



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (388)/2023/ 161

Date: 05/02/2025

BEFORE THE MEMBER SHRI VINCENT D'SILVA

Jatinder Narang,
6 274, Greeta Colony,
Delhi, East Delhi, 110051.

.....Complainant

Versus

Ms. Alchemy India a partnership firm,
Represented by its partners
Rahul Sharma and Vishal Garg,
4 First Floor, Community Centre East of Kailash,
Delhi, South Delhi 110065.

.....Respondent

Ld. Advocate Jonathan George for the complainant.

Ld. Advocate Shirin Naik along with Advocate A. Tari for the respondent.

ORDER

(Delivered on this 5th day of the month of February, 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 Respondent, a partnership firm approached the complainant by way of emails, messages and telephone calls with an aim of inducing the complainant to

invest in a Studio apartment in the building project known as “The project-Sagrados” located on the land known as Pernem admeasuring 6900 sq. mts. falling under Survey no. 31/1, 31/6, 31/7 and 31/8 at Pernem, Goa. The respondent provided the complainant with drawings, plans and brochures of said project where various amenities were to be provided by the respondent to the purchasers of the Studio apartment and on the basis of representation, the complainant entered into an agreement for sale dated 16.01.2017 for ₹49,91,000/- of the Studio apartment bearing no. 306, on third floor admeasuring 62.83 sq. mts.

3. The complainant agreed to pay the purchase price of Rs. 49,91,000/- for the said studio apartment in terms of Clause 1 and 2 read with Schedule II of the said agreement in the following manner:-

(i) An amount of Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand only) has been received by the FIRST PARTY from the OTHER PARTY, through RTGS dt. 09.01.2017; (ii) Second Installment for an amount of ₹40,00,000/- (Rupees Forty Lakhs only) on or before 31.01.2017; (iii) Third and final Installment for an amount of ₹2,41,000/- (Rupees Two Lakhs Forty One Thousand only) on the day of execution of sale deed post the possession which is on or before 31.05.2017.

4. The complainant has paid an amount of ₹47,40,000/- towards consideration amount with respect to the purchase of the said Studio apartment by taking loan and borrowing money from the bank. The respondent was obliged as per the agreement to hand over possession on or before 31.05.2017 however, no such possession has been handed over neither the complainant received any notice of possession in terms of Clause 4.2 of the agreement for sale. The complainant inspite of sending repeated reminders and pleas calling upon the respondent to hand over possession of the studio apartment, the respondent has continued to

delay in handing over the possession and occupation of the said Studio apartment. The respondent has presently stopped responding to the calls and messages of the complainant. The complainant has invested his hard earned money and life savings including the borrowings from the bank and the delay on the part of the respondent has caused him huge amount of stress and mental anguish. The complainant is therefore entitled for reliefs.

5. The respondent filed a reply inter-alia contending that RERA Act has no application to the present proceedings as all NOCs including proposed residential housing, construction license, occupancy certificate, technical clearance and completion order were taken prior to 2015. The complainant has entered into an agreement for sale with attorney Shri Mohit Lugani who was never permitted to act as a signatory/attorney on behalf of the respondent, M/s Alchemy India and therefore, the agreement for sale stands void. Mr. Lugani is a relative of the complainant and the whole dealing took place without actual notice to the respondent. All the amounts mentioned in the agreement to sale was transferred by the complainant to the company's account only but Shri Mohit Lugani who was connected to them for the purpose of marketing, used the blank signed cheques, which were given under the marketing agreement, to transfer the said amount to his personal account citing it as a personal dealing and a favour, thus the amount was never given to M/s Alchemy India. The complainant has therefore failed to establish any connection and hence, not entitled for any relief.

6. Argument heard. Notes of written arguments came to be placed on record by the parties.

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

Sr. No.	Points for determination	Findings
1.	Whether the complainant is entitled for refund of amount along with delayed interest on the same?	In the affirmative.
2.	What order? What reliefs?	As per final order.

REASONS

Point no. 1 and 2

8. The complainant in the present case has filed the complaint and has sought the following reliefs:-

(a) Direct the respondent to return and refund the entire consideration amount, amounting to INR ₹47,50,000/- (Indian Rupees Forty Seven Lakhs Fifty Thousand only) along with interest calculated at the rate of 24% from the date that the Studio apartment was to be handed over i.e. May 31, 2017 till this case is heard and disposed of; (b) Direct the Respondent to compensate me for the losses and damages incurred by me as a result of delay in completion of work and delay in handing over the possession and occupation of the said Studio apartment along with interest calculated at the rate of 24% from the date that the Studio apartment was to be handed over, i.e. May 31, 2017 till this case is heard and disposed of; (c) Direct the respondent to compensate me for the costs incurred by me as medical expenses for the mental anguish and agony, caused by the respondent, along with interest calculated at the rate of 24% from the date that the Studio apartment was to be handed over, i.e. May 31, 2017 till this case is heard and disposed of; (d) Direct the respondent to compensate me for the costs

incurred by me for instituting such proceedings and all legal expenses incurred in this regard, along with interest of 24% from the date that the Studio apartment was to be handed over i.e. May 31, 2017 till this case is heard and disposed of and (e) such other order as this Hon'ble Authority deems fit and proper

9. The complainant in the present case has been seeking refund of the entire consideration amount of ₹47,40,000/- paid along with interest @ 24% from 31.05.2017 till recovery. The complainant is therefore seeking relief under Section 18 of the Act, which 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.

Thus, if promoter fails to complete the project or is unable to deliver possession of the apartment, plot or building by agreed time and allottees intend to withdraw from the project, then the promoter shall refund the paid amount together with interest to allottees at such rate as may be prescribed.

10. Ld. Advocate Jonathan George for the complainant has submitted that the complainant invested in the project by agreeing to pay purchase price of ₹49,91,000/- and thereafter entered into an agreement for sale dated 16.01.2017. As per Clause 4.1 of the agreement for sale, the respondent was obliged to handover possession and occupation of the said Studio apartment on or before 31.05.2017 with a notice of possession in terms of clause 4.2 of the agreement, however even after several years, the Studio apartment has not been handed over to him on the agreed date of possession and therefore, the respondent has violated provisions of Section 18 of the RERA Act and for that reason, the complainant is seeking refund along with interest.

11. Per contra, Ld. Advocate Aniket Tari for the respondent has submitted that there is no explicit consent given by the respondent to sign the agreement for sale dated 16.1.2017 with the complainant and the said agreement has been signed by the complainant's own brother-in-law, Shri Mohit Lugani who was an underwriter with Mr. Ashish Singh and Mr. Abhinav Chandla with whom the respondent has entered into marketing agreement dated 31.05.2013 for the sole purpose of marketing and advertisement and the said agreement was terminated by the respondent. The said agreement for sale was not consented to by the respondent and was not to the knowledge of the respondent, which was signed by purported Power of attorney dated 11.01.2017, which complainant has intentionally not

brought on record in order to cover his misdeeds. He further submitted that the owner of the said property, Eco Promoters has not been intentionally added as party to the proceedings and therefore, complainant is not entitled for any relief.

12. The contention of the respondent that there is no consent given by the respondent to sign the agreement dated 16.01.2017 with the complainant and that they have challenged the Power of attorney given to Mohit Lugani is not borne out of records. The agreement has been signed by the complainant and the respondent on 16.01.2017 and the consideration amount of ₹47,40,000/- has been paid by the complainant to the respondent and the said fact is not in dispute. The respondent has not produced anything on record to show that the agreement between the parties is bad-in-law and not legally tenable. It is well settled that the agreement for sale is binding on all the parties. There is no justification as to why the said Power of attorney is not revoked, if at all it was not executed by the respondent. The contention that owner of the said property Eco Promoters has been intentionally not added also does not inspire confidence as no reliefs are sought against the said owner. The respondent has also failed to handover possession of the Studio apartment on agreed date of possession mentioned in the agreement for sale and as such, the complainant has approached the Authority under Section 18 of the RERA Act.

13. Ld. Advocate for the respondent has submitted that the said agreement was executed on 16.01.2017 and was agreed that possession of the said unit would be handed over on or before 31.05.2017 and that the complainant had come claiming relief before the Authority on 03.01.2024 thereby showing that they have initiated the proceedings after a lapse of six years, seven months and that too without explaining the reasons for the said delay and hence, the present complaint deserves to be dismissed being time-barred.

14. Per contra, Ld. Advocate Jonathan George for the complainant has submitted that there is no question of any delay in initiating the present proceedings. The agreement for sale dated 16.01.2017 does not provide for any limitation nor the Act stipulates any limitation. Moreover, the Limitation Act, 1963 does not apply to the Real Estate (Regulation and Development) Act, 2016 in view of specific provisions within RERA itself. The overriding effect of RERA ensures that the right of allottees are protected and that the developers are held accountable without the procedural constraints of limitation period and the legal stance not only promotes justice and accountability in the real estate sector but also aligns with the RERA's primary objective of safeguarding the interest of the home buyers. In short, the Limitation Act, 1963 does not restrict the filing of complaints or seeking relief under RERA, which prioritizes the rights and remedies of the allottees, even if the transactions or agreements were made prior to the enactment of RERA. The RERA does not provide a timeline for availing relief, thus the provisions of the Limitation Act, 1963 do not apply and therefore, the above submissions of Ld. Advocate Tari pales into insignificance.

15. Ld. Advocate Aniket Tari for the respondent has further submitted that the agreement was executed on 16.01.2017 which is prior to coming into the force of RERA Act in Goa as Section 3 of the Act came in force on 01.05.2017 vide Notification S.O. 1216 (E), dated 19.04.2017 and therefore, the complaint should fail on the above count alone, which has been refuted by Ld. Advocate Jonathan George for the complainant, and rightly so as the completion certificate with respect to the said project was issued on 22.03.2021 and occupancy certificate was issued on 04.06.2021 and therefore, the said project is an ongoing project in terms of proviso to Section 3 of the Act.

16. Moreover, in the case between *M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and Ors. Etc*, 2021 SCC, Online 1044 it is held that the projects where completion certificate remained pending, those project has to be registered and once completion certificate is issued, there is no question of registration. A promoter of a project is under obligation to complete the project and the projects which are under construction are ongoing projects. The completion certificate with respect to the above project was issued on 22.03.2021 while the agreement for sale was executed 16.01.2017 and therefore, it is an ongoing project in terms of proviso to Section 3 of the Act as rightly submitted by Ld. Advocate Jonathan George for the complainant and hence, the above submissions of Ld. Adv. Tari cannot be accepted.

17. Ld. Advocate Aniket Tari for the respondent has further submitted that in terms of Clause 14, Page 29 of the agreement, all the disputes arising out of or touching upon or in relation to the terms of the agreement including the interpretation and validity of the terms thereof and the respective rights and obligation of the parties, shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration, which shall be held at appropriate location in New Delhi by a sole arbitrator, who shall be appointed by mutual consent of both the parties and whose decision shall be final.

18. Ld. Advocate Jonathan George has submitted and rightly so that the scope of Section 8(1) of the Arbitration and Conciliation Act, and its relevance had been considered by the National Consumer Disputes Redressal Commission in its order dated 13.07.2017 in the case of "*Aftab Singh vs. EMAAR MGF Land Ltd. and Anr.*" and in its order, the National Commission has held as under in Para 47 thereof:

“.....Hence, in view of the binding dictum of the Hon’ble Supreme Court in Ayyaswamy (supra), the matters/disputes which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which to a large extent, are similar to the disputes falling for resolution under the Consumer Act.”

It is therefore the arguments put forth by the respondent regarding the arbitration clause cannot sustain in law.

19. There is no dispute that the complainant paid the consideration in the following manner:-

There is no dispute that the complainant paid the purchase price in the following manner:-

a. On 09.01.2017- an amount of Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) was paid/ transferred by way of RTGS by the complainant to the respondent.

b. On 20.01.2017 an amount of Rs. 39,90,000/- (Rupees Thirty Nine Lakhs Ninety Thousand only) was transferred via ICICI Bank and paid by the complainant to the respondent.

Thus, the complainant paid a total of Rs. 47,40,000/- to the respondent.

20. The Hon’ble Supreme Court in the case of **“Imperia Structures Ltd. Vs. Anil Patni and Another” 2020 (10) SCC 783** has held in Para 25 with respect to provisions of Section 18 of the Act and the same is reproduced here-in-below:-

“25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly

completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. *The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed.*”

21. There is no dispute that the consideration amount as stated above has been paid by the complainant. The respondent has not put the complainant in possession of the Studio apartment in terms of the agreement and is yet to offer fully furnished unit with all the amenities in terms of Clause 4.6 of the agreement. The submissions of the respondent for not granting reliefs have been unsubstantiated nor delay in delivering possession, will come to the rescue of the promoter/respondent from legal liabilities under the RERA Act and corresponding legal rights accrued to the allottee/complainant under the RERA Act and therefore, the respondent has failed in its obligations stipulated under Section 11(4) (a) and (f) read with Section 18 of the Act and hence, the complainant is entitled for refund of the amount paid along with interest.

22. Once the respondent has failed in its obligations either to deliver the possession to the complainant or to refund the amount, Section 18 of the Real Estate (Regulation and Development) Act, 2016 and 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 are attracted and have to be invoked, the benefit of the aforesaid provision and the statutory interest goes to the complainant, who had entered into

an agreement for sale with the respondent, who is legally bound to refund the entire amount paid by the complainant along with interest thereon.

23. 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 under:-

“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.”

24. Needless to mention, the object of Section 18 is to recompense an allottee for depriving him of the use of the funds paid by him. The respondent who has received money from the complainant but has failed to adhere to its contractual or statutory obligations, cannot claim that it is entitled to utilise the monies without paying any interest with respect thereto to the allottee. In such circumstances, it would be just and fair to refund the paid amount along with interest to the complainant in terms of 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 from the date of

receipt of such amounts by the respondent. Hence, respondent is liable to pay to the complainant present lending rate of interest by SBI, which is 9.10% per annum plus two percent i.e 11.10% per annum interest for delay in delivering possession to the complainant on the total amount of ₹47,40,000/- (Rupees Forty Seven Lakhs Forty Thousand only) paid by the complainant as stated above. Hence, the above points are answered in the affirmative.

25. The complainant has prayed to compensate him for the losses and damages incurred by him as a result of delay in completion of work and delay in handing over the possession and occupation of the said Studio apartment. The complainant has also prayed to direct the respondent to compensate him for the cost incurred by him as medical expenses for the mental anguish and agony caused by the respondent. Under Section 71 of the RERA Act, compensation under Sections 12, 14, 18 and 19 of the RERA Act has to be adjudged only by the Adjudicating Officer. Accordingly, the above prayers for compensation have to be dealt with by the Adjudicating Officer for adjudging the compensation, if any. The complainant may prefer an application before the Adjudication Officer for compensation, if so desires.

26. The complainant is also seeking cost for instituting the proceedings and all legal expenses incurred in that regard along with interest of 24% from the date that the Studio apartment was to be handed over i.e. 31.05.2017 till the case is heard and disposed of. It is a matter of record that the complainant incurred expenses for prosecuting the case as well as legal expenses and other ancillary expenses including the amount paid while registering the case. The complainant is therefore entitled to a reasonable amount of Rs. 1,00,000/- (Rupees One Lakh only) towards such costs, which shall be borne by the respondent.

27. Under Section 61 of the RERA Act, if any promoter contravenes any other provisions of the RERA Act, other than that provided under Section 3 or Section 4, or the Rules or Regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project as determined by the Authority. The respondent has contravened the provisions of Section 11(4) (a) and (f) read with Section 18 of the Act and therefore, is liable to pay penalty under Section 61 of the RERA Act.

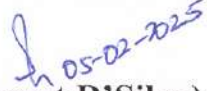
28. Pursuant to above discussion, I pass the following:-

ORDER

- i. The respondent is directed to refund the amount of ₹47,40,000/- (Rupees Forty Seven Lakhs Forty Thousand only) to the complainant within sixty days from the date of this order.
- ii. The respondent is directed to pay interest @ 11.10% per annum for delay in delivering possession to the complainant from the dates of such payments as mentioned in Para 19 till the date of actual payment on the aforesaid amount paid by the complainant.
- iii. The respondent is directed to pay costs of ₹1,00,000 (Rupees One Lakh only) within sixty days of the order, failing which it will carry interest in terms of 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 till payment.
- iv. The respondent is directed to pay ₹2,00,000/- (Rupees Two Lakhs only) as penalty under Section 61 of the Act for violation of Section 11(4)(a) and (f) read with Section 18 of the Act. The amount shall be deposited before the

Authority within 60 days, failing which necessary proceedings will be initiated against the respondent.

- v. The respondent is 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: 05.02.2025