



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

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Case no.4/RERA/Adj. Matters (8)/2021 | 549

Date: 29/07/2022

BEFORE THE ADJUDICATING OFFICER

Sripad Shetkar,

H.No.5, Cotto, Amona,

Quepem, Goa 403705.

.....

Complainant

V/s

Talak Homes and Estates,

Aashiyana, Comba,

Margao Goa-403601.

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Respondent

Ld. Advocate for complainant: Shri S. Lawande

Ld. Advocate for respondent : Shri J. Costa

ORDER

(Delivered on this the 29th day of the month of July of the year 2022)

The complainant had initially filed an online complaint dated 09.08.2019. The matter was heard by the Goa Real Estate Regulatory Authority which thereafter referred the matter to this Forum as the complainant was only seeking compensation.

2. The complainant thereafter filed his claim for compensation on 28.02.2022 at exhibit 82/c.
3. The respondent filed affidavit in reply at exhibit 586/c.
4. The complainant filed affidavit in rejoinder at exhibit 882/c.
5. The respondent filed affidavit in sur-rejoinder at exhibit 980/c and additional affidavit in sur-rejoinder at exhibit 1002/c. The complainant chose not to respond to the additional affidavit in sur-rejoinder at exhibit 1002/c.

6. Arguments were heard. I.d. Advocate for complainant filed written arguments at exhibit 990/c. I.d Advocate J. Costa argued for respondent and filed written arguments on behalf of respondent at exhibit 1044/c.
7. The point for determination and my finding to the same is as under:-

<i>Point for determination</i>	<i>Finding</i>
<i>Whether the complainant is entitled to compensation of ₹25,00,000/- (Rupees Twenty Five Lakhs only) as claimed?</i>	<i>In the negative.</i>

REASONS

8. Briefly stated, it is the case of the complainant that the respondent had to hand over possession of the three shops as agreed on or before 31.01.2019 but failed to do so.
9. It is the case of the complainant that the entire consideration amount for the three shops have been fully paid to the respondent at the time of executing the agreements for sale. The acts of the respondent and the delay in handing over the said three shops resulted in tremendous mental and physical hardships. The complainant had to even drop his plan of opening the bar and restaurant and lost a lot of revenue as he could not open the restaurant in the season time. Hence, the complainant has prayed for compensation towards loss of business, mental harassment and physical hardship caused due to ongoing work which is still pending as on date, totaling ₹25,00,000/- (Rupees Twenty Five Lakhs only).
10. The respondent has denied the case as set up by the complainant. The case of the respondent on the other hand is that the complainant had approached this Authority with unclean hands and has suppressed material facts and as such is not entitled to any reliefs as prayed. The complaint as well as the allegations therein are neither verified nor affirmed on oath and as such

ought to be dismissed in limine. The complaint is not in conformity with Rule 7 and Form B as prescribed there under and as such ought to be dismissed outright.

11. The respondent states that the complainant had approached the respondent stating that he was interested in purchasing three shops for the purpose of setting up and establishing a Bar and Restaurant. The complainant also informed the respondent that he would be requiring certain changes and modifications to be made to the internal structure and layout of the shops which would deviate from the approved plans and licenses already obtained. At the request of the complainant, the respondent agreed to carry out the changes as demanded by the complainant and to construct a mezzanine slab in the shops along with a staircase, enclose and modify the toilets, construct separate kitchen facilities with connection of ACO Lipumax Below Ground Grease Separator (NS4) and Top Cover A-15 Load Class Cover with Air and Water Seal, connect the same to the STP provided by the respondent, construct additional wash basin facilities, etc. The respondent informed the complainant that as these changes requested were not in consonance with the approved plans and permissions obtained, the stipulated date of handing over possession of the shops might get extended, by a reasonable amount of time, to which the complainant duly agreed and accepted. Vide 3 Agreements of Sale, all dated September 17, 2018 for the purchase of the said three shops the consideration price was ₹ 75,00,000/- (Rupees Seventy Five Lakhs only) for which the complainant had made payment of ₹60,00,000/- (Rupees Sixty Lakhs only). It was duly agreed that the total price of ₹75,00,000/- (Rupees Seventy Five Lakhs only) excludes taxes. It was also agreed that the respondent shall be entitled to reasonable extension of time for delivery of said shops in case of withholding of grant of completion certificate and/or

occupancy certificate by the concerned authorities. It was also agreed that the following amounts shall be liable to be paid by the complainant:-

(i) ₹ 10,000/- (Rupees Ten Thousand only) for share money, application entrance fee.

(ii) ₹ 645/- (Rupees Six Hundred and Forty Five only) per month towards outgoings of Society.

(iii) ₹25,776/- (Rupees Twenty Five Thousand Seven Hundred and Seventy Six only) as corpus in respect of the society.

(iv) ₹50,000/- (Rupees Fifty Thousand only) for installation charge towards water and electricity connection.

(v) ₹7,500/- (Rupees Seven Thousand Five Hundred only) as legal charges.

(vi) ₹14,862/- (Rupees Fourteen Thousand Eight Hundred and Sixty Two only) as Infrastructure Tax.

(vii) ₹1,25,000/- (Rupees One Lakh Twenty Five Thousand only) as Stamp duty and registration charges.

(viii) ₹2,57,021/- (Rupees Two Lakh Fifty Seven Thousand Twenty one only) towards Goods and Service Tax, ACO Lipumax Below Ground Grease Separator (NS4) and Top Cover A-15 Load Class Cover with Air and Water Seal.

(ix) Electrical consumption charges.

(x) House Tax in respect of the said premises.

(xi) Any increase or introduction of new rates, taxes and levies.

Upon obtaining necessary completion certificate in terms of the said agreements, the respondent called upon the complainant to pay the balance amount due and payable, pending towards the purchase of the said shops. However, the complainant failed and neglected till date to make payment of the entire balance amount due and payable. As of May 27, 2022, the complainant owes to the respondent an amount of ₹6,62,832/- (Rupees Six Lakhs Sixty Two Thousand Eight Hundred and Thirty Two only) towards purchase of the said shops under the terms of the Agreements dated September 19, 2018, which amounts remain unpaid till date. The respondent states that the delay of about one month only in obtaining the necessary occupancy certificate in respect of the shops was due to the respondent having to revise the necessary plans and approvals admittedly at the request made by the complainant for the changes sought.

12. The first objection raised by the respondent is that the complainant has approached this Authority with unclean hands and suppressed material facts. It is the complainant's case that the entire consideration amount has been paid to the respondent in terms of the agreements for sale. However, in the online complaint initially filed by the complainant, the complainant himself has stated the total amount agreed is ₹75,00,000/- and the payment made so far till date was ₹ 74,25,000/- whereas in the claim for compensation at exhibit 82/c the complainant has submitted that at the time of Agreements for Sale, the complainant upon the demand from the opposite party had paid the opposite party more than the amount prescribed under the law, which is also a violation of the Act. Thus, there is a mischievous shift in the stand taken by the complainant in his claim at exhibit 82/c vis-à-vis the online complaint filed before the Goa Real Estate Regulatory Authority.

13. The prescribed Form B under Rule 7 requires an application to the Adjudicating Officer for claim for compensation under Section 12, 14, 18 and /or 19 read with Section 71 of the Act to be verified. The record shows that on 06.01.2022 the complainant had produced an incorrect format of the complaint which was not as per Form B and without documents. Time was granted to file a fresh claim in Form B along with documents after seeking adjournments twice on 19.01.2022 and 11.02.2022. Thereafter, on 28.02.2022 the complainant filed his claim for compensation purportedly in Form B again without documents and undertook to file the documents in the course of the day.
14. The said claim for compensation at exhibit 82/c dated 28.02.2022 is only signed by the advocate for the complainant/applicant Shri Sripad Shetkar. It has not been signed by the complainant/applicant nor verified as required in terms of the prescribed Rule 7, Form B.
15. It is the case of the complainant that he has paid the entire consideration amount to the respondent. The complainant himself has admitted in his online complaint that there was a balance due and payable of ₹75,000/-. The case of respondent is that the complainant is still due and liable to pay an amount of ₹ 6,55,549/- (Rupees Six Lakhs Fifty Five Thousand Five Hundred and Forty Nine only) in terms of the said agreements for sale. The complainant has not produced any receipt issued by the respondent having paid the said balance amount due and payable in terms of the said agreements of sale dated September 19, 2018 in order to establish the complainant's case
16. The complainant has not disputed that he had sought structural changes in the three shops for which revised plans and approvals had to be sought from

the concerned authorities. It is not in dispute that there is a delay of about one month in the handing over possession of the said shops to the complainant, which delay is attributable to the complainant himself as the plans and approvals which had already been obtained had to be revised and fresh approvals had to be obtained on account of the changes as sought by the complainant himself. Therefore, the delay of about one month in handing over the shops cannot be said to be on account of any default on the part of the respondent in the facts and circumstances of the present case.

17. In the additional affidavit in sur-rejoinder filed by the respondent at exhibit 1002/c in response to which the applicant/complainant has chosen not to respond to, it is alleged by the respondent that upon receipt of demand letter dated 27.05.2022, the complainant has taken recourse to physically intimidating and threatening the respondent and its employees and committing various offences against them. The respondent has further alleged in para 6 to 10 of exhibit 1002/c the criminal acts meted out to the respondent's son Mr. Tejas Talak which has also resulted in filing of a police complaint dated 07.06.2022 against the complainant for offences of having wrongfully restrained and threatening to kill Mr. Tejas Talak. Having not responded to this additional affidavit sur-rejoinder the complainant has tacitly admitted to the said allegations. The said alleged criminal acts of the complainant against the respondent and its employees/ representatives which are uncontroverted have to be accepted as true and as such disentitles the complainant to any equitable reliefs including compensation as prayed for against the respondent.
18. From the material placed on record, it is not in dispute that the respondent has already handed over the possession of the said shops agreed to be

purchased, to the complainant within the time period as prescribed in the said agreements. Moreover, the complainant is still admittedly in default of payments of the balance amount of ₹ 6,62,832/- (Rupees Six Lakhs Sixty Two Thousand Eight Hundred and Thirty Two only) due and payable to the respondent under the terms of the said agreements. The complainant has falsely stated that all the payments have been made in terms of said agreements for sale, which falsity is borne out from the records itself. The claim for compensation has neither been signed by the complainant/applicant nor has been duly verified in terms of Rule 7 as prescribed in Form B. Therefore, on this count itself the claim of the complainant is liable to be dismissed.

19. For the reasons set out herein above, the point for determination is answered in the negative.
20. Before parting with this Order, it is necessary to mention that the claim for compensation was filed on 28.02.2022. The same was filed without documents as prescribed. The complainant undertook to hand over the copies of the documents to the respondent in the course of the day to enable the respondent to file a reply on the next date i.e. 11.03.2022. However, on the next date 11.03.2022 Advocate for the complainant admitted that copies of the said documents as undertaken to be handed over to the Advocate for the respondent in the course of the day was not done till 08.03.2022. Hence, on 11.03.2022, time had to be granted to the respondent to file reply on 23.03.2022. On 23.03.2022, respondent remained absent and informed by e-mail that he is out of station and hence the matter was adjourned for reply and same was filed by the respondent on 08.04.2022.


The respondent thereafter filed list of documents on 19.04.2022. The complainant then filed affidavit in rejoinder on 22.04.2022 along with three documents and one CD. On 10.05.2022, email was received from the respondent reporting that the CD furnished was not opening. Advocate for the complainant undertook to furnish a fresh CD which was furnished on 20.05.2022. On 30.05.2022 Affidavit in sur-rejoinder was filed by the respondent. On 08.06.2022, written arguments were filed by the complainant. On 21.06.2022 respondent filed additional affidavit in sur-rejoinder along with police complaint and 6 photographs. On 29.06.2022 Advocate for complainant submitted that the complainant does not wish to file reply. Written arguments were then filed by Advocate for the respondent on 07.07.2022. Oral arguments were heard on 20.07.2022. Order is pronounced on 29.07.2022.

In the result, I pass the following

ORDER

The claim for compensation filed on behalf of the complainant at exhibit 82/c stands dismissed.

Proceedings closed.


29/07/2022
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA