



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

Case no.4/RERA/Adj. Matters (69)/2022/152

Date: 28/02/2023

BEFORE THE ADJUDICATING OFFICER

Harshant Sonu Pednekar,
H.No. 142/F, Chandanwadi,
Bastora, North Goa-403507.

.....Applicant/complainant

Versus

Provident Housing Ltd.,
Represented by VHS Sastry and Mrs. Rekha Umesh,
130/1 Ulsoor Road,
Bangalore-560042.

.....Respondent

Ld. Advocate Shri A. Naik for the applicant/complainant.

Ld. Advocate Ms. M. Amonkar for the respondent.

ORDER

(Delivered on this 28th day of the month of February, 2023)

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 respondent bearing complaint no. 3/RERA/Complaint(182)/2021.

2. In the said complaint the applicant had 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.”

3. The said complaint was disposed off by Goa Real Estate Regulatory Authority by Order dated 22.09.2022 whereby the prayers ‘a to c’ and ‘e’ were rejected. However, prayer ‘d’ for compensation of ₹50,00,000/- (Rupees Fifty Lakhs only) was referred to 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 44/c seeking compensation of ₹50,00,000/- (Rupees Fifty Lakhs only) for false representation, mental torture and mental harassment.
5. Briefly stated the case of the applicant is that the respondent had floated a development project by the name "Adora De Goa" in Survey no. 198/1 in Village Sancoale, South Goa and published their brochures showing the project master plan and the layout of the building structures from Row 1 to Row 18 with swimming pool in the middle of Row no. 18. It is the applicant's case that in the project master plan annexed to the brochure, the respondent has given the details of the rows where the proposed building/structures will be erected. Since the property is a big property, the respondent has erected three high viewing towers at the site and in the project master plan it shows 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. 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. It is the applicant's case that the representative of the respondent Ms. Shruti Gawandi confirmed to the applicant that the tower as shown in the project master plan is as existing at the site. Accordingly, based on the said representation, the applicant decided to finance the construction of the apartment in wing 'B' bearing no. 406 on the 4th floor of Row no. 5 (hereinafter referred to as "said apartment"). Based on the confirmation of the respondent's said representative that the said apartment will have a partial sea view, the Agreement for Sale dated 11.06.2019 came to be executed between the respondent as promoter with the applicant and his wife Dr. Deepti Harshat Pednekar. It is also the applicant's case that in the month of January 2020, when the applicant visited the site, he was shocked and surprised to see that the excavation of Row no. 5 was in progress and in front of the said construction



the respondent had erected the hoarding of Row no. 5. However, the said Row no. 5 was not coming in line with the high viewing tower erected at the site and was neither in line as represented in the project master plan. Thereafter, the applicant complained about these facts vide e-mail dated 28.01.2020 to the respondent that the applicant is very upset and tensed due to the false information provided by the representative to book the said apartment at a huge cost of more than ₹52,00,000/- (Rupees Fifty Two Lakhs only).

6. It is further the applicant's case that he sought the intervention of the respondent vide e-mail dated 15.08.2020 and requested the respondent to provide the applicant with a full sea view apartment in Row no. 7 wing 'D' 501 as the respondent had launched Row no. 7 and Row no. 8 on the very same day. The applicant had even approached the office of the manager of the respondent Shri Manmohan Vyas who intimated the applicant that he will be given first preference in Row no. 7 once the construction of Row no. 7 is started. It is the applicant's case that he believed in the assurance of the said manager and awaited for their decision as represented to the applicant. However, since there was no communication from the said manager of the respondent Shri Manmohan Vyas of the said development project, the applicant then approached said Shri Manmohan Vyas on 09.07.2021 at which point of time the applicant was shocked to see that the construction of Row no. 7 has been started and when the applicant questioned the said Shri Manmohan Vyas about his assurances of giving first preference to the applicant, the said Shri Manmohan Vyas started giving evasive answers. The applicant thus felt cheated. Hence, the present application for compensation.
7. The respondent filed reply at exhibit 69/c opposing the claim for compensation filed by the applicant. The respondent has denied the case as set out by the applicant. It is the respondent's case that the applicant approached the respondent to finance and construct the said apartment. The applicant was



constantly pressing for a sea viewing flat which the respondent never promised. However, it was a constant attempt of the respondent to fulfil the desire of the applicant provided the applicant pays extra for the enhanced carpet area. The applicant was well informed about the same. So also the site was shown by the respondent. The applicant later changed his mind and sought for a sea view apartment instead of the said apartment. At a later point of time when the applicant informed the respondent about his willingness to have a sea view apartment, the respondent offered a three BHK apartment in an attempt to fulfil the applicant's demand but the applicant was unwilling to pay for the enhanced carpet area of the 3BHK apartment.

8. On 15.08.2020, the applicant first wrote to the respondent requesting for a total refund on the cancellation of the said apartment in Row no. 5, B-406 or exchange of the said apartment with Row no. 7, D-501 with previous rates. On approaching the said manager Shri Manmohan Vyas, the applicant was informed that he will be given preference in allotment in the Row no.7 and accordingly, the applicant was offered a 3 BHK apartment in Row no. 7. However, the applicant's response was in the negative. The applicant approached the respondent to finance and construct the apartment. However, it is not true that the applicant approached the respondent to finance the apartment having a sea view. The applicant was first taken to the site where the above referred high viewing tower was erected. The applicant was at no point of time informed that the said tower corresponds to and in line with Row no. 5 as shown in the project master plan annexed to the brochure and that the said apartment of the applicant bearing no. 406 in Row no. 5 will have partial sea view.
9. The applicant himself voluntarily chose to sponsor the said apartment. It was never promised to the applicant through the master plan that the said apartment will have partial sea view. The respondent had clearly specified about the said apartment to the applicant upon which the Agreement for Sale dated 11.06.2019



was executed for total consideration of ₹52,43,768/- (Rupees Fifty Three Lakhs Forty Three Thousand Seven Hundred and Sixty Eight only) for the said apartment and the sale came to be registered on 24.06.2019. The applicant was sent a final notice dated 17.06.2021 for payment of consideration of ₹10,41,495/- including penalty. The applicant then approached Shri Manmohan Vyas on 09.07.2021 where he requested to provide 3 BHK in Row no. 7 instead of 2 BHK in Row no. 5. Shri Manmohan Vyas was shocked to hear the said demand of the applicant which is not logically possible and hence clearly intimated the applicant that the said apartment cannot be given in exchange for any apartment in Row no. 7 due to the difference in the carpet area but could be given only if the applicant pays extra for the enhanced carpet area. Hence, the applicant is not entitled to any compensation as prayed for.

10. The applicant filed his Affidavit in Evidence at exhibit 83/c. The respondent filed Affidavit in Evidence at exhibit 100/c.
11. Heard arguments. Ld. Advocate Shri A. Naik argued for the applicant and filed written submissions at exhibit 136/c. Ld. Advocate Ms. M. Amonkar argued for the respondent and filed written submission at exhibit 160/c.
12. The points for determination and my findings to the same are as follows:-

Sr. No.	Points for determination	Findings
(a)	<i>Whether the respondent made false representations to the applicant in respect of the said apartment pertaining to high viewing tower in front of Row no. 5 being a partial sea view apartment and thereby cheated the applicant and caused him mental torture and harassment?</i>	<i>In the negative.</i>
(b)	<i>Whether the respondent is liable to pay compensation</i>	



of ₹50,00,000/- (Rupees Fifty Lakhs only) to the applicant?	In the negative.
---	------------------

REASONS

Point (a)

13. In the Agreement for Sale dated 11.06.2019 which was registered on 24.06.2019 executed between the parties, there is no mention of any high rise tower with a sea view in front of Row no. 5.
14. The applicant has laid emphasis on the project master plan annexed to the brochure. Ld. Advocate Shri A. Naik for the applicant has argued that the said project master plan shows the high rise tower in front of Row no. 5 for sea viewing. Perusal of the said project master plan shows that there is a diagram of a square in front of Row no. 5. However, there is no mention in the said project master plan that the same is a high rise tower. In fact, there is nothing in the said project master plan which shows that the said tower is for sea viewing. There is also no agreement between the applicant and respondent to the effect that there will be any high rise tower in front of Row no. 5 for the purpose of sea viewing of the applicant. Ld. Advocate Shri A. Naik for the applicant has submitted that in the reply of the respondent, the respondent has admitted 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.” In fact, the respondent has merely stated in the said reply that the prospective purchasers were only told that from the development project sea view is “possible”. Therefore, the said statement does not amount to any agreement between the applicant and the respondent pertaining to any high rise tower having sea view. In fact, in the said reply the respondent has stated “since the property is the big property the builder has erected 3 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 constructed in the said property.”

15. It can be noticed that in the reply the respondent has clearly stated that “the applicant was never promised that he will be given sea view apartment”. The respondent has also 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 bearing sea view”. The respondent has denied in the reply that the respondent or its representative ever promised the applicant through the master plan that the said apartments will have partial sea view.
16. With regards to the allegations of the applicant to the effect that instead of high rise tower in front of Row no. 5 with a partial sea view, there is already high rise building of the adjoining owner due to which sea view is totally blocked for all the apartments in Row no. 5, the respondent in the reply has clearly stated 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 applicant.”
17. The respondent in the reply has categorically denied that its representative Ms. Shruti Gawandi had confirmed to the applicant that the tower for sea viewing as shown in the project master plan is existing at site and has also denied any assurances given by its manager Shri Manmohan Vyas to the applicant. In fact in the reply, the respondent has stated that the applicant then approached Shri Manmohan Vyas on 09.07.2021 where he was requesting to provide 3 BHK in Row no. 7 instead of 2 BHK in Row no. 5, upon which Shri Manmohan Vyas was shocked to hear the said demand of the applicant which is not logically possible and hence clearly intimated the applicant that the said apartment cannot

be given in exchange for any apartment in Row no. 7 due to difference in the carpet area and can be given only if the applicant pays extra for the enhanced carpet area.

18. In conclusion, there is neither 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 has it been depicted in the project master plan that the said square diagram is a high rise tower for sea viewing of the prospective purchaser of the apartments in Row no. 5.
19. The oral assurance of the representative of the respondent as claimed by the applicant have been denied by the respondent and thus, do not amount to any agreement between the applicant and respondent.
20. The present issue was also discussed and decided in the aforesaid complaint vide Order dated 22.09.2022 passed by the Goa RERA whereby this very issue was decided in the negative against the applicant. The Ld. Advocate Shri A. Naik for the applicant in the course of arguments has fairly conceded that the findings arrived at in the said Order dated 22.09.2022 have not been challenged by the applicant by way of any appeal/review/ revision. Being so, the said Order with respect to the present issue in consideration continues to stand as against the applicant herein. Accordingly, the applicant stands precluded on the principle of estoppel from raising the very same issue in the present proceedings. Thus the applicant has failed to establish that the respondent made false representations to the applicant in respect of the said apartment pertaining to high viewing tower in front of Row no. 5 being a partial sea viewing apartment and thus cheated the applicant and caused him mental torture and harassment. Point (a), is therefore, answered in the negative.




Point (b)

21. As point (a) is answered in the negative, the respondent is not liable to pay any compensation to the applicant. Therefore point (b) is also answered in the negative.
22. Before parting with this Order, it is necessary to mention that on 20.10.2022 the applicant filed his claim for compensation in Form 'B'. The respondent sought time to file its reply on 02.11.2022 and 14.11.2022. Reply was filed by the respondent on 16.11.2022. On the next date i.e. 29.11.2022 the applicant remained absent. The applicant was notified by e-mail and filed his Affidavit in Evidence on 15.12.2022. On 04.01.2023 the respondent filed Affidavit in Evidence and on the same day the applicant filed written arguments. On 17.01.2023, Advocate for the respondent sought time to file written argument which was then filed on 25.01.2023. On 02.02.2023 and 09.02.2023, the applicant sought time for oral arguments as his Advocate was unable to remain present. On 15.02.2023 oral arguments were heard and the matter stands disposed on 28.02.2023.

In the result, I pass the following:-

ORDER

The claim for compensation of ₹50,00,000/- filed by the applicant in Form 'B' stands dismissed.


28/02/2023
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA