



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

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Case no.4/RERA/Adj. Matters (19)/2021/526

Date: 14/07/2022

Ann Marie De Souza,
through POA Fatima De Souza,
AGI Nirvana Housing Complex,
Shetye Waddo, Duler,
Bardez-Goa, 403507

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**Applicant/
Complainant**

V/s

Navkar Goa Enterprises,
203/204 Joia De Souza,
Opp. Angel Resort, Chogm Road,
North-Goa, 403521.

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Respondent

Ld. Advocate for complainant : Natasha L. Saldanha.

Ld. Advocate for respondent : D. Mandrekar.

ORDER

(Delivered on this the 14th day of the month July of the year 2022)

The present proceedings have arisen as a corollary to the complaint filed u/s 31 of The Real Estate (Regulation and Development) Act, 2016 filed by the applicant/complainant against the respondent bearing complaint no. 3/RERA/Complaint/ (151)/2020.

2. The above said complaint was disposed off in favour of the applicant/complainant vide Order dated 15/02/2022 of the Goa Real Estate Regulatory Authority. The said Authority directed as follows:-

“ A) Respondent/Promoter is directed to pay the penalty of ₹5,00,000/- (Rupees Five Lakhs Only) within 30 days and also get the project registered after submitting all the

documents within 60 days failing which he will be liable for action under Section 59(2) of the Act.

- B) The Respondent is directed to pay the interest amount for delayed period with effect from 01/07/2015 till 31/01/2022 at the rate of 9.3% p.a. which comes to ₹10,07,602/- (Rupees Ten Lakhs Seven Thousand Six Hundred and Two only) within 30 days after receipt of this order. Further respondent is also directed to pay the monthly interest at the rate of 9.3% p.a. and the said interest will be payable with effect from 01/02/2022 till delivery of the possession of the premises to the complainant. The monthly interest amount comes to ₹12,754/- (Rupees Twelve Thousand Seven Hundred and Fifty Four only). It should be paid between 1st to 10th of the subsequent month. Apart from this, in case of failure on payment of interest amount ₹10,07,602/- (Rupees Ten Lakhs Seven Thousand Six Hundred and Two only) within the prescribed period of 30 days, respondent will be liable to pay the interest on this amount at the rate of 9.3% p.a. from 01/02/2022 till the entire amount is paid or recovered as per law. Similarly, respondent will also be liable to pay interest at the same rate in case of default of monthly interest described above. The entire amount under this clause will be payable by respondent to complainant directly.
- C) For the purpose of determination of compensation, the case is referred to Adjudicating Officer under Section 71 of the Act.”



3. Accordingly, the said matter came before this Forum u/s 71 of The Real Estate (Regulation and Development) Act, 2016.
4. The applicant/complainant has filed her claim for compensation in Form 'B' at exhibit 62/c, seeking compensation of ₹5,00,000/- (Rupees Five Lakhs only).
5. The case of the applicant/complainant is that the applicant had booked a flat with the respondent and entered into an agreement on 5th December 2013 for the purchase of the flat bearing no.203, admeasuring 76.02 square meters, on the second floor of the building project, "POSTCARD PORTICO" along with the proportionate undivided share in the property at Guirim, Bardez Goa, for a consideration of ₹22,80,600/- (Rupees Twenty Two Lakhs Eighty Thousand and Six Hundred only). As per agreement dated 5th December 2013, the respondent would deliver the possession of the said flat for the use and occupation of the applicant within a period of 18th months from the date of execution of the agreement. The applicant paid an amount of ₹16,45,749/- (Rupees Sixteen Lakhs Forty Five Thousand Seven Hundred and Forty Nine only) from 2013 till the year 2015. Thereafter as the said flat was not ready, the applicant stopped the payments. As the said flat is stated to be ready, the applicant paid the balance amount of ₹7,76,794/- (Rupees Seven Lakhs Seventy Six Thousand Seven Hundred and Ninety Four only) on 27.09.2021 and 28.09.2021. However, the possession of the said flat is still not handed over to the applicant, since respondent wanted the applicant to sign a no claim letter which the applicant refused to do.
6. The respondent filed written statement at exhibit 140/c denying the claim for compensation filed by the applicant/complainant.



7. Heard arguments. Ld. Advocate Ms. Natasha Saldanha filed notes on arguments on behalf of the applicant/complainant at exhibit 148/c. Despite opportunity given on 03.06.2022, 20.06.2022 and 30.06.2022 to Ld. Advocate for the respondent to argue orally and/or to file written arguments, no oral arguments were advanced nor were any written arguments filed.
8. The point for determination and my finding for the same is as under:-

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

9. The applicant/complainant is seeking compensation in the amount of ₹5,00,000/- (Rupees Five Lakhs only) under the following four heads:-
- A) Monthly rent of ₹20,000/- (Rupees Twenty Thousand only) from the year 2015 till date, which the flat would have accrued if it was given on rent by applicant.
- B) Mental stress and worry for the last 6 years.
- C) Constant visits by complainant from Mumbai to Goa, to visit the site, to check the progress of the apartment, from the year 2015 to the present. (Flights tickets attached).
- D) Legal fees.
10. The respondent in the written statement at exhibit 140/c has stated in response to the claim at point no.4 that the contents of the same are partly admitted. The respondent has only specifically denied being false that the said flat is not handed over to the applicant/complainant.

11. The applicant/complainant has clearly averred at point No. 4 of her claim for compensation at exhibit 62/c that the possession of the said flat is still not handed over to the applicant/complainant since the respondent wanted the applicant/complainant to sign a no claim letter which the applicant refused to do.
12. There is no denial to this specific averment made by the applicant nor has the respondent produced any confirmation letter of handing over of possession to the applicant/complainant. Therefore, it has to be held that till date the respondent has deceitfully not handed over the possession of the said flat to the applicant/complainant.
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 as a result of the default on the part of the respondent of failing to hand over possession of the said flat to the applicant/complainant, the complainant has sustained financial losses which she would have been able to earn by way of monthly rent which the flat would have accrued if it was given on rent by the applicant from the year 2015 till date. By way of compensatory costs the applicant is thus entitled to



₹3,50,000/- (Rupees Three Lakhs Fifty Thousand only) on conservatory basis towards loss sustained having not been able to give said flat on rent by applicant.

17. The respondent has caused sustained mental stress and worry to the applicant for the last 06 years having not handed over possession of the said flat to the applicant as agreed. The applicant therefore, is entitled to be compensated for such mental stress and worry caused due to default by respondent for which the respondent is liable to pay compensation quantified at ₹1,00,000/- (Rupees One Lakh only).
18. The applicant/complainant has furnished her flight tickets from Mumbai to Goa and back from the year 2015 upto the year 2021 amounting to ₹53,492/- (Rupees Fifty Three Thousand Four Hundred and Ninety Two only). The applicant claims that the constant visits by the complainant from Mumbai to Goa were to visit the site to check the progress of the apartment. Admittedly, the applicant is resident of Goa but presently working in Mumbai. Therefore, the applicant in the normal course of events would have come to visit her family residing in Goa from time to time. In the circumstances, it is held that the applicant/complainant is partly entitled to be compensated in the amount of ₹25,000/- (Rupees Twenty Five Thousand only) towards costs of her flight tickets from Mumbai to Goa and back from the year 2015 upto the year 2021.
19. The applicant/complainant has also claimed legal fees. No particular amount towards legal fees have been claimed. Despite directions by this Authority to get the building project "POSTCARD PORTICO" registered after submitting all documents within 60 days, the respondent has willfully defaulted in doing so as revealed from the noting by the technical section of

Goa RERA that the project by name “POSTCARD PORTICO” has not come on the Goa RERA website for registration till date and the respondent is consequently liable for further action u/s 59(2) of The Goa Real Estate (Regulation and Development) Act, 2016. Further the respondent had also been directed by this Authority to deliver possession of the premises to the complainant which the respondent has failed to do till date thereby necessitating further legal action to be taken by the applicant/ complainant against the respondent. In the circumstances, it is held that the applicant/complainant is entitled to be compensated in the sum of ₹25,000/- (Rupees Twenty Five Thousand only) towards legal fees.

20. The point for determination is accordingly answered in the affirmative in the amount of ₹5,00,000/- (Rupees Five Lakhs only).
21. Before parting with this order, it is necessary to mention that the claim for compensation in Form ‘B’ was filed by the applicant/complainant on 23.03.2022. The respondent sought time to file reply on 11.04.2022 and 26.04.2022 and finally filed reply on 10.05.2022. The applicant/complainant filed notes on arguments on 19.05.2022. Thereafter, the respondent sought time to file written arguments on 03/06/2022, 20/06/2022 as well as on 30/06/2022. The matter has thereafter been disposed of on 14.07.2022.

In the result, I pass the following:


ORDER

- a) The respondent is directed to pay the complainant compensation of ₹5,00,000/- for violations u/s 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 is liable to pay interest on the said amount at the rate of 9.3% p.a. till realization.

- b) For the purpose of non-compliance of the directions of this Authority of getting the project registered, the case is referred to the Authority for action u/s 59(2) of The Real Estate (Regulation and Development) Act, 2016.


14/07/2022
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA