



**GOA REAL ESTATE REGULATORY
AUTHORITY**

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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Case no.4/RERA/Adj. Matters (4)/2020 / 328

Date: 27/04/2022

Rajesh Lobo,

591/A-2/3 Rajendra Apts, Ground Floor,
L J Cross Road No.1, Mahim West,
Mumbai City, Maharashtra-400016.

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Complainant

V/s

Agnelo Cardozo,

M/s Nathan Constructions Private Limited,
H.No. 135/C, Zoriwaddo,
Davorlim, Navelim,
Salcete Goa-403707.

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Respondent

Complainant in person

Respondent Ex-parte

ORDER

(Delivered on this the 27th day of the month of April of the year 2022)

The complainant, a resident of Mahim West, Mumbai had booked a studio apartment in Owner's pride located at Varca, Goa, a project of the respondent. For various reasons, the project got delayed. The complainant cancelled the booking and sought relief from the Goa Real Estate Regulatory Authority for refund of ₹ 25,00,000/- till its realization and compensation of ₹40,00,000/- along with interest @ 18% per annum.

2. Vide Order dated 12/02/2020, this Authority directed the respondent to refund the complainant an amount of ₹25,00,000/- with interest @ 10% per annum from 06/01/2016 till its realization and in addition cost of ₹ 1,00,000/-. The compensation sought by the complainant was referred to this



forum for adjudication as per the Goa Real Estate (Regulation and Development) Act, 2016.

3. The complainant has filed his claim for compensation in Form 'B' dated 07/01/2022 at exhibit 60/c.
4. It is the complainant's case that on the basis of statements, commitments made by the respondent contained in the advertisement, discussions correspondence proceedings, notices, prospectus, booking letters, list of amenities, added features –specifically rent-back and buy-back options at an appreciated rate, the complainant remains without a quality home and the rent-back earning.
5. It is also the case of the complainant that for the said project Owner's Pride, Varca of Nathan Constructions, the respondent had committed, a guaranteed buy-back and rent-back of ₹ 7,20,000/- per annum vide his brochures, public advertisements.
6. The respondent though duly notified by e-mails of the hearings fixed on 14/01/2022; 07/02/2022 and 04/03/2022 remained absent. A fresh registered A.D notice was therefore issued to the respondent to remain present on 25/03/2022. However, the said notice was returned with remarks "refused return to sender".
7. The matter was therefore ordered to proceed ex-parte against the respondent.
8. Heard arguments. The complainant has placed on record his written synopsis of arguments in support of his claim for compensation at exhibit 118/c.
9. The points of determination and my findings to the same are as follows:-



	POINTS	FINDINGS
(a)	<i>Whether the complainant is entitled to compensation towards rent-back of ₹7,20,000/- per annum from May 2017 till date amounting to ₹36,00,000/-?</i>	<i>Partly in the affirmative from 01/06/2017 till 11/04/2018 amounting to ₹6,22,000/- @ ₹60,000/- per month.</i>
(b)	<i>Whether the complainant is entitled to compensation due to mental agony, harassment and hardship suffered due to deception by the respondent?</i>	<i>In the affirmative in the amount of ₹ 1,00,000/-.</i>

REASONS

Point (a)

10. In support of the complainant's case, the complainant has placed on record e-mail dated 26/10/2015 with the subject of earning ₹ 7,20,000/- per annum in the body of the e-mail and the brochure/presentation accompanying the email.
11. The complainant has also produced the receipt of the payment from complainant and the booking/allotment letter, list of amenities issued by the respondent dated 05/01/2016 of the guaranteed buy-back and rent-back of ₹ 7,20,000/- per annum.
12. It is the complainant's case that the respondent has given false assurances and excuses, harassed the complainant by not answering the calls, lack of communication and has turned volte-de-face on numerous occasions with respect to project delays in view of modifying the plan, promises to hand over the possession in a couple of months vide e-mail dated 31/12/2016.
13. It is the complainant's case that for cancellation of the booking due to the issue and delays with the respondent, the complainant was required to provide in the respondent's format on a stamp paper, notarized and to be sent by speed post for the return of the booking amount and interest. The



complainant has produced the cancellation of the booking of the studio apartment in Owner's Pride, Varca executed on stamp paper duly notarized on 11/04/2018.

14. It is the complainant case that he is entitled to compensation for loss of promised rental income of ₹7,20,000/- per annum from May 2017 till realization. According to the complainant, this equates to ₹36,00,000/- @ ₹ 60,000 per month for five years as on April, 2022.
15. Section 12 of the Real Estate (Regulation and Development) Act, 2016 pertains to obligations of promoter regarding veracity of the advertisement or prospectus.- Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:
Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.
16. Section 18 of the Real Estate (Regulation and Development) Act, 2016 provides for return of amount and compensation. Section 18(3) provides that if the promoter fails to discharge any other obligations imposed on him under this Act or rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.
17. Admittedly, vide Order dated 12/02/2020 this Authority has already directed the respondent to refund the amount advanced by the complainant amounting to Rs. 25,00,000/- with interest @10% per annum from 06/01/2016 till its realization and in addition costs of Rs.1,00,000/-.



18. The present proceeding is only with respect to the complainant's claim for compensation.
19. It is evident that from the commitments made by the respondent in advertisement, prospectus, booking letter indicating the list of amenities and added features especially rent-back and buy-back options at appreciated rate placed on record, the complainant was induced to make the investment and was thus deprived of a quality home and rent-back earning in the said project as was guaranteed by the respondent vide their brochures and public advertisements. The respondent has failed to put in his appearance to controvert the claims put forth by the complainant for compensation. The complainant has claimed compensation to the extent of the guaranteed rent-back of ₹ 7,20,000/- per annum from May 2017 till date @ ₹ 60,000/- per month amounting to ₹ 36,00,000/- .
20. Admittedly, the complainant cancelled the booking of the studio apartment by executing the cancellation on stamp paper duly notarized on 11/04/2018. This being the position, the complainant is not entitled to claim rent-back earnings after executing the cancellation of the booking on 11/04/2018.
21. To my mind, the complainant is only entitled to the rent-back from 01/06/2017 till 11/04/2018, in view of the fact that the respondent had agreed to complete the project by May 2017 and therefore the rent-back option would have come into play only effective from June 2017.
22. Therefore, the complainant is entitled to ₹60,000 per month. Accordingly point (a) is answered partly in the affirmative in the amount of ₹6,22,000/-.



Point (b)


23. It is the complainant's case that he has suffered the burden, mental agony, harassment, hardships by him and his family due to stonewalling, volte-de face, repetitive nature of default, deception from respondent, inconvenience in having to travel to Goa for the case, taking time away from ailing parents, the family, hectic work schedule, additional cost for traveling and being in Goa for case hearing and stress affecting the health of the complainant for which the complainant has sought compensation from the respondent.
24. The complainant has not spelt out the amount of compensation sought on this count but has left the same to the discretion of this forum. To my mind, the complainant has suffered mental agony, hardships, stress and additional costs for travelling to Goa from Mumbai for the case from time to time, the complainant being a resident of Mumbai. The respondent has chosen not to contest this claim of the complainant. In the premises, I deem it equitable that the complainant is entitled to compensation in the amount of ₹1,00,000/- towards mental agony, harassment, hardships, travelling expenses suffered/incurred by the complainant due to the deception by the respondent. point (b) is accordingly answered in the affirmative in the amount of ₹1,00,000/-.
25. Before parting with this Order it is necessary to state that after the filing of the claim in Form 'B' by the complainant on 07/01/2022, both the complainant as well as the respondent remained absent on the next two dates of hearing i.e. 14/01/2022 and 07/02/2022. Thereafter the complainant remained present on 04/03/2022 but the respondent again failed to remain present. Accordingly a registered A.D. notice was issued to the respondent to remain present on 25/03/2022 which notice was returned with remarks

“Refused return to sender”, upon which the matter was ordered to proceed ex parte against the respondent. On the next date i.e.08/04/2022 the complainant sought time to file written synopsis on the next date i.e. 18/04/2022.

In the result, I pass the following:-

ORDER

- a) The respondent shall pay compensation of ₹ 6,22,000/- with respect to loss of rent-back to the complainant with interest @10% per annum from the date of this order till realization.
- b) The respondent is also further directed to pay to the complainant compensation in the sum of ₹1,00,000/- for causing mental agony, harassment, hardships suffered and losses sustained due to the deception by the respondent with interest @10% per annum from the date of this order till realization.


27/04/2022
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA