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Consumer Rights in Real Estate Negotiations: A Brazilian Case

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ABSTRACT

This article presents a single case study of an actual Brazilian real estate negotiation which demonstrates how consumer rights affect contractual agreements. The property purchase attempt includes an initial large down payment but the financing process remains unfinished because of missing documentation. The buyer seeks to get back their entire investment through consumer protection laws. The seller who works for a local development company wants to keep part of the payment through the contractual deposit clause. The research demonstrates the negotiation process which reveals the difficulties both parties encounter when trying to achieve financial stability while protecting their business reputation.

Keywords: Consumer Rights, Real estate Negotiation, Brazil.

INTRODUCTION

This study addresses a Brazilian Type II (Dias, 2020) negotiation which developed from disagreements about down payment refund policies and deposit retention conditions in their initial agreement. The research focuses on the complete case to study how consumer protection laws affect contractual enforcement (Brasil, 1990; 2002). The negotiation process between the buyer and seller matches the Type II negotiation pattern which Dias (2020) describes in his Four-Type Negotiation Matrix. The high conflict levels and strong interdependence of Type II negotiations require parties to use strategic methods for interest protection because their individual choices could lead to legal disputes or negative media exposure. The framework enables researchers to analyze this case by showing how parties need to manage their requirement for working together with their competitive objectives.

The buyer bases their argument on consumer protection laws which the Brazilian Consumer Defense Code (CDC) enforces to stop businesses from using clauses that force customers to lose their entire payment amount. The seller operates under the Civil Code which enables him to keep deposits or request double payment based on which party fails to meet their obligations. The negotiation process becomes complicated because the two legal systems create multiple points of conflict between financial value and legal interpretation and professional reputation.

The research design uses Creswell (2014) and Yin (2004) case study methodology to study a single negotiation case which generates knowledge about negotiation procedures. The research method uses case studies because this approach excels at studying complex situations which merge the study subject with the research setting. The research benefits from established negotiation theories about negotiation which serve as its theoretical foundation. Managers require judgment abilities to execute decisions according to Bazerman and Moore (1994) while Fisher and Ury (1981) show that principled negotiation produces successful agreements through reduced concessions. The research by Cunha and Dias (2021) and Dias et al. (The research by (2022) shows that Brazilian negotiation techniques rely on contract details and non-monetary elements which lead to the final agreement terms. The research demonstrates the necessity to study business operations because it demonstrates how academic principles function in actual business environments. The case study presents evidence of various strategic management principles. The seller faces a strategic dilemma because Dess and Lumpkin (2003) demonstrate that organizations need to maintain both competitive strength and public trust. Raiffa Richardson and Metcalfe (2002) describe the scientific and artistic elements of collaborative decision-making which becomes crucial when legal and financial risks are at play.

METHODOLOGY

The research design follows Yin (2004) methodological guidelines to conduct a descriptive single case study investigation. The research design of this study follows Yin (2004) who established the methodological framework for case study research. The research investigates the negotiation dynamics between Brazilian real estate buyers and sellers regarding their disagreements about down payment refunds and contractual deposit retention.

The research uses a single case study because it needs to study this particular situation in detail. According to Creswell (2014) qualitative case studies allow researchers to investigate particular settings for extracting significant interpretations instead of searching for statistical data. The negotiation case study demonstrates how civil law deposit rules lead to disputes between consumer protection and deceptive contractual terms which need evaluation of legal framework effects on negotiation results. The research data consists of a detailed account of the negotiation process which incorporates Brazilian legal documents (Civil Code and Consumer Defense Code) and negotiation theory principles. The analysis uses Dias's (2020) Four-Type Negotiation Matrix to identify this case as a Type II negotiation which requires both parties to handle competitive and cooperative approaches because of high conflict levels and strong interdependence. The research combines the Four-Type Negotiation Matrix with additional negotiation concepts from Bazerman and Moore (1994) about managerial judgment and Fisher and Ury (1981) about principled negotiation and Raiffa et al. (2002) about collaborative decision-making. The research design employs qualitative interpretive methods as its method of investigation. The research examines the complete situation by studying the buyer's financial stability needs and the seller's business stability requirements and the effects of consumer protection laws on contractual disputes. Finally, the research connects theoretical knowledge to practical applications through its analysis of negotiation processes which occur under legal and ethical constraints. The research protects all individual and organizational identities through complete name changes and modifications. The research uses this case study for academic and educational purposes only while keeping all parties involved completely confidential.

BACKGROUND

The Brazilian real estate negotiation serves as the basis for this case study because a buyer and developer signed a contract to buy a R$350,000 residential property. The buyer paid R$50,000 as down payment because he expected the rest of the payment to come from bank financing. The financing process stopped when the seller did not deliver required documents which made the transaction fail to complete. The buyer felt both anger and doubt because he had already organized his personal and family schedule according to his expectation of buying the property.

The buyer depends on consumer protection laws which control their legal situation. The buyer believes the financing failure resulted from the seller's mistake so they want to receive their entire down payment back. The buyer bases their request for double restitution through Brazilian Civil Code deposit provisions because the seller did not fulfill their contractual duties. The Consumer Defense Code supports this claim because it prohibits total loss provisions in contracts which protects the buyer's legal rights (Brasil, 2002).

The seller keeps a defensive stance from start to finish during this entire process. The seller needs to receive the entire amount because the company spent some of the received funds but returning the money would lead to financial problems and harm the business reputation. The seller points to a R$15,000 deposit clause in the contract which they claim allows them to keep part of the payment when the contract ends. The seller understands that starting legal action against the developer would harm their business reputation which could lead to lost business relationships and decreased customer confidence. The dispute emerges because the buyer wants to get a full refund under consumer protection laws but the seller depends on contractual terms to defend their financial position. The involved parties encounter significant obstacles during this situation. The down payment amount consists of all his accumulated savings and his life-long dream which he wants to give to the buyer. The seller requires these funds to run their business operations and defend their business standing in the local community. The negotiation process remains difficult because parties will pursue legal options after they cannot reach a mutually advantageous agreement.

The negotiation between the parties follows Type II patterns (Dias, 2020) because it involves two parties and multiple issues negotiated. A single party cannot force a solution because it would result in major financial consequences. The buyer faces potential financial instability while the seller faces potential legal consequences and damage to their business reputation. The present disagreement between parties shows how negotiation methods and legal frameworks and consumer protection laws determine the final outcome of real estate transactions.

Negotiation Analysis

The negotiation process between parties includes multiple available choices which determine their bargaining activities. The buyer needs to ask for their full R$ 50,000 down payment back because the seller lost financing due to their own error. The buyer has two negotiation approaches which include filing a lawsuit to recover their contractual deposit amount of R$ 80,000 through double restitution. The buyer has three possible solutions to consider which include requesting a refund between R$ 35,000 and R$ 40,000 or establishing payment terms for the full R$ 50,000 amount or using the credit for another property from the developer.

The seller maintains multiple options for their response to the situation. The seller can maintain R$ 15,000 from the deposit while returning R$ 35,000 to the buyer according to contractual terms which permit keeping part of the deposit. The seller has three options to consider which include: (a) the full payment of R$ 50,000 through installments or using the credit for another development project. (b) refund between R$ 30,000 and R$ 40,000 to protect their financial situation.

The Zone of Possible Agreement (ZOPA) shows the price range which extends from the highest amount the seller will accept to the lowest price the buyer will pay. The buyer wants the seller to pay back the full amount of R$ 50,000 but the seller refuses to pay more than R$ 50,000 and completely rejects the demand for double restitution. The ZOPA exists between R$35,000 and R$50,000 and can be settled through payment plans or property credit transfers. The parties can halt legal proceedings through mutual agreement which stays within the predetermined limits. The parties need to develop their Best Alternative to a Negotiated Agreement (BATNA) when negotiations fail to produce results. The buyer can seek legal action to retrieve their R$ 50,000 deposits plus an additional R$ 30,000 through a strong legal basis under Civil Code and Consumer Protection Code regulations although this approach will cost money and create delays and uncertainty. The seller needs to decide between refusing all negotiations and court action which would result in monetary penalties and harm to their professional reputation. The negotiation outcome depends on reaching mutual agreement because both parties need to consider their critical BATNA.

IMPLICATIONS AND DISCUSSION

Real estate transaction negotiations become complex because consumer protection laws establish the rules for contractual agreement operations. The negotiation process determines final results because both parties need to avoid major financial losses to achieve a solution. Managers need to use their judgment skills during negotiations because this enables them to make effective decisions according to the case. The negotiation process between the two parties demonstrates how managers make decisions under uncertainty by considering legal risks and financial constraints and reputational effects. The negotiation process shows how consumer law protects buyers from unfair financial losses through its enforcement of statutory rights which go beyond what contracts provide. The seller needs to defend their market reputation as a strategic asset (Dess & Lumpkin, 2003) because they need to maintain their current financial performance and achieve sustainable business stability. The negotiation process between parties requires both scientific analysis and artistic skills according to Raiffa, Richardson, and Metcalfe (2002) which becomes evident in this specific case. The single case study method (Yin, 2004; Creswell, 2014) delivers effective results for studying complex negotiation situations because it preserves all information about the negotiation process.

The research confirms Cunha and Dias (2021) who demonstrated that particular contract elements control how negotiations between parties will end and Dias et al. (The research by (2022) shows that Brazilian bargaining systems operate through non-material assets which combine with environmental elements. Consumer protection law functions as a dual system which restricts contract flexibility and provides direction to parties during their negotiation activities. The negotiation process operates at multiple levels according to Dias and Navarro (2020) and Sebenius (2013) because legal aspects and financial elements and relational factors work together to produce final results. The case study demonstrates how negotiation theory intersects with consumer law to produce an extreme situation which forces parties to unite their conflicting competitive and cooperative methods. The ongoing dispute continues to maintain story tension because it needs evaluation of how legal frameworks and negotiation models and strategic elements impact real estate transaction results.

RESEARCH LIMITATIONS

The research contains specific restrictions which need to be recognized because it uses a single case study approach. The research investigates one Brazilian real estate negotiation which prevents the results from being applicable to other situations. The case study method according to Yin (2004) produces valuable results through its detailed analysis of specific contexts yet the findings from this study do not represent universal principles for all industries and jurisdictions and negotiation environments. The research data consists of descriptive accounts instead of direct observation or interview data. The researchers have restricted knowledge about complete negotiation processes because reconstructed accounts fail to include nonverbal signals and emotional patterns and unofficial communication that influence results (Bazerman & Moore, 1994; Fisher & Ury, 1981). The research focuses on Brazilian legal framework through an analysis of the Civil Code and Consumer Defense Code. The Brazilian statutes used in this study offer solid insights about the case but their provisions differ from consumer protection and contract laws that exist in other countries. The research focuses on the viewpoints of the buyer and seller but fails to include financial institutions and regulators and mediators as external stakeholders. The effectiveness of mediation in Brazilian business negotiations according to Dias (2020d) indicates that third-party interventions would transform the path of disputes. The research fails to include external viewpoints which restricts its analytical capabilities. The ongoing dispute in the case study prevents researchers from determining the final resolution of the conflict. The research functions as an analytical framework to study negotiation actions instead of providing a conflict resolution method.

CONCLUSIONS

The research shows how Brazilian real estate negotiations work through the combination of legal contracts and consumer protection laws. The buyer requests court restitution but the seller relies on deposit clauses to defend his financial position which leads to a dispute between monetary protection and business reputation preservation. The case demonstrates how consumer protection laws affect negotiations through their rigid contract restrictions which affect all stages of the negotiation process. The buyer used his entire life savings for the down payment because buying a home had always been his dream. The seller needs this money to keep his business going and protect his share of the market. The personal and organizational aspects of this situation illustrate that negotiation outcomes have lasting impacts on individuals.

FUTURE RESEARCH

Research on this case should continue by studying how consumer protection frameworks affect negotiation processes between different industry sectors including healthcare and technology and government procurement. Research should investigate how trust and reputation affect negotiations when consumer rights receive substantial protection in different contexts. Santos and Dias (2024) establish trust as the essential element which allows digital communication users to achieve successful negotiations with face-to-face interactors. Research about trust

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relationships between legal systems will help us understand negotiation patterns and create useful recommendations for business operations and public institutions.

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