



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

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Case no.4/RERA/Adj. Matters (60)/2022/ 786

Date: 27/10/2022

BEFORE THE ADJUDICATING OFFICER

Arman Bankley,

BH 9, Balama Heritage,

Opp. Chinmaya mission,

Gogol, Margao Goa-403601.

..... **Applicant/Complainant**

V/s

1. M/s Umiya Holding Pvt. Ltd.

2. M/s Umiya Builders and Developers

29/3, HM Stafford, 2nd Floor,

Seventh Cross, Vasant Nagar,

Bangalore, Karnataka-560052.

.....

Respondents

Ld. Advocate for the complainant: Ms Sapna Mordekar.

Ld. Advocate for the respondents: Shri R. S. Banerjee.

ORDER

(Delivered on this the 27th Day of the Month of October of the Year 2022)

The present proceedings have arisen as a corollary to the complaint under Section 31 of The Real Estate (Regulation and Development) Act, 2016 filed by

the applicant/complainant against the respondents bearing complaint no. 3/RERA/Complaint/ (134)/2020.

2. The above said complaint was disposed off in favour of the applicant/complainant vide Order dated 06.05.2022 of the Goa Real Estate Regulatory Authority for short RERA. The said Authority directed as follows:-

“The respondents are directed to form a society /Co-operative society/ an association of allottees in respect of the aforesaid project, without any additional charges from the complainant other than those mentioned in the Agreement for Construction and Sale dated 13.03.2018 within two months from the date of this order and handover to its members within the said period all the necessary documents including plans related to the common areas of the said building.

The respondents are further directed to execute a sale deed of the said commercial shop in favour of the complainant along with the undivided proportionate title in the common areas to the association of allottees within two months from the date of this order.

The respondents are further directed to pay a penalty of ₹ 1,00,000/- (Rupees One Lakh only) for violation of

Section 11 (4) (e) of the Act within two months from the date of this order and also to pay a penalty of ₹ 1,00,000/- (Rupees One Lakh only) for violation of Section 11 (4) (f) of the Act within two months from the date of this order.

The instant matter is referred to the Adjudicating Officer for deciding compensation, if any.”

3. Thereafter, the said matter came before this Forum under Section 71 of The Real Estate (Regulation and Development) Act, 2016.
4. The applicant/complainant has filed his claim for compensation in Form ‘B’ at exhibit 122/c, seeking compensation of ₹5,00,000/- (Rupees Five Lakhs only).
5. Briefly stated the case of the applicant/complainant is that the respondents have failed and neglected to constitute a co-operative society/ Association of Persons or such other entity despite handing over the possession of the units to the majority of the allottees. The applicant/complainant states that the respondents are duty bound to constitute and enable the formation of the said association, society or co-operative society of the allottees which is specifically provided for as per

clause 7 (W) (v) of the Agreement for Construction and Sale dated 13.03.2018.

6. The applicant/ complainant stated that the respondents thus, are in breach of Section 11(4) (e) of the Act and are liable to be penalized, for such contravention.
7. It is the applicant/complainant's case that as per clause 7(W) (xxi) of the agreement it is the respective purchasers who will be solely responsible and liable with respect to the common amenities of Umiya Mercado and for looking after the upkeep thereof. In terms of clause 7(W) (xvi) it is the duty of the respondent to assist the applicant/complainant and the other purchasers in forming the co-operative society or any other entity.
8. It is also the applicant/complainant's case that respondents have further failed to execute the conveyance deed of the Commercial Shop in favour of the applicant along with undivided proportionate title in the common areas to the association of the allottees and thus the respondents are in breach of Section 11(4) (f) of the said Act.
9. It is also the applicant/ complainant's case that respondents have further failed to handover the necessary documents, plans including that of the common areas after handing over the possession of the commercial shop

and other units to the allottees, inspite of the applicant/complainant time and again requesting the respondents for the same.

10. The applicant/ complainant states that respondents have continued to commit the aforesaid breaches under the said agreement and under the Act and are therefore are liable to be penalized for violations and contraventions of the obligations cast upon the respondents.
11. The applicant has therefore prayed that the sum of ₹ 5,00,000/- (Rupees Five Lakhs only) be paid as compensation to the applicant/complainant, towards costs of the present application, mental trauma, loss of time, hardship caused, notional losses and legal fees incurred.
12. The Respondents filed reply at exhibit 330/c opposing the claim of the applicant/complainant. The respondents have denied the case as set out by the applicant/complainant. It is the respondents case that out of the said whole building comprising of 35 units constructed only 4 units are sold and the remaining units have remain unsold. Therefore the respondents are not in the position to assist the prospective purchasers in formation of an entity.
13. It is also the respondents case that for the formation of society/ entity 50% of the members are required to sign the bye-laws and since only 04 units were sold, the respondents were not in a position to assist the



prospective purchasers in formation of the society/entity and therefore continued to maintain the high standard of safety and security of the building through highly qualified professionals.

14. The respondents were always ready and willing for formation of society/entity and were always willing to execute the Deed of Conveyance in favour of the applicant. The respondents deny that they have failed to hand over the necessary documents, plans including that of the common areas as there were no requests for the same. Hence, the applicant/complainant is not entitled to any compensation as prayed for.
15. The applicant/complainant filed his affidavit in evidence at exhibit 360/c. The respondents have filed their affidavit in evidence at exhibit 378/c.
16. Heard arguments. Ld. Advocate Ms. Sapna Mordekar has argued for the applicant/complainant and filed written submissions at exhibit 424/c. Ld. Advocate shri R. S. Banerjee argued for the respondents and filed written submissions at exhibit at 406/c.
17. The Point for determination and my finding to the same is as under:-

<i>Point for determination</i>	<i>Finding</i>
<i>Whether the respondents are liable to pay compensation to the applicant/complainant?</i>	<i>In the Affirmative as per order.</i>



REASONS

18. Ld. Advocate Ms. S. Mordekar for the applicant/complainant has submitted that the respondents failed to execute conveyance deed of the commercial shop in favour of the applicant/complainant along with undivided proportionate title in the common areas and the respondents are therefore in breach of Section 11(4) (f) of the said Act.

19. Ld. Advocate for the applicant/complainant has also submitted that the respondents now claim that the society/entity cannot be formed as only 04 shops been sold. However, clause 7 W (xi) states that incase the respondents decide to retain any portion of the suit complex, they shall join the entity along with other premise holders. Ld. Advocate for applicant/complainant further submitted that respondents have leased out most of the shops/offices in the project which clearly depicts the intention of the respondents that they do not desire to sell the said shops. Ld. Advocate for the applicant/complainant has submitted that the respondents by not forming the society/entity are therefore in breach of Section 11(4) (e) of the said Act.

20. Ld. Advocate Shri R.S. Banerjee for respondents has not denied that respondents have leased out several shops/offices and are collecting rent. The respondents seem to have decided to retain a major portion of the units of the suit complex which they have given out on lease. That being



so it was required of the respondents to join the entity along with the other premise holders which they have failed to do ostensibly with a view to keep complete control over the common areas to the detriment of the other premise holders which is not permissible in terms of the said Agreement for Sale.

21. Chapter III of the Real Estate (Regulation and Development) Act, 2016 deals with the functions and duties of promoter.-

“11. Functions and duties of promoter.-

(4)The promoter shall-

(a)

(b)

(c)

(d)

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;”

22. 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 obligation imposed on him under this Act or the rules and 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.
23. In terms of the Agreement for Construction and Sale dated 13.03.2018, executed between the parties it is evident that the respondents have failed to discharge their statutory duties of forming the society, association as required under Section 11(4) (e) and of execution of sale deed in favour of the applicant/complainant in terms of Section 11(4) (f) read with Section 17 of the said Act.



24. Further, despite the Order passed by the Goa Real Estate Regulatory Authority dated 06.05.2022 in the said complaint, wherein the RERA has taken a lenient view and imposed a lesser penalty, the respondents have willfully failed to form a society/co-operative society, Association of allottees in respect of the said project nor have the respondents executed a sale deed in favour of the applicant/complainant along with undivided proportionate title in the common areas to the association of allottees within 02 months as stipulated by the said order dated 06.05.2022.

25. The broad factors to be considered while adjudging compensation has been provided under section 72 of the said Act which reads as under:-

“72. Factors to be taken into account by the adjudicating officer.- 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, wherever 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.”

26. The respondents have thus caused sustained mental stress, hardship, loss of time and agony to the applicant/complainant including legal fees

incurred for the present application due to the continuing wilful default on the part of the respondents to form the society/entity and hand over to its members all the necessary documents including plans related to the common areas of the said building and to execute sale deed in favour of the applicant/complainant of the said commercial shops along with the undivided proportionate title in the common areas to the association of allottees.

27. In the case of ONGC LTD. v. SAW PIPES LTD. **(2003) 5 Supreme Court Cases 705**. The Apex Court while dealing with Section 73 and 74 of the Contract Act has held that:

“(1) Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same.

(2) If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act.

(3) Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person

aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of a contract.

(4) In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is genuine pre-estimate by the parties as the measure of reasonable compensation.”

28. To my mind, taking all the above factors into consideration the respondents are liable to pay compensation quantified reasonably at ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand only) to the applicant/complainant. The point for determination is accordingly answered in the affirmative in the amount of ₹ 2,50,000/- (Rupees Two Lakhs Fifty Thousand only).


29. Before parting with this order, it is necessary to mention that on 17.06.2022 the applicant/complainant filed claim for compensation in Form 'B'. The respondents sought time to reply on 28.06.2022, 08.07.2022 and filed reply only on 14.07.2022. The

applicant/complainant sought time to file affidavit in evidence on 21.07.2022 and filed the same on 01.08.2022. The respondents after seeking time on 11.08.2022 filed affidavit in evidence on 19.08.2022. The applicant and the respondents filed written argument on 29.08.2022. Oral arguments were heard on 10.10.2022. The matter now stands disposed off on 27.10.2022.

In the result, I pass the following:

ORDER

The respondents are directed to pay the applicant/complainant compensation of ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand only) for violations under Section 18(3) read with section 71 of The Real Estate (Regulation and Development) Act, 2016 within 30 days of this Order. In default, the respondents shall be further liable to pay the applicant interest on the said amount at the rate of 10.25% p.a. till the date of realization.


27/10/2022
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA