA

To,
All Concerned Parties.