



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (416)/2024/ 500

Date:23/04/2025

(BEFORE THE MEMBER SHRI VINCENT D'SILVA)

Raj Aguiar Enclave Co-operative Housing Society Ltd.,

Through its Chairman,

Mr. Amit Kamat,

Near Old Military Camp,

Dhavli, Ponda, Goa-403401.

.....Complainant

Versus

M/s Raj Housing Development Pvt. Ltd.

Represented through Mr. Sandip Nigalye,

Chairman/Managing Director.

401, 4th floor, Rajdeep Galleria,

Sadar-Ponda, Goa-403401.

.....Respondent

Ld. Advocate Pradosh Dangui along with Ld. Adv. Ms Akshaya Joglekar for the complainant.

Ld. Advocate Jonathan George for the respondent.

ORDER

(Delivered on this 23rd day of the month of April, 2025)

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

2. Shorn of details, the case of the complainant is as follows:

The complainant is a co-operative society duly registered. Raj Aguiar Enclave is a residential building having 31 units which have been purchased by the members of the complainant society from the respondent. The respondent

actively marketed the project situated at Ponda. The complainant society and the respondent entered into an agreement for sale of their respective flats. The respondent constructed two buildings, building 'A' and building 'B' for which completion certificate was issued. The members of the complainant at the time of purchase of flats have paid due consideration to the respondent, apart from which, the respondent also charged mandatory fees to the purchasers, other than the basic cost, such as legal charges, society formation charges, corpus fund, and maintenance for one year, which were duly collected by the respondent.

3. The provisions of the agreement clearly mandate that before completion of the society, it is the duty of the builder/promoter to maintain the building and its amenities. The payment of maintenance of the unit holders starts from occupancy certificate issued by the Ponda Municipal Council and not from the date of the construction of the building is completed and as such, all the expenses have to be borne by the builder till the time occupancy certificate is issued, which is in March 2017 for building 'A' and in December 2017 for building 'B' and hence, the expenses deducted from the corpus fund till December 2017 is erroneous and unauthorized.

4. There are several deficiencies in the project of the respondent such as pending works and handing over of accounts to the complainant, which were not complied despite several intimations to the respondent. There were also structural defects which were pointed out by the complainant to the respondent, namely covering of the plumbing duct, STP and soak pit, which were overflowing, etc. The complainant had sent a legal notice dated 29.07.2023 calling upon the respondent to comply with the terms and conditions of the agreement for sale, which were replied by the respondent denying the claim raised by the complainant.

5. The members of the society had to contribute towards the housing society/maintenance society, corpus and maintenance funds in equal shares. The

respondent had retained a flat no. A-302 which is unsold and being owner, it is the duty of the respondent to pay towards maintenance and corpus fund. The agreement for sale executed between the parties states that all the charges of electricity, security, water bill etc. are to be borne by the builder before the delivery of possession of the unit. The respondent failed to take steps to set up transformer to install permanent electricity meter connection, due to which the temporary electrical bills from January 2018 to August 2018 was billed at ₹2,73,238/- for 13 members, who were residing in the building at that time.

6. The respondent has been misutilising the corpus fund time and again without the consent and approval of the complainant. The respondent in the letter dated 22.05.2020 have mentioned that the corpus fund have been utilized for the formation of the society and contribution towards share and other miscellaneous expenses. The respondent has not given any proof of documentation, data, bill vouchers, etc to show how the said corpus fund has been utilized nor did the respondent take any consent of the complainant before spending the corpus fund, which belongs to the society. There was no occasion for the respondent to utilize the corpus fund as the complainant has already taken amount towards formation of society and for maintenance of the society, which is malafide and amounts to unfair trade practices. The housing society was formed on 30.11.2018 and Mr. Kamat who was the employee of the respondent was the Chairman of the society till 30.09.2019, whereas the corpus fund and the maintenance fund of the society were exhausted by March 2020 and that there was no corpus fund or maintenance fund remaining with the society. The complainant therefore is entitled for the reliefs prayed.

7. The respondent filed a reply inter-alia contending that the complainant has approached the Authority with unclean hands. No cause or reason has arisen to the complainant to file the present complaint. The complainant also has no locus standi to file the complaint nor it is in the realm of a dispute governed by

the RERA Act. The present complaint is also barred by Law of Limitation. The said project 'Raj Aguiar Enclave' was not registered before the RERA Authority having completed the project before 24.11.2017. Only purchasers of 19 units have paid corpus fund to the respondent and the rest of the 12 units have directly paid corpus fund to the complainant. The respondent were paying all outgoings including ground rent, taxes, etc. pertaining to the property up to the date of occupancy certificate of the premises and that all the expenses subsequent to the occupancy certificate shall be borne by the respective purchasers of the premises.

8. The respondent was forced to incur expenses towards maintenance of the building which included expenses towards maintenance of the building, electricity charges, water charges, AMC of lifts, housekeeping common areas, maintenance of common amenities, security and other miscellaneous expenses. The respondent used to hand over the statement of account every month to the President of the society, Mr. Amit Kamat. The complainant has no right for investigation of the accounts of the respondent. There are no deficiencies in the project, as it was the responsibility of the flat owners to maintain their respective premises. If at all, maintenance charges are pending, the same should be recovered from respective owners and therefore, the complaint be dismissed.

9. Argument heard. Notes of written arguments came to be filed by the complainant.

10. 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 to recover the corpus fund of ₹16,95,750/- (Rupees Sixteen Lakhs	In the affirmative.

	Ninety Five Thousand Seven Hundred and Fifty only) from the respondent, along with interest?	
2.	What order? What reliefs?	As per final order.

REASONS

Point no. 1 and 2

11. The complainant has prayed for the following reliefs:

(a) That this Authority be pleased to direct the respondent to refund the corpus fund amounting to ₹16,95,750/- along with interest at rate of 18%, collected by the respondent from the purchasers of the flats in the project of the respondent no. 1, M/s Raj Housing Development Pvt. Ltd. to the complainant within a period of three months.

(b) That this Authority be pleased to direct the respondent to complete the structural defects as mentioned in Para 7 of the complaint and in terms of clauses of the Agreement dated 14.11.2013 which were the responsibility of the respondent before the handing over of the building.

(c) That this Authority be pleased to direct the respondent to refund the complainant society an amount of ₹1,90,000/- towards the construction of badminton court and second soak pit as mentioned in Para 7 of the complaint;

(d) That this Authority be pleased to direct the respondent to give proof of documentation, data, bill, vouchers to show the utilization of the maintenance and corpus fees which was collected by the respondent from the purchasers of the flats in the project.

(d) That this Hon'ble Authority be pleased to direct the respondent (promoter) to register itself under the RERA Act 2016 for all purposes as far as the project, M/s Raj Housing Development Pvt. Ltd. is concerned (amended as per order dated 29.02.2024.)

12. Ld. Advocate Shri Pradosh Dangui for the complainant has submitted that the respondent at the time of sale of the flats had insisted upon collecting corpus fund from the allottees and the respondent has collected an amount of ₹16,95,750/- (Rupees Sixteen Lakhs Ninety Five Thousand Seven Hundred and Fifty only) towards corpus fund charging at the @ ₹750/- per sq. mts. for 2261 sq. mts. for 22 flats, altogether. The society was formed in the year 2018 and as such the corpus fund of ₹16,95,750/- ought to have been transferred by the respondent to the complainant society at the time of handing over of the charge, at least from the amount collected from the members of the complainant society, which has not been done and as such, the respondent be directed to remit the said amount along with interest.

13. Per contra, Ld. Advocate Shri Jonathan George for the respondent has submitted that the respondent was forced to incur expenses, which included expenses towards maintenance of the building, electricity charges, etc. and the respondent used to handover the statement of accounts every month to the President of the complainant society, Shri Amit Kamat. The complainant has no right of any nature for investigation of the accounts of the respondent as the said accounts were scrutinized by the Chartered Account, Shri G. R. S. Talauliker and Co. who have prepared the report for financial years from 2018-19 to 2022-23 which have been confirmed by the society. The complainant is therefore not entitled for any reliefs.

14. The moot question is whether the complainant society is entitled for recovery of the corpus fund contributed by its members to the builder amounting to ₹16,95,750/- (Rupees Sixteen Lakhs Ninety Five Thousand Seven Hundred and Fifty only) along with the interest from the respondent.

15. It needs no mention that Corpus fund is a dedicated pool of money established by a real estate developer for welfare of the societies and used for

meeting huge expenditure like change of diesel generator, replacement of lift and similar large expenses. The fund is typically collected from residents, often as a onetime payment or through regular contributions, alongside monthly maintenance charges and the said money is used for major repairs, renovations or upgrades to common areas and amenities within the apartment complex. *In short, a corpus fund is a reserve fund for major repairs, infrastructure upgrades, and future developments, collected from the residents and managed by the society and is often transferred to the society at the time of its formation.*

16. The Hon'ble Tamil Nadu Real Estate Appellate Tribunal (TNREAT) in the case between *M/s. Hiranandani Realtors Private Limited vs. Hiranandani Amalfi Owners Association* dated 06.03.2024 has also held that corpus fund shall be utilized towards major infrastructure in maintenance of the building and other infrastructure facilities and amenities in the said complex and the promoter shall transfer the residual amounts after deducting the expenses incurred, without any interest to the Association of apartment owners as and when formed.

17. In the instant case, the respondent has admitted in Para 3 of the reply that only purchasers of 19 units have paid corpus fund to the respondent and the rest of purchasers of 12 units have directly paid corpus fund to the complainant through the owners of the land, Mrs. Maria De Fatima Filomena De Souza Aguiar alias Mrs. Maria Fatima Aguiar and her husband, Mr. Paulo Francisco Rodrigues. The respondent has thus admitted that 19 flat owners have paid the corpus fund to the respondent. The complainant who is admittedly a society known as Raj Aguiar Enclave Co-operative Housing Society Ltd. is claiming that the respondent has collected corpus fund from 22 allottees and therefore, they are entitled to recover corpus fund charged at the @ ₹750/- per sq. mts. for 2261 sq. mts. from 22 flats owners, amounting ₹16,95,750/- (Rupees Sixteen

Lakhs Ninety Five Thousand Seven Hundred and Fifty only) altogether collected by the respondent.

18. The complainant has produced on record receipts of three allottees namely, Ms. Bhavana G. Kholkar, Mr. Shrihari Nayak and Ms. Vrinda Hede, who have also paid the corpus fund to the respondent. The complainant has produced on record a chart with sale deeds and receipt of 22 flat owners who paid corpus fund to the respondent at exhibit 1221/c along with the chart showing the flat nos., names of the allottees, area of the flat, amount paid to the respondent, which clearly shows that the 22 flat owners have paid corpus fund amounting to ₹ 16,95,750/ to the respondent. Thus, an amount of ₹16,95,750/- (Rupees Sixteen Lakhs Ninety Five Thousand Seven Hundred and Fifty only) was collected by the respondent from the members of the complainants' society towards the corpus fund and retained by the respondent.

19. It would now be useful to examine whether the respondent utilised any amount from the corpus fund and whether it is reflected in the accounts submitted by the respondent to the Chairman of the society. The documents produced on record by the respondent, namely the Auditor's Reports along with annexure by Shri G.R. S. Talaular & Co., Balance Sheets, Receipt and Payment Accounts, Income and Expenditure Accounts do not show any expenses made by the respondent from corpus fund collected by the respondent. The respondent has failed to furnish any proof of documentation, data, bills, vouchers to show as to how the corpus fund and the maintenance fund have been utilised nor did the respondent take any consent of the complainant before spending from the corpus fund, which belonged to the society and which was a reserve fund meant for major repair, renovation or upgrade to the common areas and amenities and therefore, the case of the respondent as alleged cannot be accepted having any merits.

20. The complainant had expressed dissatisfaction to the respondent about misutilization of the corpus fund through various letters dated 03.01.2019, 19.08.2019, 20.09.2019 and others. The complainant had clearly averred in the complaint as also addressed a legal notice dated 29.07.2023 to the respondent, wherein it is stated that vide letter dated 22.05.2020, the respondent had mentioned that corpus fund had been utilized for the formation of the society and contribution towards share and other miscellaneous expenses, to which the respondent vide its reply dated 26.08.2023 has claimed that the respondent has incurred expenses towards maintenance of the premises and every month statement of account was submitted to Mr. Amit Kamat, Chairman who was maintaining record and that he was fully aware about the expenses incurred by the complainant towards the maintenance of the building.

21. The respondent has thus admitted that the corpus fund has been utilised for the formation of the society and contribution towards share and other miscellaneous expenses. Discernibly, the respondent has already collected an amount of ₹5,000/- from each member of the society towards formation of society. The respondent has also collected an amount of ₹12,000/- as maintenance of the society for one year from each member of the complainant as well as an amount of ₹40,000/- towards electrical and water connection and ₹300/- per meter, at actual, towards infrastructural tax and ₹2,00,000/- towards car parking. There was therefore no occasion for the respondent to utilise the corpus fund as the complainant has already collected amount towards formation of society and contribution towards share and other miscellaneous expenses, which is malafide and amounts to unfair trade practices.

22. The respondent has thus unauthorisedly used the corpus fund without any reasons, in fact the respondent misutilised the corpus fund in complete derogation of the agreement entered between the parties nor the said amount has been transferred to the complainant after completion of the project nor any

accounts were submitted with respect to the expenditure at the time of the formation of the society, which amounts to unjust enrichment on the part of the respondent. The Hon'ble Tamil Nadu Real Estate Appellate Tribunal (TNREAT) supra, has clearly held that the promoter/builder is liable to refund the residual amounts after deducting the necessary expenses from the corpus fund to the society. The corpus fund collected by the respondent amounting to ₹16,95,750/- has been unauthorisedly retained/utilised by the respondent without any justification. The complainant is therefore entitled for refund of the said corpus fund amounting to ₹16,95,750/- with interest due from the respondent.

23. 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.”

The complainant is thus entitled for recovery of ₹16,95,750/- (Rupees Sixteen Lakhs Ninety Five Thousand Seven Hundred and Fifty only) from the respondent along with the interest @ 11.10% from the date of filing of the complaint till its recovery.

24. The complainant has also sought other reliefs namely, for directing the respondent to complete the structural defects as mentioned in Para 7 of the complaint as well as to refund to the complainant an amount of ₹1,90,000/- paid towards the construction of the badminton court and second soak pit as

mentioned in Para 7 of the complaint, as well as, to direct the respondent to register under the RERA Act, 2016 as far as project of the respondent is concerned, as per the amendment carried out on 29.02.2024 by the complainant. Nonetheless, the complainant has failed to substantiate the above case with any document. No evidence has been produced with respect to the structural defects or that the alleged defects were not attended to by the technical staff of the respondent or that the badminton court came under the pending works. There are also no pleadings that the project was not registered and that the same requires registration and therefore, the above reliefs prayed for by the complainant, cannot be granted.

25. The complainant having proved that the respondent have collected an amount of ₹16,95,750/- (Rupees Sixteen Lakhs Ninety Five Thousand Seven Hundred and Fifty only) from the members of the complainant society and has not returned the same to the complainant, at the time of formation of society, the complainant is entitled for the refund of said corpus fund of ₹16,95,750/- along with interest at the rate @ 11.10% from the date of filing of the complaint till its recovery. Hence, the above points are answered accordingly.

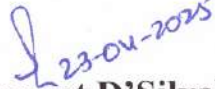
26. Having said so, I pass the following:

ORDER

- i. The respondent is directed to refund the corpus fund amounting to ₹16,95,750/- (Rupees Sixteen Lakhs Ninety Five Thousand Seven Hundred and Fifty only) to the complainant, collected by the respondent, from the purchasers of the flats, in the project of respondent, within sixty days of the order.
- ii. The respondent is also directed to pay interest @11.10% on the said sum of ₹16,95,750/- (Rupees Sixteen Lakhs Ninety Five Thousand

Seven Hundred and Fifty only) to the complainant, from the date of filing of the complaint, till its effectual recovery.

- iii. The respondent is directed to file compliance report of the order in the form of an affidavit within 60 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: 23.04.2025