



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

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Case no.4/RERA/Adj. Matters (2)/2020/ 976

Date: 25/11/2022

**BEFORE THE ADJUDICATING OFFICER**

**Jose Cabral/Jimmy Cabral,**  
H.No. 36, P.O. Box NIO,  
Dona Paula, Goa-403004.

.....Applicant

*Versus*

**Kiran Anand Dabolkar,**  
Shree Samrudhi, 95-C/5,  
Alto Guimaraes, Altinho,  
Panaji-Goa,403001.

.....Respondent

Learned Advocate Shri Vasco Fernandes for the Applicant.

Learned Advocate Ms. P. Mandrekar for the Respondent.

**ORDER**

**(Delivered on this 25<sup>th</sup> day of the month of November, 2022)**

This order shall dispose off the claim for compensation filed by the applicant at exhibit 194/c.

2. The respondent filed reply at exhibit 207/c, contesting the same.
3. The applicant filed rejoinder at exhibit 214/c denying the reply of the respondent contrary to the applicant's case.

4. Heard arguments. Ld. Advocate Shri Vasco Fernandes argued for the applicant. Ld. Advocate Ms. P. Mandrekar argued for the respondent and filed written submission at exhibit 222/c.
5. The point for determination and my finding to the same is as under:-

<i>Point for determination</i>	<i>Finding</i>
<i>Whether the respondent is liable to pay compensation to the applicants?</i>	<i>In the affirmative as per Order.</i>

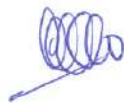
### REASONS

6. It is not in dispute that an Agreement for Construction Cum Sale dated 27.02.2015 was duly executed and registered between the parties whereby the said applicant Mr. Jose Cabral agreed to purchase the flat No. B1-002, of super built area of 90 sq. mtrs. on the upper ground floor in the complex SURYA KIRAN RESIDENCY for ₹23,00,000/- (Rupees Twenty Three Lakhs only). The respondent had agreed to construct the said flat and hand over the possession of the same to the said applicant within 18 months from the execution of the said agreement. However, on account of financial constraints the respondent was not able to hand over possession of the said flat to the said applicant.
7. It is also not in dispute that the occupancy certificate was obtained by the respondent of the said project only on 04.06.2020. The said applicant has



admitted that the possession of the said flat was handed over only on 04.06.2020. However, the said flat was incomplete in several respects on account of leakages; incomplete painting; lift not operational and defects in the construction of the same.

8. The applicant has relied upon a letter undated and issued by the respondent acknowledging the delay in handing over the possession of the said flat and undertaking to hand over the possession of the said flat on 8<sup>th</sup> April, 2017 and if delayed a payment of ₹1,000/- (Rupees One Thousand only) would be paid daily.
9. It is the contention of the respondent that there is an outstanding balance due and payable of ₹50,000/-. The said applicant has stated that the said balance amount will be disbursed by the Bank upon submission of the Sale Deed for the said flat which the respondent is required to execute in favour of the said applicant. It is now for the respondent to execute the Sale Deed in favour of the said applicant amount and upon submission of the same to the Bank the said balance amount will be disbursed to the respondent.
10. The applicant placed on record the several defects and deficiencies which were required to be cleared/removed. The respondent agreed to clear all the defects and deficiencies and handover complete possession without defects including the instalment of lift which had not been done.



11. Both the parties mutually agreed to extension of time from time to time. Both the parties have now mutually agreed that all the pending works and deficiencies have since been complied with/completed and that the lift has also been installed at the site.
12. Both the parties further sought time to amicably settle the amount of compensation to be paid. However, the parties have not been able to amicably arrive on the amount of compensation to be paid to the said applicant by the respondent.
13. 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 obligations imposed on him under this Act or rules or 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.
14. 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, 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.”

15. 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.”

16. In the light of the above ruling and the provision of law under the RERA and as a result of defaults on the part of the respondent of failing to handover the said flat without defects and with all the necessary facilities to the said applicant within the time line as agreed under the said agreement between the parties, the said applicant has sustained considerable mental stress, worry and financial loss for not being handed over complete possession of the said flat without defects and with all necessary facilities. Hence, the said applicant is entitled to be compensated for such mental stress, worry and financial loss caused due to the default of the respondent which in the circumstances is conservatively quantified in the amount of ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand only).
17. The point of determination is accordingly answered in the affirmative in the amount of ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand only).



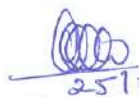
18. Before parting with this order, it is necessary to mention that the claim for compensation in Form 'B' was filed by the applicant on 10.12.2021. Reply by the respondent was filed on 07.01.2022. Rejoinder was filed by the applicant on 07.03.2022. Written arguments were filed by Ld. Advocate for respondent on 23.03.2022. Thereafter list of works to be done was submitted by the applicant on 01.04.2022. From then till 04.11.2022 both the parties mutually sought time for completion of the works to be carried out and finally sought time for mutual settlement which they could not arrive at with respect to the compensation amount payable.

In the result, I pass the following:

**ORDER**

The respondent is directed to pay the said applicant Mr. Jose Cabral compensation of ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand only) for violation 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 respondent shall be liable to pay interest on the said amount at the rate 10.35% per annum till the date of realisation.

  
25/11/2022  
**(Ashley L.C. Noronha)**  
**Adjudicating Officer,**  
**Goa RERA**