



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patta Plaza, Panaji 403 001 GOA

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F. No:3/RERA/Complaint(129)/2020/986

Date: 21/12/2022

Vincent J. Andrade,

H.No. E-16,

Near Ribandar Divar Ferry Point,

Ribandar Tiswadi-Goa, 403006.

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Complainant

V/s

1. Abdul Gafoor,

Mannat Infra Developers and Contractors,

Office No.9 and 10, First floor,

Patto Centre building, near bus stand,

Panaji-Goa, 403001.

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Respondent No.1

2. Mr. Ratnpal Namdev Taksande,

Resident of Flat UG-1

Mannat Heritage, Village Ella

Old Goa, 403402.

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Respondent No.2

3. Mrs. Reena R. Taksande,

Resident of Flat UG-1

Mannat Heritage, Village Ella

Old Goa, 403402.

.....

Respondent No.3

ORDER

Date: 21.12.2022

Shri Vincent J Andrade, 53 years, resident of House No. E-16, Near Ribandar-Divar Ferry Point, Ribandar, Tiswadi, North Goa (**Complainant**) filed a complaint before this Authority on 29/09/2020 against Shri. Abdul Gafoor, Proprietor, M/s Mannat Infra Developers and Contractors, having its

office at 9/10, 1st floor, Patto Centre, Patto, Panaji, Goa (**Respondent No.1**) and Shri. Ratnpal Namdev Taksande, resident of No. 158, Mollor, Corlim, North Goa (**Respondent No.2**) and Smt. Reena R. Taksande, resident of No. 158, Corlim, North Goa (**Respondent No.3**).

- 2.1. The brief facts of the case is that the complainant had approached the respondent No.1 with an offer to purchase one of the premises being flat No. UG-1 having built up area of 96 sq.mts. with carpet area of 62.43 sq.mts., situated on the upper ground floor of the building “Mannat Heritage” for a total sum of Rs. 39,00,000/- (Thirty nine lakh rupees only) herein referred to as “said flat”
- 2.2. The complainant entered into an Memorandum of Understanding (MOU) with the respondent No.1 on 16/01/2019. He paid Rs. 15,00,000/- (Fifteen lakh rupees only) as initial payment and balance Rs.24,00,000/- (Twenty four lakh rupees only) to be paid at the time of executing Deed of Sale/ Conveyance Deed. The complainant has issued a legal notice to the respondent No.1 on 23/06/2020 due to delay in handing over possession and subsequently through Right to Information came to know that the said flat was sold to respondent No.2 and respondent No.3 vide Agreement for Sale on 12/06/2020.
- 2.3. The complainant alleged that the respondent No1 fraudulently sold the said flat to the respondents No.2 and 3. He also alleged that the respondents No.2 and 3 have entered into transaction for purchase of the said flat even though they knew that an MOU already entered with the complainant by the respondent No.1 for sale of the said flat.
- 2.4. The complainant has sought reliefs such as, (a) Cancellation of Agreement for Sale on 12/06/2020 executed between the respondent No.1 and respondents No.2 and 3. (b) Handover possession of the said flat to the complainant on payment of balance amount. (c) Rs.1,00,000/- (One

lakh rupees only) as compensation. (d) Terminate license of respondent under RERA Act. (e) Payment of interest by all respondents and (f) Any other just and necessary orders as deemed fit to be issued under the circumstances of the case.

3. The copy of the complaint forwarded to all 03 respondents. All the parties filed reply statements in affidavit followed by written and oral arguments.
4. The Learned counsel to the complainant, Advocate Euclid Peter Heridia has stated that as per MOU signed on 16/01/2019, his client has paid Rs.5,00,000/- (Five lakh rupees only) on 14/01/2019; Rs.5,00,000/- (Five lakh rupees only) on 21/01/2019; and Rs.5,00,000/- (Five lakh rupees only) on 20/03/2019. The balance consideration of Rs. 24,00,000/- (Twenty four lakh rupees only) is to be paid at the time of executing Sale deed/ Conveyance deed. He stated that the Learned Counsel to the respondent No.1 Advocate G.S. Kubal has claimed that his client has replied to the legal notice issued by the complainant dated 23/06/2020, that a notice dated 13/11/2019 was issued by the respondent No.1 requesting to pay as a final opportunity for the balance consideration within 15 days, and in the event of failure, the MOU shall stand cancelled and made an offer to return complainant's payments after deduction, vide letter dated 07/07/2020. The Learned Counsel further stated that the said notice dated 13/11/2019 has not been received by his client. Thereafter, the complainant under RTI came to know the flat was fraudulently sold to the respondents No. 2 and 3 on Agreement for Sale dated 12/06/2020 for a total sum of Rs. 39,90,000/- (Thirty nine lakh ninety thousand rupees only). He alleged the respondent No.1 has agreed to sell the said flat firstly to the complainant, took initial payment from him and subsequently entered into another transaction over the said flat with the respondents No.2 and 3 is a fraudulent act. The Learned Counsel has also stated that an MOU once acted upon, can be enforced according to Hon'ble Supreme

Court Judgement, in M/s Jai Beverages Pvt. Ltd. v/s State of Jammu & Kashmir and others dated 12.05.2006.


5. The Learned Counsel to the respondent No.1, Advocate Shri. G.S. Kubal countered the arguments held by the complainant side. He stated that only MOU was executed and the parties were yet to confirm and sign agreement. The complainant had agreed to make the payment as per Schedule IV of the MOU. He admitted that his client received initial payments of Rs. 15,00,000/- (Fifteen lakhs rupees only), and thereafter the complainant failed to make balance payment of Rs.24,00,000/- (Twenty four lakh rupees only) in time. The respondent No.1 issued legal notice on 13/11/2019 to the complainant to pay the balance amount within 15 days, however, notice returned back without receipt. The Learned Counsel to the respondent No.1 further stated that the complainant approached his client through one Shri. Dixson K.S. right from the beginning who informed regarding the complainant's unwillingness to pursue purchase as he was unable to secure loan from the bank. The Learned Advocate to the complainant denied involving Shri. Dixson K.S. Meanwhile, the respondent No.1 completed the project and obtained Occupancy Certificate on 12/06/2020. The Learned Counsel also filed an affidavit signed by Shri. Dixson K.S. disclosing intervention between both parties. He further stated, though the complainant had the desire to purchase the flat but except for the initial amount he did not have balance amount and or source to raise the balance consideration of Rs. 24,00,000/-. The respondent had given opportunities to the complainant to raise bank loan and even offered him to help by arranging the loan from bank which was not possible without Annual Income Tax Returns for Three years. The complainant has failed to comply with terms of the MOU, failed to make payment of balance amount. The respondent No.1 always ready to return initial payment of Rs.15,00,000/- made by the complainant. The

respondent No.1 only after failure of the complainant and after giving him opportunity and after confirming that he cannot raise the bank loan conveyed the said flat to respondent No.2 and 3 bonafide, and hence, complaint liable to be dismissed.

6. The Learned Counsel to the respondents No.2 and 3, Advocate Shri. G.M. Rege argued that the pleadings, dispute and reliefs sought by the complainants have arises out of contractual obligation is only between the complainant and respondent No.1 and to which respondent No.2 and 3 never had any knowledge of such grievances. The relief sought by the complainant is not within the purview of the provision under the Real Estate (Regulation and Development) Act, 2016. The cancellation of Agreement for Sale dated 12/06/2020 executed between the respondent No.1 and respondent No.2 and 3 and handing over the possession of the said flat to the complainant on payment of balance amount as per MOU dated 16/01/2019 are the disputes which arose from the contractual obligations can be decided by civil court. The respondents No.2 and 3 are bonafide purchasers of the said flat who have legally entered into registered Agreement for Sale on 12/06/2020 with respondent No.1 as per law, and thereafter got the conveyance deed dated 26/10/2020 executed and registered and then took the delivery of physical possession of the said flat. They were not at all aware as alleged that MOU dated 16/01/2019 was executed between the complainant and respondent No.1, and there was no fraudulent transaction entered by the respondent No.2 and 3. They availed Housing Loan from the Union Bank of India, have created Equitable Mortgage after transfer of Title and possession of the flat, loan is also disbursed, repayments also started, as such the respondent No.2 and 3 have a clear marketable title towards the said flat, subject to now mortgage charge in favour of the Union Bank of India. The alleged MOU executed between the complainant and the respondent No.1 is not

registered as per provisions under Section 13(1) of the Real Estate (Regulation and Development) Act, 2016. There is no privity of contract exist between the complainant and respondent No.1. Hence, the application of the complainant liable to be dismissed.

7. In the light of the above factual matrix the following points need to be determined within the ambit of Real Estate (Regulation and Development) Act, 2016, Rules and Regulations thereof as given under:-
8. **Whether duly registered Agreement for Sale and Conveyance Deed can be cancelled by the Authority and the complainant liable for relief of restoring the said flat along with interest?**
9. **Whether the respondent No.1 violated provisions under the Real Estate (Regulation and Development) Act,2016 and Rules 2017 thereof and liable for penalty?**
10. **Whether respondents No.2 and 3 are liable to pay interest? Whether respondent No.1 licence can be terminated and whether compensation is to be given to the complainant?**
11. **Whether duly registered Agreement for Sale and Conveyance Deed can be cancelled by the Authority and the complainant liable for relief of restoring the said flat along with interest?**

 11.1. The real estate project "Mannat Heritage" located at Sy.No. 111/5, Ella village, Old Goa, Tiswadi, North Goa, was registered with the Goa RERA by the promoter Shri. Abdul Gafoor s/o Mohammad Haji, proprietor of M/s Mannat Infra Developers & Contractors, having office at 9/10, 1st floor, Patto Centre, Panaji, Goa. The project registration No. PRGO07180580. The registration shall be valid from 05/07/2018 to 30/06/2020. The respondent No.1 obtained Occupancy Certificate on 12/06/2020.

11.2. The respondent No. 1 and the complainant have entered into an Memorandum of Understanding on 16/01/2019 for sale/purchase of flat No. UG-1 having built up area of 96 sq.mts. with carpet area of 62.43 sq. mts., situated on the upper ground floor along with individual proportionate share in the land corresponding to the said flat, for a total consideration of Rs. 39,00,000/- (Thirty nine lakh rupees only). The complainant has paid Rs. 10,00,000/- (Ten lakh rupees only) on two dates 14/01/2019 and 21/01/2019 respectively. The respondent No.1 issued receipts to both transactions. The remaining balance consideration of Rs. 29,00,000/- (Twenty nine lakh rupees only) shall be paid at the time of execution of the deed of sale. As per the MOU, the parties shall have a right to sue for specific performance.

11.3. Further, complainant has made payment of Rs. 5,00,000/- (Five lakh rupees only) to the respondent No.1 on mutual consideration on 20/03/2019. Thus the complainant has made initial payment of Rs. 15,00,000/- (Fifteen lakh rupees only) and remaining balance of Rs. 24,00,000/- (Twenty four lakh rupees only) to be made at the time of executing conveyance deed. Both the parties have not disputed the above transactions. The respondent No.1 issued a notice to complainant on 13/11/2019 asking him to pay remaining payments. However, the said notice returned back to the respondent No.1 without receipt from the complainant. The respondent No.1 has obtained occupancy certificate to the project on 12/06/2020. The complainant has issued a legal notice to the respondent No.1 on 23/06/2020 and subsequently through Right to Information came to know that the said flat was sold to respondents No 2 and 3 on Agreement for Sale dated 12/06/2020 and got registered conveyance deed on 26/10/2020.

11.4. Section 13 of the Real Estate (Regulation and Development) Act, 2016 stipulated that no deposit or advance to be taken by promoter without first

entering into agreement for sale. Sub section (1) of the above provision (a) limits taking advance money upto ten percent of the cost (b) register the said agreement for sale under any law for time being in force. Sub section (2) of the above provision stipulated that the agreement for sale shall be in such form as may be prescribed specifying particulars of development, specifications, internal/external works, dates and manner of payments to be made by the allottees, date of possession, rates of interest payable by the promoter to the allottee and vice-versa in case of default by the allottee, etc. Rule 10(1) of the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Rules 2017) prescribed Model Form of Agreement to be entered into Between Promoter and Allottees. The Explanatory Note to the said Rule allows the promoter to modify depending upon circumstances in each case, but retaining all mandatory provisions. Any clause in the Agreement found contrary to or inconsistent with any provisions of the Act, Rules and Regulations would be void ab-initio.

11.5. There is no Agreement for Sale as prescribed under Section 13 of the Act read with Rule 10(1) of Rules 2017 executed between the complainant and the respondent No.1 except an Memorandum of Understanding (MOU) dated 16/01/2019. The written statement, arguments and counter arguments advanced by both parties indicated lack of such an instrument executed between them. Both the complainant and the respondent No.1 failed to show serious consideration for entering into Agreement for Sale. The statement by the respondent No.1 that the MOU entered would be followed by Agreement for Sale in due course and not executed thereon, is violation of the Section 13 of the Act and Rule 10(1) of the Rules 2017, further the said MOU is also not registered with the competent authority.

11.6. As regards to cancellation of the registered Conveyance Deed/ Deed of Sale is concerned, it is a matter of settled law already that only the civil

court has the jurisdiction to cancel the sale deed even if it is registered fraudulently. A deed can only be cancelled by approaching the appropriate civil court. The respondent No.1 has entered into an Agreement for Sale with respondents No.2 and 3 on 12/06/2020, and thereafter, got the registered Conveyance Deed on 26/10/2020, mortgaged the said flat with the Union Bank of India, obtained loan, already created third party obligation. There is no provision under the Real Estate (Regulation and Development) Act, 2016 and Rules thereof to terminate the Conveyance Deed. Further, Section 88 of the Real Estate (Regulation and Development) Act, 2016 does not bar application of other laws and it mentions that provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

11.7. Both complainant and respondent No.1 were given opportunity to settle the matter mutually, however, it failed. The Agreement for Sale can be declared ab-initio void if it violates the mandatory provisions under the Act, Rules and Regulations. Further, an Agreement for Sale can be cancelled by both the parties as per terms and conditions contained therein. Unfortunately, no such Agreement for Sale exists between the complainant and respondent No.1 except an unregistered MOU dated 16/01/2019. The respondent No.1 has not shown serious efforts to settle the matter except for letter addressed to the complainant on 13/11/2019 asking balance payment before sale of said flat to the respondents No.2 and 3. On the other hand, the complainant failed to prove that he was ready to pay balance consideration cost of the flat on time as required under Section (19)(6) of the Act.

12. **Whether respondent No.1 violated provisions under the Real Estate (Regulation and Development) Act, 2016 and Rules, 2017 thereof and liable for penalty?**


The respondent No.1 being the promoter of the said project even though registered it with Goa RERA but failed to adhere to provisions under Section 13 and sub-section (1) and (2) of the Real Estate (Regulation and Development) Act, 2016 and Rules, 2017 thereof. The respondent No.1 failed to execute Agreement for Sale with the complainant prior to accepting advance booking money and obtained in excess of stipulated ten percent limit. The respondent No.1 also failed to fulfil the functions and duties of promoter as per provisions of Section 11 and sub-section(3) of the said Act. The respondent No.1 entertained an unregistered agent for transactions with the complainant is violation under Section 9 read with Rule 11 of Rules, 2017. The respondent No.1 is liable for penalty to be imposed under **Section 61 of the said Act “If any promoter contravenes any of other provisions of this Act, other than that provided under Section 3 or Section 4, or the rules or regulations made there under, he shall be liable to a penalty which may extend upto five percent of the estimated cost of the real estate project as determined by the Authority”**. The estimated cost of the project disclosed by the respondent is to the tune of Rs. 5.09 crores approx.

13. **Whether respondent No.2 and 3 are liable to pay interest? Whether licence of the respondent No.1 can be terminated? Whether compensation is to be given to the complainant?**

13.1. In view of my findings as stated at para-11 above, the issue pertaining to payment of interest by the respondents No.2 and 3 and termination of licence is beyond the scope of reasons. However, the issue pertaining to determining compensation if any falls within the jurisdiction of Learned Adjudicator under Section 71 and 72 of Real Estate (Regulation and Development) Act, 2016.

14. In the light of findings at paras 11,12 and 13 above, the following speaking order issued as given below:

- (i) Cancelling Sale Deed or the Conveyance Deed is beyond the jurisdiction of this Authority. There is no provision under the Real Estate (Regulation and Development) Act, 2016, and Rules thereof to terminate the Conveyance Deed. The complainant may approach appropriate authority for seeking the said relief.
- (ii) A penalty of Rs.1,00,000/- (Rupees one lakh only) imposed against the Respondent No.1 under Section 61 of the Real Estate (Regulation and Development) Act, 2016. The respondent No.1 should deposit the penalty amount before the Authority within 60 days failing which recovery proceedings will be initiated under Section 40(1) of the Act read with Rules, The Goa Real Estate (Regulation and Development) (Recovery of Penalty),2017.
15. The case file along with all connected documents may be forwarded to the Learned Adjudicator for determining compensation if any under Section 71 and 72 of the Act.


S.Kumaraswamy, IAS(Retd.)
Chairperson, Goa RERA

To,

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| 1. Vincent J. Andrade,
H.No. E-16,
Near Ribandar Divar Ferry Point,
Ribandar Tiswadi-Goa, 403006. | 2. Abdul Gafoor,
Mannat Infra Developers and Contractors,
Office No.9 and 10, First floor,
Patto Centre building, near bus stand,
Panaji-Goa, 403001. |
| 3. Mr. Ratnpal Namdev Taksande,
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