



GOA REAL ESTATE REGULATORY AUTHORITY

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 Goa
www.rera.goa.gov.in

Tel: 0832-2437655; e-mail: goa-rera@gov.in

F.No:3/RERA/Complaint(155)/2021/667

Date: 16/05/2024

Shri Vilas Soma Goltekar,

Resident of H. No. 896, Vanskar Wada,
Shirgal, Dhargal, Pernem, Goa-403512.

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Complainant

V/s

1. Shri Uday Ghanshyam Naik,

Proprietor of M/s G. N. Construction

Having office at 12-G, Nirmal Nagar CHS. Ltd.,
Mira Road (East), Thane-401107.

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Respondent No. 1

2. Shri Krishna Ganapayya Balgi

Resident of B/1, 604, New Ashok Nagar,
Bapu Pranjape Marg, near Vazira Naka,
Borivali (W) Mumbai-400092

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Respondent No. 2

ORDER

(Date: 16/05/2024)

Shri Vilas Soma Goltekar, Resident of House No.896, Vanskar Wada, Shirgal, Dhargal, Pernem, Goa (**Complainant**), filed a complaint before the Goa Real Estate Regulatory Authority (**Goa RERA**) on 21.04.2021 Complaint(155)/2022 against(1) **Shri Uday Ghanshyam Naik, Proprietor of M/s G. N. Construction** having office at 12-G, Nirmal Nagar CHS Ltd., Mira Road(East), Thane and **Shri Krishna Ganapayya Balgi**, resident of B/1,604,

New Ashok Nagar, Babu Pranjape Marg, near Vazir Naka, Borivali (W), Mumbai (**Respondents**) with reference to purchase of a flat in the real estate project namely, "**G. N. Meadows II**" having registered with Goa RERA registration No. PRGO09180257 (**Project**) situated in the property under Chalta No. 20 of P.T. Sheet No. 99 of City Survey, Mapusa, Bardez, Goa.

2. The Complainant has been represented his case on behalf of him, whereas, the respondent has authorised Shri Krishna Ganapyya Balgi, one of the respondent to represent on behalf of them. Initially, the complaint was assigned to the Adjudicating Officer, as the complaint mainly seeking compensation and cancellation of Agreement vide Adjudicating Matters (6)/2021. The matter was heard by the Ld. Adjudicating Officer upto 05.01.2022, thereafter, noticed that as the complainant is also seeking cancellation of agreement which is within the purview of the Authority, hence, the matter was reverted back to the Authority for hearing.

3.1 The Complainant has filed supplementary complaint dated 04.04.2022 revising relief sought earlier. The copy of the said supplementary complaint has been provided to Shri Krishna Ganapyya Balgi, respondent.

3.2. The Complainant stated that he and his wife, Smt. Sushma Vilas Goltekar has entered into an Agreement for Sale dated 22.05.2017 with the Respondent which was registered with the Sub- Registrar of Bardez at Mapusa dated 29.05.2017, agreed to purchase a flat No. 101 of First Floor in an under



construction project, namely "G.N. MEADOWS II" admeasuring an area of 96.99 sq. mtrs, situated in the property under Chalta No. 20 of P.T. Sheet No.99 of City Survey, Mapusa, Bardez, Goa.

- 3.3 The Complainant also stated that at the time of execution of Agreement for Sale, Shri Krishna Ganapayya Balgi, Power of Attorney holder has misrepresented to him stating that only 10% of the remaining work is pending, would be completed and flat No.101 would be handed over to the Complainant before April 2018.
- 3.4 The Complainant has further stated that he has paid to the Respondent a total amount of Rs. 46,88,000/- (Rupees Forty six lakhs, eighty eight thousand only) in instalments between the period from 23.04.2017 to 07.06.2018 including GST amount of Rs. 1,80,000/- (Rupees One lakh, eighty thousand only).
- 3.5. The Complainant also alleged that the Respondents were not available for any clarification, not provided details of project; a lot of pending external and internal works; the faulty construction of entrance to the flat No. 101 posed danger was not rectified and not completed the project latest by 31.12.2019 as declared to the Goa RERA, even though it was commenced on 31.01.2015.
- 3.6. Due to delay in completion of the project, the Complainant has issued a legal notice dated 19.05.2020 and 08.01.2021 respectively to the Respondent but met without any return response. The Complainant pleaded for withdrawal from the project, for refund of money already paid to the tune of Rs.46,88,000/- (**Rupees**



Forty six lakhs, eighty eight thousand only) alongwith interest at the rate of 10% per annum from the date of agreement till the entire amount is paid; refund of stamp duty money to the tune of Rs. 1,42,100 (**Rupees one lakh, forty two thousand and one hundred only**) with interest at the rate of 10% per annum; compensation to the extent of Rs. 10,00,000/- (**Rupees Ten lakhs only**) due to unreasonable delay, agony undergone and also sought for termination of Agreement for Sale dated 22.05.2017.

4.1 The Respondent has filed reply to the supplementary complaint on 16.05.2022.

He stated that Respondent has registered the project namely "G.N. MEADOWS II" bearing registration No. PRGO0918057, and there is no contravention of the provision of the Real Estate (Regulation and Development) Act, 2016 and further stated that the complaint is not as per specified norms as laid down in Goa Real Estate (Regulation and Development) Rule, 2017 and pleaded for dismissal with costs.

4.2 The Respondent also stated that the Complainant is seeking compensation and cancellation of agreement but failed to file claim in Form A as well as Form B as per Rule 6 and 7 of the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects) Rules,2017. The Complainant purchased Flat No.101 on first floor in the said project admeasuring 96.99 sq. mtrs. for a total consideration of Rs.49, 00,000/- (**Rupees Forty nine lakhs only**). He entered into an Agreement for Sale with the Complainant on 22.05.2017.



- 4.3 The Respondent further stated that they have received a total amount of Rs.45,08,000/- (**Rupees Forty five lakh, eight thousand only**) from 23.04.2017 to 10.06.2018 in 09 instalments. As per registration of the project, completion date given is upto 31.12.2021, after extension of deadline by 06 months due to COVID-19 pandemic. The project has received Completion Certificate on 25.11.2021.
- 4.4 The Respondent further contended that as per Clause 5 of the Agreement for Sale dated 22.05.2017, if the vendor is not able to give possession of the said premises to the purchasers owing to unavoidable circumstances, the purchasers shall not be entitled to claim any damages what so ever from the vendor. The Respondent has tried to settle the matters mutually with the complainant but met without any favourable response.
5. The Complainant has filed an Affidavit in Rejoinder dated 31.03.2023 in response to reply of the Respondent dated 16.05.2022. He strongly denied the averments made by the Respondent, that he is relying upon mere technicalities without addressing main grievance against delay in completion of the project and handing over possession before 31.12.2019, as per undertaking in the application for registration of the project before the Authority on 27.03.2018. That after filing complaint before the Authority, Respondent tried to settle the matter mutually but evinced least interest to take it forward the same.
6. Both Respondent and Complainant have again expressed intention before this Authority for mutual settlement of the dispute on 28.06.2022. The Authority has



given adequate time for mutual consultation and settlement. As part of this process, the Respondent has paid to the Complainant a total amount of Rs.24,00,000/- (**Rupees Twenty four lakhs only**) in three instalments dated 07.09.2022, 09.11.2022 and 04.12.2023 respectively.

7. Pursuant to the above, the Respondent has filed an Affidavit for settlement dated 15.01.2024 for a total amount of Rs. 59,74,040/- (**Rupees Fifty nine lakhs, seventy four thousand and forty only**) including principal amount Rs. 45,08,000/- (**Rupees Forty five lakhs, eight thousand only**) and interest amount of Rs. 14,66,040/- (**Rupees Fourteen lakhs, sixty six thousand and forty only**) to be payable before 30.06.2024, subject to the condition that the complainant agree and undertake to execute register the Deed of Cancellation of the Agreement for Sale within fifteen days from the date of receipt of entire amount.
8. The Complainant has filed a reply affidavit dated 30.01.2024. The Complainant disputed the calculation of Interest portion. The Complainant sought refund of Principal amount Rs. 45,08,000/- (**Rupees Forty five lakhs, eight thousand only**) and the interest accrued on it as on July, 19,2023, to the extent of Rs. 27,13,904/- (**Rupees Twenty seven lakhs, thirteen thousand, nine hundred and four only**) along with stamp duty amount paid Rs. 1,42,100/- (**Rupees One lakh, forty two thousand and one hundred only**) and GST amount of Rs. 1,80,000/- (**Rupees One lakh and eighty thousands only**) which is totally calculated at Rs. 75,44,004/- (**Rupees seventy five**



lakhs, forty four thousand and four only). The Complainant further stated that the Respondent has given partial amount of Rs.24,00,000/- (**Rupees Twenty four lakhs only**) as part of settlement as on 04.12.2023. After deducting the same from total amount, the Respondent has to pay remaining amount of Rs.54,06,970/- (**Rupees Fifty four lakhs, six thousand, nine hundred and seventy only**). The Complainant willing to execute terms of settlement after receipt of the same.

9. Due to delay in handing over possession of the flat, the complainant has sought withdrawal from the project, refund of money with interest, compensation and cancellation of Agreement for Sale. The provisions under **Clause 18 Return of amount and compensation of the Real Estate (Regulation and Development) Act, 2016** govern the cases of withdrawal from project, refund of money with interest and compensation.

Sub-clause (1) of clause 18 states that:

“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

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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.”

Sub- Clause (3) of Clause 18 states that:

“if the promoter fails to discharge any other obligations imposed in him under this Act or the Rules or regulations made there under 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.”

10. Sub- Clause (4) of Clause 19 states that:

“The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this

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Act, from the promoter, if the promoter fails to comply or in unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.”

11. Both Complainant and Respondent have entered into an Agreement for Sale dated 22.05.2017 for purchase and sale of flat No.101, on the First Floor, admeasuring 96.99 sq. mtrs. in the ongoing residential real estate project, namely, “G.N.Meadows II” situated in the property under Chalta No.20 of P.T. sheet No. 99 of City Survey, Mapusa, Bardez, Goa. The possession date of the flat has not been incorporated in the said Agreement. However, it was promised by the Respondent to handover possession before April 2018. The terms and conditions incorporated in the said Agreement for Sale is not as per Model Form of Agreement to be entered into between promoter and allottees as per Rule 10 (1) of the Goa Real Estate (Regulation and Development) (Registrations of Real Estate Projects) Rules, 2017.
12. The Total cost of the flat is Rs. 49,00,000/- (Rupees Forty nine lakhs only); the Complainant has paid a total amount of Rs. 48,30,100/- **(Rupees Forty eight lakhs, thirty thousand and one hundred only)** including stamp duty



charges and GST amount between the period from 23.04.2017 to 07.06.2018. The project has not been completed before April 2018 as promised initially to the complainant and thereafter before 31.12.2019 deadline set for completion of the said project as per registration of the project. Due to delay in completion of the project, complainant has sought to withdraw from the project along with seeking refund of principal amount with interest and compensation.

13. As per provisions under Sub- clause (1)(a)(b) of clause 18 of the Real Estate (Regulation and Development) Act, 2016, if the promoter fails to complete or unable to give possession of an apartment or plot or building in accordance with the terms of the Agreement for Sale, duly completed by the date specified therein, in case the allottee wishes to withdraw from the project, the promoter liable to refund money paid by the allottee alongwith interest including compensation. Hon'ble Supreme Court of India has also upheld the above principle in Civil Appeal No. 6745-6749 of 2021 in M/s New Tech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.
14. Both parties agreed to settle the dispute amicably. Adequate opportunities has been given. Both parties admitted that Principal amount of Rs. 45,08,000/- (Rupees Forty five lakhs and eight thousand only) has been paid/ received towards total consideration of the flat to the tune of Rs. 49,00,000/- (Rupees Forty nine lakhs only). In addition to the above, complainant has also paid to the Respondent Rs. 1,80,000/- (Rupees One lakh and eighty

thousand only) as GST charges and Rs. 1,42,100/- (Rupees One lakh, forty two thousand and one hundred only) towards stamp duty charges. However, both parties failed to reconcile applicable interest due that is to be calculated since 23.04.2017 onwards and until payment of both principal amount alongwith interest to be paid to the complainant.

15. As per Clause 18 of 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, 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(MCLR) 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. As per MCLR historical data Interest Rates of SBI, Marginal Cost Lending Rates averages 8.85% per annum for last three years, as on 15.03.2024, thus effective interest applicable shall be 8.85% plus 2% comes to 10.85% per annum.
16. The contention of the Respondent that as per Clause 5 of the Agreement for Sale dated 22.05.2017, if the Vendor is not able to give possession of the said premises to the purchasers owing to unavoidable circumstances, the purchasers shall not be entitled to claim any damages what so ever from the vendor is concerned, it is fundamentally against the terms and conditions laid



down in the Model Form of Agreement to be entered into between promoters and allottees as per Rule 10(1) of the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects) Rules, 2017 and hence, the said contention is rejected.

17. Further, the contention of the Respondent that Complainant is seeking compensation and cancellation of agreement but failed to claim in Form A as well as Form B as per Rule 6 and 7 of the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects) Rules, 2017 is concerned, is to state that complainant has filed single complaint before the Authority seeking refund, interest, compensation and cancellation of Agreement for Sale. After determination by the Authority, the matter shall be referred to Adjudicating Officer to determine compensation as per provisions under Clause 71 of the Real Estate (Regulation and Development) Act, 2016 read with provisions under clause 7 and 8 of the said Rules; 2017. Hence the contention of the Respondent is rejected.

18. As regards to seeking Cancellation of the Agreement for Sale dated 22.05.2017 by the Complainant is concerned, it is not within the jurisdiction of this Authority, whereas it has to be dealt as per terms and conditions under the said Agreement for Sale. Hence, the request of the Complainant seeking cancellation of said Agreement for Sale is rejected. Similarly the refund of Rs.1,42,100/- (Rupees One lakh, forty two thousand and one



hundred only) paid towards stamp duty for registration of said Agreement for Sale cannot be refunded.

19. In the Light of above findings and conclusions arrived, the following Order is issued for compliance:

- (i) Respondent No. 1 is hereby directed to return principal amount to the Complainant to the tune of Rs. 45,08,000/- (**Rupees Forty five lakhs and eight thousand only**) along with interest on the said amount at the rate of 10.85% per annum from 10.06.2018 within two months from the date of receipt of this order or until the time it is paid.
- (ii) Respondent No. 1 is also directed to refund of Rs. 1,80,000/- (Rupees One lakh, eighty thousand only) paid towards GST to the Complainant without interest within two months from the date of receipt of this order
- (iii) The Respondent No. 1 is also directed to deduct Rs. 24,00,000/- (**Rupees Twenty four lakhs only**) from the interest part and repay the remaining interest to the complainant within the said period.
- (iv) The Complainant is hereby directed to co-operate with the Respondent No. 1 for proceeding ahead with Cancellation of Agreement for Sale as per provisions under relevant clause of the Agreement for Sale immediately after receipt of said principal amount along with interest.
- (v) Failure to comply the above order within 02 months from the date of receipt of this order is liable for initiation of Recovery Proceedings under



Section 40 (1) of said Act read with Rule 3 of the Goa Real Estate
(Regulation and Development) (Recovery of Interest) Rules, 2017.

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16/05/2024
S. Kumaraswamy, IAS (Retd.)
Chairperson, Goa RERA