



# GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

101, 1<sup>st</sup> Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA

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F.No.3/RERA/Complaint(123)/2020/655

Date: 29/10/2021

## **Guddu S. Malha**

R/o Shop No.SairajComlex,  
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**

This is to dispose off the complaint received online on the webportal of Authority on 17.08.2020 against project 'Amans Jatayu'. Complainant Shri Guddu S. Malha is allottee in the said project which has been promoted by 'Aman Builders and Developers', a proprietary firm of Shri Adam Abdul Jumma (hereinafter referred as Promoter/Respondent). As per complainant, he entered into an Agreement for Construction cum sale dated 26.07.2016 with the promoter. As per agreement, the promoter agreed to construct and sale a double bedroom flat identified as F-1 admeasuring 83.90 sq.mts. to be located on the fourth floor of the said project 'Amans Jatayu'. Under the said agreement Promoter/Respondent was under contractual obligation to construct and sale the said flat and handover the possession thereof within a period of 24 months from the date of Agreement with a grace period of three months for a total consideration of Rs.25,00,000/- (Rupees twenty five lakhs only). The said completion period of twenty four months along with grace period of three months expired on 25.10.2018. In terms of said Agreement, Complainant paid to Respondent a sum of Rs.11,25,000/- (Rupees Eleven lakhs twenty five thousands only) between period of 20.07.2016 to 29.07.2016. As per complainant, he approached the Respondent several times

asking the status of construction. However, Respondent failed to provide the exact status of construction and failed to construct and deliver the possession of apartment within stipulated time. Accordingly, Complainant opted for termination of the said Agreement and refund of amount through his letter dated 04.02.2020.

2. Since the proposal of Complainant for termination of Agreement was not responded, complainant by his lawyer's notice dated 13.07.2020 called upon the Respondent to refund with interest the money already paid to him towards consideration of the said flat amounting to Rs. 11,25,000/- along with compensation etc. The Complainant has further stated that in view of the enactment of Real Estate (Regulation and Development) Act, 2016, (hereinafter referred as the said Act), the Respondent was under statutory obligation to register the project before the Goa-RERA Authority within the time fixed for registration of ongoing projects. However, Respondent failed to do so and has now registered the same belatedly under Project Registration No. PRGO 01200435.

3. Now, Complainant has filed the present complaint dated 17.08.2020 before this Authority and have prayed for following relief:

- 1) Action against Respondent in terms of section 61 or other relevant provision for having failed to complete the construction.
- 2) Action in terms of section 59 of the Act for failure to register the said project within prescribed time limit.
- 3) The Respondent to be directed to refund the consideration paid so far amounting to Rs.11,25,000/- along with interest at the rate of 18% p.a. and further compensation amounting to Rs.2,50,000/- for breach of contractual obligations etc.
- 4) The Respondent be also directed to pay an amount of Rs.2,00,000/- as compensation towards reimbursement of the cost incurred/paid for alternate arrangement of his residence pursuant to failure of the Respondent to deliver possession of the said flat.

4. A notice dated 21.08.2020 was issued to Respondent requiring to file reply. The Respondent has filed reply dated 10.09.2020 and 21.10.2020 before this Authority. In reply, Respondent has refuted that there was any delay. The respondent has quoted clause 3(a) of the Agreement and pointed out about 'Force Majeure'.

According to him, the subject property was in dispute before the Court of Civil Judge at Vasco in Regular Inventory Proceeding No. 01/2013/B due to dispute within the family and matter was subjudice and thereafter the same was subject to the Regular Civil Appeal No. 35/2019 before the Court of District Judge at Margao which was disposed off vide Judgement and Order dated 15.10.2019 and hence Construction was stopped from 2016-2017 to October 2019. In View of above, delay was beyond the control of Respondent. Respondent has also mentioned that he is willing for cancellation of Agreement and Refund of amount.

5. Complainant has filed counter reply dated 06.01.2021 to the reply dated 10.09.2020 and additional reply dated 21.10.2020 of the Respondent. Again, Respondent has also filed counter reply dated 03.02.2021 in furtherance to the counter reply dated 06.01.2021 of the complainant.

6. Both the parties were heard on 29.09.2021.

7. I have carefully gone through the complaint, reply filed by Respondent as well as counter replies of the parties. As per agreement between the parties, the said flat was to be constructed in twenty four months along with grace period of three months and this period expired on 25.10.2018. Admittedly, the project was not complete till 20.08.2020. The plea of the promoter that case was subjudice and interim injunction was in operation, has no meaning as the said litigation was going on since 2013, much earlier than the date of agreement for sale. Plea of promoter that he was supposed to deliver flat only after receipt of full payment has also no meaning as he himself has admitted that work was stopped by him.

8. As per section 18 of the Real Estate (Regulation and Development) Act 2016, the promoter is duty bound to refund the amount along with interest to the allottee in case of delay in project. Section 18 reads as follows:

**“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 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”.

9. From the above, it is clear that complainant is entitled to get the refund along with interest in terms of Rule 18 of Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rate of Interest and disclosures on websites) Rules, 2017. Complainant has paid to the Respondent a sum of Rs.11,25,000/- between period of 20.07.2016 to 29.07.2016. So, in my opinion, he is entitled to receive the interest on entire amount at the rate 8% per annum. The period of interest will start on 01.08.2016 and will be till 31.10.2021. The total interest at this rate for this period comes to Rs.4,72,500/- (Rupees four lakhs seventy two thousands five hundred only). Thus, total amount payable including principal and interest will be Rs.15,97,500/- ( Rupees Fifteen lakhs ninety seven thousands five hundred only). Apart from refund of principal and interest, complainant has claimed compensation also. Power to determine compensation is vested in Adjudicating Officer as per section 71 of the Act. Hence, for determination of Compensation, if any, case should be referred to Adjudicating Officer.

10. Complainant has also requested action against the Respondent for having failed to complete the construction and also, action in terms of section 59 of the Act for failure to register the said project within prescribed limit. In this regard, it is stated that Authority in this case is already issuing order for refund of amount to complainant along with interest and making reference to Adjudicating Officer for determining the compensation. Once this is being done, no other separate action is required against Respondent. Regarding failure to register the project within prescribed limit, it is stated that subsequently project was registered under section 3 of the Act by Authority and this is not appropriate forum to open this matter. If complainant feels, he may take issue separately before competent Authority/Appellate Authority.
11. In view of above, Respondent/Promoter is hereby directed to refund the amount alongwith interest amounting to Rs. 15,97,500/- (Rupees fifteen lakhs ninety seven thousands five hundred only) under section 18 of the Real Estate (Regulation and Development) Act, 2016 within 30 (thirty) days after receipt of this order failing which he will be liable to pay interest on entire amount at the rate of eight percent per annum from 01.11.2021 onwards till entire amount is paid by the builder or recovered as per law. Further the case is referred to Adjudicating Officer to determine the amount of compensation if any in terms of prayer made by complainant in the complaint.

Order accordingly.

  
**J.B.Singh, IAS(Retd.)**  
Member, Goa RERA

To,

**1. Guddu S. Malha**

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