



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

Case No. 3/RERA/Complaint(308)/2022/273

Date: 07/03/2025

Mr. Santosh Krishna Prabhugaonkar,

House no. 540, Kolsar, Loliem,

Canacona Goa-403702.

.....Complainant

V/s

1. M/s M. S. Builders and Developers,

Represented by its Managing Partner's,

Mr. Vithal Mohan Miringkar & Mr. Sadanand Govind Gaude,

Having Business office at office no. 18, First floor,

Ponda Commerce Centre, Ponda-Goa, 403401.

2. Mrs. Sandhya Sadanand Gaude,

Represented by her constituted power of attorney holder,

Shri Sadanand Govind Gaude,

Both residents of H.No. 139,

Borim, Ponda Goa, 403401.

3. Mrs. Savita Vithal Miringkar,

Represented by her constituted power of attorney holder,

Shri Vithal Mohan Miringkar,

Both residents of H.No. 1372,

Chikangal, Shiroda, Ponda, Goa, 403401.

4. Mr. Narendra Gopinath Gaonkar,

Residing at House No.48, Near Ganjeshwari Temple,

Ganjem, Usgao, Ponda, Goa- 403406

.....Respondent(s)

V. Amal
07/03/25

ORDER
(Dated 07.03.2025)


By this order, I shall dispose of the Application dated 15.02.2024 filed by the Applicant complainant seeking execution of the order dated 03/11/2022 passed by this Authority in the above matter. The operative part of the said order read as follows:-

- a) "The sale of open area admeasuring 45 sq. mts. by promoters to the respondent is declared as illegal and respondent is hereby directed to take possession of the area and remove the structure on this open space within 45 days .
- b) For the purpose of determination of compensation the case is referred to Adjudicating Officer under Section 71 of the Act."

2. Pursuant to the above noted directions, the Respondents vide a Memo of Compliance dated 16/02/2023 placed on record that the Respondent No. 1 to 3 have taken possession of the open area admeasuring 45 sq. mts. and removed the structure which was erected by the Respondent No. 4 in the said open area.
3. The advocate for applicant, however, subsequently filed an Application dated 15.02.2024 for execution of order dated 03/11/2022 in the above cited matter stating that the respondent have failed to comply with the said order dated 03/11/2022 as Respondents have not taken appropriate steps to cancel the sale deed dated 30/11/2020 in the light of the declaration in the order dated 03/11/2022. Further Respondents have failed to take possession of the said open space admeasuring 45 sq. mts. and remove the structure erected on this space and prayed to the Authority to take appropriate steps for execution of the said order dated 03/11/2022 by referring the matter to Principal District Judge (North Goa) for the purpose. The Applicant also submitted the site photographs clicked on 10/02/2024 in support of his submissions.


07/03/25

4. Accordingly, a notice dated 21/02/2024 was issued to all the parties to appear for hearing on 05/03/2024.
5. In response, the Respondents submitted that they have complied with the order dated 03/11/2022 of this court and have even demolished the unauthorized construction carried out in open space and a memo of compliance in regards the same was also filed by the respondents. It was further submitted that since the Respondent no. 4 was well aware that the only access to reach the open disputed space was the flat of respondent 4 and hence it grabbed the advantage of the same and reconstructed an illegal construction in open space without their approval and has also sold the flat along with illegal construction to a third party without permission of Respondents. It was further submitted that after getting knowledge of the flat, they tried their level best to re-comply with orders but all efforts have failed as access was denied by third party and that they are still willing even now to re-comply with the order of this Authority however without police protection, it is highly impossible for the respondents to comply with the orders.
6. The Complainant also filed an Application dated 29/08/2024 for imposing penalty upon the Respondents and revocation of registration granted to Respondents Promoter stating that the Respondents have not taken appropriate steps to enter into rectification deed in the light of the declaration given by the Hon'ble Court declaring sale of open space illegal and void nor have taken possession of said open space admeasuring 45 sq. mts. and removed encroachment made therein and hence are liable for penalty as specified under Section 63 & 67 of the Act, 2016 as they have failed to comply with order issued by Authority even after such order having attained finality. It was further submitted that the registration granted to Respondent No.1 as promoter is liable to be revoked under Section 7 of the Act since they have indulged into unfair trade practice by executing Deed of Sale to dispose of a common area and



07/03/25

continuing with illegalities despite order by Authority declaring Sale as illegal & void.

7. In response, the Respondents submitted that the application is not maintainable as an attempt was made at the instance of the respondents to comply with the orders of this Authority and a memo of compliance was also submitted. The respondents from day one of the order dated 03/11/2022 are in the continuous process of action to enforce the said orders, however there is no access to the encroached premises except from the flat premises and therefore without the co-operation of respondent No.4 and the new purchaser it was impossible to enforce the said orders. Further, the respondent No.4 is neither appearing before this Court nor co-operating with this respondent, therefore, any default caused in compliance of the orders is directly attributable to respondent No.4. It was further submitted that the respondents to avoid any default also requested appointment of court commissioner for execution of order and also sufficient police protection being felt necessary in the facts and circumstances of the case. Further, this fact is impliedly admitted by the complainant by giving consent for transfer of the Decree of the Court for its execution through District Court which clearly manifest that, the order cannot be enforced without the assistance of the Court. Further, the subject flat has also been transferred by the respondent No.4 to a third party and therefore on account of adamant approach of the respondent No.4 and the new purchaser, the illegal constructions were restored at his end. It was also submitted that the provisions quoted by the applicant are not arbitrary but are to be applied in a reasonable manner considering the fact and circumstance of the case. It was further pointed out that as far as application of section 7 of the Act in the present matter is concerned, this Authority has already passed order upon the contravention if any after adjudication of the complaint and accordingly compensation is also awarded in favour of the complainant, hence adjudicating the same issue is not permissible in law.

Handwritten signature and date:
07/03/25

8. As far as the prayer of the Applicant for revocation of registration granted to the Respondent No.1 as Promoter is concerned, it is noted that the said relief was also prayed for by the complainant Applicant in the main complaint which has already been adjudicated by this Authority vide order dated 03.11.2022 with no relief granted on this count. As the said order has already attained finality, the matter needs no further consideration at this stage particularly in the absence any provisions for review of its order by Authority being available under the Act.
9. With reference to the prayer of the Applicant for levy of penalty upon Respondents under Section 63 and Section 67 for non compliance of the orders dated 03.11.2022 passed by this Authority, it is pertinent to state that the present proceedings were preferred by the complainant Applicant praying the Authority to take appropriate steps for execution of the said order dated 03/11/2022 by referring the matter to Principal District Judge (North Goa) for the purpose. The said prayer of levy of penalty under Section 63 (failure to comply with the orders of the Authority by the Promoter) and 67 (failure to comply with the orders of the Authority by the Allottee) cannot be granted along with referral of the matter to Principal District Judge (North Goa) at this stage. It is also noted that the matter was adjudicated for the grant of compensation to the complainant allottee and the total amount of compensation granted in the matter also included the compensation on account of willful default of respondent despite the orders dated 03/11/2022 passed by this authority.
10. With reference to the Application for execution of the order dated 03.11.2022 seeking referral of the matter to Principal District Judge (North Goa) for the purpose is concerned, it is observed that the direction issued vide the said order declaring the sale of open area admeasuring 45 sq.mts. as illegal and the Respondent to take possession and remove the structure on the said open space; clearly subsumes taking of appropriate steps to cancel the sale deed dated



07/03/25

01.11.2020 in the light of the declaration in the order dated 03.11.2022 and without the same having been done, the compliance memo dated 16.02.2023 becomes irrelevant. It is pertinent to note that the plea of the Promoter/Respondent to shift the onus of default on the respondent No 4 is also misconceived in as much as the whole issue arose out of the sale deed stated 30/11/2020 executed by him with respondent No. 4.

11. Further, the Respondent have admitted that the said order dated 03.11.2022 passed by this Authority could not be properly implemented so far and even expressed their willingness to comply with the orders. However, the fact remains that the order dated 03.11.2022 is still to be complied with even after a lapse of more than 02 years and is thus liable to be referred to Principal District Judge (North Goa) for execution of the said order in terms of the provisions of Section 40(2) of the Act and 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 which being relevant to the issue in question; are extracted here below:-

“Section 40(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 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 or


07/03/25


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.”

12. With regard to the issue of creation of third party rights etc., it is pertinent to add that the provisions contained in Order XXI Rule 97 of Civil Procedure Code, if holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

13. The Rule 97 of Order XXI Civil Procedure Code is extracted here below for ready reference.

“Resistance or obstruction to possession of immovable property.—

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction. 6 [(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the


07/03/25

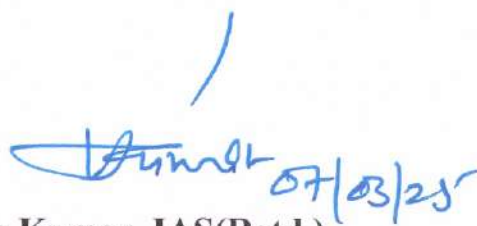
application in accordance with the provisions herein contained.]

The Hon'ble Apex Court in the matter of 'Jini Dhanrajgir v. Shibu Mathew, 2023 SCC OnLine SC 643 decided on 16-06-2023, explaining that in case of objections/resistance against execution of a decree, provisions under Rules 97, 101 and 98 of Order 21 enable the Executing Court to adjudicate inter-se claims of decree holder and third parties to avoid prolonged litigation in independent suits; vide para 17 of its judgement observed as follows:-

“17. Section 47 of the CPC, being one of the most important provisions relating to execution of decrees, mandates that the court executing the decree shall determine all questions arising between the parties to the suit or their representatives in relation to the execution, discharge, or satisfaction of the decree and that such questions may not be adjudicated in a separate suit. What is intended by conferring exclusive jurisdiction on the executing court is to prevent needless and unnecessary litigation and to achieve speedy disposal of the questions arising for discussion in relation to the execution, discharge or satisfaction of the decree. Should there be any resistance offered or obstruction raised impeding due execution of a decree made by a court of competent jurisdiction, the provisions of Rules 97, 101 and 98 of Order XXI enable the executing court to adjudicate the inter se claims of the decree-holder and the third parties in the execution proceedings themselves to avoid prolongation of litigation by driving the parties to institute independent suits.

No wonder, the provisions contained in Rules 97 to 106 of Order XXI of the CPC under the sub-heading “Resistance to delivery of possession to decree-holder or purchaser” have been held by this Court to be a complete code in itself in *Brahmdeo Chaudhary (supra)* as well as in a decision of recent origin in *Asgar vs. Mohan Verma*¹³. In the latter decision, it has been noted that Rules 97 to 103 of Order XXI provide the sole remedy both to parties to a suit as well as to a stranger to the decree put to execution.”

14. It also needs to be noted that the Application for appointment of court commissioner for execution of order and also an Application for Police Protection filed by the Respondents during the course of hearing, could not be proceeded with in view of the pendency of the Application filed by the Complainant for execution of order dated 03/11/2022 by way of referring the matter to the Principal District Judge (North Goa).
15. The applications (interlocutory) filed by both parties other than the application dated 15.02.2024 filed by the complainant Applicant for execution of the Order dated 03.11.2022; stand disposed off in terms of the observations made at para 8, 9 & 15 above.
16. In view of what has been noted herein above, the application dated 15.02.2024 filed by the complainant Applicant for execution of the Order dated 03.11.2022 is allowed and the aforesaid order dated 03.11.2022 is forwarded to Principal District Judge (North Goa).


Virendra Kumar, IAS(Retd.)
Member, Goa RERA