



# 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

www.rera.goa.gov.in

F.No.3/RERA/complain (1)/2018/412

Date: 28/11/2018

## ORDER

Whereas a complaint has been filed before the Interim Authority, Goa RERA by Shri Sushil Kumar Modi, H. No. 260, Cardozo waddo, Taleigao, Bardez Goa-403002, of the Real Estate (Regulation and Development) Act, 2016; and received by this Office wide Inward No.120 dtd.22/02/2018 and complaint received online dtd.06/02/2018

Whereas it has been stated that the project "Adwalpalkar's Sanctum" bearing Sy.No. 59/1, Adwalpalkar Constructions and Resorts Pvt. Ltd is registered with Goa RERA with registration no is PRG05180303;

In the said complaint the complainant stated that he had booked a flat with the respondent on payment of token amount of Rs. 2,07,500/- on 10/06/2016, thereafter on payment of Rs.7,86,425/- on 23/07/2016 as per the flat booking Terms and Conditions.

The complainant was issued allotment letter dtd.25/07/2016 allotting flat No.301, on third floor in block A, admeasuring 102 sq.mts.at 'Adwalpalkar Sanctum' in Santa Cruz, Tiswadi Goa, for total consideration of Rs.47,90,000/- Including one stilt car park.

The Complainant was informed by the Respondent that the complainant's flat no. has been renamed as 201. The complainant was informed by the respondent, that RERA is applicable and in such case the agreement is not being done now and payment should be done as per current completion status, in compliance of the RERA Rules.

The Complainant further informed the respondents that there has been unjustified delay in starting the project construction and signing of agreement for the sale.

The complainant's version is that after thoughtful deliberation it was agreed upon by respondent through letter dtd.27/10/2017, that the agreement signing will be done latest by 30/12/2017, provided a payment of Rs.5 lakhs is made by the complainant, latest by 30/11/2017,

Accordingly the complainant paid the respondent, Rs. 5 lakhs on 28/01/2018, through a cheque drawn on ICICI Bank, Jaipur.

The complainant says that after continuous follow up with the respondent orally and through email dt. 25/12/2017, he finally got the Draft Agreement (unfilled) of Sale on 30/12/2017.

The complainant had certain reservation in some of the clauses in the draft agreement and he wanted respondent to delete.

In reply to the said email the respondent replied that alteration/ deletion was not possible as it is standard draft for entire project for all the investors.

The respondent shared final filled draft on 16/01/2018, and after going through the said draft, complainant wrote a letter dt. 22/01/2018 reiterating his reservation on certain clauses requesting respondent to resolve the same by modifying the agreement for sale.

Since there was no reply by the respondent till 05/02/2018, on 06/02/2018, the complainant filed the complaint to RERA office.

The complainant was shocked to receive a cheque (of an amount of Rs.14,20,500/- after deducting service tax/GST), along with letter dtd.05/02/2018, stating that the respondent has terminated and cancelled the booking of the flat on the pretext of alleged delayed execution of agreement for sale.

The complainant replied to the said letter, through letter dtd.10/02/2018 denying all allegation and challenging the illegal cancellation and termination of the booking.

The notice was issued by this office to respondent that is Shri. Mahesh Adwalpalkar, M.D, Adwalpalkar construction and resort Pvt Ltd. vide file No.03/RERA/Complaint(1)/2018/141 dtd.16/07/2018, of which copy was sent to complainant Shri. Sushil Kumar Modi.

In reply to the said notice the respondent stated through letter dtd.30/07/2018, that on account of default on the part of the complainant, the respondent was constrained to cancel the booking after invoking the provision of their agreement.

The entire amount paid by complainant was of Rs.14, 93,925/-. The respondent refunded amount of Rs.14,20,500/- as final amount towards settlement to the complainant. Rs.73,425/ is the amount which respondent deducted, as he deposited that as GST and Service Tax.

Notices were issued to respondent on the complaint made by the complainant and copy of the same was also given to complainant, directing both of these to appear on 07/09/2018.

Whereas the complainant was present in person for the hearings on 07/09/2018, 21/09/2018, 26/09/2018, 08/10/2018 and 15/10/2018.

Whereas the respondent was represented by Mrs. Aparna N Shirodkar, Adv on behalf of M/s Adwalpalkar Constructions and Resort Pvt. Ltd.

Respondent filed a reply on 31/07/2018.

Copy of the same was handed over to complainant to file a counter reply if any.

On the next date complainant reiterated his original stand and conveyed that cancellation and termination order of the booking of flat was wrong on the part of respondent.

Respondent argued and filed additional reply in support of his claim.

Heard both the parties.

From the perusal of the record it reveals that upto 30/11/2017 there was no dispute between the respondent and complainant as complainant committed to make the last payment of Rs. 5 Lakhs as demanded by respondent as one of the instalments before Sale Agreement could be executed.

Dispute arose on the issue of signing of agreement for sale between complainant and respondent.

Complainant wanted certain clauses to be deleted from the agreement whereas respondent stuck to his stand that this is the general agreement having all the clauses intact as are being signed and executed by other investors, so an exception cannot be created for the complainant.

Matter dragged on with no solution and finally the respondent terminated the contract by issuing communication on 05/02/2018 along with cheque of Rs 14, 20,500 in favour of the complainant.

Having gone through entire matter, I am of an opinion that the complainant needs to be compensated by the respondent for the loss which he has incurred, on account of GST deduction, Interest component on the deposit which he made to the respondent and finally not getting the flat after keeping the booking alive by making due payments as asked for by the respondent.

Since Complainant was not allotted flat by the Respondent, GST amount which was deducted by the respondent should be refunded to the Complainant.

Respondent will also pay interest to the complainant for the amount which he had deposited with the respondent. The interest would be as defined in Chapter IV, clause 18. *Rate of Interest payable by the Promoter and Allottee.*- 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.



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For not honouring the commitment by the respondent and for not delivering the flat, to the complainant, though for the reasons as spelt out in the aforesaid narration, I impose a penalty of Rs. 2.5 Lakhs. This penalty of Rs. 2.5 Lakhs is over and above the interest component and GST deduction, which Respondent shall refund to the complainant.

The entire amount as mentioned in the last para has to be remitted in the account of complainant as compensation.



**(Sudhir Mahajan)**  
Secretary (U.D)/Interim Authority,  
Goa RERA

To: - Mr. Mahesh Adwalpalkar,  
Managing Director,  
Adwalpalkar Constructions and Resorts Pvt. Ltd.,  
F-5 Adwalpalkar Avenue,  
St. Inez, Panaji Goa

C.c to: Sushil Kumar Modi,  
260 E-1, Ashraji,  
Manzil, Cardozo Waddo,  
Taleigao Tiswadi Goa.....for information

ok

Issued on 28/11/18  
Signature R

Recd  
Dineshan  
28/11/2018.

S. K. Modi  
29/11/18