



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

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA
www.rera.goa.gov.in

Tel: 0832-2437655; e-mail: goa-rera@gov.in

F.No.3/RERA/Complaint(182)/2021/684

Date: 22/09/2022

Harshat Sonu Pednekar,
H.No. 142/F Chandanwadi,
Bastora, Goa, 403507.

..... Complainant

V/s

PROVIDENT HOUSING LTD

Represented by V H S Sastry and Mrs Rekha Umesh,
130/1 Ulsoor Road, Bangalore
Goa-560042.

..... Respondent

ORDER
(Dated 22/09/2022)

This order disposes of the aforesaid complaint filed under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act'), wherein the complainant has prayed for the following reliefs:-

a) For order to enquire and investigate into the affairs of the development project Adora De Goa and the glaring illegalities and cheating committed by the promoters to sell their flats from Row No. 5 with false representation by practising fraud, cheating with the prospective buyers and upon investigating in the matter to cancel the permission and approval granted to the said project Adora De Goa.

- b) For order directing the promoters to exchange the apartment No. B-406 from Row No. 5 with the apartment bearing No. D-501 in Row No.7 having sea view.
- c) For order restraining the promoters and their representatives from creating any third party rights in respect of the said apartment no. B-406 in Row No. 5 and also in apartment No. D-201 in Row No. 7.
- d) For order of compensation of Rs. 50,00,000/- (Rupees Fifty Lakhs only) for false representation, mental torture and harassment caused due to false representation and cheating.
- e) Interim relief staying the construction of the said project as there is every likelihood that the other people have been cheated by the promoters.
2. It is the case of the complainant that Provident Housing Ltd. and Trinitas Realtors India, both as promoters published their brochure pertaining to the project Adora De Goa in Survey No.198/1 in Village Sancoale, South Goa and the project master plan/ layout of the building structures showed Row 1 to Row 18 with swimming pool in the middle of Row No. 18. According to the complainant, in the project master plan, the builders have shown high viewing towers in front of Row No. 5, Row No. 8 and Row No. 10 which are of multilayers and the prospective purchasers were shown the sea view possible from the said project.
3. According to the complainant, he approached the promoters to finance and construct the apartment having sea view and the complainant was taken to the site and to the tower towards the western side and was informed that the said tower corresponds to and is in line with Row No. 5 as shown in the project master plan annexed to the brochure. The complainant has submitted that the representative of the promoters Ms. Shruti Gawandi confirmed that tower as shown in the master plan is



existing at the site and accordingly, based on the representation of the promoters and their representative, the complainant decided to finance the construction of the apartment in wing B, bearing No. 406 on fourth floor of Row No. 5, which apartment is referred in the complaint as “the said apartment”.

4. The complainant has submitted that based on the confirmation of the promoters that the said apartment will have partial sea view, the complainant along with his wife entered into an agreement for sale dated 11.06.2019 with the respondent for total consideration of Rs. 52,43,768/- (Rupees Fifty Two Lakhs Forty Three Thousand Seven Hundred and Sixty Eight only) in respect of the said apartment and the said agreement for sale was registered on 24.06.2019. The complainant has further submitted that he paid part consideration amount of Rs. 18,61,450/- with GST and stamp duty as payable by the complainant.
5. According to the complainant, in January 2020 when he visited the site he was shocked to see that the excavation of Row No. 5 was in progress and in front of the said construction, the promoters had erected hoarding of Row No. 5 but the said Row No. 5 was not coming in line with the high viewing tower erected at site and therefore he informed the said fact to the respondent by e-mail dated 28.01.2020. It is stated that by e-mail dated 15.08.2020, the complainant requested the promoters to provide the complainant full sea view apartment in Row No. 7 wing D-501 as the promoters had launched Row No. 7 and 8 on the same day. According to the complainant the manager of the respondent intimated the complainant that the complainant will be given the first preference in Row No. 7 once the construction of Row No. 7 is started and the complainant believed in the said assurance of the manager. The complainant has further stated that he approached the manager on 09.07.2021 when the construction of Row



No. 7 was started and when he questioned the manager about his aforesaid assurance, the manager gave evasive answers and at that time the complainant came to know that he was cheated.

6. According to the complainant, false representation was made to the complainant to the effect that there will be high viewing tower in front of Row No. 5 which will give partial sea view, however at the site in front of Row No. 5 there is already high rise building which is constructed by the adjoining owner due to which the sea view is totally blocked for all the apartments in Row No. 5. Thus according to the complainant, the promoters have committed the illegalities, fraud and cheated the complainant by selling the said apartment No. B-406 in Row No. 5 which has no sea view.
7. According to the complainant, he received final notice dated 17.06.2021 from the promoters asking the complainant to pay the balance part consideration of Rs. 10,41,495.20/- which includes interest and after receiving the said notice, the complainant approached the manager of the respondent, Mr. Manmohan Vyas who intimated that the apartment B-406 in Row No.5 cannot be exchanged for any apartment in Row No.7. Hence the prayers of the complainant as stated above.
8. Reply has been filed by the respondent, wherein it is stated that the complaint is not maintainable and is liable to be dismissed since it is frivolous, vexatious, mischievous and is without any substance or cause of action and that the complainant has approached the authority with unclean hands and concocted story.
9. According to the respondent, the complainant was never promised that he will be given sea view apartment and that with malafide intention, the complainant is trying to grab 3bhk apartment with the cost of 2bhk



apartment. The respondent has submitted that if the complainant was interested in Row No. 7, D-501, then the complainant would have accepted the offer of purchase given by the respondent by paying difference in the amount for the enhanced carpet area. It is stated that the Application Form and Annexure A clearly mentions about the details of the apartment B-406 in Row No. 5 and there is no mention of sea view. According to the respondent, no units/ apartments were sold by mentioning that they have sea view and hence the brochure does not disclose about the sea view units. It is further stated that the complainant is bound by and liable for all the terms and conditions mentioned in the booking/confirmation letter and breach of the same would result in cancellation of booking. It is stated that even the allotment letter clearly mentions about the unit Row-5/Block B-406 and not a sea view apartment.

10. According to the respondent, in the project master plan annexed to the brochure, the promoters have given the details of the Rows where the proposed building structures will be erected and since the property is a big property, the builder has erected three high viewing towers at site and in the project master plan it is shown that the high viewing towers are in front of Row No. 5, Row No. 8 and Row No.10 for easy identification of the respective rows to be constructed in the said property.
11. According to the respondent, it was never promised to the complainant through the master plan that the said apartments will have partial sea view. It is stated that before executing the agreement for sale, the promoters clearly described and explained about the said apartment to the prospective buyers and the same was done in case of the complainant and therefore there is no basis for the complainant to imagine that the said apartment will have sea view. It is further stated that the manager of the



respondent never assured the complainant as stated by the complainant in the complaint. According to the respondent, the said neighbouring building has been in existence prior to undertaking the construction of Row No. 5 and even before executing the agreement for sale with the complainant and hence the respondent denies the plea of the complainant that in the event the complainant would have learnt about the said high rise building in line of Row no. 5, then he would not have gone for apartment in Row No. 5.

12. According to the respondent, the complainant as well as other prospective purchasers were well informed about the construction details and were shown the site, however, the complainant later changed his mind to have a sea view apartment instead of the said apartment, regarding which the promoters offered a 3 bhk apartment but the complainant was unwilling to pay additional cost for the enhanced carpet area of 3 bhk apartment.
13. According to the respondent, a final notice dated 17.06.2021 for payment of balance consideration amount of Rs. 10,41,495/- including penalty was given to the complainant and on receiving the said notice, the complainant approached Shri Manmohan Vyas on 09.07.2021 and requested to provide him 3 bhk in Row No. 7 instead of 2bhk in Row No.5, to which it was made clear to the complainant that the said apartment in Row No. 5 cannot be given in exchange of any apartment in Row No. 7 due to difference in the carpet area and can be given only if the complainant pays extra amount for the enhanced carpet area.
14. According to the respondent, the complainant has undertaken not to delay any payment due and payable under the agreement for sale and the complainant has also agreed that the respondent would be entitled to terminate the said agreement for sale in the event the complainant delays



or otherwise fails to make payments on time and in the event of termination, the complainant acknowledged the right of the respondent to deal with the apartment in any manner including allotting the same to the third party purchaser. It is further stated that the complainant cannot blow hot and cold at the same time by praying for cancellation of the development of the project and also praying to avail the apartment No. D-501 in Row No. 7. The rest of the contentions and allegations of the complainant are denied by the respondent.

15. Documents have been filed by the parties. Affidavits have been filed by both the respondent and complainant. Written submissions were also filed by both the parties. Oral arguments were heard from Ld. Advocate Shri A. Naik for the complainant and Ld. Advocate Ms. M. Amonkar for the respondent.
16. After going through the entire records of the case the points which come for my determination along with the reasons and findings thereon are as follows:-

Sr. No.	Points of determination	Findings
1.	Whether the respondent made false representation to the complainant in respect of the apartment bearing No. B-406 in Row No. 5 pertaining to high viewing tower in front of row No. 5 for sea view?	In the negative.
2.	Whether the complainant is entitled for an order of canceling the permission and approval granted to the said project?	In the negative.



3.	Whether the complainant is entitled to have the said apartment B-406 in Row No. 5 exchanged for the apartment bearing no. D-501 in Row No. 7?	In the negative.
4.	Whether the respondent is liable to restrained from creating any third party rights in respect of apartment No. D-501 in Row No.7?	In the negative.
5.	Whether the complainant is entitled for compensation as prayed in the complaint?	To be decided by the Adjudicating Officer under Section 71 of the said Act.

REASONS

Points No 1 and 2

Both the points are taken up together as they are interconnected and the reasons for deciding the same overlap.

In the agreement for sale dated 11.06.2019, which was registered on 24.06.2019, there is no mention of any high rise tower with a sea view in front of Row No. 5. On page 6, recital 3 (V) it is mentioned as follows:-

“The Purchaser(s) made an application for allotment of an Apartment in this Phase of the Project and pursuant to such application, Promoters have allotted Apartment no. **B406** on the floor no **4** of Block **5** in **Row5**, located in this Phase of the Project, having Carpet Area measuring



approximately **47.74** sq.mts. and a Super Built Up Area measuring approximately **74.18** sq. mts. which is inclusive of a proportionate undivided interest in the Common Areas of the Project Buildings along with **covered** Parking Space; details of the said Apartment is more fully described in Schedule-2 attached to this Agreement; and hereinafter referred to as the **“Purchaser’s Apartment”**.

17. One page 7 of the recital I, it is interalia mentioned as follows:-

“1.1 Description of purchaser’s apartment

Purchaser(s) hereby agrees to purchase from Promoters and Promoters hereby agrees to sell to Purchaser(s), the Purchaser’s Apartment bearing no. **B406** located on the **4** floor in **Block 5** of **Row 5** of this Phase of the Project, along with one covered parking space having –

- i. Carpet Area measuring approximately **47.74** sq. meters, and
- ii. exclusive balcony measuring approximately **5.55**sq. meters, and
- iii. exclusive terrace measuring approximately 0.00 sq. meters,

which Purchaser(s) Apartment is more fully described in Schedule -2 attached hereto.

1.2 Purchaser(s) hereby agrees to purchase from Promoter and Promoter hereby agrees to sell to Purchaser(s), the Purchaser(s) Apartment for an



aggregate sale consideration of ₹5243768.00 (Rupees **Fifty Two Lakh Forty Three Thousand Seven Hundred Sixty Eight only**) (the “sale consideration”) which includes the proportionate price of the Common Areas of the Project Buildings and consideration **along with one covered parking space.**


1.3 Sale Consideration includes cost of Carpet Area of the Purchaser’s Apartment, Built Up Area, a proportionate undivided interest in the Common Areas of the Project Building, and other areas exclusive to and/or appurtenant to the Purchaser’s Apartment, and excludes Taxes as well as Deposits and Charges.....”

18. Schedule 2 in the said Agreement for Sale gives the description of the purchaser’s apartment as follows:-

“The Apartment (unit floor plan attached) bearing no. **B 406on the 4 of Block 5 in Row 5** of this Phase of the Project (shown as Block **Row 5** in the Sanctioned Plan) having a Carpet Area of **47.74** sq. mts along with **covered** Parking Space(s) with a proportionate undivided interest in the Common Areas of this Phase of the Project with the non-exclusive right to use the Common Amenities and Facilities of Project.”

19. From the above Agreement for Sale executed between the complainant and his wife on one part and the promoter on the other part, it is clear that it is nowhere mentioned in the said agreement that there will be a high rise tower in front of Row 5 for sea viewing of the allottees.



20. The complainant has emphasized on the project master plan annexed to the brochure and has argued that the said project master plan shows the high rise tower in front of Row 5 for sea viewing. The said project master plan is produced on record by the complainant and the perusal of the same shows that though there is a diagram of a square in front of Row 5, it is nowhere mentioned in the said project master plan that the same is a high rise tower. **Secondly**, even if it is taken for granted that the said diagram of square is in fact a high rise tower shown therein, still there is nothing in the said project master plan to show that the said tower is for sea view. **Thirdly**, there is no agreement/contract between the complainant and the respondent to the effect that there will be any high rise tower in front of Row 5 for sea viewing of the complainant.
21. The Ld. Advocate for the complainant has argued that in para 2 of the reply of the respondent, it is admitted by the respondent that “the tower erected as shown in the master plan are of multilayers and the prospective purchasers were shown the sea view possible from the development project”. From the aforesaid statement of the respondent in the reply, the respondent has merely stated that the prospective purchasers were only told that from the development project sea view is “possible” and therefore the said statement does not amount to any agreement/ contract between the promoter and the complainant pertaining to any high rise tower having sea view. Infact, in the same para 2 of the reply, the respondent has stated that “since the property is the big property the builder has erected three high viewing towers at site and in the project master plan it is showing that the high viewing towers are in front of Row No. 5, Row No. 8 and Row No. 10 **for the easy identification of the respective Rows to be constructed in the said property.**” (emphasis supplied)
- 

22. In the reply, the respondent has clearly stated that “the complainant was never promised that he will be given sea view apartment”. It is further stated in the reply that “The Respondent never sold any units/apartments mentioning that the same has sea view so much so, the brochure does not disclose about the sea view units and it is needless to state that the respondent is not selling any of its units being sea view”. It is specifically denied by the respondent in the said reply that the respondent or its representative ever promised to the complainant through the master plan that the said apartments will have partial sea view. To the allegation of the complainant to the effect that instead of high rise tower in front of Row 5 with a partial sea view, there is already high rise building of the adjoining owner due to which the sea view is totally blocked for all the apartments in Row 5, the respondent has clearly stated in the reply that “The said neighbouring building has been in existence prior to undertaking the construction of Row No. 5 and even before executing the Agreement with the complainant.”
23. The respondent has denied specifically in the reply that its representative, Miss Shruti Gawande confirmed to the complainant that tower for sea viewing as shown in the project master plan is existing at site and has also denied any assurance given by its manager Shri Manmohan Vyas to the complainant. On the contrary in the reply, the respondent has stated that the “complainant then approached Shri Manmohan Vyas on 9th July, 2021 where he was requesting to provide 3 bhk in Row 7 instead of 2 bhk in Row 5, wherein Shri Manmohan Vyas was shocked to hear the said demand of the complainant which is not logically possible and hence, clearly intimated the complainant that said apartment cannot be given in exchange of any apartment in Row 7 due to difference in the carpet area



and can be given only if the complainant pays extra for the enhanced carpet area.”

24. Thus, neither there is any mention in the agreement for sale that there will be or is under construction any high rise tower in front of row No. 5 for the prospective purchasers of the apartments in the said Row for sea viewing/ partial sea viewing from the said tower nor it is depicted in the project master plan that the said diagram square is a high rise tower for sea viewing of the prospective purchasers of the apartments in Row No. 5. The oral assurances or the statements of the representatives of the respondent, if any, as claimed by the complainant, though not established by the complainant in this case except mere statements in the complaint, which are denied by the respondent, are not translated into any agreement/contract between the complainant and the respondent as per law.
25. From the aforesaid it is clear that the complainant has failed to prove that the respondent made false representation to the complainant in respect of apartment bearing no. B-406 in Row No. 5 pertaining to high viewing tower in front of Row No. 5 for sea view. Point No. 1 is therefore answered in the negative. The complainant is therefore not entitled for an order cancelling the permission and approval granted to the said project. Even otherwise the permissions and approvals for the said project are granted by the concerned statutory authorities and the same cannot be cancelled by this Authority. Point No. 2 is also therefore answered in the negative.

Points No. 3 and 4

26. Since there is no agreement for sale/ contract between the complainant and the respondent in respect of apartment no. D-501 in Row No. 7, the



complainant is not entitled to have the apartment No. B-406 in Row No. 5 exchanged for the apartment bearing No. D-501 in Row No. 7. Since the complainant has no right over the apartment bearing No. D-501 in Row No. 7, the respondent cannot be restrained from creating any third party rights over the said apartment in Row No. 7. Hence, both the instant points are answered in the negative.

Point No. 5

27. The Point of compensation, if any, has to be decided by the Adjudicating Officer under Section 71 of the said Act.

In view of the aforesaid the prayers of the complainant before this Authority are rejected. However, for deciding compensation, if any, the matter is referred to the Adjudicating Officer.

v. jettley
22/9/2022
(Vijaya D. Pol)
Member, Goa RERA