



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

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F.No:3/RERA/Complaint(117)/2020/383

Date: 06/08/2021

1. Melvin Socorro Emidio Palha

2. Arzilia Antonette Dsouza,

H.No.711/83, (SF-1) Second floor,

Green Hills Colony,

Building 'CASA MERCY' Socorro,

Porvorim, Bardez Goa-403501.

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Complainants

V/s

Rahim Mehboob Virani,

M/s Virani Ventures,

H.No.7/193/6 (GK2), Poonam Apartment, Gr. Floor,

Angod Mapusa-Goa, 403507.

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Respondent

ORDER

This is to dispose of the complaint dated 26/05/2020 filed by the complainants herein wherein they have requested for refund with interest and Compensation. In this case, Respondent is the promoter of a residential building and complainants are purchaser of flat in the said building. The said flat is part of the project 'The Palms Socorro' being constructed by Respondent. The said project is situated in the property bearing Sy.No.23 Sub-division 3-C of village Socorro within the limit of the village Panchayat of Socorro, Taluka Bardez, Goa (hereafter referred as suit property). The project is registered under Goa RERA. The complainants discussed the details of the project with the Respondent and Respondent provided the required information and documentation like Title verification, search report and Title clearance etc. Upon perusal of the documents particularly Title Clearance certificate provided by Advocate A.K. Phadte, the complainant became satisfied that said suit land was free from all the encumbrances and the title was clear and marketable. The complainants, then approached the Respondent/promoter to book a flat therein.

2. Complainants agreed to purchase from Respondent the said flat bearing No.B-302 alongwith an individual parking having carpet area of 87.76 sq. meters approximately and open to sky terrace area of 10.16 sq. meters on third floor of the Building for a total consideration of Rs.72,00,000/- (Rupees Seventy two lakhs only) and Developer assured the complainants that he shall complete the flat and hand over the possession by March 2020. Then, complainants paid the booking amount at the rate of 10% of the total cost alongwith GST i.e. 7,20,000/- (Seven Lakhs twenty thousand only) as booking amount and 86,400/- as GST charges by cheques dated 13.06.2018. The complainants then approached the Developer to execute an agreement for sale but Respondent delayed the same for nearly six months. It is further stated by Complainants that there was mention of a Civil Suit in the said draft agreement which was not disclosed earlier. Para 14(IV) of the said draft agreement on page 27 is as follows:

“There are no litigations pending in respect of said apartment and Building ‘B’ wherein the proposed building construction is undergoing before the court of law. However, a civil suit on fictitious ground to claim falsely negligible encroached area of the project land is pending as disclosed in the said Title Report”.

3. The matter pertaining to this clause of the agreement was enquired by the Complainants with the lawyer of the Respondent and it was informed to him that there existed another title Report prepared by Advocate Santosh Sawkar dated 22.02.2018 wherein the said remark with respect to litigation was raised. As per complainants, they had no idea regarding any other title report with respect to the said suit property. However, since complainants had paid the substantial amount of Rs.8,06,400/- inclusive of GST (Rupees eight lakhs six thousand four hundred only) as booking amount and got assurance from Advocate of the promoter, he entered into agreement for sale dated 09/09/2019 wherein complainants incurred stamp duty charges worth Rs.2,08,800/- (Rupees two lakhs eight thousand eight hundred only) and processing charges of Rs.1070 (Rupees one thousand seventy only) and Registration charges of Rs.500/-(Rupee five hundred only).

4. After the registration of said Agreement, Complainants approached the nationalized bank alongwith all the necessary documents for sanction of loan. The bank informed the complainants that they cannot sanction the loan as the project was under litigation. The Bank showed the complainants, a public notice dated 27/11/2017

which was published on the newspaper by Comunidade of Serula. Based on the said litigation, bank did not sanction the loan to the Complainants.

5. Complainant discussed this issue with the Respondent and after not getting proper response, decided to exit from the said project. Accordingly, complainant decided for cancellation of said agreement for sale and refund of the entire amount. As per Complainant, the amount includes booking amount of Rs.7,20,000/- (Rupees Seven lakhs twenty thousand only), GST amount Rs.86,400/- (Rupees eighty six thousand four hundred only), Stamp duty Rs.2,08,800/- (Rupees two lakh eight thousand eight hundred only) and Registration fees Rs.1570/- (Rupees one thousand five hundred seventy only) and legal charges of Rs.20,000/- (Rupees twenty thousand only). Thus, the total amount comes to Rs.11, 08,770/- (Rupees eleven lakhs eight thousand seven hundred seventy only) over and above the above amount, complainants have also made the claim for interest from 13/06/2018 till the full and final payment. Complainants have also requested for compensation of Rs.3,00,000/- (Rupees three lakhs only) for the mental trauma, anguish and hardship caused to him.
6. After receipt of the above complaint, a notice dated 10/07/2020 was served to the respondent (enclosing the copy of complaint) with the direction to file the reply. Respondent filed reply dated 31/07/2020 wherein Respondent has submitted that the said project has got all the necessary approvals and clearances from the concerned authorities and the Agreement for Sale was entered and executed between the parties on being convinced and confirmed of the lawful status of the deal. Respondent has also stated that the litigation with Comunidade of Serula is being defended with vigour, vitality and also earnestness with which the parties (the complainant) should not get themselves entangled in any manner whatsoever.
7. Opportunities of hearing were given to both the sides and case was adjourned from time to time. Finally, the matter was heard on 24/03/2021. Both the parties were present and argued the case at length.
8. It was repeatedly argued by complainants that facts were misrepresented by the Respondent. Though there is civil litigation pending before Court in respect of Suit land, it was not disclosed by Respondent in the beginning. Even, at the time of entering into Agreement for sale, it was not elaborated properly. Respondent furnished title report to complainants signed by Adv. A.K. Phadte, where it was shown that land was free from all incumbrances. Even, at the time of entering into

Agreement for Sale, it was not clarified. Though respondent mentioned that there is another 'Title Report' prepared by Advocate Sawkar, that was never shown to the complainants. It was only when complainants applied for loan, Bank authorities properly clarified that loan cannot be sanctioned because of pending dispute. When this fact of refusal of loan by bank on the ground of pending dispute was pointed out to promoter, no attention was paid about it by promoter/respondent. Under these circumstances, complainants had no option other than to cancel the agreement and claim for refund alongwith interest and other compensation.

9. It was pointed out by Respondent that existing dispute was only about small portion of suit land and not about the entire land. He said that the same was properly handled by Respondent before the Court of Law and it will not have any bearing on the existing construction and apartments allotted to various allottees. Respondent states that there was no misrepresentation of facts by Respondent and the said so called dispute was mentioned in the Agreement for sale which has been duly signed by complainants.

10. I have gone through the facts and proceedings of the case as well as rival contentions made by the parties in this case. It is a fact that there is dispute in respect of the suit land though it may be very small in nature. This dispute was not properly narrated to the complainants. Earlier, a 'Title Report' signed by Advocate A.K. Phadte was provided to the Complainants where it was mentioned that suit land was free from all the in-cumbrances. Subsequently, it was pointed out by Respondent that there is another subsequent report prepared by Advocate Sawkar where the said fact about dispute was incorporated. However, the said Report of Advocate Sawkar was not forwarded by Respondent to complainant. At the same time, it cannot be concluded that complainants were unaware about the dispute as they themselves have written in the complaint that Respondent mentioned to them about subsequent 'Title Report' though it was not provided to them. The fact of dispute has also been incorporated in Agreement which has been signed by complainants which shows that they were aware about the existence of dispute. To this, complainants have taken the plea that since they had already paid the booking amount, there was no option available to them other than signing the Agreement for Sale.

11. Complainants have requested for three fold relief in this case. At first, they have requested for refund of the total amount of advance alongwith GST amount paid, 1% of TDS, Stamp duty, Registration fees and legal charges shown as follows:

Amount of Advance	Rs.7,20,000/-
GST	Rs.86,400/-
1% TDS	Rs.72,000/-
Stamp Duty	Rs.2,08,800/-
Registration fees	Rs.1,570/
Legal Charges	Rs.90,000/-
Total amount	Rs.11,08,770/-

Secondly, they have claimed interest on this entire amount from 13/06/2018 till the date of full and final payment. Thirdly, they have also requested for compensation of Rs.3,00,000/- (Rupees three lakhs only) on the ground of mental trauma, and anguish caused to them.

12. I have considered the case. It is a fact that at the time of giving advance, the complainants were not informed about dispute. But it is also a fact that they were aware of the dispute before signing the Agreement for sale. They should have insisted for full facts before signing the Agreement which they have not done. At the same time plea of Respondent that dispute is very small and had no repercussion on complainants is also not correct because only on this ground complainants were refused the loan by Bank. After, considering the facts and circumstances and position of both parties, I feel a judicious view should be taken.

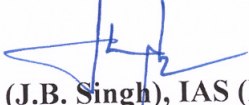
13. Since the complainants were totally unaware about existence of Civil Suit over the suit land, I think, they should be refunded the amount paid to Respondent alongwith GST, 1% TDS, Stamp duty and Registration fees. However, their claim for legal charges and interest is not agreed. Advance, GST, TDS and Stamp duty is paid by them beyond doubt and hence refund for these is admitted. However, since they became aware about dispute and entered into agreement even after that, in my opinion they are not entitled for interest. Similarly, legal charges is not a statutory fees and hence claim is not admitted. As far as claim of Compensation of Rs. 3,00,000/- (Rupees three lakhs only) is concerned, the power of determination is vested in Adjudicator under Section 71 of the Act. The relevant provision off Section 71 is as follows:

“71.Power to Adjudicate – (1) For the purpose of adjudging compensation under sections 12, 14, 18 and Section 19, the Authority shall appoint in consultation with the Appropriate Govt. one or more judicial officer as deemed necessary, who is or has been a District t Judge to be an Adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard.”

Accordingly, I feel that for the purpose of deciding the matter of compensation, the case should be referred to Adjudicator under Section 71 of the Act.

14. Therefore, based on above observations, I order for refund of Advance alongwith GST, 1% TDS, Stamp duty and Registration fees. The total amount to be refunded comes to Rs.10,88,770/- (Rupees ten lakhs eighty eight thousand seven hundred seventy only). Respondent is directed to refund this amount to complainant within 30 days time after receipt of this order. If respondent does not refund this amount within 30 days, he will be liable to pay interest at the rate of 10% per anum on entire amount after expiry of 30 days till the date of payment. Further, for the purpose of determination of Compensation claimed by complainant, the case is refereed to Adjudication under section 71 of the Act.

Order accordingly.


(J.B. Singh), IAS (Retd.)
Member, Goa RERA

To,

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2. Arzilia Antonette Dsouza,

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3. Rahim Mehboob Virani,

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