



## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (452)/2024/ 367

Date: 26 /03/2025

### BEFORE THE MEMBER SHRI VINCENT D'SILVA

**Mrs. Celina Rodrigues Braganza,**

H.No. 124, Joefil Nagar,

Ponda, Goa-403401.

.....Complainant

*Versus*

**1. S. M. Ventures Builders & Developers**

Office at shop No. UG-04, Rishwa Residency,  
Durgabhat, Ponda Goa-403401.

Represented through its partners, namely

**2. Mr. Sushant Vishnudas Sawant,**

R/o H.No. 132/13 (1), Near Municipal Garden, Silva  
Nagar, Ponda, Goa, 403401.

**3. Digamber Manguesh Tilve,**

R/o H.No. 157/7, Behind Sangam Bakery,  
Upper Bazar Ponda, Goa, 403401.

(Deleted as per Order dated 13.03.2025)

**4. Devendra Kumar Maheshwar,**

R/o H.No. 302, Near Govt. Primary School,  
Kandola, Marcel, Ponda, Goa, 403107.

.....Respondents

Ld. Advocate Prasad D. Samant along with Advocate Rohan T. Shet for the complainant.

Ld. Advocate Pritesh Shetty for the respondents nos. 1, 2 and 4.

**ORDER**

**(Delivered on this 26<sup>th</sup> day of the month of March, 2025)**

This order shall dispose of the complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016.

2. Briefly stated, the case of the complainant is as follows:-

The complainant has approached the respondents to purchase a flat no. F-2 on the first floor admeasuring an area of 63.25 sq. mts. in an under construction project in a multi store building project named as 'Silver Sky' under Survey no. 118/1-B of Village Curti, Khandepar, Ponda Goa and on verification of the layout of the building, completion target, location, rate and promised materials and fixtures explained by the respondents, agreed to purchase the said flat for a total consideration of ₹30,00,000/- pursuant to which, the complainant paid an advance of ₹50,000/- on 26.10.2018. The respondents further demanded an advance amount of ₹9,50,000/- paid on 05.11.2018 and thereafter demanded an advance of ₹3,65,000/- paid on 25.10.2019 and subsequently, demanded an amount of ₹3,35,000/- paid on 06.11.2019. Thus, the complainant paid an amount of ₹17,00,000/- towards the advance of purchase of the said flat as demanded by the respondents.

3. It was agreed that the balance amount shall be paid at the time of the possession and the respondents undertook to execute an agreement by December 2019, however to her surprise, the complainant received a demand letter dated 10.12.2020 calling upon the complainant to pay an amount of ₹4,48,000/-. The complainant approached the respondents to seek clarification as it was agreed to pay the balance amount at the time of the possession, however respondents did not comply and stuck to their demand and hence, the dispute arose as the respondents did not keep their promise. The respondents had also not executed an agreement by December 2019.

4. The complainant thereafter issued a notice calling upon the respondents to execute an agreement on the terms stipulated on the demand notice and thereafter personally inquired with the respondents as to the completion of the project and issue of the occupancy certificate, to which it was assured that the flat would be ready by February 2021 for occupation. The said flat was not ready by the said date nor did the respondents respond. The complainant issued a legal notice through her lawyer calling upon the respondents to execute a valid deed of sale or agreement of sale as per the agreed terms. The respondents duly received the said notice, however, replied with evasive answers refusing to perform the promise. The respondents received an advance amount of ₹17,00,000/- from the complainant who is a lay and middle class person without executing a valid

agreement for sale which is a violation of Section 13(1) read with Section 61 of the RERA Act. The respondents neither executed a valid agreement nor returned the advance amount to the complainant. Hence, the complaint.

5. The respondents nos. 1, 2 & 4 filed a reply inter-alia contending that the complainant has already filed a Regular Civil Suit seeking a specific performance of the contract, which includes execution of the sale deed or in the alternative, a refund of the amount with interest. There is no violation of Section 13(1) of the Act. The respondents cannot be vexed twice for the same issue in different courts as the reliefs sought in both the proceedings are identical. The present dispute is of purely civil nature and does not pertain to any contravention under the RERA Act. The complainant is merely an investor. The complainant was called upon to execute and register the agreement after making the initial payment, however she refused to proceed with the registration, which shows she was an investor investing in the project.

6. It is also the case of the respondents that the amount of ₹17,00,000/- was not made in a single transaction but was paid in installments. The construction activity was carried out as per the schedule but the complainant unfairly failed to make timely payment and avoided executing the agreement, thereby breaching the terms of the understanding between the parties and thus caused loss, inconvenience hardship and great prejudice to the respondents. The complainant was called upon

to make necessary payments vide letter dated 10.02.2020, however the complainant neither complied with the payment obligations nor came forward to execute the agreement. The present proceedings are nothing but an attempt to manipulate facts to suit her case. The intention of the complainant was not to enter into any binding contract but rather to profit from the project by selling the flat to the prospective buyers at higher rate. The complainant has approached the Authority with unclean hands and therefore, the complaint be dismissed.

7. Argument heard. Notes of written arguments came to be placed on record by the complainant.

8. The points for my determination along with the reasons and findings thereon are as follows:-

<b>Sr. No.</b>	<b>Points for determination</b>	<b>Findings</b>
1.	Whether the complainant is entitled for refund of amount along with interest as prayed for in the complaint?	In the affirmative.
2.	What order? What reliefs?	As per final order.

### REASONS

**Point no. 1 and 2**

9. The complainant prayed for the following relief:-

(a) The respondents be directed to pay a penalty to the extent of 5% of the real estate project and to return the advance money along with interest in violation of Section 13(1) of RERA Act.

(b) Any other and better orders in the larger interest of justice be kindly passed.

10. Ld. Advocate Shri Prasad Samant for the complainant has submitted that the complaint has been filed under Section 13(1) and Section 18 read with Section 61 of the Act, which is a special remedy available only before the present forum and the civil court has no jurisdiction to entertain the grievances sought for under Section 13 of the Act as the respondents received an amount of ₹17,00,000/- from the complainant without executing a registered agreement, exceeding the limit as set out in the Section. He further submitted that the said provision puts an obligation on the promoter not to exceed ten per cent of the consideration amount of the apartment as an advance, whereas in the present case, the respondents have received an amount of ₹17,00,000/- from a total consideration of ₹30,00,000/-, which exceeds the limits in violation of provision of Section 13 and therefore, the respondents are guilty of violation of Section 13 of the Act. He further submitted

that the complainant was serious in completing the transaction and the dispute arose when the promoter put his illegal demand regarding the GST, when in fact, the consideration agreed was inclusive of GST, stamp duty for registration and other miscellaneous charges. The respondents are neither showing any signs of execution of sale deed nor concerned in refunding the amount with interest and thereby illegally enjoying the hard earned money of the complainant.

11. Per contra, Ld. Adv. Shri Pritesh Shetty for the respondents has submitted that the present dispute is purely of a civil nature and does not pertain to any contravention under the RERA Act as the complainant has already taken up the dispute before a civil court by filing a Regular Civil Suit bearing no. 11/2022/B for specific performance of the contract and in the alternative, directing the respondents to pay the advance deposit of ₹17,00,000/-. He further submitted that the respondents cannot be vexed twice for the same issue in different courts as reliefs sought in both the proceedings are identical and therefore, the complaint is not maintainable and in support thereof, he relied upon the case of *Ireo Grace Realtech Private Limited vs. Abhishek Khanna and others*, (2021)3 Supreme Court Cases 241.

12. There is no dispute that the complainant filed a suit before Civil Judge, Senior Division at Ponda for specific performance of contract and other alternate relief bearing no. RCS 11/2022/B for a decree to execute a valid sale deed in

respect of the suit flat or if the prayer is not decreed, to direct the defendants to pay advance amount of ₹17,00,000/- with interest and the same is pending for adjudication. The moot question is whether the complainant can choose to file an application under the provisions of the RERA Act, when a civil suit with respect to same subject matter is pending between the parties. The provisions of the Act as well as the law on the subject is very clear as adumbrated here-in-below.

13. The Apex Court, in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India and Ors*, (2019) 5 SCC 72 has held that buyers of flats could avail concurrent remedies under Consumer Protection Act and the provisions of RERA Act. The Hon'ble Punjab and Haryana on 16.10.2020 in the case of *Experion Developers Pvt. Ltd. v. State of Haryana and Ors*. held that the provision of Section 71 of the Act has to be read with Section 88 of the RERA Act, which explicitly states that the provision of RERA is in addition to and not in derogation of any other law and that the complainant was empowered to simultaneously pursue remedies in both the forum on the strength of Section 88 of the Act. The Hon'ble Apex Court in the case of *M/s Imperia Structures Ltd. v. Anil Patni & Another*, AIR 2021 SC 70 has clarified that where cases under Civil Procedure Code are initiated after the provision of RERA came into force, there is nothing in the RERA Act, which bars such an initiation and that Section 18 itself specifies that remedy under said Section is 'without prejudice to any other remedy available,



thus the choice or discretion is given to the allottee whether to initiate proceedings under the Code or file an application under the RERA Act. In *Ireo Grace Realtech Private Limited*, supra, the Hon'ble Apex Court has reiterated that the remedies under the RERA Act are without prejudice to any other remedy available and hence, RERA Act does not in any way affect the jurisdiction of the Consumer Fora or the Civil Court as they are not in derogation of the RERA Act.

14. It is therefore evident that the filing of a suit cannot be a bar for filing proceedings under RERA Act as any aggrieved person can maintain a complaint under Section 31 of the Act as Section 18 of the RERA Act gives an option to the homebuyer/allottee either to proceed under the RERA Act or approach the regular civil court. Section 18 of the Act itself specifically states that the remedy under the RERA Act is “without prejudice to any other remedy available” which makes it clear that an option is given to the allottee either to proceed under the RERA Act or to approach the regular civil court, etc. Merely because the complainant has initially approached the civil court, it does not bar the remedy of filing a complaint before this Authority, since the jurisdiction of the civil court is not specifically excluded by the legislature and the remedy before the Authority is in addition to the remedy that may be given to a party by the Authority under the RERA Act and therefore, the jurisdiction of RERA Authority is not barred by virtue of Section 18 read with Section 79 of the RERA Act and therefore, the submission of Ld.

Advocate Shri Pritesh Shetty that the complainant cannot file proceeding at two places is without any merits.

15. Ld. Advocate Shri Pritesh Shetty has also submitted that the complainant is merely an investor so also that the complaint is bad-in-law and is liable to be dismissed due to non joinder of necessary parties as the complainant failed to bring on record the legal heirs of respondent no. 3. The complainant has acted in contravention of Section 13 of the RERA Act by refusing to execute the agreement for sale, even when called upon to execute the necessary agreement probably to evade stamp duty and registration fee. The amount of ₹17,00,000/- was not made in a single transaction, instead the amount was paid in installments. The respondents have consistently acted in accordance with legal guidelines but the complainant has refused to come forward to make necessary payment and execute the agreement for sale and therefore, the complaint be dismissed

16. Ld. Advocate Shri Prasad Samant for the complainant has submitted and rightly so that under the RERA Act, even the investors are protected through measures like mandatory project registration, transparency in marketing and advertising as well as completing the project in a time bound manner. The duty of the promoter is to safeguard the interest of the homebuyers and promoter's transparency in the real estate sector. The functions and duties of the promoter

amongst other things have been specified in terms of Sections 11 and 13 of the Act, which the respondents have failed to adhere to. There is nothing on record that after the death of Digambar Mangesh Tilve, the partnership firm has substituted the deceased partner by any other partner and therefore, the above contentions of Ld. Advocate Shri Pritesh Shetty cannot be countenanced.

17. Admittedly, the parties have not entered into a written agreement for sale in terms of RERA Act with respect to flat no. F-2 situated on first floor admeasuring 63.25 sq. mts. in the project known as "SM Silversky". However, an amount of ₹50,000/- was admittedly paid by the complainant on 26.10.2018 as advance payment towards purchase of the said flat. However, except a receipt, no allotment letter was issued nor an agreement for sale was executed. The first letter is dated 10.02.2020 issued by the respondents to the complainant requesting to pay the amount of ₹4,00,000/- as per the allotment letter including GST of ₹48,000/- and to execute agreement for sale within fifteen days from the date of this letter. There are several letters from the respondents with a heading "allotment of flat no. F-2". In letter dated 12.03.2020, the respondents have referred demand letter dated 08.02.2020 in which it is stated that the complainant has failed to comply with the demand for payment and upon lapse of seven days, they shall presume that the complainant has waived the claim. Letter dated 08.02.2020 has not been produced on record. The letter dated 01.06.2020 of the respondents states "that the

complainant has made initial payment of ₹50,000/- on 26.10.2018” and thereafter made further payments and the last such payment was on 06.11.2019 thus making total payment of ₹17,00,000/- till date.

18. The above letter dated 01.06.2020 of the respondents is an indication of the fact that the respondents have received a total payment of ₹17,00,000/- till 01.06.2020 and such amounts were paid first on 26.10.2018 and the other amounts by 06.11.2019. The letter dated 29.06.2020 issued by the respondents to the complainant states that she has failed to comply with the demand for payment made by them and that they are constrained to intimate her that upon lapse of seven days from receipt of the letter, they will presume to treat that she has waived her claim in respect of the said flat allowing them to deal with the same with other prospective buyers. The letter dated 08.09.2021 of the respondents states that the complainant has not responded to the conversation made by the respondents for refunding, and as such she was directed to collect the cheque towards the refund amount as payable after requisite deduction from their office or any working day. The above letter appears to be cancellation of the booking of the flat unilaterally by the respondents, without any justification and/or in consonance with the provisions of the RERA Act, moreso when the respondents have violated the Act by accepting more than ten per cent of the consideration amount, prior to execution of the agreement for sale.

19. Section 13 of the Act reads as under:-

“(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such a person and register the said agreement for sale, under any law for the time being in force.”

20. The Hon’ble Kerala High Court in the case of *Unnikrishnan Chandran Pillai vs. Tata Reality Infrastructure Ltd; Relationship Manager, Tata Reality and Infrastructure Ltd. 2022 lawsuit (ker) 697* has held that Section 13 prohibits the promoter to accept the sum of more than 10% of the cost of the apartment or building as advance payment without first entering into a written agreement for sale with such a person and the promoter accepting the payment in violation of Section 13, the course open to the Authority is not only to refund the amount but to award also interest on the said amount.

21. The above provision of Section 13 of the RERA Act makes it manifestly clear that the promoter is prohibited from accepting a sum more than ten per cent of the cost of the apartment as an advance payment without first entering into a written agreement for sale and the promoter accepting amount surpassing the said limit, be it in lumpsum or in installments, prior to entering into agreement constitute a clear violation of the above statutory provision, which is intended to

protect the interest of the consumers, be it for any reason, entitling the party for withdrawing from the project and seeking necessary reliefs against the promoter.

22. The respondents have accepted an advance amount of ₹17,00,000/- which is more than 56.66% of the total consideration of ₹30,00,000/-, although the respondents have not specifically admitted so, in the reply. The fact, however remains that the respondents took an advance amount of ₹17,00,000/- from the complainant without executing a valid agreement for sale, which is more than ten per cent of the consideration, which exceeds the permissible limit stipulated under Section 13(1) of the RERA Act 2016, which is contrary to the provision of Section 13 of the Act. There is no dispute that the object of RERA is to protect the interest of the consumers and therefore, whatever amount is paid by the complainant under misconception or in violation of the Act, the said amount have to be refunded to the allottee on her withdrawal from the project along with interest due.

23. There is no dispute that the said amount of ₹17,00,000/- was paid by the complainant to the respondents on various dates as advance payment and the said amount has not been refunded by the respondents till date. Section 11(5) of the Act states that “the promoter may cancel the allotment only in terms of the agreement for sale, provided that the allottee may approach the Authority for relief, if he/she is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause”.

The complainant has thus approached the Authority for necessary relief and rightly so.

24. In the case of *M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others*, 2021 SCC, Online 1044, the Hon'ble Supreme Court has clarified that "if the promoter fails to give possession of the apartments, plot or building within the time stipulated under the terms of the agreement, then allottee's right under the Act to seek refund/claim/interest for delay is unconditional and absolute, regardless of unforeseen events or stay orders of the Court/Tribunal". The relevant abstract is reproduced below for ready reference:

"25. The unqualified right of the allottee to seek refund referred to under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement *regardless of unforeseen events or stay orders of the Court/Tribunal*, which is in either way not attributable to the allottee/home buyer, the Promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act."

25. It is thus the grounds as stated by the respondents for accepting more than ten per cent of the consideration amount as well as cancellation of the agreement

and non-refund of the said amount along with interest, will not come to the rescue of the respondents from legal liabilities under the RERA Act and corresponding legal rights accrued to the complainant under the RERA Act. The complainant is therefore entitled for refund of the said amount along with the interest due in terms of law.

26. The Hon'ble Supreme Court in the case of “ *Experian Developers Pvt. Ltd. vs. Sushma Ashok Shiroor*” (2022) SCC Online SC 416” has held as follows:

“22.1 We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The commission in the order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. *Following the decision in DLF Homes Panchkula Pvt. Ltd. vs. DS Dhanda and in modification of the direction issued by the commission, we direct that the interest on the refund shall be payable from the dates of deposits. Therefore, the appeal filed by the purchaser deserves to be partly allowed. The interests shall be payable from the dates of such deposits.*”

27. 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 websites) Rules, 2017 states as follows:



“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.” Presently, the rate of State Bank of India highest Marginal Cost of Lending Rate plus two percent i.e (9.10 plus 2%) is 11.10 percent.

28. The complainant admittedly paid the amount towards the consideration of the flat in the following manner, as per the receipts, produced on record:-

Sr. No.	Particulars	Date	Amount
1.	Receipt no. 208 dated 26.10.2018 bearing cheque no. 618241 dated 26.10.2018 drawn on Canara Bank, Ponda.	26.10.2018	₹50,000/-
2.	Receipt no. 209 dated 05.11.2018	05.11.2018	₹9,50,000/-
3.	Receipt no. 225 dated 24.10.2019 bearing cheque no. 618258 dated 24.10.2019 drawn on Canara Bank, Ponda	24.10.2019	₹3,65,000/-
4.	Receipt no. 227 dated 06.11.2019 NEFT payment dated 06.11.2019 drawn on Saraswat Bank, Ponda	06.11.2019	₹3,35,000/-
<b>Total</b>			<b>₹17,00,000/-</b>

29. The complainant is thus entitled for the lending rate of interest by SBI, which is 9.10% per annum plus two per cent i.e. 11.10% per annum 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 on the said amount of ₹17,00,000/- paid by the complainant to the respondents on various dates as advance payment, from the dates of deposit as stated above.

30. The complainant approached the Authority since she is aggrieved by unilateral cancellation of the agreement by the respondents nos. 1, 2 & 4 and retaining her hard earned money invested in the project, thereby unjustly enriching themselves. The RERA Act is enacted to protect the interests of vulnerable allottees from high-handedness from powerful and unscrupulous builders. Disturbingly, the said flat has been sold by the respondents to unknown allottees and the said fact is conspicuous by its absence in the pleadings of the respondents. The complainant is therefore entitled for refund of the said amount of ₹17,00,000/- with interest as well as costs of ₹2,00,000/- for investing in the project since October, 2018, firstly being a woman, a lay person and middle class person, prosecuting a case against the respondents, who are not inclined to refund the amount to the complainant, inspite of the fact that the said flat is sold by them. The

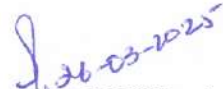
respondents are also liable to pay penalty under Section 61 of the Act for violation of Section 13 read with Section 18 of the RERA Act. Hence, the above points are answered accordingly.

31. Pursuant to above discussion, I pass the following:

**ORDER**

- i. The respondents nos. 1, 2 & 4 are directed to refund the sum of ₹17,00,000/- (Rupees Seventeen Lakhs only) to the complainant within 30 days, from the date of this order.
- ii. The respondents nos. 1, 2 & 4 are also directed to pay to the complainant interest @11.10% p.a. from dates of deposit as referred in Para 28 above, till effective payment.
- iii. The respondents nos. 1, 2 & 4 are directed to pay costs of ₹2,00,000 (Rupees Two Lakhs only) to the complainant within thirty days of the order, failing which it will carry interest in terms of law till payment.
- iv. The respondents nos. 1, 2 & 4 are directed to pay ₹5,00,000/- (Rupees Five lakhs only) as penalty under Section 61 of the Act for violation of Section 13 read with Section 18 of the RERA Act. The amount shall be deposited in the bank account of the Authority within 60 days, failing which necessary proceedings will be initiated against the respondents.

- v. The respondents nos. 1, 2 & 4 are directed to file compliance report of this order in the form of an affidavit, within sixty days of this order, failing which further legal action will be initiated by the Authority under the RERA Act for execution of the order.

  
(Vincent D'Silva)  
Member, Goa RERA

Panaji, Goa.  
Date: 26.03.2025