



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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No.3/RERA/complaint (Comb. Prabhu Chamber)/2019/448

Date: 09/06/2022

REVIEW APPLICATION

IN

COMPLAINT NO.

3/RERA/complaint (Comb. Prabhu Chamber)/2019

M/s Prabhu Construction

Through its proprietor Shri Venkatesh Narayan Prabhu Moni Applicant
(Orig. Respondent)

Versus

Mr. Kishor Uttam Bhaidkar & Ors.

..... Respondents
(Orig. Complainants)

ORDER

Dated 09/06/2022

This order disposes of the review application filed by the original respondent on 16.05.2022 in the aforesaid complaint. The main grievance of the original respondent is that Principles of Natural Justice were not followed by this Authority and hence according to the said respondent, the impugned order dated 17.03.2022 “deserves to be quashed and set aside as being of no legal force or consequence”.

2. Reply to the aforesaid review application has been filed by the complainant Mr. Kishor Bhaidkar along with affidavit. Arguments were heard from Ld. Advocate N. Takkekar for the complainants and Ld. Advocate Ankur Kumar for the original respondent.

3. As rightly pointed out by the Ld. Advocate for the complainants, there is no provision of review in The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act') and in the absence of any provision of review in the said Act, the instant review application is not maintainable. Thus, this Authority cannot review its own order when no such power has been given to it under the said Act. In this regard, the Ld. Advocate for the complainants rightly relied upon the judgment of the Hon'ble Supreme Court in the case of "KAPRA MAZDOOR EKTA UNION Versus BIRLA COTTON SPINNING AND WEAVING MILLS LTD. AND ANOTHER (2005) 13 Supreme Court cases 777" wherein the Hon'ble Supreme Court held interalia as follows :-

"19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceedings itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is

taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In *Grindlays Bank Ltd. V. Central Govt. Industrial Tribunal*⁵ it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again.”

4. In the absence of any provision of review in the said Act, a review on merits is not permissible or legally maintainable and the Ld. Advocate for the

respondent has not pointed out any procedural defect. The respondent has not established that the procedure followed by this Authority suffered from such illegality that it vitiated the proceeding and invalidated the impugned order. It is nowhere the case of the respondent that the respondent was not heard at any time.

5. The main grievance of the original respondent to the effect that Principles of Natural Justice were not followed by this Authority is baseless, incorrect and contrary to the records of the instant case as the Principles of Natural Justice were followed at every stage of the case by hearing both the parties and giving them opportunities to advance their respective stands at every level of the case by filing applications, replies, documents, written submissions etc. and both the Advocates were heard at length during final arguments. Thus, the judgments of the Hon'ble Supreme Court cited by the Ld. Advocate for the original respondent on the Principles of Natural Justice have no bearing on the instant case. Therefore, even the Ld. Advocate for the respondents has neither mentioned in the review application nor stated in his oral arguments as to how or in what manner the Principles of Natural Justice were violated in the instant case.

6. The Ld. Advocate for the original respondent has filed Maharashtra Real Estate Regulatory Authority (General) Regulations 2017 and pointed out the following para therein regarding review of decisions, directions and orders:-

“36(a) Any person aggrieved by a direction, decision or order of the Authority, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed,



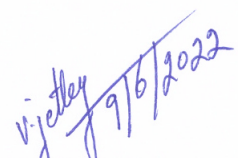
may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for review of such order, within forty five (45) days of the date of the direction, decision or order, as the case may be, to the Authority.”

7. The aforesaid regulations of Maharashtra Real Estate Regulatory Authority are not applicable to the State of Goa, which has its own Rules and Regulations. It is clearly mentioned in the Maharashtra Real Estate Regulatory Authority Regulations in para 1 (d) that “these regulations shall apply in relation to all matters falling within the jurisdiction of the Authority in the State of Maharashtra (Emphasis supplied). Further in para 2 (iv), the “Authority” means the Maharashtra Real Estate Regulatory Authority. Even otherwise the Ld. Advocate for the respondent has not mentioned in the review application nor pointed out in his arguments that the respondent has discovered any new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the impugned order was passed nor there is any whisper in the review application or in the arguments that there is some mistake or error apparent on the face of the record. Moreover the impugned order was passed on 17.03.2022 and the corrigendum was added on 21.03.2022. The certified copies of the impugned order dated 17.03.2022 were handed over to both the parties on 17.03.2022 and the fresh certified

copies of the same were given to the parties on 21.03.2022 when the corrigendum was added. The instant review application is filed on 16.05.2022 which is, even otherwise beyond forty five (45) days from the date of the impugned order/corrigendum.

8. Thus, as stated above, the instant review application filed by the respondent is not legally maintainable not only because there is no provision of review for this Authority in The Real Estate (Regulation and Development) Act, 2016 and the Regulations of Maharashtra Real Estate Regulatory Authority are not applicable to the State of Goa but also because the Principles of Natural Justice were fully complied by this Authority before passing the impugned order.

As there is no merit in the instant review application filed by the respondent, the same is dismissed.


(Vijaya D. Pol)
Member, Goa RERA