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FNo: 3/RERA/Complaint(468)/2025/346 Date05/03/2026

Shakuntala Mesquita,
Color Zone Shop NO. 3,
Nuvem Enclave, Nuvem,
Salcete, Goa-403604 ..... **Complainant**

V/s

1. **K K Construction**
Shivneri, Comba,
Margao, Goa- 403601

Represented by its Partner

2. **Mr. Rosario Colaco (Deceased)**
R/o Cuptem, Nuvem,
Salcete, Goa-403604

3. **Mrs. Tejashri Naik Khavante**
R/o Shanti Nagar- Mandop,
Aquem, Baixo, Navelim,
Salcete Goa-403601 ..... **Respondents**

Ms. Shakuntala Mesquita appeared in person along with Ms. Judith Almeida.
Ld. Adv. Maria Rosette Pereira for the Respondent.

ORDER

(Delivered on this 05 th day of the month of March , 2026)

Case of the Complainant

1. The Complainant Ms. Shakuntala Mesquita filed an online complaint on 11/03/2025 stating that, she is the owner and in possession of Shop No 3 (H No. 78/A/8), in building No

Part 'A' in property existing and titled as "Nuvem Enclave", Salcete, Goa, alleging that the respondents have not registered the project and have started construction work after over 30 years causing damage to the property.

2. The construction was carried out by the respondents as per technical clearance dated 24/11/1993 and village panchayat license dated 22/12/1993 for commercial cum residential project. This approval was for a total built up area of 1756 sq. mts. The project comprised of two buildings viz. Part A and Part B. Part A comprises of 7 row houses, 6 shops and a commercial space on the first floor. While Part B is a G+2 Building commercial on ground floor Residential on first and second floor. This building has been lying vacant/unutilized till date. The commercial space on the first floor in Part A was constructed illegally only in the year 2019 and the Respondents commenced construction activities without registering the project with Real Estate Regulatory Authority.

3. That the respondent's commenced constructions of shops and flats in year 2019 on the western side in part 'A' as well as and on the first floor above the shops 1, 2 and 3. These constructions were not as per the approved plans and caused damage to the interior of the shop belonging to the Complainant which compelled her to file complaints / objections to the Village Panchayat of Nuvem, and the Town and Country Planning Department and Sr. Town Planner, (TCPD) Margao. The Complainant suffered damages to her shop after the Respondents undertook construction activities without any Technical Clearances and other permissions/

licenses from the relevant authorities. The Town and Country Planning Department conducted a Site Inspection and recorded in its noting sheet dt. 04.04.2022 "….. ***that the construction is already carried out at the site as per the Revised Plan on part 'A' building on first floor i.e. (Commercial premise).***

4. The Respondents filed a fresh proposal plan which has been approved vide Technical Clearance dt. 21.04.2022 under No. TPM/Part/NUV/ 280/5/2022/2017. Considering the fact that the fresh construction had commenced on an aging structure of almost three decades the petitioner had to suffer the consequences of sheer callousness on the part of Respondents who did not even provide a Liability Certificate from a certified Engineer/Architect.
5. That the said project is being constructed in phases and in the earlier phases of 1993 the units have been advertised and purchased. Since the Construction has now obtained fresh approvals on 21.04.2022 it is incumbent/mandatory upon the Respondents to register the new phase of the project under RERA Act 2016 under Section 3. Further as per section 14 (2) (ii) of the RERA Act the revision of the project needs the consent of at least two thirds of the allottees. The Respondents have not obtained the consent of the allottees till date.

Relief sought:

a) Direct the Respondents to Register the project under Section 3 of RERA Act 2016.

b) Initiate Criminal proceeding against the respondent for willfully violating Section 3 of The RERA Act 2016.

c) Conduct a thorough enquiry into the revised Technical Clearance and construction license and to cancel the same if it is found that it violates the Rules of The Goa Land Development and building Construction and Regulation 2010.

d) Cancellation of the revision of plans since as per section RERA Act section 14 (2) (ii) the revision of the project needs the consent of at least two thirds of the allots, however consent of the allottees has not been taken.

e) To impose penalty on the Respondent as per the laws in force.

f) If the complaint is found genuine to reimburse the fees paid by the complainant with cost.

Interim relief sought:

a) Pending final decision on the complaint the complainant seeks issue of the following interim order:

b) To restrain the respondent from selling the units or carrying out any construction activity until a thorough enquiry is conducted and necessary order passed.

6. A Notices dated 20/03/2025 was issued to the complainant for submission of requisite documents. Upon submission of the documents, a Notice dated 14/05/2025 was issued to the Respondents.

Reply of the Respondent

7. (A) The Respondent No. 1, 2 and 3. filed a reply dated 30/06/2025. Further the Respondent No. (2) Mr. Rosario Colaco expired on 07/10/2025 and was brought on records vide an application dated 15/10/2025, however the defense continued.

7.(B)The Respondents submitted that, the Real Estate (Regulation & Development) Act, 2016 is not applicable to the Shop No.3 as it was purchased by Mr. Claudius Thomas Mesquita by Deed of Sale dated 31/05/2004, Occupancy Certificate granted on 07/05/2004. Therefore, Respondents' project with respect to above complainant was completed before coming into force of the Real Estate (Regulation & Development) Act, 2016. Further the Complainant has no privity of contract with the Respondents. There is no requirement for project being registered with the Real Estate Regulatory Authority as the number of units/apartments in the real estate project does not exceed 8.

7.(C)The Respondents have denied that Complainant is the owner of Shop No.3,as payment of the trade tax is no evidence of ownership. Further the premises of Shop No.3 was transferred/sold by Respondent No.2, Rosario Colaco to Mr. Claudius T. Mesquita by Deed of Sale dated 31/05/2004 wherein Respondent 3 is a Confirming Party.

8. That the western part of the said proposed project as approved in the year 1993, was never developed/constructed and none of the premises were offered/advertised for sale.

That the said part of the land on the western side comprising of spaces on the ground floor and first floor (villas), was not constructed and will not be constructed by the Respondents. That the said part of the land (with undivided rights) was transferred somewhere in the year 1995 by the Respondents to Mr. Michael Felix Miranda and Mr. Bosco M. Miranda.

9. That the building designated as 'A', which is on the eastern part of the property, 1 unit was approved in the year 1993. That subsequently, the said unit was developed into 3 units in as much as Occupancy certificate was granted to one of such units admeasuring 138.30 sq. mtrs. on 16/08/2004 and for the second unit of 90 sq. mtrs. on 07/05/2004 and both were transferred to respective purchasers before the year 2010. Therefore, 1 unit constructed on the ground floor was available for sale since 2010 till date which is identified as 'Unit 1'.

10. That on the first floor on the said Building 'A', there are 4 units which are identified by numbers 2, 3, 4 & 5. Hence, considering 1 unit on the ground floor and 4 on the first floor of the approved plan in the year 2022, the total number of units are 5. The development of the first floor unit by the Respondent No.3 does not involve marketing, advertising or selling or new allotment.

11. That the relief at prayer clause (a) & (b) cannot be granted by this Authority under the said Act because Respondents are not amenable to the jurisdiction of the Authorities under

the said Act. The prayer clause (c) cannot be granted because there is no scope for any inquiry into revised Technical Clearance and Construction License or to cancel the same by these Authorities as this Authority has no jurisdiction for the same. Even otherwise, there is no irregularity in granting the Technical Clearance or Construction License.

12. That Sec.14(2)(ii) of the said Act is not applicable in the present case because firstly because the said act is inapplicable and secondly, the complainant has not agreed to take any apartment developed on the first floor of the said building. That the particulars about Technical Clearance Order and Construction License was admitted.

13. The Respondent denied that, the first floor of building Part A was illegally constructed in the year 2019. It is stated that the first floor was partially erected, namely, the external walls and the roof but for the internal finishing. That the Respondent No.2 commenced construction of shops and flats on western side in Part A. It is stated that only internal finishing was carried out on the first floor and the existing roof was substituted by R.C.C slab roof.

14. That the Respondent denied that the aforesaid construction was not as per approved plans. That in terms of Technical Clearance Order dated 21/04/2022, the Senior Town Planner, South Goa approved the construction of Change of the first floor as per the approved plans. That Village Panchayat of Nuvem granted Construction License bearing No.

VP/NUV/BL/2022-23/27 dated 04/10/2022 for the same. The Respondent denied that the aforesaid development caused any damage to the interior of the Shop No.3 as a result of the said development of first floor.

15. That the allegations made by complaints to different Government Departments/Authorities were entirely different from the allegation made in the present complaint though false e.g. the complaint to Village Panchayat and Town & Country Planning Department was about access to the setback of 3 mts. is without sufficient place for turning and is not having mandatory width for commercial establishment. That there is no parking space for the complex except the main road. That the construction of additional shops and flats, the operation of existing commercial shops will be hampered. The complaint to the BDO & Senior Town Planner stated that concrete slab on the first floor was without permission. That casting the slab on old construction endangers life and property of the owners. The inspection by the Town & Country Planning Department shows no illegality.

16. The Respondents denied that in view of the fresh approvals on 21/04/2022, it is mandatory to register the new phase of project under RERA under Section 3 and therefore the complainants are not entitled to any of the above interim relief and reliefs prayed.

17. That there is no breach of Regulation No.3.12 of Goa Land Development and Building Constructions Regulations, 2010 in the present case. The purpose of said Regulation is that the development of the Owner should be supervised by the Architect who has drawn the plan. That in the present case the initial development which was approved on 24/11/1993 was based on the plan drawn by Nitin Hodarkar, Architect, for which Occupancy Certificate was granted on 16/08/2004. The development proposed thereunder was of the Ground+1 structure of which Mr. Claudius T. Mesquita purchased one premises on ground floor. The first floor of the said structure was partially erected, namely, the external walls and the roof but for the internal walls. That the development of the construction of Change of first floor was approved on 21/04/2022. The plan of this development of first floor showing the changes was prepared by Architect Devdatta Borkar which is apparent from the Approved plan and which was noted by the Authorities at the time of the approval. Mr. Borkar supervised the said development. That in any case, Architect Mr. Hodarkar, who expired could never have participated in the changes on the first floor.

18. That the Complainant has otherwise obtained the Technical Clearance Order dated 21/04/2022 alongwith Ground Floor + First floor roof and parking plan, annexed to the complaint. Site Plan is in the file of the Authority. The complainant should have provided it to her Architect from the records of the Planning Authority.

19. That All the Statements to be submitted including the Area statement are in the files of Planning Authority, showing the areas and the parking layout plan is shown on the scale of 1:200, which is better for visibility in terms of the overall area of development which is conveniently shown. That the requirement of 1:500 as per the Regulation is not mandatory but merely directory inasmuch as area of development is 3275 sq. mtrs. which is marginally higher than 2000 sq. mtrs.

20. The width of the access to the street is 4 mts which is in fact more than the minimum requirement and is a 'No Parking' zone.

21. That the number of car parks shown is not erroneous and there is no prohibition on showing car parks as per the plan of the development, which is not yet undertaken.

22. That Block B is not relevant for the present case. Occupancy Certificate was granted in 1996. In any case, same has been transferred in the year 2006.

23. That there is no violation of any Building Rules, of access width shown in the Plan in the year 2022 was more than the requirement. That Commercial use is permitted on the first floor as well in view of amendment to the Regulation 6.A.3(i) because Commercial use is allowed on the upper floors.

24. That the structures indicated on the Plan of Architect Jose Carlos De Viega Gracias dated 11/07/2022 and marked under No.3 & 4 were not existing with such dimensions in the year 1993 but it was one composite structure shown as "existing structure" with the stated dimensions in the approved Plan. That space for parking for 13 vehicles was accordingly available at the relevant time. That subsequently the occupants of the structures modified it into two separate structures beyond the area originally occupied by the single structure. This fact of alteration of structures when came to the notice of the Respondent' No.2, complaint vide letter dated October 2007 to the Village Panchayat of Nuvem was made to know whether permissions have been granted for the alterations/modifications. The Village Panchayat informed vide communication dated 10/10/2007 that no permissions have been granted. Hence, these structures are illegal and unauthorized and need not be shown in the Building Plans,

25. That in the circumstances there is any misrepresentation in the Plans of the year 1993 as well as the year 2022. There is no fraud. The allegations have been made without any basis in verifying the facts and are therefore denied. There is no irregularity in the approved Plans referred at para 3(a), (b) & (c) as alleged in the observations therein.

Rejoinder and Written arguments by the Complainant

26. Further the Complainant filed a rejoinder to the above reply of the Respondent dated 30/06/2025 and Written arguments

dated 18/8/205 and all statements made by the Respondents in their Reply dt 30.06.3035 were denied as follows:-.

That the Technical Clearance Order dt. 21.04.2022 is issued in the name of M/s K. K. Constructions in the same property and the same building 'A' where the Complainant is an allottee as per Section 2 (d) of the Goa Real Estate (Regulation and Development) Act 2016. The Respondents. are the promoters as per Section 2 (zk) of the Goa RERA 2016 and is responsible towards the allottees.

27. Further the project is considered as a single Stand-alone real estate project under Section 3 (1) (2 a, b, c) and as in 'Explanation', even though the development is phased presently of the portion of the allottee and the portion in the Revised proposed plan.

28. That the 07 villas marked as 'A To G' in respondent's reply stating " was not constructed and will not be constructed....." was objected as proof for withdrawal of the Construction license has not been produced which implies that the construction license is still effective.

29. That the Respondent's reply that the land was transferred in 1995 by the Respondents to certain persons Mr/ Michael Felix Miranda and Mr. Bosco M. Miranda. However as the TCO dt. 21.04.2022 stands in the name of R1 the Resps. would have filed an ownership affidavit notarized on oath as

per Appendix B4, Regulation 3.2 D(b) of the Goa Land Development and Building Construction Regulation, 2010 (referred to as GLDBCR 2010 from hereon) When the Respondents. have sworn on oath regarding their ownership under this project under GLDBCR 2010, this suggests evasion of responsibilities under the title Promoter which applies to the regulations under Goa RERA 2016.

30. That no clarity of the ownership of the project is provided by the Respondents however Technical Clearance Order, dated 21/04/2022, shows that the Respondents. should be treated as a promoter and Promoter as per Section 2(zk) & in the Explanation.

31. The Respondents. attempt to fragment Building 'A' into parts of building A as eastern and western part has no relevance to the Goa RERA 2016 and the whole project is to be constructed as a single standalone project including the Complainants allotted Shop No 3 on the Ground Floor in the premises. The fragmentation of the project suggested by the Resps. in their reply is just another ploy to misguide the Authority to consider fragmentation of this project suggesting 7 villas transferred to Mr/ Michael Felix Miranda and Mr. Bosco M. Miranda. It is argued that Goa RERA 2016 strictly prohibits fragmentation and phasing of a construction project as per Section 3 in the 'Explanation'.

32. It is clear that the construction plan of the Ground floor of the project is a single standalone one and is approved in an

undivided property presently comprising of Building 'A', building 'B' totally consisting of 12 units (comprising of 3 shops and unit 1 totalling (ground floor units 2,3,4,5 totalling 4 units on the first floor.

33. As per Rejoinder dt. 21.07.2025 inadvertently the 05 units on the first floor were missed out to be mentioned which takes the total number of units in building A to 17.

34. That the illegal construction works on 1st Floor undertaken by the Promoter on the RCC slab of shop No 3 which is almost 30 years old structure is a huge risk of structural safety and damages thereby endangering the lives and property of the Complainant.

35. Further the Respondents. want to abdicate themselves of the responsibility cast on them as promoters in the said Goa RERA 2016 by suggesting that the Complainant is not covered as an allottee under the Goa RERA 2016. It is also highlighted that Promoters attempted illegal construction of the project which is established by the Town and Country Planning (TCP hereon) Inspection Report on noting sheet dt. 04.04.2022 which is proof that illegal works without any structural liability responsible Engineer on record and approvals by the TCP and Village Panchayat of Nuvem (referred as VPN from hereon) license which were only granted after 21.04.2022. The said noting sheet dt. 04.04.2022 states ".....it is noticed that the construction is

already carried out at site as per Revised plan on part 'A' bldg. on first floor .....".

36. That Multiple complaints are on record regarding rights of the Complainant affected involving the common areas of the project like rights of access, setbacks and parking regarding which the Promoter has approved this proposed project with incomplete wrong and non uniform information as observed by Architect Jose Carlos Da Viega Gracias in his report dt 22.10.2023.

37. With regards to missing information of this project the records of the TCP department where the Site Plan has been denied under the Right To Information Act 2005 is proof of incomplete information accessible to the allottee regarding her common rights in the undivided property and which would have been available to allottees in a transparent manner if the project was registered on the Goa RERA website. undivided property and which would have been available to allottee in a transparent manner if the project was registered on the Goa RERA website.

Written Arguments by the Respondent

38. The Respondent filed their Written arguments on 24/08/2025 and reiterated that Respondents' project as far as the premises referred to above, was completed before coming into force of the Real Estate (Regulation & Development) Act, 2016. Further, the premises purchased by the Purchaser, Claudius T. Mesquita, was ready and completed. As such,

there was no scope of application of Sec. 14 of the said Act, in as much as there was "no real estate project" being under development in relation to the original purchaser. It is submitted that therefore, the original Purchaser could not be considered as "allottee" under the aforesaid Act. The Respondents relied upon the judgment of the Hon'ble Supreme Court reported in (2021) 18 SCC 1, Newtech Promoters and Developers Private Ltd. V/s. State of Uttar Pradesh & Ors. which holds that projects already completed or to which completion certificate has been granted are not under the fold of the scheme of RERA and therefore, vested or accrued rights, if any, in no manner are affected. Further the Complainant has no locus and there is no privity of contract with the Respondents.

39. The Respondents reiterated that, as the number of units does not exceed 8, there is no requirement for the project being registered with the Real Estate Regulatory Authority as the same does not fall within the purview of the said Act.

40. The Complainant in the rejoinder has stated that the number of units in the said project is 12 in number without any proof whatsoever and therefore cannot be accepted .For the reasons stated above, the relief at prayer clause (A) & (B) cannot be granted by this Authority under the said Act because Respondents are not amenable to the jurisdiction of the Authorities under the said Act.

41. The Respondents state that development of the first floor unit by the Respondent No.3 does not involve marketing, advertising or selling or new allotment. The complainant has failed to show any proof of the same.

42. That there is no scope for any inquiry into revised Technical Clearance and Construction License or to cancel the same by Goa RERA as the Authority has no jurisdiction for the same. Even otherwise, there is no irregularity in granting the Technical Clearance or Construction License.

43. That in terms of Technical Clearance Order dated 21/04/2022, the Senior Town Planner, South Goa approved the construction of Change of the first floor from residential to commercial as per the approved plans. That Village Panchayat of Nuvem granted Construction License bearing No. VP/NUV/BL/2022-23/27 dated 04/10/2022 for the same.Sec.14(2)(ii) of the said Act is not applicable in the present case because firstly because the said act is inapplicable and secondly, the complainant has not agreed to take any apartment developed on the first floor of the said building.

44. That the allegations made by Complainants to Village Panchayat and Town & Country Planning Department was about access to the setback of 3 mts. is without sufficient place for turning and is not having mandatory width for commercial establishment. That there is no parking space for the complex except the main road. That the construction of

additional shops and flats, the operation of existing commercial shops will be hampered. The complaint dated to the BDO' & Senior Town Planner stated that concrete slab on the first floor was without permission. That casting the slab on old construction endangers life and property of the owners. These Respondents further add and state that the allegations made in these complaints are entirely false, frivolous and unsupported by any documentary evidence.

45. The inspection by the Town & Country Planning Department also supports the case of the Respondents that there is no illegality as is apparent from the report/noting sheet.

46. With reference to observations in the Inspection report dated 22/10/2023 of Architect Jose Carlos de Viega Gracias referred to at para 5 of Supplementary submissions to affidavit dated 30/04/2025 of the Complainant.

47. There is no breach of Regulation No.3.12 of Goa Land Development and Building Constructions Regulations, 2010 in the present case. The purpose of said Regulation is that the development of the Owner should be supervised by the Architect who has drawn the plan. That in the present case the initial development which was approved on 24/11/1993 was based on the plan drawn by Nitin Hodarkar, Architect, for which Occupancy Certificate was granted on 16/08/2004. The development proposed thereunder was of the Ground+1 structure of which Mr. Claudius T. Mesquita purchased one

premise on ground floor. The first floor of the said structure was partially erected, namely, the external walls and the roof but for the internal walls.

48. The development of the construction of Change of first floor was approved on 21/04/2022. The plan of this development of first floor showing the changes was prepared by Architect Devdatta Borkar (in view of that) which is apparent from the Approved plan and which was noted by the Authorities at the time of the approval. Mr. Borkar supervised the said development. That in any case, Architect Mr. Hodarkar, who expired could never have participated in the changes on the first floor.

49. The Complainant has otherwise obtained the Technical Clearance Order dated 21/04/2022 alongwith Ground Floor + First floor roof and parking plan, annexed to the complaint. The Site Plan is also in the file of the said Planning Authority. The complainant should have provided it to her Architect from the records of the Planning Authority.

50. That Regulation .3.2C1(d) the parking layout plan is shown on the scale of 1:200, which is better for visibility in terms of the overall area of development which is conveniently shown. That the requirement of 1:500 as per the Regulation is not mandatory but merely directory inasmuch as area of development is 3275 sq. mtrs. which is marginally higher than 2000 sq mtrs.

51. The width of the access to the street is 4 mts which is in fact more than the minimum requirement and is a 'No Parking' zone.

52. Number of car parks shown is not erroneous and there is no prohibition on showing car parks as per the plan of the development, which is not yet undertaken.

53. Block B is not relevant for the present case. Its Occupancy Certificate was granted in 1996. In any case, as already stated by these Respondents, the same has been transferred in the year 2006.

54. There is no violation of any Building Rules. The width of access shown in the Plan in the year 2022 of 5.5 mts. was more than the requirement.

55. Commercial use is permitted on the first floor because Commercial use is allowed on the upper floors as well in view of amendment to the Regulation 6.A.3.1(i).

56. The structures indicated on the Plan of Architect Jose Carlos De Viega Gracias dated 11/07/2022 and marked under No.3 & 4 were not existing with such dimensions in the year 1993 but it was one composite structure shown as "existing structure" with the stated dimensions in the approved Plan. That space for parking for 13 vehicles was accordingly available at the relevant time. That subsequently the occupants of the structures modified it into two separate

structures beyond the area originally occupied by the single structure. This fact of alteration of structures when came to the notice of the Respondent No.2, complaint vide letter dated October 2007 to the Village Panchayat of Nuvem was made to know whether permissions have been granted for the alterations/modifications. The Village Panchayat informed vide communication dated 10/10/2007 that no permissions have been granted. Hence, these structures are illegal and unauthorised and need not be shown in the Building Plans.

57. It is denied that in the circumstances there is any misrepresentation in the Plans of the year 1993 as well as the year 2022. There is no fraud. The allegations have been made without any basis in verifying the facts and are therefore denied. There is no irregularity in the approved Plans.

Complainant's counter arguments to the written arguments

58. Further the complainant filed their counter arguments to Written arguments of the Respondent That there is no criteria of the timeline mentioned in para 3 attached with the definition of 'allottee'. Moreover, the Judgment produced by the Respondents "Hon'ble Supreme Court reported in (2021) 18 SCC 1, Newtech Promoters and Developers Pvt. Ltd. V/s State of Uttar Pradesh & Ors." has not been provided to this Complainant even after reminder for the same before the court. In absence of which the claimed rights are affected.

59. The above-mentioned Judgment perused through self-access "From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the Ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016"

60. In the instant case the complainant is very much within the definition of 'allottee' and the Respondents are in violation of RERA 2016 for not registering the project when clearly it fits within the definition of ongoing projects. Hence as per the above-mentioned Supreme Court Judgment it is clear that the RERA 2016 will apply to the Respondents project and therefore my rights as 'allottee' gets protected retroactively.

61. The total units are 21 as clear from approved plans of Ground floor and first floor and the Technical Clearance granted. From the above table it is clear that of the 21 units, 4 units in building 'A' and 5 units in building 'B' were completed i.e. a total of 9 units were completed earlier by the Promoter (R1) and presently 12 units in Building 'A' were proposed in the name of the same Promoter in the Order dt. 21.04.2022. Notwithstanding the present Technical Clearance Order dt. 21.04.2022. claim of the Respondents in

their Reply dt. 30.06.2025 that part of the land consisting of 7 villas i.e. 'A, B, C, D, E, F, and G "was not constructed" by the Respondent and that the undivided rights were transferred in the year 1995 even then the total no of units in Building 'A' will be 4 ground floor existing, 1 Ground + 2 = 5 units (Existing). The Total units in the remaining undivided plot amounts to 14 units within the jurisdiction of Section 3 (2) (a).

62. In addition to the above it is also argued that Section 3 (2) (a) also mentions that the area of the land not exceeding 500 meters does not require RERA registration whilst the present case is of the plot of area 3,275 sq. m. as per approved plan on Page 45. Hence, for both the criteria under Section 3 (2) (a) are fulfilled for the project to be considered under the purview of RERA 2016 and any marketing, selling or new allotments has to be as per RERA 2016 jurisdiction.

63. That there is no proof about the transfer of undivided Rights in 1995 to Michael Miranda and Bosco Miranda in conflict with his ownership affidavit filed with the Town & Country Planning Department office dt. 28.05.2021 further the Complainant should be allowed opportunity to submit say on the said documents if produced. The Complainant has obtained the affidavit dt. 28.05.2021 under the Right to information Act 2005 which is annexed as *Exhibit 1*as proof that this present Respondent has claimed to be the Promoter of the full project constituting plot area of 3,275 sqm comprising of 21 units as stated above including all the

phases and all buildings within the plot. Further the Complainant faced damages of life and property due to the illegal construction works undertaken by the Respondent who is the promoter and only after the said complain the Respondent submitted the project for approval with the Town & Country Planning Department. All regulations regarding the Goa Land Development Building Construction Regulation 2010 and Goa RERA 2016 will be revealed if the Prayer 'C' regarding inquiry is undertaken.

64. That as per Section 3 (2) (a) the Regulation of Real Estate projects applies to all ongoing projects as per criteria (i) plot area exceeds 500sqm OR (ii) No of apartments exceeding 8 units inclusive of all phases, which is the case of Building 'B' which belongs to the same promoter same project but executed at an earlier stage which may be considered as earlier phase but gets accounted retroactively for the current stage of this projects ongoing status, hence relevant to Building 'B' where occupancy was issued in 1996.

65. Besides as stated in the Complainants submission dt. 15.09.2025 at para 3 the Sale Deed dt. 05.07.2005 between the promoter (R1) and Michael Miranda & Bosco Miranda obtained reveals that the Promoter (R1) herein has stated that an alleged Building 'C' proposed in an area of 1,170 sq. m. has been transferred to Michael Miranda & Bosco Miranda, however, the plan annexed as Exhibit 2 attached to the Sale Deed on page 18 shows an alleged Building 'C' disconnected with Building 'A' in 2005 has now got

connected with building 'A' and therefore does not comprise of a separate Building 'C' as on date the approved plan by TCPD annexed on page 45 has been labeled at Building 'A' only and there is now no Building 'C' in the said plot. Therefore, the claimed Sale Deed dt. 1995 by the Resp. 1 is strictly required to be produced for comparison with the status above.

Points for determination

66) The points for determination along with the reasons and findings thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the Respondents are liable to Register the project " Nuvem Enclave" under Section 3 of RERA Act 2016. And can Goa RERA Authority impose penalty for non registration.	In the negative
2.	Whether the Goa RERA Authority can Initiate Criminal proceeding against the respondent for willfully violating Section 3 of The RERA Act 2016.	In the negative
3.	Can Goa RERA Authority conduct a thorough enquiry into the revised Technical Clearance and construction license and to cancel the same if it is found that it violates the Rules of The Goa Land Development and building Construction	In the negative

	and Regulation 2010.	
4.	Whether the Goa RERA Authority cancel the revision of plans since as per section RERA Act section 14 (2) (ii) the revision of the project needs the consent of at least two thirds of the allots, however consent of the allottees has not been taken.	In the negative
5.	Is the Respondent liable to reimburse the fees paid by the complainant with cost.	In the negative
6.	Can Goa RERA Authority restrain the respondent from selling the units or carrying out any construction activity until a thorough enquiry is conducted and necessary order passed.	In the negative

67) **Issue 1 and Issue 2:-**

1) **Whether the said project "Nuvem Enclave" is registrable under Section 3 of Real Estate (Regulation and Development) Act 2016?**
2) **Whether Goa RERA can initiate Criminal proceeding against the respondent for willfully violating Section 3 of The RERA Act 2106.**

68) The case of the complainant can be broadly divided into two distinct axis of arguments, viz.

A) Why this is a case of on-going project and thus requiring mandatory registration.

a) That the location of the unit though constructed in & occupied since 1996, yet should be considered as a part of alleged " new permissions" taken by Respondent No. 1, 2 &3 in 2019, 2022;

which squarely makes it an "ongoing project " under Section 3 RERA Act, thus requiring:-

(i) Registration under RERA

(ii) Promoter requiring permission of the 2/3rd allottees before embarking a fresh construction.

b) The Complainant musters evidences to this effect through documentation in Village Panchayat, TCP , TC etc. and from the ongoing construction activity on the ground which reflects that so called "A" and "B" & "C" are one project, deliberately being obstructed by the promoter as 3 distinct projects entities to RERA . Thus, damage to previous structures (as that of the Complainant), loss of parking spaces, etc., are led as evidence. The documents dating post RERA enactment, in which the Respondent 1, 3 and 3 are still shown/mentioned as owners are relied upon.

c) All statutory permissions from the various department have been obtained by fraud / suppression of facts and therefore must be denied by RERA. And the authority to do this, flows from 'A" above i.e. in as much as it is registrable project, once that finding is rendered, the same fraudulent documentation would be submitted by the promoter to obtain their mandatory registration as an ongoing project.

69) The core defense of the Respondent is centered on the time legacy ie from 1996 to 2006 , the conclusive delivery of possession at different points of time during Pre-RERA circumstance, the legal imperative to view each Occupancy certificate/ Completion certificate as a completed phase and, when viewed so, at no point of time does the project is rendered registerable as an ongoing project when RERA was enacted.

70) The Respondent was directed to file a chart & clearly legible copy of document to explain / establish their version of sequence of events which total up to support his defense (see Roznama dated 11/11/2025 & 05/12/2025).

71) From the documents filed on 28/11/2025 and 08/01/2026, the following was presented by the Respondent :

A) Original/Initial approval document given by Respondent dated 24/11/1993 (undisputed).

(i) This documents clearly reveals three portion of the entire property i.e. A, B & C.

Portion A – Ground Floor

(ii) The documents shows, with respect to "A", that it had two floors.

(iii) That GF had 5 units.

(iv) Of which 3 (including that of complainant), was sold(undisputed).

(v) A part Occupancy was obtained for these three units on 26/03/2004(copy on record & undisputed).

(vi) 1 more unit was sold & its Occupancy was received on 03/08/2024.

(vii) 1 unit remains unsold till date.

Portion A- First Floor

(viii) First Floor has six units

(ix) Of which 3 residential & 1 commercial were sold in 2022. Occupancy of same obtained on 31/12/2025.

Portion B

(i) This as per plan of 26/11/1993 had basement , GF,FF, SF and a total of 5 units.

(ii) All were sold and occupancy was obtained on 15/02/1996 (undisputed)

Portion C

(i) Plan approval for 7 villas taken on 24/11/1993.

(ii) Unconstructed and un divided share were finally sold to Mr Bosco and Michael Miranda on 20/06/2005. (Sale Deed on record).

(iii) Till date no construction has commenced.

72) The **Respondent** accordingly concludes that :

(i)That, with respect to Portion A (Both Ground Floor & First Floor) after Sale and part Occupancy certificate of 26/03/2004 even if remaining portion is seen as "unsold" & "awaiting Completion certificate" as on 2017, the number of units does not add upto the threshold of registration requirement i.e. more than 8 units.

(ii) That sale, delivery of possession & occupancy certificate completed until 2004 along with two other units, necessarily falls under the statutory prohibition of " Occupancy certificate granted" & thus could be counted for determination of "ongoing project".

(iii) That potion "B" all got sold and Occupancy certificate given on 15/02/1996 and thus goes outside the consideration of calculating its registrability as an ongoing project.

(iv) That portion "C" being sold, in its entirety to the Mirandas and as no construction having commenced and its plan of 24/11/1993 shows only 7 villas approved, in any case, gets segregated from any determination.

73)The **Complainant** on 06/10/2025 concluded his contentions as follows:-

(i)That the Technical Clearance Order Approval of 21/04/2022 the documents approved reflected the "full plan" including 7 villas and makes the land/plot as Portion A &B only, further is continuous and reflects shared common spaces. All in all this makes it case of more than 8 units and more than 500 sq. mts. as on 2017, thus requiring registration as an ongoing project.

74) The **Respondents final response** being that , the sale of Portion "C" with approved 7 villas, were concluded via registered Sale Deed of 2005. No construction has commenced .No sale or

advertisement for sale is evident. The Mirandas have not been arrayed as Respondents all support a series of facts, spread over 43 years, which is incapable of being strung together to make it as an " ongoing project".

Assessment/Findings with respect to Issue (1) & (2)

75) (A)The defense raised by the Respondent is persuasive on facts and in law. The statutory scheme for determining an "ongoing project" and if it is a "registrable" project, embeds within its calculus, exclusion of projects or phases thereof, for which the completion certificate has been issued. As part occupancy certificate is legal and, as in this case, they are accompanied by undisputed grant of possession (and actual occupation since 1996) the defense narration of sequence of facts (as at para 71 above) by the Respondent, holds ground. That finding on facts, which represent active ground reality of 43 years, cannot be set aside by indirect inferences from title of documents being submitted for continued construction in other parts, as the complainant has attempted. Further, the respondent at Para 43 to 57 (above) have explained/and countered the alleged discrepancies in documents (asserted by the complainant at 2,3 and 5 above). The statutory mandate to exclude the Occupancy Certificate covered area /units is clear and sharp. To interpret it otherwise and to grant the status of an "allottee" to the Complainant, in the facts of the case, would amount to expanding the defined boundaries of "on going" projects, beyond envisaged by RERA provisions. The fact of the Occupancy Certificates and the sale represents events, contemporary to the point of time they were created and that

being well before RERA was enacted, it rules out a conspiracy or use of vexatious documentation to avoid RERA, as alleged by the complainant.

75(B)Thus, while the dislocation/discomfort of ongoing construction may be a reality for the complainant , yet the remedy of which is to be found in other jurisdictions such as consumer/civil/criminal laws which may have different threshold of assuming cognizance.

75(C)Accordingly, issues (1) and (2) are ruled as negative.

76) **Issue 3 and Issue 4:**

1) **Whether the Authority has power to conduct an enquiry into the revised Technical Clearance and Construction license and to cancel the same if it is found that it violates the Rules of The Goa Land Development and building Construction and Regulation 2010.**
2) **Whether the Authority can cancel the Revision of plans since as per section RERA Act section 14 (2) (ii) the revision of the project needs the consent of at least two thirds of the allots, however consent of the allottees has not been taken.**

77) The Technical Clearance, Construction license and Revision plans are issued by the respective statutory/competent Authorities and not issued/approved by Goa RERA. As such these reliefs sought, do not come within the purview of the Real Estate (Regulation and Development) Act, 2016. The prayer cannot be granted because there is no scope for any inquiry into revised Technical Clearance and Construction

License or to cancel the same by RERA and, relief if any, on these can only be directed to the respective statutory Authorities, and RERA court has no jurisdiction for the same. The complainant has to pursue these reliefs from the respective forums or civil courts.

78) **Issue 5:**

Whether the complaint is found genuine to reimburse the fees paid by the complainant with cost.

79) In view of the decision/finding with respect to issue (1) &(2), this does not arise.

80) **Issue 6)**

Can Goa RERA Authority restrain the respondent from selling the units or carrying out any construction activity until a thorough enquiry is conducted and necessary order passed.

81) In view of the decision/finding With respect to issue (1) & (4), this does not arise.

Order

In view of the above and considering that all points for determination are negative the said Complaint is dismissed.

Dharmendra Sharma, IAS(Retd)
Chairperson, Goa RERA.