

**BEFORE THE REAL ESTATE REGULATORY AUTHORITY, ASSAM
AT GUWAHATI**

RERA/ASSAM/COM/2024/65

Smti Ranu Dutta

..... Complainant

-versus-

M/S Dolphin Builders.

..... Respondent

**Present: Mr. Binod Kumar Chetri, AJS (Retd)
Member,
Real Estate Regulatory Authority, Assam**

For the Complainant : In person.

For the Respondent : Shri Vishal Poddar (Partner).

Date of Hearing : 19.11.2025.

Date of Judgment & Order : 21.01.2026.

JUDGEMENT AND ORDER

1. This complaint was filed on 07.10.2024 by Mrs. Ranu Dutta u/s 31 of the Real Estate (Regulation & Development) Act, (RERA) Act 2016 against M/s Dolphin Builders, a partnership firm of Mr Biswajit Bora & Mr. Gautam Ch. Lahkar, as the respondent has failed to hand over the possession of the agreed premises.
2. The complainant has entered into an agreement dated 18.03.2014 with the respondent for purchase of a shop premises measuring 308 sqft being shop no 8 on the 1st floor of the building at Beltola Tiniali, Guwahati, Kamrup(M) constructed upon a plot of land measuring 1(one)bigha 15(fifteen)lessa covered by Dag No.124 (O) 1851, 1922

(N) of K P Patta No. 148 (O)/1666(N) of Village Maidam under Mouza Beltola, Guwahati, Kamrup (M), Assam in terms of agreement for sale registered vide deed no 2858 dated 18.03.2014 for a total consideration of Rs 12 Lakh, out of which the complainant has paid Rs 10,000/- on 14.12.2013, Rs 2 Lakh & 3 lakh on 21.01.2014 i.e., before agreement and therefore Rs 3 lakh on 07.06.14. As per the agreement the possession of the Shop was to be handed over within 30 months and the builder shall give possession of the premises to the purchaser on or before the expiry of thirty day from the date of issue of written notice from the builder that the said premises is ready for use and occupation and the purchaser shall take the position of the premises. Being so the possession should have been delivered by sept 2016.

3. It is stated in the complaint petition that Shri Pulin Ch. Dutta, the husband of the complainant visited the respondent office number of times to enquire about the competition of the project and handing over the possession but the Respondent showed various reasons. A written letter dated 09/02/2023 was sent by the complainant and to the surprise of the complainant receive a reply Dated 13.02.2023 from the Respondent informing that 98% of the purchaser had already obtain the position and got the sale deed executed putting the blame upon the Complainant for not contacting the Respondent. It is stated that it is against clause 5(a) of the agreement for sale which clearly mentioned that the respondent will issue written notice to purchaser that the premises is ready for use and occupation of the purchasers. Thereafter the complainant visited the office of the respondent and she was offered another room instead of the shop no 8 as per the agreement. On 06.09.2024 the complainant send another

letter to the respondent but the respondent vide reply dated 16.0.2024 inform that there not willing to deal with the complainant and thereby cancelling/terminating the agreement.

4. Relief sought

- a. Directs the respondent for payment compound interest on quarterly basis at the rate marginal rate of SBI plus 2% since sept 2016 till handing over the possession as the complainant does not want to withdraw themselves from the project.
 - b. Compensation of Rs 5 Lakh for mental agony and harassment.
 - c. Cost of the proceeding.
 - d. Any other relief/reliefs, as entitled.
5. Along with the complaint, the agreement for sale deed No. 2868 registered before Sub – Registrar, Kamrup (M), Guwahati dated 18.03.2014, payment receipts and copy of letter dated 09.02.23, 13.02.23, 06.09.24, 16.09.24 are enclosed.
6. The project in question was undertaken in a plot of land measuring 1 Bigha 15 lechas covered by the dag no 124 old /851, 1922 (n) of KP patta no 148(O)/166(N) of revenue village Maidam under Mouza Beltola, Guwahati in the Dist of Kamrup Metro, Assam. The building permission was issued vide NOC GNDA/BP/914/12042010/108 dated 02.11.2012.
7. The respondent appeared and filed W/S through the partner Gautam Lahkar and interlia stated as follows.
- i. Bared by limitation
 - ii. Bared by the doctrine of waiver, estoppel and acquiescence
 - iii. Actual area of the premises is not mentioned
 - iv. Complaint not field in Form N and as per Rule 37 (1) of the RERA rules

- v. Clause 26 of the agreement for sale is binding upon both the parties and the respondent has never denied to give the Shop no 8 to the comp., as in wherein basis
- vi. Due to denial of the complainant over the commercial shop no 8 in inconformity of clause no 26 of the agreement for sale the respondent were compelled to issue termination notice dated 2.11.24 and it was responded by the Ld Advocate of the Complainant vide notice dated 5.11.24 of informing about the filing about the complaint case,
- vii. As per letter dated 23.10.23 of the complainant, the institution of the complainant is barred as the complainant vide letter 23.10.23 had demanded resolution through arbitration as per clause 21 of the agreement.
- viii. For getting benefit U/S 31 of the Act, 2016 and Rule 9(1) of the RERA Rule ,2017 the agreement for sale but be as per Annexure A and as the agreement for sale is prior to the coming into force of the RERA Act. 2016, the complaint is liable to be dismissed.

The Respondent, has enclosed the letter dated 23.10.23 of the complainant, reply dated 14.11.23 of the Respondent, termination letter dated 2.11.24 and reply dated 5.11.24 of the complaint as document no A, B, C, D respectively

8. Point for determination.

- 1. Whether the complaint is maintainable
- 2. Whether there was any agreement for sale between the parties and still subsisting.
- 3. To what relief /reliefs, the parties are entitled to

9. Argument Raised

Complainant.

- a.** Vide agreement for sale dated 18.03.14, the complainant paid more than 69% of the agreed amount of Rs 12 Lakh and the respondent was to hand over the possession within 30 months i.e., by September, 2016.
- b.** The complainant was always ready to pay the balance amount
- c.** The Respondent delayed the construction and on visit of the husband of the complainant to the respondent's office/sites shown one excuse or another
- d.** No intimation given of the completion of the building as per clause 5 (a) of the agreement, which provide respondent to give written notice informing the premises ready for use and occupation and purchaser to take possession
- e.** Complainant ready to pay for the extra 66 sqft of the construction of the said agreed premises. This extra area was found during the inspection by the Town Planner RERA and this amount to be adjusted with the interest amount to be paid by the respondent for the delay in not handing over the possession
- f.** Complainant suffered business for 9 years of delay and seeks compensation for the same.

Respondent

- a.** Complainant silent for 9 years and 1st correspondence on 9.2.2023 (Annexure 7 to the Complaint)

- b.** Complainant did not come for the meeting for handing over the premise of to the allottees
- c.** All allottees took possession
- d.** Clause 26 of the agreement provides the builder a right to effect suitable and necessary alteration the layout plan of the building or block of the building if and when found necessary which alteration may involve all or any of the following change namely change in the position of the apartment, no of the apartment, dimension (NB later part replied by the complainant)
- e.** In between COVID 20 -21 complainant did not respond. Respondent even offered to refund back the money with interest
- f.** Area slightly squeezed in the building permission. While obtaining OC authority found some deviation for which certain area has to be reduced. OC obtaining to 2021
- g.** Prior to COVID many allottees took possession but for OC sale deed could not be executed.
- h.** Ready to give smaller room as the bigger one given possession to the landlord after COVID.

10. Inspection Report

During the proceedings of the case in order to properly adjudicate the facts and issues, the site inspection was ordered vide order dated 30.06.2024 and accordingly, Town Planner, RERA Assam visited the site on 04.08.2024 and submitted a report.

As per the inspection report two rooms are vacant on the 1st floor. The shop number 8 is one as per the agreement and it measures 374 sqft with dimension 17 feet X 22 feet, whereas as per the agreement, area was 308 sqft. Other room on the 1st floor offered by the promoter to the complainant

is having an area of 120 sqft with dimension of 6 feet 9 inch X 18 feet 3 inch.

The inspection was done in presence of Shri Vivek Gupta, the representative of the promoter and Shri Pulin Chandra Dutta, the husband of the complainant.

Discussion, Decisions and Reasons thereof

11. There is no dispute as to the agreement dated 18.03.2024 and so also the agreement in respect of shop No. 8, which is admitted in para 17 of the WS. The only dispute raised by the respondent is that the agreement was to handover the possession as in where in basis and in support of it referred to clause 26 of the agreement for sale, which provides for suitable and necessary alteration in layout plan of the building etc and if there is increase/decrease in the area the rate per sqft and other charges will be charged at the same rate. The said clause 26 in the agreement also provides for supplementary agreement of necessary such changes of the construction. If certain changes were necessary, the same should have been informed to the complainant and supplementary agreement to that effect should have been executed. Even if not in a form of regular agreement but atleast there should have been something in writing about such changes/alteration/defect including the additional payment, if any for extra area and similarly the adjustment on return of the amount for decreased area. No such agreement or information to this effect has been there. Being so, the plea of the respondent taking recourse to clause 26 of the agreement is not sustainable.
12. The other plea taken by the respondent is that the complainant has not approached him whereas other allottees has approached and even took possession of their respective premises. In para 18 of the WS, it is mentioned that after reply dated 14.11.2023 by the respondent in respect of the complainant's letter dated 23.10.2023, the complainant responded with letter 06.09.2024 reiterating the terms, which the respondent in terms of NOC/sanction of the concerned authority could not perform for which the respondent was compelled to issued final notice dated 02.11.2024 for termination. Thereafter by letter dated 05.11.2024, Ld. Advocate for the

complainant informed the counsel for the respondent about the instant case before this Authority.

13. The possession was to be handed over by September, 2016 and for more than 9 years also, the respondent has not given the possession of the premises to the complainant. According to clause 5(a) of the agreement, the pleader has to give notice to the complainant informing about the premises getting ready and the purchaser to take possession within the expiry of 30 days from that notice. No such notice was ever issued by the respondent. Had it been so, he would have produced that notice. According to the complainant, the premises was not completed even after years of the agreed date of possession and on his visit to the respondent office, one or other excuse was given. It was the complainant who had first issued the letter dated 09.02.2023 (Annexure 7 of the complaint petition) and thereafter the respondent has written to the complainant vide letter dated 13.02.2023 (Annexure 8 of the complaint petition) mentioning that the agreement for sale is valid for 3 years; that the complainant never tried to contact the respondent whereas other purchaser has taken possession of the flat/premises and lastly that if the complainant wanted amicable settlement, to inform them. The complainant counsel vide letter dated 23.10.2023 (Document A to the WS) reiterated the payment of Rs.8,10,000/- out of the sale consideration of Rs.12,00,000/-; that several times the complainant has visited the office of the respondent in respect of the delay in construction; that the complainant is ready to comply with her part of the agreement to pay the balance amount, etc. The said notice also mentioned about invoking clause 21 of the agreement regarding arbitration. Ld. Advocate for the respondent vide notice dated 14.11.2023 (Document B to the WS) mentioned amongst others the size of the shop being decreased as per requirement of the NOC issuing Authorities; that the respondent is ready and willing to execute the final sale deed in respect of room No.8 etc. The complainant vide letter dated 06.09.2024 (Annexure 9 of the complaint petition) replied to the respondent's advocate notice dated 14.11.2023 and asked the respondent to settle the matter amicably and come forward for execution of the final sale deed. The area of the room No.8 has been mentioned as 308 sqft in that letter

too. Thereafter, the respondent sent final termination letter dated 02.11.2024 (document C to the WS) through their counsel and thereafter through notice dated 05.11.2024 (Document D to the WS). Ld. Advocate for the complainant informed the Ld. Advocate for the respondent about the filing of the complaint case before this Authority.

14. Going by the above discussion, the plea of the respondent that the complainant never visited or enquired about the completion of the project do not sustain as because after the payment of 69% of the agreed amount there can be no reason for anyone to forget the agreement and not possession of the premises. According to the complainant she and her husband has approached the office of the respondent several times regarding the delay in construction and handing over of the premises and it was the complainant who wrote the first letter dated 09.02.2023 to the respondent.
15. As per clause 5(a), it was the duty of the respondent to give the notice to the complainant to take possession but not done so. Having not informed the complainant, the plea of the respondent fails.
16. The third plea taken by the respondent is that the agreement dated 18.03.2014 is not as per Annexure A of the Assam Real Estate (Regulation & Development) Rules, 2017 and said agreement being prior to coming into the effect of RERA Act, 2016, the instant complaint petition is not maintainable. The Act came into force w.e.f. 1st May, 2016 and as per Section 3(1) of the RERA Act, 2016 registration of the project completed with occupancy certificate is not required to be registered but the projects where completion certificate or occupancy certificate has not been issued, such projects are the ongoing projects on the date of commencement of this Act and as such projects are bound to be registered and the implications of the RERA Act, 2016, applicable upon such projects. Though the agreement was on 18.03.2013 prior to coming into effect of the RERA Act, 2016, the complaint petition is maintainable as because occupancy certificate not received by that time.
17. Fourth plea taken by the respondent is that the agreement contains clause 21 incorporating the provision of Arbitration and as such this proceeding is not maintainable. This matter has been settled by the Hon'ble Supreme Court of India in M/s Emaar MGF

Land Ltd V/s Aftab Singh. Furthermore Section 89 of the Act clearly provides that “notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 88 says that this Act shall be in addition to, and not in derogation of the provision of any other law for the time being in force.

18. Without handing over the possession of the agreed premises to the complainant inspite of taking 69% of the agreed amount even after more than 11 years of the agreement dated 18.03.2014, the respondent of late has taken the false plea of the area of the agreed premises having been squeezed to 120 sqft to meet the requirement of NOC issuing Authority. This plea is not supported by any evidence. Furthermore, the room in question agreed to be allotted by the respondent to the complainant is in respect of another room measuring 120 sqft which is on the back side. The complainant's room is on the front side which at present on measurement found to be 374 sqft as against 308 sqft as per the agreement.
19. The inspection done on 04.08.2025 and the report thereof of the Town Planner, RERA Assam establishes vacant existing rooms mentioned above.
20. The complainant is ready to pay for that extra 66 feet and the same to be adjusted from the interest accrued upon the delayed possession on the payment made by the complainant.
21. From the above discussion and findings arrived at, it is held that the complainant is entitled for possession of the shop No.8 measuring 374 sqft along with interest as per SBI MCLR + 2% as per section 18(1)(b) of the RERA Act, 2016 and Rule 17 of the Assam Real Estate (R & D) Rules, 2017 upon the amount paid for delay in handing over the possession.

It is hereby directed as follows:

- a) The respondent to handover the possession of shop/room No.8 measuring 374 sqft mentioned above to the complainant immediately.
- b) The complainant to pay Rs.2,57,142/- (Rupees two lakh fifty seven thousand one hundred forty two) (Rs.12,00,000 divided by 308 sqft X 66 sqft) to the respondent and this amount to be adjusted from the interest to be paid by the respondent to the complainant.

- c) Respondent to pay interest @8.75% i.e., SBI MCLR + 2% i.e., 10.75% on Rs.8,10,000/- w.e.f. 01.10.2016 (Due date of possession) to the complainant after adjusting Rs.2,57,142/- (Rupees two lakh fifty thousand one hundred forty two) to be paid by the complainant for 66 sqft area till realization.
- d) As on this date, the interest due upon the complainant's payment of Rs.8,10,000/- w.e.f. 01.10.2016 to 01.02.2026 i.e., for 112 months comes to Rs.8,12,700/- (Rupees eight lakh twelve thousand seven hundred) [(Rs.8,10,000/- X 10.75%) divided 12 X 112].
- e) Respondent shall execute the sale deed in respect of the said premises measuring 374 sqft immediately.
- f) As regard compensation, the complainant to file appropriate petition before the Adjudicating Officer, RERA Assam.
- g) Cost of Rs.20,000/- (Rupees twenty thousand).

The above directions to be fully complied with within 2 (two) months from this date of order.

Sd/-
(B.K.Chetri)
Member

Memo No. RERA/ASSAM/COM/2024/65

Dated.21.01.2026

Copy for information and necessary action as per order to:

1. Website i/c RERA Assam to upload the above mentioned order.
2. Order copy.

Registrar
Real Estate Regulatory Authority,
Assam