



**GOA REAL ESTATE REGULATORY  
AUTHORITY**

**DEPARTMENT OF URBAN DEVELOPMENT  
GOVERNMENT OF GOA**

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**Case no.4/RERA/Adj. Matters (5)/2020/267**

**Dr. Ashish Rodricks**

A1/002 Zion Square,  
Xelpem Duler,  
Mapusa-Goa-403507.

.....

**Complainant**

*V/s*

**K.D. Constructions**

H.No. 188, Altinho,  
Mapusa-Goa, 403507.

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**Respondent**

Ld. Adv. Shri Umesh Rao for the complainant

Ld. Adv. Shri P.G Narulkar for the respondent

**ORDER**

**(Delivered on this the 6<sup>th</sup> day of the month of April of the year 2022)**

This Order shall dispose of the claim for compensation in Form "B"  
filed by the complainant dated 22/12/2021 at exhibit 162/c.

2. The respondent filed reply dated 12/01/2022 at exhibit 180/c to the claim for compensation filed by complainant.
3. The case of the complainant briefly stated is that he had entered into an Agreement for Construction Finance cum Sale of flat bearing no. 105, admeasuring super built up area of 100 sq. mts. on the first floor of the building known as "NEELKANTH HEIGHTS" alongwith one stilt parking having access by common staircase including incidence of staircase, elevator and passage as per approved plans situated at Ansabhat, Mapusa, Bardez,

Goa with the respondent, M/s K.D. Constructions on 19/10/2012 (hereinafter referred to as the original Agreement). However, due to poor progress of the construction of the building and non-delivery of possession of the flat within the stipulated time, the complainant requested for cancellation of the said original Agreement. An Agreement for Cancellation of the said original agreement was signed by the complainant with the respondent on 15/07/2015 (hereinafter referred to as the Cancellation Agreement). The respondent refunded the principal amount paid to him by the complainant at that time. However, the respondent failed to refund the stamp duty and interest on the principal amount. The respondent refunded the stamp duty of Rs. 40,000/- (Rupees Forty Thousand Only) on 03/07/2019 to the complainant but has not refunded the interest till date.

Hence, the complainant seeks compensation towards loss of interest amounting to Rs. 21,42,153.90/- (Rupees Twenty One Lakhs Forty Two Thousand One Hundred Fifty Three and Ninety Paise only).

4. The respondent in the reply dated 12/01/2022 at exhibit 180/c has raised two preliminary objections to the maintainability of the complaint namely:-

(a) that complainant cannot introduce new pleadings or claims otherwise then by way of amendment of the original application/complaint; and

(b) that the original agreement dated 19/10/2012 was cancelled/ revoked/ rescinded and dissolved by mutual consent of both the parties vide the Agreement of Cancellation dated 15/07/2015 signed and executed between the complainant and the respondent, whereby all the rights and liabilities of both the parties were adjusted and settled. Consequently, by virtue of Section 115 of the Indian Evidence Act 1872, the complainant is estopped





from raising any fresh claims against the respondent having undertaken not to raise any fresh claims against the respondent.

5. Heard arguments. Ld. Adv. Shri Umesh Rao argued for the complainant and filed written submissions at exhibit 260/c. Ld. Adv. Shri P.G Narulkar argued for the respondent and filed written arguments at exhibit 226/c.
6. The point for determination and my finding to the same is as under:-

<b>Point</b>	<b>Finding</b>
Whether the complainant is entitled to compensation towards loss of interest amounting to Rs. 21, 42, 153.90/-?	In the negative.

### **REASONS**

7. The first objection of Ld. Adv. for respondent that complainant is not entitled to raise any claims without amending the original complaint for compensation cannot be accepted as the complainant was entitled to file the claim for compensation in terms of Form "B" in which all claims for compensation were filed by the complainant.
8. There is no dispute that the present complaint has been filed by the complainant on the basis of the original agreement dated 19/10/2012 entered into between the parties. It is also not in dispute that the said original agreement dated 19/10/2012 was cancelled, revoked, rescinded and dissolved by the said Agreement for Cancellation dated 15/07/2015 by mutual consent of both the parties. Therefore, upto the execution of the Cancellation Agreement dated 15/07/2015, the said original agreement dated 19/10/2012 stood dissolved and came to an end.



9. It also cannot be disputed that by virtue of the Agreement for Cancellation dated 15/07/2015 the rights and liabilities of both the parties have been mutually adjusted and settled. All the moneys paid by the complainant to the respondent under the original agreement dated 19/10/2012 were refunded to the complainant and the parties mutually released and relinquished their respective rights and obligations under the original agreement dated 19/10/2012. It was also specifically agreed in the Agreement for Cancellation dated 15/07/2015 that neither of the parties namely the complainant and respondent shall have any right or claim against each other.
10. Ld. Adv. Shri P. G. Narulkar for the respondent has pressed into service Section 115 of the Indian Evidence Act, 1872 which reads as under:-
- “115. Estopped.- When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to delay the truth of that thing.”**
11. Shri P. G. Narulkar submitted that once the complainant has specifically declared in the said Agreement for Cancellation that he relinquished all his rights and claims in respect of the original Agreement for Construction, Finance and Sale dated 19/10/2012, the complainant is estopped from raising any claim based on the said original agreement.
12. In support of this contention, Shri P. G. Narulkar has placed reliance in the judgment B.L. Sreedhar and Ors V/s K.M. Munireddy and Ors. A.I.R 2003 SC 578.






13. Clause 5 of the said Agreement for Cancellation dated 15/07/2015 provides that in consideration of the refund of the said advance of Rs. 18,32,000/- (Rupees Eighteen Lakhs Thirty Two Thousand only) in full, the parties hereby agree to mutually release and relinquish their respective rights and obligation under the Agreement dated 19/10/2012 entered into by the parties.
14. Clause 6 provides that all the costs of incidental and pursuant to this Cancellation of Agreement for Finance and Sale shall be borne by the said second party i.e. Dr. Ashish Rodricks, the complainant herein.
15. Clause 8 of the said Agreement for Cancellation provides that upon execution of this Cancellation of Agreement for Finance and Sale, neither of the parties hereto shall have any right, claim, interest, action or demand against the other at any time hereafter. (Emphasis supplied)
16. Clause 9 of the said Agreement for Cancellation provides that apart from the refund of the said amount of Rs. 18,32,000/- (Rupees Eighteen Lakhs Thirty Two Thousand only) no further dues shall be payable by either of the parties to the other on account of or arising from this Cancellation of Agreement for Finance and Sale. (Emphasis supplied)
17. In the light of the above stipulated clauses mutually agreed to and declared by both the parties including the complainant, the complainant is now estopped from making any claims whatsoever from the respondent with respect to original agreement dated 19/10/2012 upon the execution of the Agreement for Cancellation dated 15/07/2015 mutually agreed, signed and executed by the parties.



18. There is thus considerable merit in this submission of Ld. Adv. Shri P. G. Narulkar for the respondent. The judgment cited supra also supports the case of the respondent.
19. Even otherwise, the complainant despite the execution of the Agreement for Cancellation dated 15/07/2015 has also admitted having received refund of the stamp duty of Rs. 40,000/- on 03/07/2019 from the respondent. Having thus received refund of stamp duty of Rs. 40,000/- the complainant is not entitled to receive any interest by way of compensation as sought for. The point for determination is therefore answered in the negative.
20. Before parting with the order it is obligatory to set out herein that the present application for compensation could not be disposed off within the prescribed period of sixty days on account of the covid-19 restrictions and the protocol safeguards which were required to be followed as per the Government of Goa guidelines.
21. In the result, the application for compensation filed by the complainant in Form "B" at exhibit 162/c stands dismissed.

  
06/04/2022  
**(Ashley L.C. Noronha)**  
**Adjudicating Officer,**  
**Goa RERA.**