



## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint( 317)/ 2022/ 990

Date: 05/10/2023

### **Audumber Vilas Joshi**

H.No. 325 Manorama Smruti,  
Near Satguru Temple Maina Pilerne,  
Bardez, Goa, 403114.

.....Complainant

*Versus*

### **Platinum Real Estates**

Ground Floor Gama Building,  
Near Church Square,  
Opp. Municipal Building,  
Panaji, Goa, 403001.

Represented by its proprietors

1. Trimurti Kishorlal Karpe,
2. Viola Karpe

Platinum House near Bhale Hospital,  
Wadakade Porvorim,  
Goa-403521.

.....Respondent

### **ORDER** **(Dated 05.10.2023)**

This order disposes of the aforesaid online complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') wherein the complainant has prayed this Authority to direct

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the respondent to refund the entire sale consideration amount of ₹29,00,000/- (Rupees Twenty Nine Lakhs only) along with interest at the rate of 24% from the date when the flat was to be handed over till the disposal of the complaint and also for compensation on various grounds.

2. It is the case of the complainant that he entered into an agreement for sale cum construction on 15.03.2013 for the purchase of flat no. A F-3 on the first floor in Block A of the building project "Platinum Residency I" with stilt parking along with the proportionate undivided share in the said property for the total sale consideration of ₹29,00,000/-. It is submitted by the complainant that as per the said agreement for sale the possession of the said flat was to be handed over to the complainant within eighteen months from the date of the said agreement i.e. by 15.09.2014.
3. According to the complainant, inspite of having paid the entire sale consideration, the respondent has failed to hand over the said flat to the complainant inspite of repeated requests and reminders and there has been a delay of more than eight years. Hence the prayers of the complainant as stated above.
4. The complainant produced on record the documents in support of his case including the agreement for sale dated 15.03.2013 executed between the complainant and the respondent and which was registered on the same day before



the Sub Registrar. Affidavit was also filed by the complainant in support of his complaint.

5. Notices were issued to the respondent, represented by its proprietors Trimurti Kishorlal Karpe and Viola Karpe, however the said notices returned with postal remarks “unclaimed” and hence the respondent was deemed to be duly served as per law. Earlier also the respondent was served by affixation of the notice on the last known address of the respondent. Since, the respondent remained absent during the hearings, the respondent was set ex parte. Arguments were heard from Ld. Advocate J. George for the complainant.
6. Thus, the only point for determination in the instant complaint is whether the complainant is entitled for the refund of the entire sale consideration amount along with the interest thereon and the answer to the same is in the affirmative because of the reasons stated herein below, however the prayer of compensation asked by the complainant has to be decided by the Adjudicating Officer under Section 71 of the RERA Act.
7. As per para 7 of the agreement for sale cum construction dated 15.03.2013, “The DEVELOPERS/BUILDERS shall deliver the possession of the said FLAT for use and occupation of the PURCHASER/FINANCER within a period of 18 months from the date of execution of this agreement”. The complainant has paid the entire

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sale consideration amount of ₹29,00,000/- to the respondent, however the respondent has failed to give possession of the said flat as per the due date of possession mentioned in the said agreement for sale. Therefore, Section 18 of the RERA Act which is reproduced herein below is squarely attracted in the instant case:-

**“18. Return of amount and compensation.-** (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the

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handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the 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.”

8. Thus the respondent is liable to return the amount received by the respondent from the complainant along with the interest as prescribed under Rule 18 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 as the complainant wishes to withdraw from the said project. The aforesaid Rule 18 is reproduced hereunder:-



**“18. Rate of interest payable by the promoter and the allottee.-** The rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent:

Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use it would be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

9. The cause of action accrued in favour of the complainant and against the respondent on 15.09.2014 on which date the respondent was liable to give possession of the said flat to the complainant. Thus the date from which the interest on the consideration amount paid by the complainant is to be calculated is the date when the cause of action accrued in favour of the complainant. Therefore the prescribed interest as per the aforesaid Rule 18 starts running from 15.09.2014 on the consideration amount paid by the complainant to the respondent. As stated above, as per the aforesaid Rule 18, the rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent. At present such lending rate of interest by SBI is 8.75% per annum. Adding two percent to the said interest as per Rule 18 comes to 10.75% per annum. Hence, the respondent is liable to pay to the complainant 10.75% per annum



interest for every month of delay to the complainant on the total amount of ₹29,00,000/- (Rupees Twenty Nine Lakhs only) paid by the complainant from the due date of delivery of possession i.e. from 15.09.2014 as mentioned in the agreement for sale till the actual return of the said amount to the complainant. Thus the instant point is answered in the affirmative.

In the premises aforesaid, I pass the following:-

### **ORDER**

The respondent is directed to refund the amount of ₹29,00,000/- (Rupees Twenty Nine Lakhs only) to the complainant within two months from the date of this order.

Further the respondent is directed to pay 10.75 % per annum interest (present lending rate of interest by SBI which is 8.75 % per annum plus two percent) for every month of delay to the complainant on the aforesaid amount paid by the complainant from 15.09.2014 till the date of actual payment of the aforesaid refund.

The respondent is directed to file compliance report in the form of an affidavit within two months from the date of this order, failing which further legal action will be taken against the respondent under the RERA Act.



The instant complaint is now referred to the Adjudicating Officer to decide compensation, if any, as per Section 71 of the RERA Act.

*v. jetley 15/10/2023*  
**(Vijaya D. Pol)**  
**Member, Goa RERA**