

**REAL ESTATE REGULATORY AUTHORITY, ASSAM**  
**JAWAHAR NAGAR, NH-37, GUWAHATI-781022**  
Email id :[info@reraassam.org.in](mailto:info@reraassam.org.in), PhoneNo. 0361-2962598

Present : Shri B.K.Chetri, AJS (Rtd.),  
Member, RERA, Assam

Case No : RERA/ASSAM/COM/2023/43

Name of the Complainants : 1.Shri Dinesh Ch. Deka  
2. Smti. Hiran Deka

Name of the Respondent No.1 : M/s Vivek Developers

Name of the Respondent No.2 : Shri Saumik Sengupta

For the complainant : Mr. Mofidul Alom.

For the respondent No.1 : None.

For the respondent No.2 : In person

Date of hearing : 17.03.2026

Date of judgement & order : 31.03.2026

**ORDER**

1. This complaints has been filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 by Shri Dinesh Chandra Deka and his wife Smti Hiran Deka against the respondents for not giving possession of a flat being flat no. 102 measuring 825 sq. ft. with one car parking being constructed upon a plot of land measuring 1katha 5 Lecha covered by Dag No. 1206 of Patta no. 2282 of revenue village Sarania part 1 under Mouza Ulubari, Guwahati in the district of Kamrup (Metro) Assam.

2. The respondent no. 1 is Vivek Developers represented by its proprietor Shri Bibhash Biswas and respondent no. 2 Shri Saumik Sengupta is the land lord.

3. As per the agreement 03.05.2017, the project to be completed within 12 months of the agreement for sale. The sale consideration was Rs. 30 Lakhs paid Rs. 2,50,000/- to the respondent no. 1, at the time of agreement in addition to Rs. 50,000/- paid on 26.04.2017, as booking amount. After the agreement, the complainant applied for a housing loan from SBI and after the

loan of Rs. 14 Lakhs was sanctioned, the same was paid to the respondent no. 1.

4. It is also mentioned in the complaint that in the month of January 2023, the complainants came to know that without completing the project, the respondent fled away and become untraceable; that when the complainant went to the project site it was found to be almost completed and when the complainant tried to take possession of the flat, the respondent no. 2 (land lord) did not allow the complainant to take possession and threatened from taking possession; that the complainant invested his entire earning in the said project and paying the EMI to the bank.

5. The prayer are as follows:

(a) Direction to the Respondent No. 1 to complete the finishing work and execute the final Sale Deed in favour of the complainant.

(b) Direction to the respondent no. 2 to allow to the complainant to take the possession of the flat.

(c) Direction to the respondent no. 2 to not to obstruct the complaints to take the possession of the flat.

(d) The interim prayer is to restrain the respondent from selling, mortgaging or disposing the flat in any manner.

6. Documents enclosed with the complaint petition are as follows:

(a) Development agreement

(b) Irrevocable Power of Attorney

(c) Agreement for sale

(d) Rectification deed

(e) Money receipt

(f) Bank Statement

7. The notice issued to the respondent no. 1 could not be furnished. From the record it is seen that as per order dated: 13.08.2024, notice to respondent no. 1 was published on 11.07.2024 in Dainik Asom and Northeast Time in terms of the order dated: 15.05.2024.

8. As the respondent no. 1 remain absent and did not context the case, vide order dated: 9.06.2025 it was ordered that the case shall proceed in absence of respondent no. 1 in terms of Rule 36 (h) of Assam Real Estate (Regulation and Development) Rules, 2017.

9. The respondent no. 2, the landlord has filed his written statement, stating interalia that he has filed a civil suit being case no. 198/2020 as same pending for disposal; that he had inform the complainant that the building has been completed by him and the complainant has no right to take possession of the said flat; that the respondent no. 2 himself suffers a lot for the act of the respondent no. 1; that the complainant has never entered into any agreement for sale of the flat with respondent no. 2, so the complainant has no right over the said flat to take possession.

10. The respondent no. 2 in his written statement also stated that the respondent no. 1 approached him for development of the said land and accordingly entered into a registered deed no. 371/2015 dated: 12.01.2015 and also execute an irrevocable power of attorney on the same day; that the respondent constructed the roofs of the proposed G+2 building till 19.09.2017 and thereafter suddenly disappeared; that on 25.10.2017 when the respondent no. 2 objected the respondent no. 1 over use of improper quality of materials and try to stop the work some unknown person came there to attach the respondent no. 2 and somehow he managed to escape and lodged an FIR being Chandmari police station case no. 929/2017; that for stoppage of the work for almost 3 years with only 3 roofs of the building constructed, the respondent no. 2 decided not to permit the respondent no. 1 to construct the

building and cancel the Development Agreement; that after some days the respondent no. 1 came to the site to forcefully start the construction; that for the act of the respondent no. 1, respondent no. 2 suffers huge financial loss and hardship.

11. The copy of the plaint T.S. no. 198/2020, Development Agreement, Power of Attorney, Copy of FIR, show cause notice by respondent no. 1 to 2 to respondent no. 2, photo of place of stay of respondent no. 2 and photo of the under constructed G+2 are annexed as Annexure 1, Annexure 2, Annexure 3, Annexure 4, Annexure 5, Annexure 6 and Annexure 7 respectively.

12. During the course of proceedings, site inspection was ordered vide order dated: 6.11.2024 and accordingly Town Planner, RERA visited the site on 26.11.2024 and his findings are as follows:

G+2 building in condition as follows:

Floor	Approved	Constructed
Ground Floor	1 Unit	4 Rental Units (Single Room)
First Floor	2 Units	1 Unit (Landowner)
Second Floor	2 Units	1 unit (Akshay Kr. Kalita + 2 rental unit (single room))

As per the approved drawing, 5 dwelling units are proposed as follows:

Ground floor – 1 unit

First Floor – 2 units

Second Floor – 2 units

Out of 5 units, 1 unit at the first floor and 1 unit at the second floor is captured by land lord (Respondent no. 2) and Mrs. Akshay Kumar Kalita. 6 rental units are under the ownership of land lord.

13. The building NOC no. GPL/BP/13/511/28042015/28/88, dated: 13.11.2015, which is mentioned in para 4 (ii) of the complaint petition is seen from the case record. The permission was for G+2 building.

14. From the copy of the plaint of the title suit no, 198/2020 filed by Mr. Saumik Sengupta (Respondent No. 2) against Shri Bibhash Biswas (Respondent no. 1) was for (a) declaration that the development agreement and irrevocable general power of attorney are not valid, (b) declaration as the defendant (respondent no. 1) has failed to complete the work in time not entitled to work further, (c) declaration expenditure incurred so far by defendant (respondent no. 1) has been forfeited, (d) permanent injunction, (e) restraining defendant from restarting the construction work, damages, any other relief/ reliefs. The pleadings in the plaint are almost similar to those made in the written statement in this instant case.

### **15. ISSUES:**

(1) Whether the agreement for sale (deed no. 3507) dated: 3.05.2017 between the respondent no. 1 and the complainant is valid?

(2) Whether the respondent no. 2 being the landlord is the builder or the promoter in view of the change circumstances?

(3) Whether the complainant is entitled for the possession of the flat as per the agreement dated 03.05.2017 from the respondents?

(4) To what relief/ reliefs the parties are entitled to?

### **Argument**

#### **Complainant**

1. The agreement for sale was executed with respondent No.1 on 03.05.2017 in respect of flat measuring 825 sqft on the back portion of the 1<sup>st</sup> floor of the building to be constructed upon the land of respondent No.2 in terms of the development agreement dated 12.01.2015 between the respondent.

2. Sale consideration was Rs.30,00,000/- which was inadvertently mentioned as Rs.25,50,000/- in the agreement for sale dated 03.05.2017 but subsequently rectified to Rs30,00,000/- vide rectification deed dated 19.05.2017.
3. Out of Rs.30,00,000/- booking amount of Rs.50,000/- was made on 26.04.2017 (Money receipt – Annexure 5), payment of Rs.2,50,000/- admitted in Schedule A – 3 of the agreement for sale and Rs.14,00,000/- paid through bank loan (Bank Certificate – Annexure 6). Total payment is of Rs.17,00,000/-.
4. Date of delivery was within 12 months from the agreement.
5. Midway the respondent No.1 (promoter) left the project with construction completed of G + 2 slab casting.
6. Subsequently, respondent No.2 (landlord) took over the project, completed the building and occupied the same.
7. Ground floor meant for parking given on rent, 1<sup>st</sup> floor occupied by respondent No.2 (landlord) and 2<sup>nd</sup> floor one portion given to Akshay Kumar Kalita and other portion on rent.
8. Complainant approached respondent No.2 several times and even went to occupy his portion of the building but the respondent No.2 did not allow the complainant to take possession.
9. The respondent No.2 demanded the sale price of the flat as per current market rate.
10. When the construction was stalled, the complainant went to the respondent No.1 and took him to the house of respondent No.2 but the respondent No.2 flatly refused and threatened the respondent No.1 to carry out the remaining works.
11. The complainant a retired person with his hard earned money paid the amount to the respondent No.1 but did not get the flat.

### Respondent

1. Not aware of any such agreement between the complainant and respondent No.1
2. The respondent No.2 is himself the victim on the default of the respondent No.1 to complete the building.
3. The respondent after waiting for more than 1 year took shelter on the 2<sup>nd</sup> floor by making makeshift arrangement.
4. Took loan and completed the building to make it habitable.
5. When the construction work was going on with the investment of the respondent No.2, the complainant never approached him and when the building was completed then came to claims.
6. The respondent No.2 did not took any money from the complainant. There was quarrel with the respondent No.1 regarding construction for which he has lodged the FIR which was registered as Chandmari P.S Case No.929/2017.

### **DISCUSSION, DECISION & REASONS THEREOF:**

(a) As regard the Development agreement No. 371 dated: 12.01.2015 between the respondent no. 1 and respondent no. 2 with regard to the development of the land mentioned therein is not in dispute. So also the irrevocable power of attorney dated 12.01.2015 executed by the respondent no. 2 in favour of the respondent no. 1, as the same is otherwise admitted by the respondent no. 2, which are annexed with the written statement as Annexure 2 and Annexure 3 respectively. These two documents are also annexed by the complainant with his complaint petition.

(b) On the basis of the Development Agreement, as above, the respondent no. 1 entered into an agreement for sale with the complainant in respect of a flat

measuring 825 sq. ft., as already mentioned above and described in the schedule A to the agreement for sale, which is annexed as Annexure 3 with the complaint petition. The particulars of the development agreement between the respondents, land particulars and building NOC issued by the GMC are mentioned in the said agreement for sale.

(c) It is the registered agreement and the development agreement has not been denied by the respondent no. 2. In para 9 of the written statement, respondent no. 2 has stated that the agreement between the complainant and the respondent no. 1 was the without the knowledge of the respondent no. 2 and the same is not applicable upon respondent no. 2 as the respondent no. 1 has not done any construction of the said RCC building and violated the clause of the development agreement.

In view of above, the agreement for sale dated: 03.05.2017, as such, is valid and enforceable.

## **ISSUE NO. 2**

(a) So far, the development agreement, the respondent no. 2 is not the promoter but the situation changed after he took over the possession of the building, completed the construction and occupied the same.

(b) Going by section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 promoter, in short, is the person who constructed building consisting of apartments or develops a land into a project for the purpose of selling to others. When the Development Agreement dated: 12.01.2015 was entered, the respondent no. 2 was the land lord. But after taking over the project and completing construction, the land lord is no longer the landlord only but has entered into the shoes of promoter. The liability of the respondent no.2 (land lord) becomes joint and severable with the erstwhile promoter, even if he did not personally receive the original booking or advance amount from the complainant. In the changed circumstances the liability of

the respondent no 2 (land lord) is to complete the project as per the original sanctioned plan and specifications and if the existing buyer or the allottee (here the complainant) wish to withdraw from the project, the respondent no. 2 (current promoter) is liable as per the Real Estate (Regulation and Development) Act, 2016 to refund the money with interest. Otherwise to handover the possession of the said flat to the complainant and receive the balance payment as per the agreement.

(c) Going by the explanation section 2 (zk) of Real Estate (Regulation and Development) Act, 2016, promoter means

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

a. Buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal

b. Plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation:— For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the Rules and Regulations made thereunder.

In the above backdrop, the respondent no. 2 has become the promoter and bound by the Act to comply with the responsibilities/obligations as of respondent no. 1.

### **ISSUE NO. 3**

(a) As the respondent no. 1 has abandoned the construction in the mid-way and fled away for whatever reasons and the building has been taken over by the land lord (Respondent no. 2) from the stage of construction of G+2 slab casting and in such situation from whom the complainant will get the possession of the flat in question.

(b) The allottee is entitled for the flat booked by him from the respondent no. 1 (promoter) and in this case the complainant as per the agreement for sale and going by the development agreement with the respondent no. 2 is entitled from the respondent no. 1. As, now the respondent no. 1 has fled away and the building has been taken over by the promoter, invested some amount, completed the building, occupied the same, residing himself over there and also let out the other premises on rent. In such situation from whom the

complainant will take the possession of the flat. Whether by the subsequent act of the respondent no. 2 has changed his status from mere landlord. This is the crux of the matter and the answer will decide the fate of the complainant.

(c) Going by the Development Agreement, that the respondent no. 2 has allowed the respondent no. 1 to develop and construct upon his land measuring 1 katha 5 lecha, as discussed above, for construction of G+2 building with the share of the respondent no. 2 as the entire 2<sup>nd</sup> floor, 2 car parking, Rs. 7000/- per month as house rent from the date of handing vacant possession of the land to the respondent no. 1 till allotment of the share for of the respondent no. 2, Rs. 8 Lakhs and 50% proportionate share of land.

(d) The Development Agreement dated: 12.01.2015 between the respondents was valid and execution admitted by the respondent no. 2. Proper building NOC dated: 13.11.2015 was issued by the GMC, which has been also mentioned in the agreement for sale dated: 03.05.2017 between the complainant and the respondent no. 1. Development agreement between the respondents is also mentioned in the said agreement for sale. The respondent no. 2 had handed over his land measuring 1 Katha 5 Lecha to the respondent no. 1 for development of the land and construction of G+2 building with his share mentioned in the Development agreement. The respondent no. 1 proceeded with the construction and completed the structure of G+2 with slab casting completed. The photographs annexed as Annexure 7 to the written statement also shows a G+2 building with slab casting completed up to the second floor with bamboo features and shuttering not removed on the second floor. The photographs are annexed as annexure 6 of the written statement, which the respondent no. 2 in para 25 of the written statement has stated that for non-completion of the work by respondent no. 1 the respondent no. 2 along with his family had to settle themselves in the camp in the second floor of the said building. The said photograph reflects the completion of the slab

casting of the second floor. As per the Development Agreement, the respondent was entitled for the entire space on the second floor with 2 (two) car parking on the ground as mentioned above. In para 9 of the written statement the respondent no. 2 stated that he had completed the unfinished work of the building with his own money for which neither the respondent no. 1 nor the complainant has any right over the said building or flat for which he has not allowed the complainant to take possession of the flat.

(e) The averment in para 16 of the written statement throws some insight to the strained relationship between the respondents, as it is alleged that on 19.09.2017 when the respondent no. 2 visited the site and noticed low quality and substandard material being used in the construction and requested the respondent no. 1 to stop the construction and bring the officers from GMDA to verify the materials used in the building, which the respondent no. 1 did not agree and left the site with threat that he will return back and work with the same material and if prevented, necessary action will be taken. In para 17 of WS, it is stated that on 25.10.2017 the respondent no. 1 came to the work site and started the work with those inferior materials and on being tried to be stopped by the respondent no. 2, some unknown persons suddenly came to attack the respondent no.2 and somehow respondent no. 2 manage to escape from the site and lodge an FIR before the Chandmari Police Station registered as case no. 929/2017. The contents of the FIR dated: 26.10.2017 (Annexure 6 to the written statement speaks about the problem between the respondents)

(f) In para 13 of the WS, the respondent No.2 stated of respondent No.1 till 19.09.2017 constructed the roof of the proposed G + 2 building and thereafter disappeared. In para 15, it is mentioned that since 2017 the respondent No.1 stopped payment of monthly rent.

(g)The averments made in the WS corroborates the submission of the complainant that when the complainant along with the respondent No.1 went

to respondent No.2 to allow the respondent No.1 to continue with the work, the respondent No.2 refused to allow the respondent No.1 to carry out the work.

(h) It is seen that the respondent No.2 himself is responsible for the stoppage of the work by respondent No.1 leading to the hardship of the complainant but enjoyment to the respondent No.2 as he got the land developed with structure of G + 2 roof casting complete and thereafter respondent No.2 completed the remaining work and occupied the same including the complainant's portion.

(i) In spite of occupying the entire building, the respondent no. 2 instead of happily providing the allotted flat to the complainant has rather deprived the complainant and lingered the matter so far depriving the complainant of his flat.

(j) As per the inspection report of Town Planner, RERA, the building is for 5 dwelling units, one of the ground floor and 2 each of the first and second floor, whereas, the respondent no. 2 has constructed 4 rental units of single room on the ground floor, one unit on the first floor for the land lord and one unit on the second floor occupied by Mr. Akshya Kumar Kalita and another 2 rental units of single rooms on the second floor.

(k) In the above premises, more specifically, the respondent no. 2 has taken over the project from the stage of G+2 slab casting, completed and occupied the same. Not only he has occupied the first floor, but let four units on rent on the ground floor, two units (single room) on rent and one unit given to Akshay Kumar Kalita on the second floor.

The respondent No.2 took the plea of civil suit being title suit No.203/24 pending before the Court of Civil Judge (Sr. Dev.) No.3, Kamrup (M) at Guwahati; where he has sought declaration against the respondent No.1. That matter is between the respondent No.2 and respondent No.1. Here, the complainant has approached this Authority in terms of Section 31 of the Real

Estate (Regulation & Development) Act,2016 which has been enacted to address the grievances of the flat buyers like the complainant and Section 79 of the Real Estate (Regulation & Development) Act,2016 bars civil suit in respect of matters which this Authority is empowered to adjudicate. Section 88 of the Act provides that the provision of RERA,Act,2016 shall be in addition to and not in derogation of the provisions of any other law for the time being in force and Section 89 of the RERA, Act, 2016 provides that this RERA,Act,2016 shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

In view of above, the complainant is entitled to the flat as per the agreement dated: 03.05.2017 from the respondents and as the respondent no. 2 has taken over the entire building, the respondent No.2 is bound to hand over the said flat to the complainant.

#### **ISSUE NO. 4**

As per the building permission, total constructed area on the 1<sup>st</sup> and 2<sup>nd</sup> floor are 112.09 sqmt which makes it around 1205.5 sqft on each floor.

Coming to the area of the flat in question, as per the agreement it is 825 sqft and as per clause 9(f), the calculation of the flat area has been mentioned as the flat area will be measured on the basis of built up area + 20% of it as for common area like lobby, staircase, watertank, toilet etc. Reducing this 20% from 825 sqft, carpet area comes to 660 sqft.

In view of the above discussions and the findings arrived, the complainant is entitled for a flat measuring 825 sq. ft. on the back side portion of the first floor of the said building along with one car parking space on the ground floor mentioned in the Schedule below. As the entire building has been

occupied by the respondent no. 2 after the respondent no. 1 left the project, the respondent no. 2 shall provide the said flat measuring 825 sq. ft. completed in all respect to the complainant described in 'SCHEDULE' below in terms of the agreement dated: 03.05.2017 and hand over the same immediately without further delay.

- 1) There is delay of 7 year 11 months since the due date of handing over possession which was 03 05 2018 as according to agreement dated 03.05.2017, the possession was to be delivered within 12 months of the date of agreement. As such, the complainant is entitled for interest for delay in handing over the possession.
- 2) The complainant has paid an amount of Rs.17,50,000/- on 26.04.2017, Rs.2,50,000/- on 03.05.2017 (Date of agreement) and Rs.14,00,000/- through bank loan.
- 3) The respondent shall pay interest @8.70% (present SBI Marginal Cost of Lending Rate) plus 2% i.e., 10.70% p.a. as per section 18(2) of the Real Estate (Regulation & Development) Rules, 2017 w.e.f. 03.05.2018 till payment for delay as within 12 months of agreement dated 03.05.2017, the possession of flat was to be handed over.
- 4) To be specific, the interest @10.70% p.a. on Rs.17,00,000/- for 6 years 11 months from 03.05.2018 to 31.03.2026 comes to **Rs.12,85,141/- (Rupees Twelve lakhs eighty five thousand one hundred forty one)** [17,00,000 X 10.70% = Rs.1,81,900 multiply by 7 years 11 months = 10,97,400 (10 years) + 1,66,741(11 months)].
- 5) As per the agreement the complainant is to pay balance amount of Rs.13,00,000/- (Rupees thirteen lakhs) and the same shall be adjusted towards the interest amount due to be paid by the respondent.

In brief, the respondent along with handing over the possession of the flat to the complainants shall also to pay the interest

on the advance amount paid by the complainant after adjustment of the balance amount due by the complainant, as detailed above. The order to be complied within 2 (two) months from this date of order.

### **SCHEDULE**

Flat measuring 825 sqft with carpet area 660 sqft on the 1<sup>st</sup> floor back side of G + 2 building with one car parking on the ground floor and undivided proportionate share of land upon land measuring 1(one)katha 5 (five)lessa covered by dag No.1206 of K.P.Patta No.2282 of Revenue Village Sarania part II under Mouza – Ulubari Town, Guwahati, Dist. Kamrup (M), Assam and as follows:

North – Railway line

South – Land of Late. Nogen Ch. Paul.

East – Road

West – Land of Bijay Paul.

Given under the hand and seal of this Authority on this 31<sup>st</sup> Day of March, 2026.

**Sd/-**  
**(B.K.Chetri)**  
**Member**

Memo No. : RERA/ASSAM/COM/2023/43

Dated. 31.03.2026

Copy to:

1. Website i/c, RERA, Assam for uploading the above order.
2. Order Book.

Registrar  
Real Estate Regulatory Authority  
Assam, Guwahati-22