



**GOA REAL ESTATE REGULATORY AUTHORITY**  
**DEPARTMENT OF URBAN DEVELOPMENT**  
**GOVERNMENT OF GOA**

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F.No.3/RERA/Complaint/(135)/2020/77

Date: 03/10/2022

**Jitendra Kumar Agarwal**  
235/P, Karle River Ville,  
Ward 2, Pulwaddo,  
Benaulim, South Goa-403716.

..... Complainant

v/s

**1. M/s Umiya Holding Pvt. Ltd.**

**2. M/s Umiya Builders and Developers**

29/3, HM Stafford, 2<sup>nd</sup> Floor,  
7<sup>th</sup> Cross Road, Vasant Nagar,  
Bangalore, Karnataka -560052.

..... Respondents

**ORDER**  
**(Dated 03/10/2022)**

This order disposes of the application moved by the complainant for execution of the order dated 06.05.2022 passed by this Authority under The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act').

2. Reply has been filed by the respondents on the said application. Oral arguments were heard from Ld. Advocate S. Mordekar for the complainant and Ld. Advocate D. Sawant for the respondents.

3. Since the respondents have not complied with the aforesaid order dated 06.05.2022, Section 40 of the said Act read with Rule 3 and 4 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of complaints and Appeal etc.) Rules, 2017 (hereinafter referred to as 'the said Rules') is squarely attracted.
4. Thus Section 40 of the said Act as well as Rule 3 and 4 of the said Rules are reproduced hereunder for ready reference:-

**Section 40:-**

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

(1) If a promoter or an allottee or a real estate agent, as the case maybe, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case maybe, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(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 3:-**

**“3.Manner of recovery of interest, penalty and compensation.-** Any interest or penalty or compensation imposed on a promoter or an allottee or a real estate agent shall be recoverable under Section 40 of the Act, from such promoter or allottee or real estate agent, as the case maybe, as an arrears of land revenue under the provision of the Goa Land Revenue Code, 1968,”

**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 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.”

5. Hence, for the recovery of penalty of ₹2,00,000/- (Rupees Two Lakhs only) for violation of Sections 11(4) (c) and 11(4)(f ) the matter to be referred to the Revenue Authority under Section 40(1) of the said Act read with Rule 3 of the said Rules. With respect to the direction to the respondents to form a society/ co-operative society/an association of allottees in respect of the project in question and also to execute a sale deed in favour of the complainant, as mentioned in the said order dated 06.05.2022, the said part of the order has to be executed under Section 40(2) of the said Act read with Rule 4 of the said Rules.



6. Since this Authority is unable to execute the aforesaid order inter alia directing the respondent to form a society /co-operative society/an association of allottees in respect of the project and to execute a sale deed in favour of the complainant and since the respondents have not complied with the aforesaid order dated 06.05.2022 till date, matter has to be sent to the Principal Civil Court of original jurisdiction as per Rule 4 of the said Rules.

7. In **Section 5** of the **Goa Civil Courts Act, 1965**, under the Chapter “District Court”, Part II, it is mentioned that the District Court shall be the principal court of original civil jurisdiction in the district. The aforesaid Section 5 of the Goa Civil Courts Act, 1965 is reproduced hereunder for ready reference:-

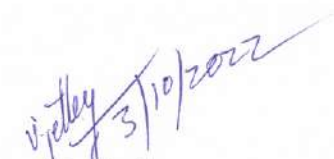
**“5. Original Jurisdiction of District court.-**The District Judge shall be the Principal Court of original civil jurisdiction in the District, within the meaning of the Code of Civil Procedure, 1908 or any other law for the time being in force.”

8. The same interpretation concerning the Principal Court of original jurisdiction was given by the Hon’ble Bombay High Court (Full Bench) in the case of **“Fountain Head Developers vs. Maria Arcangela Sequeira” 2007 (3) Mh. L. J. 744** under the Arbitration and Conciliation Act (26 of 1996), wherein the Hon’ble High Court referred to the Bombay Civil Courts Act, wherein Section 7 states that the District Court shall be the Principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure



and held that the District Court is the Principal Court of original jurisdiction for the purpose of a petition under Section 34 of the Arbitration and Conciliation Act and it does not include any other court inferior to the District Court.

9. Hence for execution of the order dated 06.05.2022 for the recovery of penalty as mentioned therein, a letter for execution under Section 40(1) of the said Act read with Rule 3 of the said Rules has to be sent to the Revenue Authority to recover the same as an arrears of land revenue under the Goa Land Revenue Code, 1968 whereas for execution of the part of the order dated 06.05.2022 directing the respondents to form a society/ co-operative society/ an association of allottees in respect of the project and to execute a sale deed in favour of the complainant, a letter for execution under Section 40 (2) of the said Act read with Rule 4 of the said Rules has to be sent to the District Court, South Goa within the local limits of whose jurisdiction the real estate project is located along with a certificate from this Authority stating that such an order has not been executed by it.

  
(Vijaya D. Pol)  
Member, Goa RERA