



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

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Case no.4/RERA/Adj. Matters (7)/2021 | 416

Date: 01/06/2022

1. Melvin Socorro Emidio Palha

2. Arzilia Antonette D'Souza,

H.No.711/83, SF-1, 2nd Floor, Green Hills colony,
Building Casa Mercy, Socorro,
Porvorim Goa 403501.

Complainants

V/s

Rahim Mehboob Virani

H.no. 7/193/6(GK2),
Poonam Apartment, Ground Floor,
Angod, Mapusa,
Bardez-Goa-403507.

Respondent

ORDER

(Dated 01/06/2022)

The complainants approached the respondent/promoter to book a flat in the project 'The Palms Socorro' being constructed by respondent/promoter situated in property bearing Survey No. 23 Sub Division 3-C of Village Socorro within the limits of the Village Panchayat of Socorro, Taluka Bardez, Goa. The project is registered under Goa RERA. The complainants agreed to purchase the said flat from the respondent for a total consideration of ₹72,00,000/-. The respondent assured to complete the flat and hand over possession by March, 2020. The complainants paid the booking amount at the rate of 10% i.e. ₹7,20,000/- (Rupees Seven Lakhs Twenty Thousand only) along with GST charges of ₹86,400 by cheques dated 13/06/2018. The complainants approached the respondent/developer to execute an agreement for sale but the respondent delayed the same for

nearly fifteen months. The complainants state that there was mention of Civil Suit in said draft agreement for sale which was not disclosed earlier. On enquiry, the complainants were assured by Advocate of the promoter that the said Civil Suit was a minor issue pertaining to a portion of the property and the same would be resolved. The complainants then entered into an agreement for sale dated 09/09/2019 and incurred stamp duty charges of ₹2,08,800/- (Rupees Two Lakhs Eight Thousand Eight Hundred only) processing charges of ₹ 1070 (Rupees One Thousand and Seventy only) and registration charges of ₹ 500/- (Rupees Five Hundred only). The complainants then approached nationalized bank (State Bank of India) along with all the necessary documents for sanction of loan but were informed that no loan can be sanctioned as the project was under litigation. The complainants discussed this issue with the respondent. However, they did not get a proper response and decided to exit from the said project. The complainants decided to cancel the said agreement for sale and sought for refund of the entire amount. The complainants also made a claim for interest and also requested for compensation of ₹3,00,000/- (Rupees Three Lakhs only) for mental trauma, anguish and hardships. By Order dated 06/08/2021 the Goa Real Estate Regulatory Authority ordered the respondent to refund the advance along with GST, 1%TDS, Stamp duty and Registration fees amounting to ₹10,88,770/- (Rupees Ten Lakhs Eighty Eight Thousand Seven Hundred and Seventy only). For the purpose of determination of compensation claimed by the complainants, the matter was referred to the Adjudicating Officer under Section 71 of the Goa Real Estate (Regulation and Development) Act, 2016.



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2. The complainants have filed their claim for compensation in Form 'B' before this forum at exhibit 96/c. The case of the complainants is that they were made to face unnecessary litigations for no fault of theirs and also made to incur legal expenses. The complainants were forced to continue to stay in rental apartment beyond the period of date of possession promised by the builder i.e. March, 2020. The complainants were also prevented to purchase alternate flat in another project as they had already invested their hard earned money amounting to ₹11, 08, 770/- (Rupees Eleven Lakhs Eight Thousand Seven Hundred and Seventy only) to the builder who continues to hold the same.
3. The respondent filed reply along with counter claim at exhibit 258/c. The respondent has denied the claim for compensation as set out in the Form 'B' at exhibit 96/c. The respondent has also sought by way of counter claim an award of ₹4,95,313/- (Rupees Four Lakhs Ninety Five Thousand Three Hundred and Thirteen only) on the grounds that the claim of the complainants being full of falsity, manipulations and misrepresentations.
4. The respondent has also filed an application seeking leave to produce Undertaking dated 09/09/2019 as secondary evidence at exhibit 320/c. The same has not been objected to by the complainants. Hence, the said Undertaking shall be read in evidence.
5. Heard arguments. Ld Advocate Shri P. Agrawal argued for the complainants and filed written submissions at exhibit 282/c. Ld Advocate Shri S. B. Sawkar argued for the respondent and filed written submissions at exhibit 362/c.

6. The points of determination and my findings to the same are as under:-

Points	Findings
<i>a) Whether the complainants are entitled to their claim for compensation of ₹3,00,000/-?</i>	<i>In the negative</i>
<i>b) Whether the respondent is entitled to the claim for compensation of ₹4,95,313/- by way of counter claim?</i>	<i>In the negative</i>

REASONS

Points a) and b)

(Both points are taken up jointly for discussion as they are interconnected and for the sake of brevity)

7. The broad factors to be considered while adjudging compensation have been provided under Section 72 which reads as under:-

“72. While adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, whenever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.”

8. The Ld. Advocate for the complainants has submitted that the complainants are seeking compensation in the amount of ₹3,00,000/- (Rupees Three Lakhs only) for mental trauma, anguish and hardships caused to the complainants as they were made to face unnecessary litigations for no fault of theirs and also made to incur legal expenses. The complainants were

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forced to continue to stay in rental apartment beyond the period of the date of possession as promised by the respondent/builder i.e. March, 2020. The complainants were also prevented to purchase alternate flat in another project as they had already invested their hard earned money amounting to ₹11,08,770/- to the respondent/builder who continues to hold the same.

9. The Ld. Advocate Shri S.B. Sawkar for the respondent on the other hand has submitted that there are no pleadings and also no supporting documents as evidentiary proof in order to conclude that the complainants are entitled to any relief of compensation as sought for. In support of the respondent's case reliance has been placed in the case of **Gulabrao Balwantrao Shinde and others v. Chhabubai Balwantrao Shinde and others, AIR 2003 SUPREME COURT 160** wherein it was held:- pleadings – Court cannot make out a new case not pleaded.
10. Reliance was also placed in the case of **Nalini Sunder v. G.V. Sunder, AIR-2003-Karnataka 86-** wherein it was held-Pleadings-Lack of-case cannot be made out on basis of evidence of party when it was not set up in pleadings.
11. In the Undertaking dated 09/09/2019 placed along with application at exhibit 320/c, which has not been opposed to by the complainants, it is evident that the respondent had undertaken that incase the complainants under the agreement for sale dated 09/09/2019 were impleaded or joined as the defendants/ the respondent in the Civil Suit No. 17/2017 pending before the District Court-II, Mapusa or in any Appeal, Revision or Writ Petition arising thereto the respondent had undertaken and assured the complainants

that they would defend the said litigation on behalf of the complainants and bear/pay the litigation costs, court-fees and other charges till disposal of the same by the court of law.

12. From the above Undertaking, it is evident that the complainants had entered into an agreement for sale with the respondent after they were very much aware of the pending litigation and had got an assurance as well as undertaking from respondent herein to bear all the costs of the litigation with respect to the said civil suit no. 17/2017.
13. This being the position, the complainants who thereafter sought to exit from the project cannot now claim that they were not aware of the said litigation and that as a result they were made to face unnecessary litigation and also made to incur legal expenses thereby causing them mental trauma and anguish.
14. As rightly submitted by Ld. Advocate for respondent, the complainants have not produced any documentary evidence in support of the contention that they were residing in a rental apartment and had to continue doing so beyond the period of the agreed date of possession i.e. March, 2020. Similarly, the respondent has also not placed any iota of evidence in support of the counter claim seeking an award of ₹ 4,95,313/- as set out in the counter claim.
15. To my mind, taking into consideration all aspects of the case, neither the complainants nor the respondents have made out any case in support of their



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respective claim and counter claim for compensation. The points for determination are therefore both answered in the negative.


16. Before parting with this order, it is necessary to state that the claim for compensation in Form 'B' was filed by the complainants on 01/02/2022. The respondent filed reply along with counter claim on 17/02/2022. The complainants filed an application for adjournment on 09/03/2022 as the father of the complainant's advocate was hospitalized and could not attend the proceedings. The Ld. Advocate for the complainants filed written submissions on 14/04/2022. Ld Advocate for respondent filed written arguments on 28/04/2022. Oral arguments were heard on 16/05/2022. At the request of Ld. Advocate for the respondent who was proceeding out of station for vacation, the date for final order was fixed on 01/06/2022.

In the result, I pass the following:-

ORDER

The claim for compensation filed by the complainants in Form 'B' at exhibit 96/c stands dismissed. The counter claim for compensation of the respondent at exhibit 258/c also stands dismissed.

Proceedings closed.


01/06/2022
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA