



**GOA REAL ESTATE REGULATORY AUTHORITY**

**DEPARTMENT OF URBAN DEVELOPMENT**

**GOVERNMENT OF GOA**

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F.No.3/RERA/Complaint(Comb. Prabhu Chamber)/2019/676

Date: 21/09/2022

**Mr. Jitesh J. Kamat & Others**

.....Complainants/Applicants

*Vs.*

**M/s. Prabhu Constructions**

.....Respondent

Through its proprietor Shri Venkatesh Narayan Prabhu Moni

**ORDER**

**(Dated 21.09.2022)**

This order disposes of the application dated 23.06.2022 moved by the complainants under Section 40(2) of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act') read with Rule 4 of The Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeals etc.) Rules, 2017 (hereinafter referred to as 'the said Rules') to execute the order dated 17.03.2022 to the extent directing the respondent to obtain occupancy certificate and give possession of the respective units to the respective complainants within two months from

the date of this order. For ready reference, the relevant part of the aforesaid order is reproduced hereunder:-

“The respondent is directed to obtain occupancy certificate and give possession of the respective units to the respective complainants as per the chart given above in para 83 and as per the area/ revised area given in the respective agreements for sale/ addendums/ demand letters etc. and with all the essential facilities/ supplies/ connections and the quality of work as mentioned in the agreements for sale executed with the complainants, within two months from the date of this order.”

2. Reply has been filed by the respondent on the aforesaid execution application, however in the reply, the respondent has only touched the merits of the complaint, though the merits cannot be looked into after passing of the order dated 17.03.2022. Arguments were heard from Ld. Advocate Shri N. Takkekar for the complainants/applicants and Ld. Advocate Shri Ankur Kumar for the respondent. The Ld. Advocate Shri N. Takkekar relied upon **the Goa Civil Courts Acts 1965** and the ruling of the Hon'ble Bombay High Court in the case of “**Fountain Head Developers vs. Maria Arcangela Sequeira**” 2007 (3) Mh. L.J 744 in



support of his arguments that the Principal Court of original jurisdiction as per Rule 4 of the said Rules is the District Court.

3. It is material to note that the respondent has till date not complied with the said order dated 17.03.2022. For the recovery of the interest imposed under Section 18(1) of the said Act as well as for recovery of penalties imposed under Section 61 and 63 of the said Act, a recovery letter has already been sent to the Revenue Authority to recover the interest and penalty. However, for compliance of the direction to the respondent to obtain occupancy certificate and give possession of the respective units to the respective complainants as mentioned in the above order dated 17.03.2022, Section 40 (2) of the said Act read with Rule 4 of the said Rules is squarely attracted in the instant case. **Section 40** of the said Act is reproduced hereunder:-

**“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 may be, 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.”** (emphasis supplied)

4. It is also significant to note that Rule 3 of the said Rules relating to the manner of recovery of interest, penalty and compensation by way of arrears of land revenue under the provision of the Goa Land Revenue Code, 1968 corresponds to Section 40 (1) of the said Act, whereas **Rule 4 of the said Rules, which is relevant for the instant application, corresponds to Section 40 (2) of the said Act.** Thus, the aforesaid **Rule 4** of the said Rules is reproduced hereunder:-

**“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. Since this Authority is unable to execute the aforesaid order interalia directing the respondent to obtain occupancy certificate and give possession of the respective units to the complainants as mentioned in the order dated 17.03.2022 and since the respondent has not complied with



the aforesaid order till date, matter has to be sent to the Principal Civil Court of original jurisdiction as per Rule 4 of the said Rules.

6. 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:-

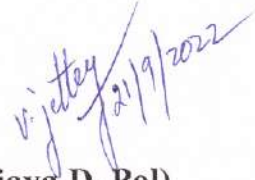
**“5. Original Jurisdiction of District court.-** The District Judge shall be the Principal Court of original civil jurisdiction in the District, within the meaning of the Code of Civil Procedure, 1908 or any other law for the time being in force.”

7. 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.

8. Hence, for execution of the order dated 17.03.2022 inter alia directing the respondent to obtain occupancy certificate and give possession of the respective units to the complainants, as mentioned in the aforesaid order, 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, North Goa, within the local limits of whose jurisdiction the real estate project is located and the respondent resides along with a certificate from this Authority stating that such an order has not been executed by it.

  
(Vijaya D. Pol)  
Member, Goa RERA