



**GOA REAL ESTATE REGULATORY
AUTHORITY**

**DEPARTMENT OF URBAN DEVELOPMENT
GOVERNMENT OF GOA**

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Case no.4/RERA/Adj. Matters (11)/2021/ 356

Date: 29/04/2022

Guddu S. Malha

Shop No.Sairaj Complex,
Near Old Chowgule Hospital,
Baina Vasco-da-Gama-Goa, 403802.

..... **Complainant**

V/s

Adam A. Jumma,

Aman Builder & Developers,
Shop No. 3-4, Gr. Floor,
Karma Empress Building,
Opp. Sub-Register Office,
Vasco-Da-Gama, Goa- 403802.

..... **Respondent**

ORDER

(Delivered on this the 28th day of the month of April of the year 2022)

The complainant had entered into an agreement with the respondent for construction cum sale dated 26/07/2016. The Respondent had agreed to construct and sell to the complainant a double bedroom flat admeasuring 83.90 sq.mtrs in the building Aman's Jatayu situated at Mestawada, Vasco-da-Gama. The respondent was to handover the possession of the said flat within a period of 24 months from the date of the said agreement with a grace period of three months for a total consideration of ₹25,00,000/-. The said grace period expired on 25/10/2018. The complainant advanced a sum of ₹11,25,000/-. However, the respondent failed to complete and give possession of the said flat within the stipulated period to the complainant. The complainant sought for cancellation of the said agreement. As the respondent failed to refund the money advanced, the complainant filed a

complaint before the Goa Real Estate Regulatory Authority for refund, interest, other reliefs and compensation.

2. Vide Order dated 29/10/2021 this Authority directed the respondent to refund the amount along with interest amounting to ₹15,97,500/- with interest @8% per annum from 01/11/2021 till payment. This Authority referred to this forum to determine the amount of compensation, if any, to be paid to the complainant.
3. The complainant has filed his claim for compensation in Form 'B' at exhibit 158/c. The respondent filed reply to the same at exhibit 258/c, opposing the same. The complainant thereafter filed an application for production of additional documents at exhibit 304/c. The respondent filed reply objecting to the same at exhibit 360/c. The objections raised by the respondent to the production of additional documents cannot be sustained as the respondent has not disputed the validity of said documents. The said documents which are judicial orders and counter reply in the proceedings before the Authority are material in support of the complainant's claim. Hence, the said application for additional documents at exhibit 304/c is allowed.
4. Heard arguments. Ld. Advocate Shri P. Velip argued for the complainant and filed written submissions at exhibit 356/c. Shri P. Velip also placed reliance in various judgments which are placed on record. Shri J. Ramaiya argued for the respondent and filed written submissions at exhibit 404/c
5. The point for determination and my finding to the same is as under:-

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



REASONS

6. The complainant is seeking compensation for damages caused due to breach of contractual obligation, hardships and inconvenience caused owing to defective title and suppressing facts as regards pendency of the litigation before the Court and inducing the complainant to enter into the said agreement and consequential failure to deliver the possession within the stipulated time further causing harassment and mental agony.
7. The complainant is also seeking compensation for expenses incurred towards registration of the said agreement as the same had to be terminated for defaults attributable to the respondent for having failed to deliver the possession within the stipulated time.
8. The complainant is also seeking compensation towards additional cost and expenses incurred by the complainant for registration of documents for purchasing an alternate accommodation upon the failure of the respondent to deliver the possession of the said flat.
9. The respondent has denied the case of the complainant. The respondent has taken the stand of "Force de Majeure"; bigger area and high end residential area of the new flat purchased by the complainant.
10. Section 12 of the Real Estate (Regulation and Development) Act, 2016 pertains to obligations of promoter regarding veracity of the advertisement or prospectus.- Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:
Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be



returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

11. 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.
12. 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, whenever 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.”

13. As a result of the default of handing over possession of the said flat by the respondent to the complainant, the complainant was performed to look out for an alternate ready premises for his residence and had to pay an additional amount for the same.
14. The respondent had also concealed the fact of the pendency of the dispute in the Court pertaining to title of the property and temporary injunction which was operative. The Court orders produced confirm this fact. The stand taken



by the respondent with regard to “Force Majeure” cannot be accepted in the light of the said Court orders.


15. The complainant had to pay a sum of ₹72,600/- towards stamp duty for registration of the said agreement dated 26/07/2016. The said agreement had to be cancelled on account of the defaults by the respondent. Therefore, the respondent is liable to compensate the complainant for the said stamp duty charges.
16. The flat originally agreed to be purchased was of the area admeasuring 83.90 sq.mtrs. at Mestawado, Vasco-da-Gama. The flat subsequently purchased by the complainant is of a bigger the area of 102 sq. mtrs. at Chicalim, Airport Road, a high end residential area. The Respondent cannot be saddled with any liability towards purchase of a much bigger flat at a high end residential area by the complainant.
17. To my mind, the respondent is liable to pay compensation for violation under Section 12 and 18(1) read with Section 71 of the Goa Real Estate (Regulation and Development) Act, 2016 in the sum of ₹ 2,50,000/-.The respondent is also liable to compensate the complainant towards stamp duty charges of ₹72,600/- for executing the said agreement dated 26/07/2016.
18. The point for determination is answered in the affirmative.
19. Before parting with this Order it is necessary to state that the claim for compensation in Form ‘B’ was filed by the complainant on 14/12/2021. The respondent filed reply to the same on 07/01/2022. On 25/01/2022 the complainant filed an application for production of additional documents and written arguments on merits. The respondent filed reply to the application for additional documents on 16/02/2022. The respondent filed written

arguments on 21/03/2022. On 01/04/2022 oral arguments of the complainant were heard. On 22/04/2022 oral arguments of the respondent were heard. Attempts to settle the matter amicably failed as the complainant did not agree to the memo of payment schedule at exhibit 422/c.

In the result, I pass the following:-

ORDER

- a) The respondent is directed to pay the complainant compensation of ₹2,50,000/- for violations under Section 12 and 18(1) read with Section 71 of The Real Estate (Regulation and Development) Act, 2016 with interest @8% per annum from the date of this order till realization.
- b) The respondent is further directed to pay ₹72,600/- towards refund of stamp duty charges to the complainant for violations under Section 12, 18(1) read with Section 71 of The Real Estate (Regulation and Development) Act, 2016, with interest @8% per annum from the date of this order till realization.


28/04/2022
(Ashley L.C. Noronha)
Adjudicating Officer,
Goa RERA