



## GOA REAL ESTATE REGULATORY AUTHORITY

101, 1<sup>st</sup> 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

F.No:4/RERA/Adj. Matters (94)/2022 / 461

Date: 02/06/2023

### BEFORE THE ADJUDICATING OFFICER

**Vincent J. Andrade,**

H.No. E-16, Near Ribandar Divar Ferry Point,  
Ribandar Tiswadi-Goa, 403006.

.....

**Applicant/Complainant**

V/s

**1. Abdul Gafoor,**

Mannat Infra Developers and Contractors,  
Office No.9 and 10, First floor,  
Patto Centre building, near bus stand,  
Panaji-Goa, 403001.

.....

**Respondent No.1**

**2. Mr. Ratnpal Namdev Taksande,**

Resident of Flat UG-1, Mannat Heritage,  
Village Ella, Old Goa, 403402.

.....

**Respondent No.2**

**3. Mrs. Reena R. Taksande,**

Resident of Flat UG-1, Mannat Heritage,  
Village Ella, Old Goa, 403402.

.....

**Respondent No.3**

Ld. Advocate Shri Euclid Heredia for the Applicant/ Complainant.

Ld. Advocate Shri G.S. Kubal for the Respondent No. 1.

Ld. Advocatae Shri G. M. Rege for the Respondents No. 2 and 3.

### ORDER

**(Delivered on this 2<sup>nd</sup> day of the month of June, 2023)**

The present proceedings have arisen as a corollary to the complaint under  
Section 31 of the Real Estate (Regulation and Development) Act, 2016

(hereinafter referred to as 'the RERA Act') filed by the applicant/complainant against the respondents bearing complaint no. 3/RERA/Complaint(129)/2020.

2. The above said complaint was disposed off vide Order dated 21.12.2022 by the Goa Real Estate Regulatory Authority (for short 'Goa RERA'). The said Authority ordered as under:-

“(i) Cancelling Sale Deed or the Conveyance Deed is beyond the jurisdiction of this Authority. There is no provision under the Real Estate (Regulation and Development) Act, 2016, and Rules thereof to terminate the Conveyance Deed. The complainant may approach appropriate authority for seeking the said relief.

(ii) A penalty of Rs.1,00,000/- (Rupees one lakh only) imposed against the Respondent No.1 under Section 61 of the Real Estate (Regulation and Development) Act, 2016. The respondent No.1 should deposit the penalty amount before the Authority within 60 days failing which recovery proceedings will be initiated under Section 40(1) of the Act read with Rules, The Goa Real Estate (Regulation and Development) (Recovery of Penalty),2017.

The case file along with all connected documents may be forwarded to the Learned Adjudicator for determining compensation if any under Section 71 and 72 of the Act.”

3. The applicant/ complainant thereafter filed his claim for compensation in Form 'B' under Section 12, 14, 18 and 19 read with Section 71 of the RERA Act at

exhibit 56/c seeking compensation of ₹40,00,000/- inclusive of the deposited sum of ₹15,00,000/-.

4. The respondent no. 1 filed reply at exhibit 632/c opposing the said claim for compensation.
5. The respondents no. 2 and 3 filed reply at exhibit 640/c also opposing the said claim for compensation.
6. Briefly stated it is the case of the applicant/ complainant that by Memorandum of Understanding dated 16.01.2019 the applicant/ complainant agreed to purchase from respondent no. 1 flat no. UG-1 having built up area of 96 sq. mtrs. with carpet area 64.43 sq. mtrs. situated on the upper ground floor of the building known as "Mannat Heritage" for the total consideration of ₹39,00,000/- (Rupees Thirty Nine Lakhs only). The applicant/ complainant states that he paid ₹15,00,000/- (Rupees Fifteen Lakhs only) as initial payment and the balance ₹24,00,000/- (Rupees Twenty Four Lakhs only) was to be paid at the time of executing the deed of sale/ conveyance deed. The respondent no. 1 was supposed to deliver the said flat but the same was never delivered to the applicant/ complainant. The applicant/ complainant issued a legal notice to the respondent no. 1 on 23.06.2020 due to delay in handing over possession. Subsequently through right to information the applicant/ complainant learnt that the said flat was transferred fraudulently to the respondents no. 2 and 3 by Agreement for Sale dated 12.06.2020 even though the respondents no.2 and 3



knew that an MOU had already been entered with the applicant/ complainant by the respondent no. 1 for sale of the said flat. The applicant/ complainant states that the transfer of the said flat by the respondent no. 1 to the respondents no. 2 and 3 is not bonafide and has been done to deprive the applicant/ complainant of the said flat and also usurp a sum of ₹15,00,000/-. The applicant/ complainant states that since the said flat was not ready he had to take a place on hire on monthly rent from March 2019 @ ₹12,000/- (Rupees Twelve Thousand only). The applicant/ complainant states that he has been deprived of the use and occupation of the said flat by the respondents especially the respondent no. 1. The applicant/ complainant has suffered loss of his hard earned money which has been invested in the said flat and the same has been used by the respondent no. 1 for his personal gain and to earn income. The applicant/ complainant had to avail professional legal advices and services and pay legal and miscellaneous fee and cost to advocates.

7. The case of the respondent no. 1 is that the applicant/ complainant fully knowing that his position to raise the loan amount is doubtful, has not executed the Agreement and preferred to content himself to the memorandum. The respondent no. 1 submits that except the initial payment the applicant/ complainant has not made any further payment. The applicant/ complainant was represented by his friend Mr. Dixon K.S. who represented him from finalization of memorandum till when the applicant/ complainant came to the office to

collect his amount of ₹15,00,000/-. In the presence of the applicant/ complainant himself Mr. Dixon K.S. informed that the applicant/ complainant wanted to raise the balance amount of ₹24,00,000/- from the Bank but the applicant's/ complainant's loan proposal has been rejected as the applicant/ complainant did not have Income Tax Returns. Mr. Dixon also informed that the applicant/ complainant is not interested in the flat and wants to have his money refunded. The respondent no. 1 agreed and was ready to refund the amount and by way of abundant precaution and to give an opportunity to the applicant/ complainant, the respondent no.1 issued a legal notice dated 13.11.2019 advising the applicant/ complainant to make the balance payment within 15 days or to collect refund of his deposit. The said notice was however returned unserved with the postal remark "party left". The notice was sent to the applicant's/ complainant's address which was furnished in the memorandum. The applicant/ complainant ought to have made the balance payment of ₹24,00,000/- which he has failed to do. The respondent no. 1 completed the project and delivered the possession of the premises to respective buyers in time. As the applicant/ complainant did not show interest in the said flat and was interested to get refund of his deposit, the respondent no. 1 had no option but to convey the same to the respondents no. 2 and 3. Hence the claim for compensation be dismissed.

8. The case of respondents no. 2 and 3 is that there is no cause of action to the applicant as against respondents no. 2 and 3. The Hon'ble Goa RERA has rightly decided the case of the applicant/ complainant and no reliefs have been considered as against the respondents no. 2 and 3. It is submitted that no reliefs lie as against the respondents no. 2 and 3 and as such there is no necessity of respondents no. 2 and 3 being added in the present adjudication proceedings. Accordingly, the respondents no. 2 and 3 be dropped/deleted from the present proceedings.
9. The applicant/ complainant file his affidavit in evidence at exhibit 648/c. The respondent no. 1 filed affidavit in evidence at exhibit 698/c. The respondents no. 2 and 3 filed affidavit in evidence at exhibit 750/c.
10. Heard arguments. Written arguments were filed by applicant/ complainant at exhibit 684/c. Written arguments of respondent no. 1 were filed at exhibit 704/c. Written arguments of respondents no. 2 and 3 were filed at exhibit 734/c.
11. The point for determination and my finding to the same is as under:-

<b>Point for determination</b>	<b>Finding</b>
<i>Whether the applicant/ complainant is entitled for compensation as claimed?</i>	<i>In the negative as per Order.</i>



## REASONS

12. In terms of Section 13 of the RERA Act a registered agreement for sale is the basis and the very foundation for all the rights and duties of the allottee under the RERA Act. Section 13 provides as under:-

**“13. No deposit or advance to be taken by promoter without first entering into agreement for sale.-**(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to

be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.”

13. From the aforesaid section it is evident that the parties not only have to enter into a written agreement for sale but it is also mandatory to have the said agreement for sale registered. Rule 10 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate agents, Rates of Interest and Disclosures on Website) Rules, 2017 also states that the agreement for sale shall be in conformity with the law in force.
14. Rule 10(2) states that “Any application, allotment letter or any other document signed by the allottee, in respect of the apartment, plot or building, prior to the execution and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale or the Act or the rules or the regulations made thereunder.”
15. Therefore in terms of the said Rule 10 not only the agreement for sale should be in conformity with the law in force but also the said registered agreement for sale prevails over any application, allotment letter or any other documents signed by the allottee and such other documents signed by the allottee prior to the execution and registration of the agreement for sale do not limit the right and interests of the allottee under the said registered agreement for sale.



16. In the present case the applicant/ complainant knowingly and willingly entered into a Memorandum of Understanding dated 16.01.2019 with the respondent no. 1. The said Memorandum of Understanding was only notarized. No agreement for sale was executed and registered as per law. It is the case of the applicant/ complainant that he has paid the part consideration of ₹15,00,000/- to the respondent no. 1.
17. Under Section 13 of the RERA Act, the promoter (respondent no. 1) cannot accept a sum more than 10% of the cost of the apartment without first executing a registered agreement for sale. This necessarily implies that the allottee (the applicant herein) cannot advance a sum more than 10% of the cost of the apartment to the promoter without first executing a registered agreement for sale.
18. Thus, not only the promoter has done an illegal act of taking the said advance consideration of ₹15,00,000/- prior to executing a registered agreement for sale but also the allottee (the applicant herein) in the present case is an accomplice to the said illegal act of promoter as it is not the case of the allottee that the said part consideration was paid by him to the promoter due to misrepresentation, undue influence or coercion etc.
19. It is therefore evident that applicant/ complainant knowingly and willingly did not execute the said agreement for sale nor registered the same as per law. Further, applicant/ complainant participated in the illegal act of parting with the

part consideration of ₹15,00,000/- without executing and registering an agreement for sale.

20. It is not the case of the applicant/ complainant that the applicant/ complainant at any time ever requested the respondent no. 1 to get an agreement for sale registered and that the respondent no. 1 refused to do so or failed and neglected to do so. Thus, it can be concluded that the applicant/ complainant equally participated with the respondent no. 1 in the aforesaid illegal act of not registering agreement for sale and parting with the part consideration amount of ₹15,00,000/- to the respondent no. 1.
21. All the rights and duties of the allottee in terms of Section 19 under Chapter IV of the RERA Act arise only when there is a registered agreement for sale between the parties.
22. Section 19(4) of the RERA Act states that “the allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.”

23. It is to be noted that the said terms of agreement for sale refer to a registered agreement for sale as mentioned in Section 13 of the RERA Act. Similarly, the remedy of the allottee under Section 18 of the RERA Act for the return of the amount paid by him to the promoter along with the interest and compensation if he intends to withdraw from the project or for the interest for every month of delay till handing over of possession if he does not intend to withdraw from the project provided the promoter fails to complete or is unable to give possession of an apartment, plot or building, "in accordance with the terms of the agreement for sale or, as the case maybe, duly completed by the date specified therein" is available only if the agreement for sale is registered.
24. The "agreement for sale" referred to in Section 18 of the RERA Act means a registered agreement for sale as mentioned in section 13 of the RERA Act. As stated above, in the present case the Memorandum of Understanding dated 16.01.2019 is not registered as required under law and in this context the applicant/ complainant is an accomplice to the aforesaid illegal act as according to the applicant/ complainant he paid the part consideration to the respondent no. 1 without executing and registering an agreement for sale and has taken no steps since 16.01.2019 to get an agreement for sale duly registered.
25. For the reasons stated above the applicant/ complainant was held to be not entitled to any of the reliefs prayed for in the complaint under Section 31 of the RERA Act filed before Goa RERA vide the order dated 21.12.2022.






Consequently, the applicant/ complainant is similarly not entitled to any of the reliefs as claimed in the application for compensation in Form 'B' under Section 12, 14, 18 and 19 read with Section 71 of the RERA Act at exhibit 56/c.

26. The point for determination, is therefore, answered in the negative.
27. Before parting with this order, it is necessary to mention that the applicant/ complainant filed his claim for compensation in Form 'B' on 09.02.2023. The respondents filed their respective replies on 16.03.2023. The applicant/ complainant filed affidavit in evidence and written arguments on 03.04.2023. On 19.04.2023 the respondent no. 1 filed affidavit in evidence and written arguments. On 27.04.2023 the respondents no. 2 and 3 filed affidavit in evidence and written arguments. On 05.05.2023 oral arguments were heard and the matter stands disposed on 02.06.2023.

In the result, I pass the following:-

### **ORDER**

The claim for compensation filed by the applicant/ complainant in Form 'B' under Section 12, 14, 18 and 19 read with Section 71 of the RERA Act at exhibit 56/c stands dismissed.

  
02/06/2023  
**(Ashley L.C. Noronha)**  
**Adjudicating Officer,**  
**Goa RERA**