



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (428)/2024/ 356

Date: 21/03/2025

BEFORE THE MEMBER SHRI VINCENT D'SILVA

Mr. Peterson Alfonso,
Son of late Piedade Alfonso
Aged about 33 years
Resident of House No. 12/26,
Gouleocotta, Cuncolim,
Salcete, Goa, 403703.

.....Complainant

Versus

- 1. Mrs. Iris Fernandes,**
Daughter of Mr. Simon Pereira,
Aged about 51 years,
Resident of Pimpollcotto, Quepem, Goa.
- 2. Mr. Stefano Fernandes,**
Son of late Mr. Alexander A. Fernandes,
Aged about 29 years,
Resident of Pimpollcotto, Quepem, Goa.
- 3. Ms. Adriana N. Fernandes,**
Daughter of late Mr. Alexander A. Fernandes,
Aged about 26 years
Resident of Pimpollcotto, Quepem, Goa.

4. **Mr. John I Monteiro**
Son of Mr. Felix Monteiro,
Aged about 45 years,
Resident of H. No. 125/B, Voddi, Cuncolim, Salcete, Goa.

5. **Mrs. Sabina Monteiro,**
Wife of Mr. John I Monteiro
Aged about 44 years,
Resident of H. No. 125/B, Voddi,
Cuncolim, Salcete, Goa.

.....Respondents

Ld. Advocate Vinoj K. Daniel for the Complainant.
Ld. Advocate Krishnakant Hegde Desai along with Ld. Adv. Nivita Costa for the
Respondent no. 1, 2 and 3.
Respondent No. 4 in person and also for Respondent no. 5.

ORDER

(Delivered on this 21st day of the month of March, 2025)

This is a 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:-

That the complainant entered into an agreement for sale registered at the
office of Sub-Registrar of Salcete at Margao, dated 25.05.2018, with Mr.
Alexander A. Fernandes and his wife, Mrs. Iris Fernandes along with Mr. John
Monteiro and his wife, Mrs. Sabina Monteiro. The said agreement was entered
towards the purchase of a flat bearing no. 102, admeasuring 92.37 square meters of
built-up area on the first floor, along with a garage in the building known as "Iris

Enclave”, to be constructed in the property bearing Survey no. 269/2 of Village Cuncolim.

3. The said flat was agreed to be purchased for a total consideration of ₹.30,00,000/- (Rupees Thirty Lakhs only), and towards the payment of the said consideration, the following payments were made by the complainant:

(a) A sum of ₹. 10,00,000/- (Rupees Ten Lakhs only) was paid via Cheque bearing no. 10008061, drawn on Union Bank of India, Sanguem Branch, dated 25.05.2018, in favour of respondent nos. 4 and 5.

(b) A sum of ₹. 14,00,000/- (Rupees Fourteen Lakhs only) was paid via RTGS having UTR No. BARB201806198170495590 dated 19.06.2018 issued from Bank of Baroda, Cuncolim Branch, in favour of respondent nos. 4 and 5.

(c) A sum of ₹. 2,00,000/- (Rupees Two Lakhs only) was paid via Cheque bearing no. 10008063, drawn in Union Bank of India, Sanguem, dated 25.05.2018, in favour of respondent nos. 4 and 5. (*respondent no. 1 and her late husband*).

(d) A sum of ₹. 2,00,000/- (Rupees Two Lakhs only) was paid via cheque no. 10008062, drawn on Union Bank of India, Sanguem, dated 25.07.2018, in favour of respondent nos. 4 and 5. (*respondent no. 1 and her late husband*).

4. The complainant made payments to respondent no. 4 and 5 at the behest of respondent no. 1 and her husband, Shri Alexander and the receipt of the said payments were duly acknowledged by said Shri Alexander and it was agreed that

the complainant shall pay the balance amount of ₹.2,00,000/- to respondent no. 1 and said Shri Alexander upon completion of civil works in the said flat and upon handing over the delivery of possession of the said flat along with occupancy in respect of the said flat.

5. It is the case of the complainant that said Shri Alexander died somewhere in the year 2020 leaving behind respondent nos. 1, 2 and 3 being wife, son and daughter respectively and are the sole legal heirs to the estate of late Mr. Alexander, as such they are necessary parties to the present complaint, similarly, respondent no. 4 and 5 are also necessary parties to the present complaint being parties to the agreement.

6. The respondent no. 1 promised the complainant to complete the civil works and obtain occupancy certificate within 06 months from the execution of the said agreement, however failed to complete the said works of the flat and also complete the construction of the said building and to obtain completion and occupancy certificates in order to deliver the possession of the said flat in favour of the complainant. The complainant made several follow-ups with said Shri Alexander during his lifetime and later with other parties to complete the said flat and obtain necessary certificates, however respondent no. 1, 2 and 3 have only made false promises and assurances towards the completion of the said building and delivery of the said flat.

7. The complainant issued a legal notice dated 14.10.2023 by a registered AD post to the respondents and by reply dated 08.11.2023, the respondent no. 1 requested the complainant to give some more time to procure the completion certificate and hand over the delivery of the said flat within 06 months or earlier. The Respondent no. 1, 2 and 3 however have utterly failed to complete the civil works of the said flat of the building and avail the necessary documents, till date. The respondent no. 1, 2 and 3 have therefore committed offences under RERA Act for non-registration of the project and also for non-delivery of the said flat despite a lapse of more than five years. The building "Iris Enclave" which is partly constructed is a commercial cum residential building having three shops and nine flats in terms of the technical clearance issued by Deputy Town Planner, Town and Country Planning Department, Margao, Goa and as such, the project fulfils the requisites to be registered under Section 3 of the RERA Act and non compliance of the same amounts to an offence under RERA Act. The complainant has availed housing loan of ₹.14,00,000/- from Bank of Baroda, Cuncolim Branch and paid a total sum of ₹.9,00,000/- as interest till date. The loss of interest and repayment of loan have occurred due to the deficiency of services committed by respondent no. 1, 2 and 3. The complainant has also suffered mental agony, financial losses and harassment from respondent no.1, 2 and 3. The complainant is therefore entitled for relief prayed.

8. The respondent no. 1, 2 and 3 have not filed any reply as vide order dated 24.11.2024, the matter was proceeded with inquiry in the absence of the said respondents in terms of Rule 6(2)(f) of the Goa Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeals etc.) Rules, 2017.

9. The respondent no. 4 and 5 have filed a reply inter-alia contending that the respondent no. 4 had taken a bank loan for an amount of ₹. 19,00,000/- from State Bank of India to purchase the said flat and the entire loan was disbursed to the husband of respondent no. 1. The respondent no. 4 has also paid to respondent no. 1 and her deceased husband an amount of ₹.5,00,000/-. A total amount of ₹.24,00,000/- was paid in respect of the said premises and the said premises were to be delivered within a period of six months from the date of the agreement dated 02.05.2015 entered between the parties. The respondent could not handover the possession and therefore, they were requested to refund the said principal amount in order to avoid litigation. The respondent no. 1 and her husband thereafter introduced the complainant to respondent no. 4 for purchase of the said premises for ₹.30,00,000/- out of which respondent no. 4 would be repaid the said amount of ₹.24,00,000/- and the balance would be paid to respondent no. 1. The said proposal was accepted and accordingly, an agreement dated 25.05.2018 was entered between the respondent no. 1, deceased husband, respondent no 4, respondent no 5

and the complainant. There is no cause of action against respondent no. 4 and 5 and as such, the complainant is not entitled for any relief against the respondent no. 4 and 5.

10. Arguments heard. Notes of written arguments came to be placed on record by respondent no. 1, 2 and 3 and respondent no. 4 and 5.

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

Sr. No.	Points for determination	Findings
1.	Whether the complainant is entitled for delivery of possession of the said flat upon availing the completion and occupancy certificates and after completing all the civil works in the said flat in terms of the agreement for sale along with delayed interest thereon as well as execution of a sale deed?	In the affirmative.
2.	Whether the respondent no. 1, 2 and 3 have committed offence under Section 3 of the RERA Act and therefore liable for punishment under Section 59 of the RERA Act.	Only respondent no. 1.



3.	What reliefs, what order?	As per final order
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REASONS

Point No. 1

12. Ld. Advocate Vinoj K. Daniel for the Complainant has submitted that the respondent no. 1 and her deceased husband had entered into an agreement for sale without possession dated 25.05.2018 for a sum of ₹. 30,00,000/- out of which, an amount of ₹. 28,00,000/- was received from the complainant for the purchase of the said premises, which was to be handed over within six months from 25.05.2018 along with occupancy certificate i.e. 25.11.2018 in terms of Clause 3, Page 18 of the Agreement. The respondent no. 1 and her deceased husband have failed to deliver the possession of the said flat upon availing the completion and occupancy certificates and after completing all the civil works in the said flat and to execute a valid sale deed in terms of the agreement for sale and therefore, the reliefs as prayed for be granted.

13. Per contra, it is claimed by respondent no. 1, 2 and 3 that the respondents are in no way connected with the present agreement and are not signatories to it. The respondents have never sold any flat or premises to the complainant. There is also no deficiency of service to the complainant. There is also no direct contract between the complainant and the respondents. The agreement had an

understanding that the clauses of force majeure would be applicable and the pandemic and the death of sole proprietor had been a crucial factor for the delay and hence, the Authority has no jurisdiction to entertain the complaint.

14. Needless to mention, the complainant, the deceased husband of respondent no.1, the respondent no. 1 as well as respondent no.4 and 5 had entered into an agreement for sale dated 25.05.2018 for sale of the flat bearing no. 102 on the first floor along with a garage bearing no. 01 in the said project "Iris Enclave" having built up area of 92.37 sq. mts. for a total consideration of ₹.30,00,000/-. All the parties to the agreement are bound by the terms of the agreement and it is well settled that the nature of the transaction is determined by the contents of the document and not by any oral submission of any part, contrary to the contents of the document. The agreement dated 25.05.2018 clearly shows that the respondent no. 1, Mrs. Iris Fernandes and her deceased husband, Mr. Alexander Fernandes were parties to the agreement for sale and that in terms of Clause 1, Page 13 the respondent no.1 and her late husband as well as the respondent n. 4 and 5 have agreed to sell the flat and the garage by payment of ₹ 24,00,000 to the respondent no. 4 and 5, which was duly paid and also paid a sum of ₹4,00,000 to the respondent no. 1 and her deceased husband and the remainder amount of ₹.2,00,000 was to be paid to respondent no. 1 at the time of completion of civil works and handing over occupancy certificate to the complainant.

15. It is apposite to reproduce the relevant clauses of the agreement dated 25.5.2018. Page 13, Clause 1 states that “the Prospective vendors/builder no-I(respondent no.1 and her husband) and Prospective builder no-II(respondent no.4 and 5) agreed to transfer their rights in the said flat and garage unto the prospective purchaser(complainant) for a total consideration of ₹. 30,00,000/-. Page 16, Clause C states ‘that the Prospective vendors/builder no-I shall handover the occupancy certificate issued by the Cuncolim Municipal Council to Prospective purchaser. Upon completion of the civil work and handing over of occupancy certificate, the prospective purchaser shall pay the remainder amount of ₹.2,00,000/- to Prospective vendor/Builder no.-I’. Page 18, Clause 3 states ‘that the Prospective Purchaser permits the Prospective vendor no. I to complete civil works detailed at Schedule-III within 6 months from today i.e. on or before 30.12.2018 and also handover occupancy certificate issued by Cuncolim Municipal Council and it is the responsibility of prospective builder no-I to handover occupancy certificate after completing all civil works detailed out in Schedule-III to the prospective purchaser within six months from today. Page 19, Clause 4 of the agreement states that ‘upon receiving total consideration, the Prospective Vendors and Builder no-I and Prospective Builder no-II shall get executed the deed of sale of the said flat and garage along with undivided portion of the said property in the name of prospective purchasers.

It is therefore evident that the civil work detailed out at Schedule-III were to be completed on or before 30.12.2018 and the occupancy certificate had to be obtained after completing all the civil works within a period of six months i.e. on or before 25.11.2018 and thereafter execute a sale deed by all the respondents in favour of the complainant.

16. It is a matter of record that the complainant issued a legal notice dated 14.10.2023 through Advocate V. K. Daniel calling upon the respondents no. 1 to 3 to complete the said flat in all respect and make the said flat in a good and habitable condition by completing all the civil works including fresh painting, availing occupancy certificate from the Cuncolim Municipal Council and payment of interest and compensation on the total consideration paid by the complainant till actual date of delivery of possession of the said flat and execution of the sale deed. The respondent no. 1 in response vide reply dated 08.11.2023 has categorically admitted that the complainant has agreed to purchase the said flat in the ongoing residential construction vide agreement dated 25.05.2018 and thereafter passing of her late husband Shri Alexander Fernandes, they have struggled to complete the construction but managed to complete most of the external work with an exception of providing occupancy certificate as other purchasers in the building are hesitant to release their funds and that they had a meeting with the purchasers and had made arrangement to complete the remainder of the project within next few

months and have it ready to be occupied by all the purchasers and that they may be given some more time during which they will try their best to procure occupancy certificate and hand over within a span of six months, if not sooner and apply for occupancy certificate.

17. The terms of the agreement for sale dated 25.05.2018 signed by respondent no.1 and her late husband Alexander, the legal notice and the reply sent by respondent no.1 dated 08.11.2023 is a clear indication of the fact that the complainant, respondent no. 1, her late husband, and respondent no. 4 and 5 have entered into an agreement for sale dated 25.05.2018 with respect to flat bearing no. 102 on the first floor along with a garage bearing no. 01 in the said project "Iris Enclave" having built up area of 92.37 sq. mts. for a total consideration of ₹. 30,00,000/- and that the said amount of ₹.28,00,000 was paid by the complainant as per the agreement with the exception of ₹.2,00,000 which is to be paid to respondent no. 1 at the time of completion of civil works and handing over occupancy certificate to the complainant. It is therefore the contentions of the respondents no. 1 to 3 that they are in no way connected with the present agreement and are not signatories to it; that they have never sold any flat or premises to the complainant; that there is no deficiency of service to the complainant; that there is no direct contract between the complainant and the respondent; that the agreement had an understanding that the clauses of force

majeure would be applicable and that the Authority has no jurisdiction, cannot be accepted having any merits.

18. It is also claimed by the respondents no. 1, 2 and 3 that there are no clauses in the agreement with regard to the liability on the legal heirs in case of death of either parties who have not been benefitted from the premises in question and that the respondent nos. 1, 2 and 3 are not obligated to fulfill monetary responsibilities stemming from the deceased's estate and are not personally liable for obligation that are related to the unique skills or expertise of the deceased and as such, the respondents do not bear any responsibilities to complete the agreement about which they have had no knowledge of or skill or expertise and in support thereof, the respondents have relied upon the case of *Vinayak Purshottam Dube Deceased vs. Jayashree Padmakar Bhat, 2024 INSC 159*.

19. The Hon'ble Apex Court in the case of *Vinayak Purshottam Dube Deceased*, supra has clearly held that the estate of the deceased becomes liable to the extent they inherit and the legal representatives must discharge their liabilities to the person who has been granted an order to recover from the estate of the deceased. Such legal representatives are liable only to the extent of the property of the deceased, which has come to their hands and/or to satisfy the decree in monetary terms. The legal representatives are however not liable to discharge the obligations which had to be discharged by the deceased party in his personal

capacity. In short, the duties or obligations which are personal in nature cannot be transmitted from a person who had to personally discharge those duties, on his demise, to his legal representatives and cannot be directed to discharge the contractual obligations of the deceased for want of privity of contract.

20. Undoubtedly, the respondent no. 1 was party to the agreement dated 25.05.2018 along with her deceased husband. The respondent no. 1 therefore is personally liable to perform the obligations contained in the said agreement. The respondent no. 1 in her reply dated 08.11.2023 in clear terms has stated that she would complete the project and hand over the unit to the respective purchasers by procuring occupancy certificate within a period of six months, if no sooner. The respondent no. 1 is therefore bound by the terms of the contract. The respondents no. 2 and 3 who are the children of deceased had no privity of contract and therefore not liable to discharge the obligations of completing the project which had to be discharged by the deceased father in his personal capacity and respondent no. 1 nor they have skill or expertise in that regard, as rightly claimed by them. Nonetheless, the respondent no. 2 and 3 who are children of deceased husband of respondent no. 1 are liable to the extent of the property of the deceased, which would come to their hands and/or to satisfy the decree in monetary terms as held in case of *Vinayak Purshottam Dube*, supra.

21. The complainant has prayed in Para 16 of the complaint for the following reliefs:

(i) To deliver the possession of the said flat upon availing the completion certificate, occupancy certificate after completing all the civil works in the said flat along with electricity and water connection.

(ii) To pay a sum of ₹.17,25,000/- (Rupees Seventeen Lakhs Twenty Five Thousand only) towards the contractual obligation agreed to be paid to the complainant due to the delay in handing over possession of the said flat.

(iii) To pay a sum of ₹. 9,00,000/- (Rupees Nine Lakhs only) towards loss of interest paid by the complainant in the repayment of the loan amounts.

(iv) To pay a sum of ₹.5,00,000/- (Rupees Five Lakhs only), towards compensation for mental agony, financial loss, loss in marital status, pain and suffering.

(v) To pay an interest @10.95% per annum on the sum of ₹. 28,00,000(Rupees Twenty Eight Lakhs only) from 01.01.2020 till the date of payment as penalty under the RERA Act.

(vi) To punish the opposite parties for offences committed under RERA.

(vii) For any other relief/s as deemed fit and proper.

(viii) For costs.

22. The prayer under Para 16(ii) is to pay a sum of ₹.17,25,000/- (Rupees Seventeen Lakhs Twenty Five Thousand only) towards the contractual obligation agreed to be paid to the complainant due to the delay in handing over possession of the said flat; (iii) To pay a sum of ₹. 28,00,000/- (Rupees Nine Lakhs only) towards loss of interest paid by the complainant in the repayment of the loan amounts and (iv) To pay a sum of ₹.5,00,000/- (Rupees Five Lakhs only), towards compensation for mental agony, financial loss, loss in marital status, pain and suffering, cannot be granted as they pertain to compensation. Needless to mention, under Section 71 of the RERA Act, compensations under Sections 12, 14, 18 and 19 of the RERA Act have 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.

23. The complainant is seeking reliefs in terms of Para 16(i) To deliver the possession of the said flat upon availing the completion certificate, occupancy certificate and after completing all the civil works in the said flat along with electricity and water connection; (v) To pay an interest @10.95% per annum on the sum of ₹. 28,000,00/- (Rupees Twenty Eight Lakhs only) from 01.01.2020 till the date of payment as penalty under the RERA Act; (vi) To punish the opposite

parties for offences committed under RERA and (vii) For any other relief/s as deemed fit and proper.

24. The Hon'ble Supreme Court in the case of *M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and Others*, 2021 SCC Online SC1044 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 *with the proviso that if the Allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*"

25. Under Section 18 of the RERA Act, 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 of every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

26. The functions and duties of the promoter have been elucidated in Section 11 of the Act. Section 11(4)(a) refers to responsibilities and obligations to the home buyers till the conveyances are executed. Section 11(4)(b) refers to obtaining completion or occupancy certificate from the relevant competent authority by the promoter and Section 11(4)(f) refers to duty of the promoter to execute a conveyance deed.

27. Needless to mention, the complainant paid a sum of ₹. 28,000,00/- as per the agreement and the remainder amount of ₹.2,00,000 was to be paid at the time of completion of civil works and handing over occupancy certificate to the complainant. The respondent no. 1 and her late husband were neither able to complete the civil works nor produced the completion or occupancy certificates before 25.11.2018 as per the agreement for sale. The respondent no. 1 and her late husband were bound to give possession of the said flat and the garage to the complainant duly completed on or before 25.11.2018 but till date, possession is neither given nor obtained necessary permissions. It is thus seen that the respondent no. 1 has failed in her obligations, responsibility and functions under the provision of the Act in completion of civil works and handing over occupancy certificate to the complainant in terms of the agreement to sale and execute a registered conveyance deed. It is thus the objections as adumbrated by the respondents no. 1, 2 and 3 for delay in delivering the possession to the complainant, will not come to the rescue of the respondents, from legal liabilities and corresponding legal rights accrued to the complainant under the RERA Act.

28. 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:-

“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 State Bank of India highest Marginal Cost of Lending Rate plus two percent i.e. (9.10 plus 2%) is 11.10% per annum.

29. It is therefore once the respondent no. 1 and her late husband have received consideration of ₹.28,00,000/- towards the purchase of the said flat and garage from the complainant and that the respondents have failed to adhere to their contractual and statutory obligation, the respondents no. 1 to 3 are duty bound to fulfill their obligations under Section 18 read with 11(4)(a)(b) and (f) of the Act and pay interest @ 11.10% per annum, to the complainant for every month of delay till execution of the sale deed i.e. from 26.11.2018 till effectual payment, having regard to Section 18 and Rule 18 of the Act, the benefit of the statutory interest goes to the complainant, who had entered into a written agreement for sale with the respondent with respect to the said flat as the respondent no. 1 and her late husband have failed to complete and were unable to give possession of the flat in accordance with the terms and conditions of sale duly completed by the date

specified in the agreement. Needless to mention, all the respondents are equally responsible to execute the sale deed in terms of Page 19, Clause 4 of the agreement referred above. Hence, the above point is answered in the affirmative.

Point no. 2 and 3

30. The complainant has claimed that the respondents have committed offences under the RERA Act for non registration of the above said project under the provisions of the Act. He has also prayed to punish the respondents for offences committed under RERA Act. There is no dispute that the respondent no. 1 and her late husband had not obtained any permission from the Authority, in fact the respondents no. 1 to 3 have not denied the averments of the complainant by way of any written statement nor produced anything of record that the project “Iris Enclave” situated at Cuncolim has any registration obtained from the Authority.

31. Section 3 of the RERA Act reads as follows:

“(1) No promoter shall advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act.”

32. The Hon’ble Apex Court in Para 33 of *M/s. Newtech Promoters and Developers Pvt. Ltd.* supra, has observed that under Chapter II of the Act 2016,

registration of real estate projects became mandatory and to make the statute applicable and to take its place under sub-section (1) of Section 3, it was made statutory that without registering the real estate project with a Real Estate Regulatory Authority established under the Act, no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner a plot, apartment or building, as the case may be in any real estate project but with the aid of proviso to Section 3(1), it was mandated that such of the projects which are ongoing on the date of commencement of the Act and more specifically the projects to which the completion certificate has not been issued, such promoters shall be under obligation to make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act. With certain exemptions being granted to such of the projects covered by sub-section (2) of Section 3 of the Act, as a consequence, all such home buyers agreements which has been executed by the parties inter-se has to abide the legislative mandate in completion of their ongoing running projects.

33. Admittedly, the respondents no.1 and her late husband have not registered with the Authority the building in which the respondents are carrying out construction in the project known a 'Iris Enclave' The respondent no. 1 has not even filed an application for registration of the project during the course of the proceedings. Needless to reiterate, if any person markets or sells plot or apartment

in an unregistered project, it contravenes provisions of Section 3 of the RERA Act. The respondent no. 1 has admittedly not registered the project, although she had ample opportunities of doing so, which the respondent no. 1 has purposely avoided, the reasons best known to her, inspite of knowing the implications of non registering the project, which attracts penalty, which may extend up to ten per cent of the estimated cost of the real estate project as determined by the Authority.

34. Be that as it may, the fact remains that the respondent no. 1 and her late husband have marketed and sold various flats to the unknown parties in an unregistered project in total derogation of Section 3 of the Act and therefore, liable for punishment for non registration under Section 3 of the Act, which is a serious lapse punishable under Section 59 of the Act. Section 59 of the Act reads thus:

“(1) If any promoter contravenes the provisions of Section 3, he shall be liable to a penalty which may extend up to ten per cent of the estimated cost of the real estate project as determined by the Authority”.

35. The failure to register the project amounts to violation or contravention of provisions of RERA Act, which is punishable under Section 59 of the Act. The respondent no. 1 is therefore liable to pay penalty under Section 59 of the RERA Act for contravening the provisions of the Act and also directing her to register the project with the Authority within 60 days of this order and in the meanwhile, not to proceed with selling or offering for sale any flats from the said project namely “Iris

Enclave” situated at Cuncolim, Salcete, Goa under Survey No. 269/2(part) till the said project is registered with the Authority. Hence, the above points are answered accordingly.

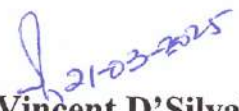
36. Having said so, I pass the following:-

ORDER

- i. The respondent no. 1 is directed to deliver the possession of flat bearing no. 102 on the first floor along with a garage bearing no. 01 in the said project “Iris Enclave” having built up area of 92.37 sq. mts to the complainant upon availing the completion and occupancy certificates and after completing all the civil works in the said flat along with electricity and water connection in terms of the agreement dated 25.05.2018, within 60 days from date of this order.
- ii. The respondents nos. 1 to 5 shall thereafter execute a sale deed in favour of the complainant after payment of the balance consideration amount of ₹.2,00,000/- (Rupees Two Lakhs only) by the complainant to the respondents nos. 1, 2 and 3 in respect of the above said flat and the garage along with undivided portion of the said property, in terms of proviso to Section 17 of the RERA Act.
- iii. The respondents nos. 1, 2 and 3 are directed to pay interest @ 11.10% per annum on the sum of ₹28,00,000/- (Rupees Twenty Eight Lakhs only) to the

complainant for every month of delay from 26.11.2018 till execution of sale deed in favour of the complainant.

- iv. The respondent no. 1 is directed to pay an amount of ₹.1,00,000/- (Rupees one Lakh only) as penalty under Section 59 of the RERA Act. The said amount shall be deposited into the bank account of the Authority, within 60 days of the passing of the order, failing which necessary proceedings will be initiated against the respondent no. 1, under the law in force.
- v. The respondent no. 1 is directed to register the project 'Iris Enclave' situated at Cuncolim, Salcete, Goa under Survey No. 269/2(part) with the Authority within 60 days of this order.
- vi. The respondents nos. 1, 2 and 3 are restrained from selling or offering for sale any flats from the project 'Iris Enclave' situated at Cuncolim, Salcete, Goa till the said project is registered with the Goa Real Estate Authority, established under the Act.


(Vincent D'Silva)
Member, Goa RERA

Panaji, Goa.
Date: 21.03.2025