

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL MUMBAI**

Misc. Application No. 1052 of 2022 (Stay)

IN

Appeal No. G-24 of 2022

(No.3/RERA/Complaint (134)/2020/367)

1. M/S Umiya Holding Pvt Ltd.)
2. M/S Umiya Builders & Developers)
29/3, HM Stafford, 2nd Floor, 1st Floor,)
7th Cross Road, Vasant Nagar,)
Bangalore - 560052)
Address of service:)
G-01, Quatro "D" Commercial,)
NR KeshavSmruti School,)
Dabolim, Mormugao, Goa: 403801.) ... APPELLANTS

-Versus-

1. Mr. Arman Bankley)
2. Mrs. Avani Arman Bankley)
BH 9, Balama Heritage,)
Opp. Chinmay Ashram, Gogol,)
Margao, Goa: 403601) ... RESPONDENTS

ALONGWITH

Misc. Application No. 1054 of 2022 (Stay)

IN

Appeal No. G-25 of 2022

(No.3/RERA/Complaint (135)/2020/368)

1. M/S Umiya Holding Pvt Ltd.)
2. M/S Umiya Builders & Developers)
29/3, HM Stafford, 2nd Floor, 1st Floor,)
7th Cross Road, Vasant Nagar,)



Bangalore: 560052)
Address of Service:)
G-01, Quatro "D" Commercial,)
NR Keshav Smruti School,)
Dabolim, Mormugao, Goa: 403801) ... APPELLANTS

-Versus-

1. Jitendra K. Agarwal)
235/P, Karle River Ville,)
Ward 2, Pulwaddo, Benaulim,)
South Goa: 403716.) ... RESPONDENT

ALONGWITH

Misc. Application No. 1056 of 2022 (Stay)

IN

Appeal No. G-26 of 2022

(No.3/RERA/Complaint (133)/2020/366)

1. M/S Umiya Holding Pvt Ltd.)
2. M/S Umiya Builders & Developers)
29/3, HM Stafford, 2nd Floor, 1st Floor,)
7th Cross Road, Vasant Nagar,)
Bangalore: 560052)
Address of service:)
G-01, Quatro "D" Commercial,)
NR KeshavSmruti School,)
Dabolim, Mormugao, Goa: 403801) ... APPELLANTS

-Versus-

1. Manish V. Gosalia)
2. Toral M. Gosalia)
Flat no.501, B Block, Status Residency,)
Bolepand, Fatorda, Goa: 403601) ... RESPONDENTS

Adv. Mr. Anwar Landge for Appellants/Promoters

Adv. Ms. Sapna Mordekar for Respondents/Allottees

**CORAM : SHRI S. S. SHINDE (J.), CHAIRPERSON, &
DR. RAJAGOPAL DEVARA, MEMBER (A)**

RESERVED ON : 12th June 2026

PRONOUNCED ON : 2nd July 2026

(THROUGH VIDEO CONFERENCE)

JUDGMENT

[PER : DR. RAJAGOPAL DEVARA, MEMBER (A)]

1. Being dissatisfied with the impugned orders dated 06.05.2022 passed by the Member, Goa Real Estate Regulatory Authority (for short "the Authority") in Complaint Nos. (No.3/RERA/Complaint(134)/2020/367),(No.3/RERA/Complaint (135)/2020/368) and (No.3/RERA/Complaint (133)/2020/366) filed by the Respondents/Allottees, wherein the Appellants, who are Promoters, have preferred the captioned appeals and thereby challenging the said order on the grounds set out therein.
2. For the sake of convenience, parties to these appeals will hereinafter be referred to as the "Promoters" (Appellants) and the "Allottees" (Respondents), respectively.
3. The facts and issues involved in the complaints and appeals are identical. The issues involved in the captioned appeals are common,



therefore, the three captioned appeals were heard together, and by this judgment, the three captioned appeals are being disposed of.

4. The facts gathered from the record broadly reveal that the Appellants proposed to develop a project known as "Umiya Mercado" and duly registered the said project with the Goa Real Estate Regulatory Authority. The Respondents/Allottees have entered into agreements for construction and sale dated 13.03.2018, 11.12.2015 and 20.07.2016 with the Appellants. The particulars of the respective agreements are set out in the table below:

Name of Respondents/ Allottees	1. Mr. Arman Jitendra Bankley 2. Mrs. Avani Arman Bankley	1. Mr. Jitendra Kumar Agarwal	1. Manish Vinod Gosalia 2. Mrs. Toral Manish Gosalia
Appeal Nos.	G-24 of 2022	G-25 of 2022	G-26 of 2022
Shop No.	105 (B)	104	105 (A)
Super Built-up Areas	31.3 sq. mtrs.	133.80 sq. mtrs.	103.4 sq. mtrs.
Outside Seating Area	15.7 sq. mtrs	26.2 sq. mtrs	20.4 sq. mtrs.
Date of Agreements for Construction and Sale	13.03.2018	11.12.2015	20.07.2016
Total Consideration	Rs.23,72,500/-	Rs.85,51,800/-	Rs.74,18,000/-

5. The Appellants/Promoters submitted that in the said project, they have comprised 35 units, out of which 4 units have been sold and the remaining units are unsold. According to the Appellants/Promoters, as per the Agreements for Sale executed between the parties, it is clearly mentioned that the Appellants/Promoters herein will assist the purchaser in the formation of the Society. It is further submitted that 50% of the members are required to sign the bye laws and required documents for formation of the Society. Since only 4 units were sold in the complex, the Appellants were not in a position to assist the purchasers in formation of the Society and therefore they continued to maintain the high standard of safety and security of the building through engaging highly qualified professionals.
6. The Appellants/Promoters further submitted that, they have not breached any terms of the Agreements for Sale and the work was completed on time and possession was handed over within time frame as per the agreements. Thus, the Appellants have followed the due process of law as per the Real Estate (Regulation and Development) Act, 2016,
7. It is pertinent to note that Clause No. 8(W) (XVII) (D) of the Agreement for Construction and Sale prescribed maintenance charges for the said shops. However, Clause No. 8(XX) further



permitted the Appellants/Promoters to increase the same if required. As the Allottees have requested them for increase in maintenance amount, keeping the safety and security of the building, the maintenance charges were increased by the Promoters. However, the Respondents/Allottees filed complaints before the RERA Authority denying the same.

8. The Appellants/Promoters further submitted that, their representatives have exchanged several drafts of deed of conveyance with the Respondents/Allottees. However, the Allottees were adamant on not resolving the said issue amicably but right to malign the name and reputation of the Appellants by taking advantage of the beneficial RERA legislation with the sole intention of extracting money from the Appellants/Promoters.
9. Per contra, Respondents/Allottees submitted that, the impugned orders dated 06.05.2022 have directed the Appellants:
 - i) To form a Society/Co-operative Society/ an Association of Allottees in respect of the project without any additional charges from the Respondents other than those mentioned in the agreements for construction and sale dated 13.03.2018, 11.12.2015 and 20.07.2016 within two months from the date of the order.




- ii) To execute a sale deed of the said commercial shops along with the undivided proportionate title in the common areas to the Association of Allottees within two months from the date of the impugned order. And
- iii) Monetary relief, that is to pay in the form of penalty of Rs.1,00,000/- (Rupees One Lakh Only) and compensation of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) within a period of 30 days of the order, in case of default the Appellants are liable to pay interest on the said penalty and compensation at the rate of 10.25%.

10. Learned Advocate appearing for the Respondents/Allottees further submitted that, the Authority vide the impugned order dated 06.05.2022 has directed the Appellants to execute sale deed of the said commercial shops including outside area of the undivided share in land as mentioned in the registered agreements for sale against which the Appellants have received additional consideration amount. It is pertinent to note that the learned Authority in the impugned order has not stated that the sale deed has to be executed only with respect to the suit shops and should not include the undivided share in the land and rightly so, as such a direction would have been contrary to the terms of agreements for sale entered between the



parties. The impugned order recorded that the Appellants shall execute sale deed for the said commercial shops in favour of the Complainants along with the "undivided proportionate title in the common areas" to the Associations of Allottees within two months from the date of the order.

11. The Respondents/Allottees further submitted that, in the agreement for sale specifically Clauses 7(w)(xv), 7(w)(xvi) and 29 stated that in the event of Society being not formed, who respective sub divided share in the land proportionate to the built up area of the shop shall be conveyed in the name of the owners by executing a sale deed.
12. The Respondents/Allottees further submitted that, the Appellants have no authority to increase maintenance amount. Further, the Appellants have not produced any documentary evidence in support of their claim of increase in actual expenses, nor they have furnished any account. Conversely, the expenses decreased as Appellants are not maintaining premises in the proper manner and try to save costs.
13. The Respondents/Allottees further submitted that, the Appellants have given most of the shops in the complex owned by them on long term lease and the Appellants are not contributing proportionately towards the use of occupation and premises occupied by the Appellants tenants. Further, the Respondents



claimed that the units occupied by their tenants are not being sold and as such no maintenance is payable by the Appellants or the said tenants.

14. The Respondents/Allottees further submitted that, Section 6 of the Co-operative Societies Act, 2001 requires that five members who are residing or intend to reside in the area of operation of the Society to form and register a Cooperative Housing Society. They invited our attention to the definition of a "Co-operative Housing Society" under Section 2(13), which is reproduced below:

"2(13) "co-operative housing society" means a society as defined in section 102 of this Act; Section 102 (e) of the Act, states as under:

102(e) "co-operative housing society" means a society-

(i) registered or deemed to be registered as a co-operative housing society under any law relating to co-operative societies in force in the State of Goa;

(ii) the principal object of which is to provide its members open plots, dwelling units or commercial units (whether in a multi-storeyed building or otherwise) and in case where open plots or dwelling units are already acquired, to provide its members common amenities and services including services relating to the arrangement of finances facilitating construction of dwelling units in order to solve their needs of dwelling units through mutual aid in accordance with the co-operative principles, and includes a co-ownership housing society, co-partnership housing society, co-operative housing



maintenance society, and any other co-operative society of like nature and purpose;”

As such a present commercial complex clearly falls within the ambit of the said definition and therefore the contention of the Appellants that a Society cannot be formed is absurd and blatantly false.

15. We have heard arguments of Advocate Mr. Anwar Landge appearing for Appellants/Promoters and Advocate Ms. Sapna Mordekar appearing for Respondents/Allottees. The submissions advanced by the respective parties are nothing but reiteration of the contents of Complaints, Affidavit-in-Replies, Appeal Memos and Written Submissions.
16. After considering the submissions advanced by Advocate Mr. Anwar Landge appearing for Appellants/Promoters and Advocate Ms. Sapna Mordekar appearing for Respondents/Allottees, pleadings of the parties, impugned orders and material placed on record, the following points arise for our determination, and we have recorded our findings thereupon for the reasons to follow:

Sr. Nos.	Points	Findings
1.	Whether the impugned orders dated 06.05.2022, passed by the Member, GoaRERA in the Complaint Nos. No.3/RERA/Complaint (134)/2020/367, No.3/RERA/Complaint (135)/2020/368 and No.3/RERA/Complaint (133)/2020/366	In the Negative

	filed by the Respondents/Allottees, warrant interference in the captioned appeals?	
2.	Whether the Appellants/Promoters are entitled to relief sought in the captioned appeals?	In the Negative
3.	What Order?	As per final Order

REASONS

17. Upon careful examination of pleadings of the parties, material placed on record and submissions advanced by the learned Counsel appearing for respective parties, it is clearly revealed that the Respondents/Allottees have purchased subject shops from the Appellants/Promoters. It is not in dispute that the Agreements for Construction and Sale dated 13.03.2018, 11.12.2015 and 20.07.2016 were executed between the parties, wherein the total consideration amount and shop numbers are clearly mentioned.
18. It is not in dispute that the consideration amounts were paid and possession of the said shops delivered to the Allottees/Respondents. The controversy relates to the obligation of the Promoters regarding formation of the Society/Association of Allottees, execution of the conveyance deed and the amount of maintenance charge to be paid by the Allottees.

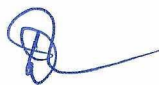


19. The Appellants/Promoters submitted that a Society/Association of Allottees could not be formed because only four units in the project were sold. We do not accept the contention. The statutory obligation cast upon the Appellants/Promoters under Section 17 of the RERA Act, 2016 is not depend solely upon the number of units sold under Section 17 of RERA Act, 2016, which reads as follows.

"17. Transfer of title.—(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the ¹[completion] certificate."



Specifically, Section 17 provided that the Promoter is required to take necessary steps for formation of an association, society or other legal body of Allottees in accordance with the applicable law.

20. Section 6(1) of the Goa Co-operative Societies Act, 2001, which speaks about the criteria for registration of Co-operative Housing Society, provides as follows:

“provided that a cooperative housing society consisting of at least five such persons who are residing or intend to reside in the area of operation of the society may be registered under this Act.”

In the present case, it is not in dispute that there are four Allottees and remaining unsold shops in the commercial complex are leased out by the Promoters and the entire complex is in commercial use. Where a commercial complex has only four purchasers and the remaining unsold units continue to belong to the Promoters, the Promoters cannot rely on the absence of a fifth purchaser to avoid registration of the cooperative society. The Promoter, as a owner of the unsold units, can be included as a member along with other four Allottees, thereby satisfying the minimum requirement of five members under the said Section 6 (1) of the Goa Cooperative Societies Act, 2001. Therefore, we are of the opinion that there is no legal hurdle in registration of co-operative housing society by making the four Allottees and the Respondents/Promoters, as



members of the proposed co-operative housing society for the said commercial complex.

21. The material on record further revealed that the agreements for construction and sale specifically contemplate conveyance deed of the proportionate undivided interest in land and common areas in favour of Allottees/Respondents and/or the Associations of Allottees. The obligation to execute conveyance deed flows not only from the contractual terms agreed between the parties but also from the statutory obligation upon the Appellants/Promoters under the RERA Act, 2016. Having obtained Occupancy Certificate and handed over the subject shops to the Allottees, the Promoters are obligated to handover conveyance within one month from obtaining Occupancy Certificate. The Promoters are in clear contravention of the provisions of Section 17 of RERA Act, 2016. Therefore, we are of the opinion that the Appellants have failed to discharge the statutory obligation and also failed to demonstrate any legal impediment preventing Appellants/Promoters from discharging such obligation.
22. The Appellants/Promoters further contended that the contractual clauses permitting revision of maintenance charges were used to support the enhancement of maintenance charges. However, no documentary evidence has been produced to establish the actual increase in expenditure on the basis of which they revised charges



as determined. The Appellants/Promoters are obligated to justify such enhancement particularly when the same is disputed by the Allottees/Respondents. The material placed on record does not indicate that the Appellants/Promoters audited statements, expenditure details demonstrating that the increase in maintenance charges was reasonable and necessary. So we do not find merit in the contention of the Appellants/Promoters. Therefore, the findings recorded by the Authority cannot be faulted.

23. Learned Counsel appearing for the Respondents/Allottees contended that most of the shops in the commercial complex owned by the Promoters have been given on long-term lease and the Promoters are not contributing proportionately towards the use of occupation by the Appellants tenants. In the absence of any evidence, the findings recorded by the Authority cannot be faulted.

24. The Appellants/Promoters have also failed to establish that the Authority acted contrary to the provisions of law or ignored any material evidence while passing the impugned order. The findings recorded by the Authority are based upon the agreements for construction and sale between the parties, the statutory obligation of the Appellants and material available on record. Therefore, we do not find any infirmity warranting interference with the impugned order.



103 In view of the foregoing reasons, we are of the view that Promoters have failed to form society/association of Allottees to execute the conveyance deed and pay the penalty and compensation awarded therein and thereby violated provisions of Section 17 of RERA Act, 2016. Accordingly, we answer point Nos. 1 and 2 in the negative. Consequently, we proceed to pass the following order.

ORDER

1. Appeal Nos. G-24 of 2022, G-25 of 2022, and G-26 of 2022 are dismissed.
2. Parties shall bear their own costs.
3. Pending Misc. Applications, if any, stand disposed of.
4. Copy of this order be communicated to the learned Authority and respective parties as per section 44(4) of RERA Act 2016.

(DR. RAJAGOPAL DEVARA)

V. K. Shople

(S. S. SHINDE, J)