



GOA@GO

GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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 (133)/2020/142

Date: 09/03/2021

Manish V. Gosalia

S-4, 2nd Floor, Osia Mall,
New KTC Bus Stand,
Margao

..... Complainant

Vs.

1. M/s Umiya Holdings Pvt. Ltd.

..... Respondents

2. M/s Umiya Builders and Developers

G-01, Ground Floor, Quatro "D" Commercial,
Near Keshav Smruti School,
International Airport Road,
Dabolim, Mormugao, Goa 403711.

ORDER

Dated: 08/03/2021

This order disposes of the application dated 16/2/2021 filed by the respondents wherein the respondents have submitted that in the agreement for sale dated 21/07/2016 executed on 22/07/2016 between the complainant and the respondents with respect to the Shop in issue, there is an arbitration clause stating interalia that all disputes which may arise between the parties to the said agreement shall be referred to arbitration in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996 and hence prayed this Authority to refer the instant dispute for arbitration as per the Arbitration and Conciliation Act, 1996.

The complainant objected the aforesaid application filed by the respondents and the Ld. Advocate for the complainant submitted that the aforesaid application is not maintainable in view of sections 79, 88 and 89 of RERA Act and relied upon the judgement passed by Maha RERA in the case of "Ganesh Louhar vs. D.S.Kulkarni Developers" on 26/12/2017. Arguments were heard from Ld. Advocate Ms. S. Mordekar for the complainant and Ld. Advocate Ms. K. Naik for the respondents.

In the complaint, the complainant has prayed this Authority for the following Reliefs:-

- a) The Complainant prays to this Hon'ble Tribunal that the Respondent be directed to execute the Conveyance Deed of the Commercial Shop in favour of the Complainant;
- b) The Complainant prays to this Hon'ble Tribunal that the Respondents be directed to form a society/association of person or any other entity and hand over all the documents (including books of accounts/electronic accounting formats related to the maintenance accounts), plans including that of the common areas to the society members;
- c) The Complainant prays to this Hon'ble Tribunal that the Respondents be penalized for violation of section 11 (4) (e), 11(4) (f) and section 17 (1) of the Act and further impose a penalty of 5 percent of the project cost on the Respondents as determined under section 61 of the Act;
- d) The Complainant prays to this Hon'ble Tribunal that the Respondents be directed to pay interest @ the rate of 10 percent per annum for the delayed possession of the Commercial Premises;
- e) That this Hon'ble Court be pleased to direct the Respondents to pay a sum of Rs.5,00,000/- (Rupees Five Lakh Only) towards cost of the present Complaint i.e., as compensation to be provided for the mental trauma, loss of time, hardship caused to our clients and the notional losses, legal fees incurred which the complaint has suffered till date to the Complainant within 1 month from the date of disposal of the present complaint.”

The aforesaid reliefs cannot be the subject of arbitration and the power to grant such reliefs cannot even be exercised by a Civil Court – section 79 of RERA Act bars the jurisdiction of Civil Court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under RERA Act to determine.

Section 88 of RERA Act states that “the provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law” and Section 89 of the Act states that “the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force”. Thus, impliedly the applicability of the Arbitration is ousted

for the disputes under RERA Act, especially when one of the prime objectives of RERA Act is to create a body for speedy dispute resolution and any law being inconsistent with the remedy provided under the Act, would be inapplicable to that extent. Furthermore, since the default of the provisions of the Act attracts penal consequences, the same would not be arbitrable.

In Natraj Studios Pvt.Ltd. vs Navrang Studios” (1981)1 SCC 523, the Hon’ble Supreme Court held that in the presence of a statutory remedy and a specific body having been established by law, parties should not be allowed to contract out of the statute.

In “Skypak Couriers Ltd. vs. Tata Chemicals Ltd” (2000)5 SCC 294, the Hon’ble Supreme Court held that the existence of an arbitration clause would not bar the jurisdiction of the Consumer Forum or Commission under the CoPrA.

The National Consumer Disputes Redressal Commission (NCDRC) post the amendment to section of the Arbitration Act held that “the disputes which are to be adjudicated and governed by statutory enactments, established for specific public purpose to sub-serve a particular public policy are not arbitrable. The NCDRC referred to the provisions of the Act and relying on the decision in “A.Ayyasamy Vs. A. Paramasivam”(2016)10 SCC 386 held that since section 79 of the Act bars the Civil Court to adjudicate upon issues under the Act, real estate disputes falling within the scope of the Act would be unarbitrable. The said decision of NCDRC was upheld by the Hon’ble Supreme Court in “Emaar MGF Ltd. vs. Aftab Singh” civil appeal Nos 23512 – 23513 of 2017, order dated 13/2/2018(SC).

Hence, it is well settled that the real estate disputes coming within the purview of the RERA Act are not arbitrable. The instant application is therefore, dismissed.

Vidley
2/13/2021
(Vijaya D. Pol)
Member, Goa RERA

**To,
All concerned**