



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (429)/2024/568

Date: 12/05/2025

(BEFORE THE MEMBER SHRI VINCENT D'SILVA)

1. Siddhartha Gupta,

Aged 40 years,

2. Naresh Gupta,

Aged 69 years,

R/o House no. A-5,

Maharani Bagh, Srinivaspuri,

South-Delhi, Delhi-110065.

.....Complainants

Versus

1. Mr. Suraj Morajkar,

Aged 53 years,

2. Mrs. Sanjana Suraj Morajkar,

Aged 51 years,

Both resident of H. No. 1679-A,

Saipem, Candolim,

Bardez, Goa, 403515.

..... Respondents

Ld. Advocate Harshit Goyal along with Ld. Adv. Sarvesh Kalangutkar for the complainants.

Ld. Advocate Dajvip V. Patkar for the respondents.

ORDER

(Delivered on this 12th day of the month of May, 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 complainants is as follows:-

The complainants are innocent allottees of the real estate project "Solstice" by Sun Estate Developers of the respondents, who are the promoters. The project "Solstice" is a residential complex spread over land admeasuring an area of 4140 sq. mts., comprising of apartments and penthouses having four wings with common amenities. The said project is duly registered with Goa RERA. The registered builder-buyer agreement was executed between the complainants and respondents on 11.10.2022 in respect of 6 BHK penthouse bearing unit no. D-401 on the third floor and attic floor on the fourth floor in Tower 'D' admeasuring 400 sq. mts. built-up area for a total consideration of ₹2,80,00,000/- out of which, the complainants deposited ₹2,00,00,000/- inclusive of TDS with respondent no. 1 and the balance of ₹80,00,000/- was payable by the complainants to the respondents at the time of registration of the sale deed or at the time of taking possession of the said unit.

3. The respondents as per Clause 3(c) of the agreement dated 11.10.2022 were liable to offer possession of the said unit to the allottees in writing within seven days of obtaining occupancy certificate from competent authority in respect of the said penthouse. The office of Village Panchayat, Candolim had issued an

occupancy certificate dated 10.05.2022 in respect of residential tower 'D' where the unit is situated. However, the respondents failed to issue said offer of possession letter in respect of the said unit till date, inspite of receipt of occupancy certificate dated 10.05.2022.

4. The promoters were liable to pay a penalty of ₹20,60,000/- on quarterly basis for the delayed period from 01.07.2022 to 31.06.2024 as per the schedule in terms of Clause 3(b)(ii) of the agreement dated 11.10.2022. The respondents have failed to pay penalty as mentioned in the above clause for a delay in delivering possession of the said unit to the complainants, till date and also failed to execute and register a sale deed with respect to the said unit in favour of the complainants, till date inspite of the occupancy certificate. The complainants have sent a legal notice dated 01.04.2024 to the respondents seeking possession of the said unit however, the respondents have failed to pay any heed to the same. The complainants, therefore, are entitled for the necessary reliefs.

5. The respondents filed a reply inter-alia contending that the complainants are not consumers within the meaning of the RERA Act. The remedy provided under Section 31 of the Act is available to only consumers. The complainants are not the consumers and therefore, the complaint filed at the instance of the complainants under Section 31 of the Act is not maintainable before the Authority and therefore, liable to be rejected.

6. The respondents are engaged in real estate business. In or around 2022, the respondents were having financial crunch and were looking out for persons to invest money with them and around that time, the complainants approached the respondents in June 2022 and offered to invest money with them and after discussion, it was agreed (a) The complainants would invest ₹4,00,00,000/- (Rupees Four Crores only) with the respondents for a period of two years (b) The respondents would refund the ₹4,00,00,000/- (Rupees Four Crores only) to the complainants on 30.06.2024 (c) During the investment period, the respondents would pay simple interest on the amount of ₹4,00,00,000/- (Rupees Four Crores only) calculated at the rate of 20.6% per annum (d) The agreed interest would be paid out at the end of each quarter, that is in eight quarterly installments of ₹ 20,60,000/- (Rupees Twenty Lakhs Sixty Thousand only) each to be paid to the complainants on 15.10.2022, 15.01.2023, 15.04.2023, 15.07.2023, 15.10.2023, 15.01.2024, 15.04.2024 and 15.07.2024 (e) The respondents would provide collateral security to the complainants for repayment of the amount of ₹4,00,00,000/- (Rupees Four Crores only) together with the interest.

7. The respondents had no intention of selling the penthouse to the complainants nor did the complainants have any intention of purchasing it. The complainants are not the allottees of the penthouse within the meaning of 2(d) of the Act. The respondents have paid a total amount of ₹1,23,60,000/- towards the

first six quarterly payouts on account of the interest and only the last two quarterly installments of ₹20,60,000/- payable on 15.04.2024 and 15.07.2024 remained to be paid to the complainants.

8. The agreement for sale was executed as collateral security for repayment of ₹4,00,00,000/- and therefore, the date of delivery of possession of the penthouse has no significance. The amount of ₹4,00,00,000/- was to be refunded only on 30.06.2024 and therefore, same was also not due on the date of filing the complaint. The complainants are not entitled to enforce the collateral security against the respondents. The agreement for sale, more particularly Clause 3(b)(ii) of the table therein is in fact a statement of the terms of the investment agreement which requires the respondents to pay interest to the complainants. The transaction apparent from the agreement for sale is unconscionable and therefore, required to be reopened. The complainants are not entitled for any reliefs.

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

10. 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 complainants have proved that they are entitled for possession as well as execution of the sale deed in respect of the penthouse in their favour, as also delayed penalty in terms of the Agreement for sale?	In the negative.
2.	Whether the respondents proved that the agreement for sale was merely a collateral security devised to secure repayment of loan advanced by the complainants?	In the affirmative.
3.	What reliefs, what order?	As per final order

REASONS

Point No. 1 and 2

11. The above points are taken up together as they are inter-related and would be dependent on each other.

12. Ld. Advocate Harshit Goyal for the complainants has submitted that the complainants and the respondents have entered into an agreement for sale dated 11.10.2022 and as per Clause 3(b)(ii), in case of delay in delivery of possession, the promoters were liable to pay a penalty of ₹20,60,000/- on quarterly basis from 01.07.2022 to 31.06.2024 as per the schedule. The respondents also failed to

execute and register the sale deed of the penthouse in favour of the complainants till date, inspite of receipt of occupancy certificate dated 10.05.2022. The complainants are ready to deposit the remaining amount of ₹80,00,000/- towards sale consideration payable at the time of registration of the sale deed. The complainants are well covered within the definition of the 'allottees' under the Act. The respondents have issued no objection certificate of intention to sell and therefore, the relief as prayed for be granted.

13. Per contra, Shri Ld. Advocate D. V. Patkar for the respondents has submitted that the complainants invested Rupees four crores with the respondents for a fixed period of two years, advancing a loan of the said amount. The agreement for sale was executed solely as collateral security to secure repayment of the principal amount along with the interest and not with intention to sell or transfer the said penthouse. The documents including the whatsapp chats, email and the bank statement of Goa State Co-operative Bank Ltd. clearly indicate that the said amount of Rupees four crores was to be refunded on 30.06.2024 and therefore, the same was not due on the date of filing the complaint. The respondents have also paid a total amount of ₹1,23,60,000/- as penalty towards the first six quarterly payouts. The complainants are therefore not entitled for any reliefs.

14. In view of the rival claims as stated above, it is apposite to scan whether the complainants are homebuyers/allottees in terms of Section 2(d) of the RERA Act and whether the agreement dated 11.10.2022 was executed as collateral security for repayment of the amount of Rupees four crores loaned by the complainants to the respondents and that it was nothing but a sham transaction, illegal in the eyes of law.

15. It is well settled by the Hon'ble Apex Court in the case of *Vishal Chelani and others vs. Debashis Nanda, (2023) 10 Supreme Court Cases 395*, that it is only 'homebuyers' that can approach and seek remedies under RERA and no others.

16. Needless to mention, in order to invoke the jurisdiction of the Authority under Section 31 of the Act, the parties have to prove that the transaction is purely a transaction between the homebuyers/allottees and the builders/promoters and merely because the parties have entered into an agreement for sale, would not entitle the party to approach the authority and seek remedies under the Act, if it fails to prove allottee/builder relationship. Needless to mention, RERA Act being a special statute intended to regulate genuine real estate transactions and to protect allottees in their capacity as consumers/homebuyers, cannot be invoked to enforce what is, in essence, a private financial arrangement. To permit otherwise would be to stretch the jurisdiction of the Authority beyond its legislative intent and

undermine the distinction between regulatory mechanism for real estate and the well-settled domain of civil remedies governing contractual loans and securities.

17. Admittedly, the parties have entered into an agreement for sale dated 11.10.2022. On the first blush, de hors the case of the respondents, it appears that the agreement for sale is an untainted and legitimate transaction pertaining to the sale of the penthouse, and that the complainants are innocent allottees as has been projected by the complainants, however it is not so, nor the agreement for sale is free from all taints or the one executed for sale of the unit, but it is a transaction akin to private financial arrangements, which is the domain of civil remedies governing contractual loans and securities.

18. Admittedly, Clause 3(b)(ii) of the agreement refers to payment of ₹20,60,000/- as a penalty for delay in handing over possession. Nowhere, under the RERA Act, such a penalty is imposed for delayed payment, as at the most, the parties are entitled for delayed interest. The purported 'penalty' in terms of clause 3(b)(ii) of the agreement, which is fixed quarterly payment, commencing from the quarter July-September, 2022 with the first due date as 15.10.2022 appears to be atrocious as the agreement itself was executed on 11.10.2022. It is thus inconceivable that penalty for delay would accrue prior to execution of the agreement with the identical amount across each quarter till July 2024, without any variations, as rightly submitted by Ld. Adv Shri D. V. Patkar for the respondents.

19. The fixed schedule of payouts devoid of any contingencies upon default or delay appears to be payment of interest on loan as evident from the term sheet dated 22.6.2022 attached to the email produced on record by the respondents, where the exact quarterly payout and the due date of the 15th of the month in the term sheet is broached and dusted, which reinforces the case of the respondents that the intention of the parties was not to purchase the penthouse per se, but the said agreement was executed as only a collateral security to secure repayment of the loan advanced by the complainants to the respondents and therefore, no such value can be attached to the transaction between the parties, which is merely a cloak and a devise to secure the loan advanced by the complainants and therefore, the submissions of Ld. Advocate Harshit Goyal that the registered written agreement for sale executed by the parties have to be considered and not the submission of the respondents, cannot be accepted, more particularly when, the transactions in question are, in essence a loan and the agreement for sale was secured for repayment thereon and such a transactions cannot come within the framework of the RERA Act.

20. The respondents in order to prove their case that the complainants are not 'home buyers' and that the agreement for sale dated 11.10.2022 was executed solely as collateral security to secure repayment of principal amount along with interest have produced on record the documents, namely the whatsapp chats

between the complainant no. 1, Siddharth Gupta and the CEO of the Respondent, Ankur Seth as well as the whatsapp chats between the complainant no. 1 and the respondent no. 1, Suraj Morajkar and the whatsapp chats between the complainant no. 2, Naresh Gupta and Respondent no. 1, Suraj Morajkar and e-mail dated 26.02.2022 and the Bank statement of the Goa State Cooperative Bank Ltd.

21. There is no challenge to the documents produced by the respondents or that Shri Ankur Seth is the CEO of the respondents, who actively engaged in the discussion between the complainants and respondents leading up to the execution of agreement for sale and even thereafter. A little peep into the whatsapp chats produced on record further corroborates the case of the respondents. On 20.06.2022, Shri Ankur Seth, CEO of the respondents initiated whatsapp chats followed by a phone call between Ankur Seth and Siddhartha Gupta regarding investment by Siddhartha Gupta. On the same day, a draft of term sheet was shared on whatsapp, which was prepared by Ankur Seth sent to Siddhartha Gupta for review with respect to proposal for collateral security. On 21.06.2022, Shri Siddhartha Gupta requested for an 'excel grid' showing payout structure. On the same day, Shri Ankur Seth sent the 'payout grid' as requested by Siddhartha Gupta, showing willingness to pay additional interest as requested by Siddhartha Gupta. On the same day, Siddhartha Gupta modified the 'term sheet' and the 'payout grid' and sent to Ankur Seth.

22. The whatsapp chats between Siddhartha Gupta and Ankur Seth on 22.06.2022 also show that the first modified 'term sheet' plus additional terms were discussed, in which lock-in-period, exit terms, sale/replace clauses, interest rate were negotiated to be at 20% and moratorium also discussed. On the same day, second modified term sheets were shared between Ankur Seth and Siddhartha Gupta based upon the discussions. Again, Siddhartha updated the second modified term sheet and sent it to Ankur. Further, on the same day Siddhartha formally sent updated term sheet via email to Ankur Seth. On 23.06.2022, Ankur summarized discussion with Suraj Morajkar. On the same day, Ankur sent a draft power of attorney to be executed by Suraj in favour of Siddhartha and discussion followed on phone and draft power of attorney was shared.

23. On 24.06.2022, as per the whatsapp chats, Siddhartha's KYC documents were shared and the buyers name was decided as Naresh Gupta. On the same day, Siddhartha confirmed receiving draft agreement for sale. On 27.06.2022, the Goa State Cooperative Bank Ltd. account details were shared for RTGS transfer of Rupees four crores. On the same day, Siddhartha Gupta confirms bank instructions passed for RTGS transfer. On 28.06.2022 till 01.07.2022, there was clarification sought and correction proposed regarding Villa 'E' versus Villa 'F' as there was confusion and eventually penthouse D-401 was finalized. On 8.7.2022, registry and TDS related discussion were started and as there was difficulty in paying TDS

through Co-operative Bank, a plan for MOU for recording interest, penalty and exit load was discussed as per the whatsapp chats.

24. The above parties on 22.07.2022 discussed on stamp duty and cancellation as there was practical difficulties regarding stamp duty. On 30.07.2022, issues regarding duty, registration and financial structuring were discussed. Between 01.08.2022 to 04.08.2022, decision to structure it formally as an investment with security to avoid adverse tax consequences were discussed with respect to confirmation of sale versus investment structure. The above communication is an indication of the fact that it is a loan transaction, which shows that the complainants are not innocent allottees as claimed by them. On 11.10.2022, agreement for sale was executed for penthouse D-401 as collateral security. Between the period from October, 2022 to December 2022, there were repeated whatsapp communications regarding follow-up on payouts, delay in payments, reiteration that the transaction was financial in nature. Between the period from 09.01.2023 to 01.12.2023, complainants demanded interest payouts as agreed under financial arrangements.

25. The above whatsapp chats clearly confirm that the complainants invested an amount of four crores with the respondents for a period of two years advancing a loan of the said amount to the respondents, with a condition that the respondents pay penalty at the rate of 20.6% per annum payable in eight quarterly installments,

out of which, an amount of ₹1,23,60,000/- was already paid to the complainants, indicating that it was solely a collateral security to secure repayment of the principal amount along with interest and not with intention to sell the unit. The whatsapp chats between Siddhartha Gupta and Ankur belie the claim of the complainants that the transaction was one of sale and purchase. The documents produced by the respondents including the email along with term sheet are indication of the fact that the respondents are borrowers and not sellers and that the agreement for sale was merely a collateral security devised to secure repayment of the loan advanced by the complainants, as discussed above.

26. Moreover, the whatsapp chats between the complainants and respondent no. 1 as well as Ankur Seth after the execution of the agreement, reveal that the complainants were following up for receipt of quarterly interest payout, which is not in consonance to the genuine transaction, besides the fact that, it is not in terms of Model Form of Agreement. Nowhere, a buyer of a property demands periodic penalty from the seller even prior to execution of the agreement. The said demand of periodic penalty aligns with the features of investment or loan transaction and not homebuyer-builder transaction. The payment of the penalty by the respondents even prior to the agreement cannot be termed as a sale between the party but is cloaked under the façade of the sale, as rightly pointed out by Ld. Adv Shri D. V. Patkar for the respondents.

27. Moreover, the respondents produced on record a copy of bank statement of Goa State Co-operative Bank Ltd., which reflects a receipt of amount of four crores by way of transfer from Naresh Gupta. There is no entry dated 27.06.2022 with respect to payment of ₹1,98,00,000/- in favour of respondent no. 1 as claimed by the complainants. If the transaction with regard to the penthouse is for ₹2,80,00,000/- and that the complainant paid ₹1,98,00,000/- as per page 12 of the agreement, it is not explained as to why there is no such an entry in the bank statement, except a transfer of four crores by the complainants to the respondents. The above transaction directly corroborates the contents of the whatsapp chats between the complainant no. 1 and Ankur Seth referred hereinabove, wherein the transfer of fund of four crores and the terms of financial arrangement were discussed. It is therefore the case of the complainants of the alleged payments towards the purchase of the penthouse, cannot be accepted having any merits.

28. Moreover, Clause 3(c) of the agreement for sale dated 11.10.2022 states that the respondents would deliver the possession of the penthouse to the complainants within seven days of obtaining the occupancy certificate. However, Clause 1(b) of the same agreement states that the respondents had already received occupancy certificate, which is produced by the complainants themselves dated 10.05.2022, which predates the execution of the agreement by five months. If the agreement for sale was executed after the occupancy certificate, nothing prevented

the parties to execute a sale deed as the parties have already received ₹4,00,00,000/-, out of which, the sale transaction was allegedly pertaining to ₹2,80,00,000/-. The above fact therefore does not support the complainants nor the alleged transaction can be termed as a genuine and legitimate. The said transaction clearly indicates that the agreement was not executed for a genuine sale nor the complainants can be termed as 'homebuyers' and the respondent as 'sellers' for the purposes of RERA Act

29. Ld. Adv. Shri Harshit for the complainants has submitted that the complainants are entitled for executing the registered conveyance deed under Section 11(4)(f) of the RERA Act as the complainants are well covered within the definition of the 'allottees' since the agreement was duly registered, so also, that the respondents had issued no objection certificate in favour of the complainants, in respect of the allotted unit showing intention to sell and granting permission to carry out publication in the local/national newspaper in respect of the said allotted unit inviting objections and that the complainants through their lawyer, Somnath Karpe has published on the newspapers in respect of the allotted units and that public notice in the newspaper dated 08.07.2022 and no objection certificate dated nil have been produced on record.

30. However, the documents produced by the respondents, namely whatsapp chats, emails and the bank statement overweighs the above said documents

produced by the complainants, which clearly indicate that the complainants have invested ₹4,00,00,000/- for a period of two years and the respondents would refund the same by 30.06.2024 and during the said period, the respondents would pay a penalty calculated at the rate of 20.6% per annum to be paid at the end of each quarter, namely 8 quarterly installments of ₹20,60,000/- each to be paid to the complainants, and the said facts are reflected in the documents produced by the respondents referred above and therefore, the transaction between the parties as stated above, is nothing but a collateral security for repayment of the amount of four crores along with interest.

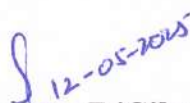
31. The appropriate forum for the complainants involving financial disputes therefore would be a civil court for recovery of the loan amount advanced to the respondents and not before this Authority. The complainants therefore have failed to prove that the transaction was a homebuyer/builder transaction under the RERA Act as held in the case of *Vishal Chelani and others*, supra. The agreement for sale, more particularly Clause 3(b)(ii) of the table therein is in fact a statement of the terms of the loan/investment agreement. The transaction apparent from the agreement for sale is unconscionable, which cannot be enforced by the complainants against the respondents, being a private financial arrangement, by filing the present proceedings. The complainants are therefore not entitled for any

reliefs. Hence, the above point (1) is answered in the negative and point (2) in the affirmative.

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

ORDER

- i. The complaint stands dismissed.
- ii. No order as to costs.


(Vincent D'Silva)
Member, Goa RERA

Panaji, Goa.
Date: 12.05.2025