



# GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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F.No: 3/RERA/Complaint (23)/2019 | 77

## ORDER

**Dated: - 23/12/2019**

This Order shall dispose off the complaint received offline from Mr. Clifford F. D'Mello, r/o H.No. 6/8 Sonarbhat, Saligao Bardez Goa against Nathan Constructions Pvt. Ltd. shop no.3, Tolleband Davorlim, Navelim Salcete Goa which is on record at exhibit 18/c dated 26/7/2018.

In nutshell it is a case of the complainant is that he has booked a studio flat in the project named Owner's Pride at Neomie, Pedda Varca with built up area of the studio is 56.26 sq. mts. (605.35 sq. ft.) and super built up area 62.26 sq. mts (669.91sq.ft.), the details of which finds at letter dated 22/4/2016 at exhibit 16/c in the year April 2016 by paying an advance amount of Rs. 25,00000/- (Rupees Twenty Five Lakhs only) and that as project has not yet started he has requested the Chairman and the M.D of the company Mr. Agnelo Cardoso to refund the money with interest as the project has not yet started and however that he is not ready to take his calls and he replies via SMS giving false assurances and excuses and prayed intervention of this Authority to direct Mr. Agnelo Cardoso to refund his hard earned money with interest.

The complaint application as per the format prescribed is on record at exhibit 36/c

According to complainant he paid an amount of Rs. 25,00000/- more than two years ago and the receipts of the same are on records at exhibit 2/c.

The Notice of the complaint was given to the respondent for violation of Section 3 of the Real Estate Regulatory Act.

Both Parties were called for hearing return able on 22/5/2019.

On 22/5/2019 respondent sought time to engage a lawyer and the matter was fixed on 19/6/2019 at 11.00 am. On 19/6/2019 both the parties were present and the respondent agreed to refund the amount with interest and the proceedings was closed.

The Order to the effect was passed on 1/7/2019. The order dated 1/7/2019 envisages that the Respondent agreed to refund the said amount along with the interest.

In accordance with the same the complainant on 1/7/2019 addressed letter to respondent to refund his booking amount Rs. 25,00000/- (Rupees Twenty Five Lakhs

*Samanth*

only) with interest thereby giving bank details. The said letter dated 1/7/2019 is followed by reminder dated 4/7/2019 to refund the payment.

As the amount is not refunded by the respondent, the complainant by his letter dated 21/8/2019 to this Authority brought to the notice the failure of the Respondent to effect amount of Rs. 25,00000/- (Rupees Twenty Five Lakhs only) with interest.

In the light of above this Authority issued Show Cause Notice to the Respondent under Section 63 of the Real Estate Regulation and Development (Act) 2016 as to why Penalty of Section 63 of the Act should not be levied. The Respondent is also directed to remain present for hearing before 'Authority' on 22/11/2019 at 3.30 p.m.

On 22/11/2019 both the parties were present. However respondent did not file any reply nor paid amount of Rs. 25,00000/- (Rupees Twenty Five Lakhs only) and sought for 1 months time to pay.

In the interest of Justice 10 days' time was given and the matter was fixed on 4/12/2019 at 3.30 p.m. On 4/12/2019 the complainant present and the respondent was represented by Advocate Ms. Pinki Kumari Rajpurohit and filed reply.

In his reply the respondent however turned volta-face and came up with the case that the complainant is an investor and not a home buyer and no relief can be granted to the complainant by this Authority as all his claims are barred by the law of limitation and no relief can be granted and there could be no penalty under section 63 of the RERA Act.

At the same time respondent sought minimum of 60 days' time to comply the order dated 1/7/2019 and prayed that show cause notice dated 4/11/2019 may be kept in abeyance.

The Complainant put an endorsement on the said reply of the respondent contending that respondent had earlier agreed to pay the amount and the respondent has not shown his bonafides by paying an amount of Rs.5,000,00/- (Rupees Five Lakhs only) initially as directed by this Authority.

Thereafter the matter was posted on 13/12/2019 at 4.00 p.m. On 13/12/2019 the complainant filed his rejoinder to the reply dated 4/12/2019.

In his rejoinder the case of the complainant is that present proceeding are for enforcement of order dated 1/7/2019 and the said order records the admission of the respondent of his liability to pay an amount of Rs. 25,00000/- (Rupees Twenty Five Lakhs only) plus interest and stand adopted by the respondent is self-contradictory.

On merits case of the complainant is that the complainant is not an investor and is a bonafide intended purchaser of the Studio Apartment B-1F-201 on the First floor at





Neomie Pedda Varca Project named as Owner's Pride. Complainant being a purchaser his claims are not barred by Law of limitation and the respondent failed to comply with the order dated 1/7/2019 and hence, penalty under Section 63 of the Act be imposed upon him.

I heard learned advocate Shri. J. Abreu Lobo on behalf of Complainant and Mrs Pinky kumari Rajpurohit on behalf of Respondent.

I have duly considered arguments advanced by both the parties and the material placed on records. Based on the arguments advanced and material placed on record the only point for determination arises is as to whether the respondent has violated the order dated 1/7/2019 thereby directing the respondent to pay the amount of Rs. 25,00000/- (Rupees Twenty Five Lakhs only) plus interest to the Complainant.

My answer to the above point is in the affirmative for following reasons.

First of all it is not in dispute that Complainant booked a studio flat in the project named Owner's Pride at Neomis Pedda at Varca in the April 2016 by paying an advance of Rs. 25,00000/- (Rupees Twenty Five Lakhs only). The documents at 2/c to 16/c demonstrates so of payment of amount of Rs. 20,00000/- (Rupees Twenty Lakhs only) and Rs. 5,00000/- (Rupees Five Lakhs only) having effected the receipt 22/4/2016 and dated 22/6/2016 respectively in all having paid Rs. 25,00000/- (Rupees Twenty Five Lakhs only). The respondent did not join issue on the same. On the top of it order dated 1/7/2019 and Rojnama dated 19/6/2019 on record shows that on the basis of Respondent admission itself the order was passed dated 1/7/2019 to refund of amount Rs. 25,00000/- (Rupees Twenty Five Lakhs only) plus interest to the Complainant. It is seen that only upon receipt of Show cause notice dated 4/11/2019 for violation of order dated 1/7/2019 under section 63 of the Act, the respondent turned volta-face and tried to reopen the case stating that he is not entitled to effect the payment. In the same breath in his reply he seeks 60 days' time to pay the payment. The stand adopted by the respondent is incongruous, self-defeating and impermissible in law. On 22/11/2019 respondent sought one months time to effect the payment However he was granted only 10 days to pay the same and the matter was posted on 4/12/2019. On 4/12/2019 instead of affecting payment either fully or in part again sought 60 days' time thus exhibiting his insincerity by taking contradictory stand. In view of order dated 1/7/2019 passed by my predecessor nothing remained to be decided and adjudicated and more so in light of clear cut admission by the respondent to effect the payment Rs. 25,00000/- (Rupees Twenty Five Lakhs only) and interest, thereon, respondent is duty bound to



pay the amount and failure to do so entitled for penalty for everyday default which such defaults continues and as contemplated under Section 63 of the Act. That being the position respondent is bound to comply the order dated 1/7/2019 for refund of the amount within 15 days with interest.

Though interest is not specified in the order dated 1/7/2019 in my opinion the complainant is entitled for the interest on the amount paid to the respondent in a sum of Rs. 25,00000/- (Rupees Twenty Five Lakhs only). The terms and conditions reflected in the letter dated 22/4/2016 at exhibits 16/c shows that respondent himself has demanded interest at the rate of 18% per annum if payment is not paid in time as per agreement by the complainant. In such circumstances if the interest is not granted it would be inequitable, unjust and prejudicial to the complainant as otherwise if he has to deposit the said amount of Rs. 25,00000/- (Rupees Twenty Five Lakhs only) in any Bank Nationalised, Schedule Bank or Co-operative Bank he would have been entitled for the existing accrued interest and in the event if he has obtained loan to purchase immovable property he has to pay interest on the said. However having due regards to Rule 18 of the Goa Real Estate, Rules 2017 and considering the fact that there is slowdown in construction activities on account of various factors it would be equitable proper reasonable and just to impose interest at the rate of 10% per annum on the principal amount of Rs. 25,00000/- (Rupees Twenty Five Lakhs only) from 22/6/2019 till its realisation.

In the result I pass the following

**Order**

Respondent is directed to pay an amount of Rs. 25,00000/- (Rupees Twenty Five Lakhs only) to the complainant with interest at the rate of 10% per annum from 22/6/2016 till its realisation failing which further order would follow.

Dated: 23/12/2019  
Panaji



**Pramod V. Kamat**  
Member, Goa RERA

To,  
Mr. Agnelo Cardoso,  
M/s Nathan Constructions Pvt. Ltd.,  
Shop no. 3, Tolleband,  
Davorlim, Navelim, Salcete Goa,

Copy to: -  
Clifford F. D'Mello,  
H.No. 6/8,  
Sonarbhat, Saligao,  
Bardez- Goa