



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

101, 1st Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA

www.rera.goa.gov.in

Tel: 0832-2437655; e-mail: goa-rera@gov.in

No.3/RERA/Complaint (Comb. Prabhu Chambers)/2019/186

Date: 17/03/2022

1. Mr. Kishor Uttam Bhaidkar,

A/7, Haldankar Residency, Near Rashtroli Temple,
Karaswada, Mapusa Bardez Goa 403507.

Complainant

V/s

Mr. Venkatesh Narayan Prabhu Moni,

505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji.

Respondent

2. Mr. Devkinandan Madhusudan Prabhu,

Flat No.780/7, Green Hill Apts, Alto Betim,
Bardez, Goa 403521.

Complainant

V/s

Mr. Venkatesh Narayan Prabhu Moni,

505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji.

Respondent

3. Mr. Xekh Hussien,

G -1, SushilaApts, Taliegao,
H.No - 427, Dr.Gama Pinto Road, Sant - Inez, Goa.
403002.

Complainant

V/s

Mr. Venkatesh Narayan Prabhu Moni,

505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji.

Respondent

4. Mr. Tony Victor,

Hno 21/A, Moica Waddo,
Pilerne Bardez, Goa
403114.

Complainant

V/s

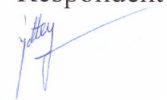
Mr. Venkatesh Narayan Prabhu Moni,

505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji.

Respondent

5. **Mr. Tushad Deepak Kannekar,**
H No.319/1, Brahmadeep ,walkeshwarwada,
Sirsaim, Tivim, Bardez- Goa -403502. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
6. **Mr. Jitesh J. Kamat,**
Karraswado, Mapusa
Tivim industrial estate,
Goa -403526. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
7. **Mr. Harshat Sonu Pednekar,**
H.No 142/f,Chandanwadi,Bastora,Bardez-Goa,
403507. Complainant
V/s
Mr.Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
8. **Ms. Deepti Pednekar,**
H.No 142/f, Chandanwadi,Bastora, Bardez Goa,
403501. Complainant
V/s
Mr.Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
9. **Mr. Bashir Ahmad Shaik,**
H.No-1502/44, Goa Housing Board,Madel,Tivim,
Goa-403502. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent

- 10.Mr. Munir Ibrahim Shaik,**
Dempo Trade Centre, 705 7th floor, EDC Complex,
Patto Plaza, Panjim,
Goa-403001. Complainant
V/s
Mr.Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
- 11.Ms.Viona Sherly Monteiro,**
H.NO 38/1 at Cruz Wada,Bastora,
Bardez, Goa-403507. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
- 12.Ms. Rosie Mascarenhas,**
H.No 20, MoicaVaddo, Reis Magos, Pilerne,
Goa-403114. Complainant
V/s
Mr.Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
- 13.Ms. Pooja Ratnadeep Mayekar,**
H.No 310, Borvonwaddo,Nachinola Post,
Aldona, Goa-403508. Complainant
V/s
Mr.Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
- 14.Ms.Suhasini Subash Kerkar,**
H.No 194, Boa-vista,Bastora,
Bardez, Goa-403507. Complainant
V/s
Mr.Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent



- 15.Mr. Mahesh M. Shetty,**
H.No 1503/1 Shantae,Mangirish colony,
Madel,Tivim, Goa-403502. Complainant
V/s
Mr.Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
- 16.Ms.Manali Subhash Parsekar,**
Zft 7 sunset Boulevard,
Alto Duler Mapusa,
Goa 403507. Complainant
V/s
Mr.Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
- 17.Mr. Subhash Sawant,**
224, Rajwaddo, Bardez Mapusa,
403507. Complainant
V/s
Mr.Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
- 18.Mr. Girish Gajanan Pednekar,**
H. No. 764, SBI Colony,
Behind Bhales Hospital,
Porvorim, Bardez – Goa,
403521. Complainant
V/s
Mr.Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
- 19.Mr. Suresh K Pednekar,**
H.No.142/10, Duler,
Near Milan Hotel, Mapusa,
Bardez,Goa-403507. Complainant
V/s
Mr.Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent

Shetty

- 20. Ms. Shabana Azmin Shaik,**
G1, Sushila Apts, Amaral Wado,
Taliegao, Goa-403206. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
- 21. Mr. Rakesh Ramesh Kadam,**
Chamunda Garden, Indira Nagar,
Karaswada, Mapusa, Goa-403507. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
- 22. Mr. Deepak Kolambkar,**
601 Nathaline Apts, Kevni Gaothan Lane,
Andheri (W), Maharashtra,
Mumbai City, 400058. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
- 23. Mr. Kunal Rajendra Shirodkar,**
H no. 105/C, Xellwado,
Bastora, Bardez, Goa,
403507. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent
- 24. Mr. Daniel Agnelo Dsouza,**
House no. 159, Pirazona Moira, Bardez
Goa-403507. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza Panaji. Respondent



- 25. Mr. Suryakant Anant Naik,**
H No 4/95/E Shri Girijatmaj, AcoiPeddem, Mapusa
Goa-403507. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji. Respondent
- 26. Mr. Neelesh Anant Takkekar,**
7A 6, Gawans Waddo, Mapusa, Bardez,
Goa-403507. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji. Respondent
- 27. Ms. Shubhada Chandrakant Desai,**
H.No.-38, Khalcha, Waddo, Sal, Bicholim,
Goa-403503. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji. Respondent
- 28. Mr. Kishor Pundalik Ajgaonkar,**
H.No. 103, Bhavkai, Mayem, Bicholim,
Goa-403504. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji. Respondent
- 29. Mr. Dasharath Shantaram Petkar,**
H. No. 683/4, Sai Sneh, Atta Fondem,
Moirā, Bardez, Goa-403507. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji. Respondent

- 30. Mr. Oscar Gomes,**
H.No. 1104, Volvonnem, Tivim,
Bardez-Goa-403502. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji. Respondent
- 31. Mr. Mahesh Narvekar,**
B & F Magnolia Housing Co-Op, Ft-C 1,
Opp. Yashoda,
Bar, Flt C-1, Alto Duler,
Mapusa, Goa-403507. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji. Respondent
- 32. Mr. Anand Kumar Singh,**
Reis Magos, Somnath Apts, Fs-3, Verem,
Mapusa-Goa-403516. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji. Respondent
- 33. Mr. Jesus Barreto,**
H.No-1020/F1, Premeiro Bairro,
St-Cruz, Goa-403007. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji. Respondent
- 34. Mr. Ashlyn Aranjó,**
Nandanvan complex, Mathurabld, ft- 203,
Caranzalem, Goa-403001. Complainant
V/s
Mr. Venkatesh Narayan Prabhu Moni,
505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji. Respondent



35. Ms. Krutika K. Tari,

S-1 Desai apartment, Gopalnagar,
Porvorim Bardez, Goa-403521.

Complainant

V/s

Mr. Venkatesh Narayan Prabhu Moni,

505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji.

Respondent

36. Mr. Raaj Chodankar,

H.No.209/1, Raint Moira,
Bardez-Goa-403507.

Complainant

V/s

Mr. Venkatesh Narayan Prabhu Moni,

505/B Dempo Trade Centre,
EDC Complex,
Patto Plaza, Panaji.

Respondent

ORDER

Dated 17/03/2022

This common order disposes of all the aforesaid 36 complainants which have been filed under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as ‘RERA ACT’), because of the failure of the respondent to hand over possession of the units in the building “Prabhu Chambers” at Mapusa to the complainants and wherein the complainants have prayed for project take over, interest on the amount of consideration paid to the respondent, compensation, delivery of possession after rectifying various deficiencies pointed out by the complainants and other reliefs. All the said complaints being similar in nature and concerning the same project, were clubbed and heard together.

2. The main deficiencies pointed out by the complainants in the said complaints are (a) water logging within the basement area of the building; (b) water logging in the lift duct; (c) non removal of kiosk which is within the set back

area of the complex and obstructing the entry of vehicles to the basement parking; (d) non registration of project by the developer in terms of the RERA Act; (e) short fall in area with respect to the units which have been agreed to be sold by the developer; (f) short fall in parking spaces agreed to be sold by the developer; (g) delay in handing over possession of units and non providing of essential supplies in the nature of electricity, water connection and sewerage connection and (h) substandard quality of material used and of painting done.

3. This order also disposes of the application dated 2/09/2021 filed by the complainants for initiating contempt proceedings against the respondents and application dated 17/04/2020 for project take over and other consequential reliefs.

4. The complainants have produced on record the agreements for sale entered into with the respondent and in some cases addendums/demand letters etc. The records show that the completion certificate issued to the respondent is dated 27/08/2018 and the same is issued for the basement floor, ground floor, first floor, second floor, third floor, fourth floor, fifth floor and sixth floor for commercial purpose (the said completion certificate is at page 886/C). Thereafter, Mapusa Municipal Council issued part occupancy certificate for the basement floor, ground floor, first floor, second floor, third floor and fourth floor but fifth and sixth floor were not granted occupancy certificate for want of NOC from the Department of Fire and Emergency Services (part occupancy certificate issued by Mapusa Municipal Council is at page 884/C).



5. Many complainants approached Mapusa Municipal Council after lodging FIR against the respondent at Mapusa PS and intimated the council about various deficiencies. Hence, the Chief Officer of Mapusa Municipal Council issued final order dated 12/09/2019 and directed the respondent to “initiate immediate action/ steps within 48 hours from the date of receipt of this order” for the following works:-
- a) Water logging in the basement and in the lift duct to be abated.
 - b) Shifting of electrical panels and installation of transformers should be done in coordination with Electricity Department.
 - c) The set back area should be cleared by demolishing the kiosk as per NGPDA approved plan.
 - d) The parking area should be made functional.
 - e) Submission of final NOC from Fire Department.
6. Since, the respondent failed to “take steps”, “initiate the above mentioned works” within 48 hours from the date of receipt of the said order, the Municipal Council revoked part occupancy earlier granted to the respondent.
7. From the records it is clear that the respondent agreed before this Authority to carry out the works in compliance with the aforesaid order dated 12/09/2019 of Mapusa Municipal Council and accordingly this Authority by order dated 25/11/2019 directed the respondent to complete all the works within thirty days of the said order and as per the request of the Ld. Advocate for the respondent the commencement date of work was fixed on 28/11/2019. This Authority in its order dated 04/01/2021 recorded that “inspite of the aforesaid order of this Authority way back in November 2019, the respondent has not complied the same”.

8. In the order dated 28/06/2021 made in the writ petition no. 1156 of 2021 (F), filed by the respondent herein, the Hon'ble Bombay High Court clearly held that **“This is not a case where the Statutory Authorities can be faulted in any manner”**. The Ld. Advocate for the respondent herein pointed out before the Hon'ble Bombay High Court that though the respondent has rectified several deficiencies pointed out by the Statutory Authorities, however, **“If there are any further deficiencies, the petitioner is willing to rectify the same”** (emphasis supplied). Accordingly, the Hon'ble Bombay High Court gave directions inter-alia as follows:-

“With respect to the aforesaid submission, we direct the Authorities of Mapusa Municipal Council, North Goa Planning and Development Authority and Directorate of Fire and Emergency Services to inspect the petitioner's site within a period of six weeks from today and certify whether there are any deficiencies in the construction put up by the petitioner comprising the ground plus five floors. The Authorities should then furnish the petitioners with the list of deficiencies, if any. **Mr. Joshi, Learned council states that the petitioner will then rectify the deficiencies, if any and once again apply to the Authorities for fresh inspection to ascertain whether such deficiencies are indeed rectified.**” (emphasis supplied)

9. As per the direction of the Hon'ble Bombay High Court, North Goa Planning and Development Authority filed site inspection report dated 04/08/2021 wherein various deficiencies were pointed out and rectifications were recommended. Similarly Mapusa Municipal Council in its site inspection

report dated 04/08/2021 pointed out several deficiencies in the said building and recommended rectifications based on the report of site inspection. Director of Fire and Emergency Services in its report dated 31/08/2021 however gave NOC to the said building.

10. Pursuant to the aforesaid Site Inspection Reports of Mapusa Municipal Council and NGPDA and in consonance with the aforesaid order dated 28/06/2021 of the Hon'ble Bombay High Court, this Authority inter-alia passed the following order dated 24/09/2021:-

“The Hon'ble Bombay High Court by order dated 14/07/2021 in Writ Petition No. 4 of 2021 in M.C.A No. 1386 of 2021 directed the Authorities of Mapusa Municipal Council, North Goa Planning and Development Authority and Directorate of Fire and Emergency Services to inspect the petitioner's site and certify whether there are any deficiencies in the construction put up by the petitioner comprising the ground plus five floors and then furnish the petitioner/the respondent herein the list of deficiencies, if any and the Hon'ble High Court accepted the undertaking given by the Advocate for the respondent herein that the respondent herein “will then rectify the deficiencies if any and once again apply to the Authorities for fresh inspection to ascertain whether such deficiencies are indeed rectified”.

Inspite of the aforesaid undertaking before the Hon'ble High Court, the respondent till date has not fully complied with the aforesaid undertaking before the Hon'ble High Court or in other words has not rectified all the deficiencies as mentioned in the

said Reports as is clear from the compliance report submitted by the respondent today, though time has been granted by this Authority for such compliance.

Hence, last and final opportunity is given to the respondent in the interest of justice to rectify all the deficiencies as mentioned in the aforesaid reports forthwith and place on record the compliance report regarding the same on the next date of hearing on 08/10/2021”.

11. Thereafter, the so called “compliance reports” were filed by the respondent wherein reasons were given for non-compliance of several recommendations of the Statutory Authorities/ directions given by this Authority and wherein the respondent has claimed that issue of water logging in basement and lift duct is resolved but which claim is disputed and denied by the complainants. The fact however remains that till date the respondent has not obtained the occupancy certificate and has not handed over possession of the units to the complainants.
12. Perused the entire record of the case. Heard the arguments advanced by Ld. Advocates Shri Yatish Naik and Shri Nilesh Takkekar for the complainants and Ld. Advocate Shri S. Joshi for the respondent. Written submissions have also been filed by the Ld. Advocates.
13. The Ld. Advocate for the complainants has argued that the main grievances of the complainants are water logging within the basement area of the building and in the lift duct; non removal of kiosk which is within the setback area of

the complex and obstructing the entry of vehicles to the basement parking; non registration of project; shortfall in area with respect to the units agreed to be sold by the developer and also in parking spaces; sub-standard quality of material used and not providing the agreed material; delayed possession of units and non providing of essential supplies in the nature of electricity and water connection; non providing of sewerage connection and sub-standard painting work. It is submitted that the complainants have valid agreements for sale with the developer ranging from the year 2012 onwards and in some cases the developer has not issued receipts towards purchase of premises and has deferred the execution of agreements without any reasons. The Ld. Advocate has submitted that the respondent has not complied with the order dated 25/11/2019 of this Authority and hence heavy penalty should be imposed in terms of Section 63 of RERA Act. According to the Ld. Advocate in spite of the Order of this Authority directing the respondent to register the project, the project is still not registered. Regarding water logging in the basement area of the building, it is submitted that the entire basement area remains submerged in water during the entire rainy season and the said fact of accumulation of water is admitted by the respondent in his various replies and also from the material which is produced by the complainants in the form of compact disk showing the photographs as well as videos of the basement area. The Ld. Advocate pointed out various defects and deficiencies in the work done as are also mentioned in the Site Inspection Reports of Mapusa Municipal Council and NGPDA and submitted that though due to the said defects in the work, Mapusa Municipal Council revoked the occupancy certificate, still the said deficiencies have not been totally corrected by the respondent even though undertaking was given by the Ld. Advocate for the respondent before the Hon'ble Bombay High Court that such deficiencies will



be corrected by the respondent. It is stated that even the method of injecting chemical in the ground has failed as is clear from the evidence produced on record by the complainants to show that water still oozes out from the ground. It is further submitted that the respondent has placed water pumps in the basement to remove the water which accumulates in the basement and the same is confirmed in the report prepared by Mapusa Municipal Council and such method will eventually cause severe hardship and inconvenience to the complainants in future. According to the Ld. Advocate for the complainants, the respondent has not seriously addressed and resolved the issue of water accumulation in the basement area and has been seeking time since November 2019 to complete the pending works but has failed to effectively perform any work on site.

14. The Ld. Advocate for the complainants has further submitted that the water which accumulates in the lift duct is a serious problem which can lead to death of a person using the lift due to electrocution as the water which accumulates in the lift duct is in direct contact with the lift car. It is submitted that this problem has persisted for last several years and the respondent has now adopted a temporary method by drilling a hole in the lift duct area with a pipe attached as an outlet to drain the water which is accumulated in the duct but the said temporary method is also ineffective since whenever there is heavy rainfall, the water in the duct which is moving out from the said pipe does not move out freely due to choking in the pipe.
15. Regarding the non removal of kiosk within the setback area, it is submitted by the Ld. Advocate for the complainants that the removal of kiosk is the responsibility of the developer, especially when this is an essential condition

in the form of direction by Mapusa Municipal Council in terms of its order dated 12/09/2019. It is further submitted that the developer was very well aware of the existence of the kiosk since the time when he commenced construction of site and that the respondent should have taken all possible steps to ensure that the conditions mentioned by the Planning Authorities are fulfilled at any cost.

16. The Ld. Advocate for the complainants also gave the details of the shortfall in the area with respect to the units which have been agreed to be sold by the developer and also the shortfall in parking spaces agreed to be sold and submitted that because of such fraudulent conduct, severe penalty should be imposed on the developer. The Ld. Advocate also pointed out to non providing of essential supplies in the nature of electricity and water connection and sewerage connection and also sub-standard quality of work.

17. The Ld. Advocate for the complainants pointed out that since the building which was stated to be completed was not fully completed in all respects, the occupancy certificate was revoked by Mapusa Municipal Council and that there is no justification for the enormous delay in completing a project. It is submitted that though the developer is to be blamed for all his conduct and delay, the developer on the contrary dishonestly blames the Statutory Authorities for causing delay either by holding the file or by imposing conditions and the developer even has the audacity to state that the technical Authorities insisted on a sanad for conversion of land to non agricultural purpose, even though the requirement of sanad is a vital and essential condition. Thus according the Ld. Advocate, there is gross delay in handing over possession of the units to the respective purchasers and hence Section 18



of RERA Act has to be invoked to grant interest on the sale consideration paid.

18. The Ld. Advocate for the complainants also argued on various applications filed by the complainants i.e. initiating contempt proceedings against the respondent, handing over of project and applications for production of documents.
19. The Ld. Advocate for the complainants pointed out that the respondent has violated all the orders and directions passed by this Authority and has also not complied with the undertaking given before the Hon'ble Bombay High Court. The Ld. Advocate relied upon "**Bikram Chatterjee and Others v/s Union of India**" reported in (2019) 19 SCC 161 and "**Eminent Infradevelopers Pvt. Ltd. v/s Vivek Radhu**" reported in 2019 SCC Online Utt 1676 to highlight the objects and purpose of enacting RERA Act and submitted that it is apparent from the aims and objectives of the Act that it ensures greater accountability towards consumers and significantly reduces fraud and delays.
20. On the other hand, the Ld. Advocate for the respondent has argued that in the instant cases a single member of this Authority cannot decide the instant complainants because though there is a provision under Section 81 of the RERA Act for delegation of powers of the Authority in favour of any Member or Officer, however these powers would not include powers for Adjudication and further there is no order passed by RERA for delegation of powers for Adjudication in favour of a Member and hence all orders passed by a Member of RERA would be nullity in the eyes of law being without jurisdiction.

21. According to the Ld. Advocate for the respondent, there were certain facts and developments beyond his control on account of which the interests of the purchasers as well as the developer suffered. It is submitted that certain Authorities of the state abused the process of law, forcing the respondent to knock the doors of the higher constitutional Authorities. According to him, the orders by the collector as regards conversion, registration of FIR by the police, revocation of occupancy certificate by Mapusa Municipal Council, frustrating the builder in restoration of occupancy certificate by seeking compliances by the Statutory Authorities in violation of law, delay by Mapusa Municipal Council in removal of kiosk are all the examples demonstrating the arm twisting methods used by the Authorities to harass the builder and frustrate his efforts in resolving the problems of the purchasers.

22. According to the Ld. Advocate for the respondent, in the monsoon of 2019, there was 33% excessive rainfall in Goa and in the year 2020 there was 41% excessive rainfall in Goa leading to water logging and floods almost in the entire State and cloud bursts aggravated the situation and during these rains some springs opened up in the lower basement of the building complex which created water logging in the basement. It is submitted that the respondent engaged a water proofing contractor and with the treatment, the said issue has been resolved and the team of Goa Engineering College accepted the said PU Treatment followed by Epoxy grouting.

23. According to the Ld. Advocate for the respondent, some of the compliances by the respondent which are not possible at this stage are removal of kiosk since the owner of the said illegal kiosk filed an appeal against the order dated



11/01/2021 passed by Mapusa Municipal Council for its removal and the said Municipal appeal No. 4/2021 is still pending before Municipal Appellate Tribunal and that on conclusion of the said proceedings, the said kiosk would be removed; that removal of transformer, generator and DG set from the road widening area would be done by shifting them after the aforesaid illegal kiosk is removed; that recommendation of Mapusa Municipal Council to evict the four occupants who were earlier inducted pursuant to the grant of occupancy certificate dated 29/05/2019 is contrary to law since the occupants cannot be evicted without due process of law to be instituted by the competent Statutory Authorities and that the recommendation of Mapusa Municipal Council regarding fitting of MS grills for the windows is not in accordance with the Building Regulations in force. It is further submitted that Mapusa Municipal Council revoked the occupancy certificate without consulting NGPDA and that there was no reason for the said Council to seek Scientific Study and Structural Stability Report from Goa Engineering College as precondition for restoration of occupancy certificate and it is submitted that Mapusa Municipal Council is acting against the respondent and in favour of the complainants. The Ld. Advocate for the respondent has submitted that the complainants themselves got misled and filed false complaints against the respondent before the police and the Mapusa Municipal Council and got the occupancy certificate revoked. It is further submitted that the respondent is making all efforts for restoration of occupancy certificate for first four floors and as far as fifth and six floor are concerned, the respondent would pursue the occupancy certificate after removal of illegal modification done by Mr. Imran Sayed. According to the Ld. Advocate for the respondent, in the aforesaid circumstances, nothing survives in the present complaints.



24. After going through the entire records of the case, the points which come for my determination along with the reasons and findings thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the undersigned member of this Authority has the power to adjudicate the instant complaint?	In the affirmative.
2.	Whether the prayer of the complainants for takeover of the project and appointment of receiver as made in application dated 17/03/2020 is required to be granted?	In the negative.
3.	Whether the respondent has violated the directions passed by this Authority in terms of order dated 07/02/2020 and if so, its legal consequences?	In the affirmative. Liable to pay penalty under Section 63 of RERA Act.
4.	Whether the respondent has violated other order(s) of this Authority and if so, its legal consequences?	In the affirmative. Liable to pay penalty under Section 63 of RERA Act.
5.	Whether the respondent has violated any provisions of RERA Act and if so, its legal consequences thereof?	In the affirmative. Liable to pay penalty under Section 61 of RERA Act.
6.	Whether the respondent/promoter has failed to give possession of units to the respective allottees/complainants as per	In the affirmative and hence Section 18 of RERA Act is squarely



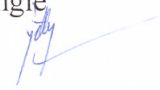
	the date specified in their respective agreements for sale and if so, the legal consequences thereof?	attracted.
7.	Whether in the instant cases, the issue of non-registration of the project can be raised by the complainants?	In the negative.
8.	Whether the complainants are entitled for compensation?	To be decided by the Adjudicating Officer.

REASONS

25. **POINT NO.1** whether the undersigned member has the power to adjudicate the instant complaint?

The Ld. Advocate for the respondent in his arguments has submitted that the individual member of this Authority has no power to adjudicate the instant complaints as not only there is no order passed by this Authority for delegation of powers for hearing and adjudication in favour of a single member but also because decision if made by a single member “would be bad in law and ultra-vires”. Thus, according to the Ld. Advocate for the respondent, any order passed by a member of this Authority would be nullity in the eyes of law being without jurisdiction.

26. There is no merit in the aforesaid submission **firstly** because way back on 01/11/2019, the instant complaints were allotted by the Chairperson of this Authority to a single member for adjudication and the said allotment is clear from the Roznama Notings of the aforesaid date. Thereafter, in the absence of the said single member, the complaints were allotted to the other single



member for hearing and adjudication as per Roznama dated 18/02/2020. On 10/12/2020, these complaints were allotted to the undersigned member of this Authority as per the Roznama dated 10/12/2020. Hence, there is a proper written allotment of these complaints to the single member of this Authority, in consonance with Sections 25 and 81 of the RERA Act which are reproduced hereunder for ready reference.

Section 25. Administrative powers of Chairperson.- The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.

Section 81. Delegation.- The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85, as it may deem necessary.

27. Secondly, “Transaction of business by the Goa Real Estate Regulatory Authority Regulation, 2021” was framed and published in the Official Gazette dated 08/04/2021, of which the relevant Clause (x) is reproduced hereunder:-

“All cases of complaints on registration, violation against various provisions of the Act/rules shall be assigned to the Member(s) by the Chairperson. They shall hear the complaints and decide on merits. Such decision of the member is final and an aggrieved



person may appeal to the designated Goa Real Estate Appellate Tribunal. At present Goa Administrative Tribunal at Panaji has been designated as Appellate Tribunal.”

Thereafter, there was **amendment to the aforesaid Regulation by Notification relating to “Transaction of Business by the Goa Real Estate Regulatory Authority Regulation (Amendment), 2021 published in the Official Gazette dated 14/10/2021**, the relevant Clause of which reads as follows:-

“2. Amendment of Regulation 3. (x)-In regulation 3 of The Transaction of Business by the Goa Estate Regulatory Authority Regulation 2021, for clause (x), the following clause shall be submitted, namely:-

(x) All cases of complaints on registration, violation against various provisions of the act/rules shall be assigned to the Member(s) by the Chairperson. They shall hear the complaints and decide on merits. Such decision of the member is final and an aggrieved person may appeal to the designated Goa Real Estate Appellate Tribunal. The Government of Goa vide Notification 11/50/2017-DMA/RERA/2146, published in Official Gazette, Series I No. 26, dated 23rd September, 2021 under Department of Urban Development (Municipal Administration) has designated the Maharashtra Real Estate Appellate Tribunal to be the Appellate Tribunal for the State of Goa to hear appeals under the said Act with effect from 23-09-2021”.



28. **Thirdly**, the instant issue also arose before the Hon'ble Supreme Court in the case **"M/s New Tech Promoters and Developers Pvt Ltd vs. State of UP and ORS etc in Civil Appeal No. (s) 6745-6749 of 2021 arising out of SLP (Civil) No(s) 3711-3715 of 2021"** in which inter-alia a specific question No. 3 was framed by the Apex Court to the effect as to "whether Section 81 of the Act authorizes the Authority to delegate its powers to a single member of the Authority to hear complaints instituted under Section 31 of the Act?" to which the Apex Court answered in the affirmative and made the following remarks and statements:-

"112 Section 81 of the Act 2016 empowers the Authority, by general or special order in writing, to delegate its powers to any member of the Authority, subject to conditions as may be specified in the order, such of the powers and functions under the Act. What has been excluded is the power to make regulations under section 85, rest of the powers exercised by the Authority can always be delegated to any of its members obviously for expeditious disposal of the applications/complaints including complaints filed under Section 31 of the Act and exercise of such power by a general and special order to its members is always permissible under the provisions of the Act - - - - -

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117 The further submissions made by learned counsel for the appellants that Section 81 of the Act permits the authority to delegate such powers and functions to any member of the



Authority which are mainly administrative or clerical, and cannot possibly encompass any of the core functions which are to be discharged by the authority, the judicial functions are non-delegable, as these are the core functions of the Authority. The submissions may not hold good for the reason that the power to be exercised by the Authority in deciding complaints under Section 31 of the Act is quasi-judicial in nature which is delegable provided there is a provision in the statute. As already observed, Section 81 of the Act empowers the authority to delegate its powers and functions to any of its member, by general or special order.”

29. As it is well established that a single member of the Authority can hear and decide complaints under Section 81 of the Act, **the instant point is answered in the affirmative.**

30. **POINT NO. 2** Whether the prayer of the complainants for takeover of the project, appointment of receiver etc. is required to be granted?

The complainants have moved an application (page 596/C) dated 17/03/2020 praying this Authority to invoke Section 8 of the RERA Act and take over the project, “Prabhu Chambers” to complete all the pending works which have been mentioned in the said application after consultation with the appropriate Government; to appoint a receiver who will take charge and control of the said project; direct the respondent not to create any third party rights or in any manner deal with the units forming part of the said building and to direct the respondent to deposit a sum equivalent to 5% of the total cost of the project towards guarantee for the works so far carried out with respect to the said

building so that the applicants are sufficiently indemnified as against any loss or damage suffered due to substandard and inferior quality work done by the respondent.

- 31.** The complainants in the instant application have given details of the non-completion of essentials works with respect to the said building/ project and defective works carried out by the respondent in the same. It is submitted that almost 95% of the sale consideration is already paid by the respective unit holders and the pending amount has to be paid on handing over the possession of the units but despite receiving substantial amount from the unit holders, the respondent did not complete the pending works in time which led to inordinate delay in handing over the units to its purchasers, thereby causing severe financial loss to the complainants.
- 32.** According to the complainants, the respondent obtained part occupancy certificate with certain conditions but the respondent never complied with those conditions. It is submitted that vide its communication dated 12/09/2019, Mapusa Municipal Council directed the respondent to initiate immediate action/steps within 48 hours with respect to the following works:-
- a)** Water logging in the basement and in the lift duct to be abated.
 - b)** Shifting of electrical panels and installation of transformers should be done in coordination with Electricity Department.
 - c)** The set back area should be cleared by demolishing the kiosk as per NGPDA approved plan.
 - d)** The parking area should be made functional.
 - e)** Submission of final NOC from Fire Department,



however, when above directions were not complied with by the respondent, the Mapusa Municipal Council revoked the part occupancy certificate issued on 25/09/2019.

33. It is further brought to the notice of this Authority that the respondent did not even comply with the directions given by this Authority by order dated 12/09/2019 to complete all the pending works in a time bound manner. According to the complainants the respondent does not have financial capacity to complete the said building and because of the default in payment of loan amount, the financial institutions have started proceedings against the respondent and his office premises under SARFAESI Act. It is submitted that the illegalities done by the respondent will further delay the grant of fresh occupancy certificate. In view of the above, the complainants furnished a scheme for implementation by this Authority so that the project is taken over and all the remaining work is completed.
34. Reply dated 01/12/2020 was filed by the respondent (page 1062/C) to the aforesaid application wherein the respondent has inter-alia submitted that the construction of the project was completed by the respondent in the year 2016 and that a completed project cannot be taken over under the RERA Act; that as the construction of the building was completed prior to 01/05/2017, RERA Act was not applicable to the said project; that the project got delayed due to reasons beyond the control of the respondent and due to the acts and omissions of the Statutory Authorities and that "he has no objection in case this Hon'ble Authority disposes of the present complaint by giving time bound directions to the builder respondent to hand over the premises along

with the occupancy certificate to the complainant along with the lift and other infrastructural facilities.”

35. Since the completion certificate obtained by the respondent is dated 27/08/2018, RERA Act is applicable to the said project/ building, however the **prayer of takeover of the project under Section 8 of RERA Act is rejected because of the following reasons:-**

(a) **Section 8 of RERA Act** dealing with obligation of Authority consequent upon lapse of or on revocation of registration states inter-alia that **“upon lapse of the registration or on revocation of the registration** under this Act, the Authority may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority”.

36. Hence, once the decision to revoke the registration of the Real Estate project has been taken by the RERA **or the registration of the Real Estate project has expired as per the time limit mentioned in Section 5(3) of the Act**, the RERA may consult the appropriate Government to take such action, as it may deem fit, for carrying out the remaining development works.

37. **In the instant case, the project in question is not registered** inspite of the order for registration of the project passed by this Authority and hence there is neither any scope for revocation of registration nor for the expiry of the registration of Real Estate project as per the time limit mentioned in **Section 5(3) of the Act** as under the said Section **“the registration granted under this Section shall be valid for a period declared by the promoter under sub-clause (c) of Clause (1) of sub-Section (2) of Section 4 for completion of the project or phase thereof, as the case may be”**.

38. As the instant project is unregistered and as Section 8 of the Act applies only either upon lapse of the registration or on revocation of the registration, the aforesaid Section is not applicable to the instant project and hence cannot be invoked to take over the project.

(b) Even otherwise, the respondent has already obtained completion certificate dated 27/08/2018. The respondent now has only to remove/ rectify the deficiencies as pointed out by North Goa Planning and Development Authority (NGPDA) and Mapusa Municipal Council as per their inspection report produced on record to obtain the occupancy certificate.

(c) Further, in this context, it is necessary to reproduce here under the relevant portion of the order dated 28/06/2021 passed by the Hon'ble Bombay High Court in Writ petition No. 1156 of 2021 moved by the respondent herein against the complainants:-

“3. With respect to the aforesaid submission we direct the Authorities of Mapusa Municipal Council, North Goa Planning and Development Authority and Directorate of Fire and Emergency Services to inspect the petitioner's site within a period of six weeks from today and certify whether there are any deficiencies in the construction put up by the petitioner comprising the Ground plus five floors. The Authorities should then furnish the petitioner with the list of deficiencies, if any. **Mr. Joshi, Learned Counsel states that the petitioner will then rectify the deficiencies, if any and once again apply to the Authorities for fresh inspection to ascertain whether such deficiencies are indeed rectified.**” (emphasis supplied)



39. From the aforesaid order it is clear that undertaking is given by the respondent's Advocate before the Hon'ble Bombay High Court in the aforesaid Writ petition that the respondent herein will rectify all the deficiencies in the construction as and when pointed out by the aforesaid Statutory Authorities. In view of the aforesaid undertaking of the respondent before the Hon'ble Bombay High Court, even otherwise there is no issue left of takeover of the project. Moreover, there are many other unit holders in the said building who are not complainants in the instant cases. **The instant point is, therefore, answered in the negative.**

40. **POINT NO. 3** Whether the respondent has violated the direction passed by this Authority in terms of order dated 07/02/2020?

Application dated 02/09/2021 was moved by the complainants praying therein to initiate contempt proceedings against the respondent and for other consequential reliefs for deliberately flouting the order dated 07/02/2020 of this Authority by the respondent. The aforesaid order of this Authority quoted in the said application is reproduced here under for ready reference:-

“ Called out –Adv. Yatish Naik present for complainants and Adv. C. Fonseca for the respondent. Filed compliance report. Complainant on the other hand filed three applications one u/s Section 36 read with r/w 37 of the Act, another u/sec 37 of the Act and last application for production of documents i.e. Compact Disk of audio recording. Matter fixed for reply of the complainant. **Meantime respondent to maintain status quo** in the sense not to mortgage or create lien or liability, charge or hypothecation **with respect to the property under dispute and the structures thereon**” (emphasis supplied).



41. According to the complainants inspite of the aforesaid order, the respondent in gross violation of the directions passed by this Authority has created third party rights with respect to office premises bearing no. **3TF1** located on third floor of the building “Prabhu Chambers”. It is submitted that the said office premises were initially agreed to be sold to Mr. Imran Sayyed under an oral contract between the respondent and said Imran paid the entire sale consideration amounting to Rs. 16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only) on 29/09/2016 to the respondent who issued a receipt towards the purchase of the said unit. Thus, according to the complainants, the conduct of the developer/respondent in creating third party rights with respect to the premises bearing no. 3TF1 amounts to contempt of order passed by this Authority. Hence, the prayer of the complainant **(a)** to initiate contempt proceedings against the respondent for deliberately flouting the order dated 07/02/2020; **(b)** to direct the respondent to produce on record the title deed with respect to the sale of premises bearing no. 3TF1; **(c)** to cancel the title deed executed by the respondent in favour of the third party; **(d)** to impose penalty on the respondent to the extent of 5% of the estimated cost of the Real Estate project under Section 63 of the Act; **(e)** to direct the respondent not to further create any third party rights, lien, charge, hypothecation or mortgage with respect to the landed properties and the structures constructed thereon.
42. Reply was filed by the respondent on the aforesaid contempt application and in the said reply the stand taken by the respondent is that **(a)** the provisions of Contempt of Courts Act 1971 are not applicable to this Authority; **(b)** that the aforesaid order was written on the Roznama sheet which cannot be considered as an order; **(c)** that even if it is presumed that the Roznama dated 07/02/2020 is an order, still in view of the use of the words “in the meantime” in the said order, it is clear that the said order was meant to be operative till the next date

fixed for hearing i.e. 12/02/2020 and not thereafter, especially when the subsequent Roznamas do not record continuation of the order of Status quo and hence the said order of status quo ceased to be operational after 12/02/2020; **(d)** that Mr. Imran Sayyed has not acquired ownership of any premises in the said building; **(e)** that the scope of inquiry before this Authority is limited to the premises purchased or agreed to be purchased by the complainants and the premises in respect of which present application for contempt is made is neither purchased nor agreed to be purchased by any complainant and hence the prayer of the respondent to dismiss the said application.

- 43.** Thereafter, the Ld. Advocate for the complainants place on record the sale deed dated 29/04/2021 and photocopies of receipts dated 13/06/2016 in order to prove that the respondent has created third party right over the premises agreed to be sold to Imran Sayyed. The Ld. Advocate for the respondent then filed written submissions pointing out that both the receipts are dated 13/06/2016 but though one receipt pertaining to Rupees Ten Lakhs mentions the premises 3TF3, the other receipt of Rupees Ten Lakhs Twenty Five Thousands does not mention any premises number. It is further pointed out that while the receipt for Rupees Ten Lakhs refers to premises 3TF3, para 6 of the application refers to 3TF1. However, the Ld. Advocate for the complainants moved an application for amendment of the contempt application on the ground that due to typographical error in para 6, 7 and 11 and prayer clause (b) of the contempt application, the unit was wrongly mentioned as 3TF1 instead of 3TF3 and the said application for amendment was allowed by this Authority and accordingly the contempt application was amended by substituting the unit number 3TF3, where ever required.



44. Arguments were heard on the said application. The Ld. Advocate for the respondent has also disputed the receipts produced on record by Imran Sayyed and has submitted that Imran Sayyed has no agreement for purchase of any premises in the building “Prabhu Chambers”; that the claim of Imran regarding payment towards sale consideration is false and no payments were received towards the said receipts; that the receipts were not a contract or agreement under the provisions of the RERA Act.
45. No doubt this Authority cannot decide or declare the ownership of any party over the said project/ its unit(s). The issue in the instant application is not whether Imran Sayyed has any right over the premises 3TF3 of the building “Prabhu Chambers” or whether there is any agreement for sale between Imran Sayyed and the respondent but **the only issue in this application is whether the respondent violated this Authority’s order dated 07/02/2020.** In this context, it is necessary to refer to the application dated 07/02/2020 moved by the Ld. Advocate for the complainants wherein the complainants had shown their apprehension and the reasons for preserving the subject matter of the instant complaint in the words which are quoted below:-

“8 Applicants submit that the respondent is a habitual defaulter and has a history of flouting orders passed by this Hon’ble Authority and taking into account such conduct of the respondent, there is apprehension in the minds of the applicants that, the said respondent in order to defeat the rights of the applicants might resort to high handed action of creating third party rights or might assign or transfer the interest, title and rights **with respect to the landed property as well as the structure which is built on the property** bearing chalta no. 70



and 71 of P.T. Sheet 148 which admeasures 701 Sq.mtrs and 874 Sq. mtrs. Applicants further submit that an additional area comprising of 295 Sq. mtrs has also been procured by the respondent for the purpose of building the commercial complex which is identified as “Prabhu Chambers”

9. Applicants submit that the matter with respect to incomplete work and compliance with the mandatory requirements in terms of the Building Regulation Act is presently pending before this Hon’ble Authority and **hence, there is a need to preserve the subject matter of lis pending the hearing and final disposal thereof.**

10. Applicants submit that, since there is a public notice issued by the bank seeking recovery of its dues, the respondent in such a situation should be restrained by passing necessary orders/directions in terms of Sections 15, 36 and 37 of RERA Act so that the dispute which is pending for adjudication does not become fait accompli”

46. Against the backdrop of the aforesaid apprehension of the complainants and their prayer, this Authority passed order dated 07/02/2020 on the Roznama Sheet. **The said order does not lose its validity nor becomes nonest in the eyes of law merely because it is passed on the Roznama Sheet** and therefore there is no force in the arguments of the Ld. Advocate for the respondent that it is not a proper or valid order. The respondent cannot take the liberty of flouting the said order merely because it is passed on the Roznama Sheet.



47. Further arguments of the respondent that the wordings in the said order to the effect that “meantime respondent to maintain status quo” merely directs the respondent to maintain status quo till the next date of hearing i.e. till 12/02/2020 is also not acceptable as such an interpretation is contrary to the spirit of the said order which has to be seen vis-a vis the application moved by the complainants. No where it is mentioned in the said order that the status quo has to be maintained by the respondent till the next date of hearing which was fixed for reply of the complainants on compliance report and replies of the respondent on the three application moved by the complainants. Futile attempt has been made on the part of the respondent to wriggle out of the consequences of flouting the said order by giving baseless and unwarranted interpretation to the said order
48. The respondent has submitted in his reply to the application for contempt that “the jurisdiction of this Hon’ble Authority is limited to the subject matter of dispute, that too in between the specific parties. Any order passed by this Hon’ble Authority in excess of the jurisdiction vested in it, is a nullity in the eyes of law”, **however, if the respondent was aggrieved by the said order dated 07/02/2020 on any ground, he was at a liberty to challenge the same before the Appellate Authority and could not have violated the same without getting it set aside by the higher Authority.**
49. **The order dated 07/02/2020 clearly mentions that the respondent has to maintain the status quo not only pertaining to the property under dispute but also structures thereon,** however, the sale deed dated 29/04/2021 executed between the respondent and one Mr. Kedar Krishna Shirgaonkar and other produced on record by the Ld. Advocate for the complainants and which registered sale deed is not disputed by the respondents clearly shows that in

violation of the aforesaid order of this Authority, the respondent created third party rights by selling the premises i.e. office no. 3TF3 on the third floor of the building “Prabhu Chambers”.

50. In view of the aforesaid, it is clear that the respondent violated the order dated 07/02/2022 passed by this Authority and action has to be taken in this regard by the Authority strictly under the provisions of RERA Act and within the purview of the said Act rather than under any other Act for flouting the Authority’s order as legal consequence is clearly provided in RERA Act. **Section 63 of RERA Act** states as follows:-

“63. Penalty for failure to comply with orders of Authority by promoter.- If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority”

The instant point is therefore answered in the affirmative and the respondent has made himself liable for penalty under Section 63 of RERA Act. It is worth mentioning that as per the Chartered Accountant’s certificate dated 13/11/2019, submitted by the respondent for registration of the instant project, **the estimated cost of the instant project is mentioned as Rs. 142,502,973.00/-** i.e. Rupees fourteen crores twenty five lakhs two thousand nine hundred and seventy three only.



51. **POINT NO. 4** Whether the respondent has violated other order(s) of this Authority?

Firstly, in this regard it is necessary to again refer to the Final Order made by Mapusa Municipal Council dated 12/09/2019. From the said order, it is clear that the said Statutory Authority had directed the respondent to “initiate immediate action/steps within 48 hours from the date of receipt of this order” for the following works:-

- a) Water logging in the basement and in the lift duct to be abated.
- b) Shifting of electrical panels and installation of transformers should be done in coordination with Electricity Department.
- c) The set back area should be cleared by demolishing the kiosk as per NGPDA approved plan.
- d) The parking area should be made functional.
- e) Submission of final NOC from Fire Department.

52. Since, the respondent failed to “take steps”, “initiate the above mentioned works” within 48 hours from the date of receipt of the said order, Mapusa Municipal Council revoked Part Occupancy earlier granted to the respondent. However, the respondent by **application dated 22/11/2019** (page 116/C) submitted before this Authority that **“the respondent is ready and willing to comply with the directions contained in the order dated 12/09/2019 made by Mapusa Municipal Council within a specified time frame”** which time frame is mentioned in the said application and the outer limit mentioned therein is 60-65 days. It is further submitted in the said application that upon the compliance by this respondent with the order dated 12/09/2019 made by Mapusa Municipal Council, a letter to said effect shall be placed before this



Authority as well as the Mapusa Municipal Council seeking restoration of occupancy dated 29/05/2019.

53. Reply was filed by the Ld. Advocate for the complainant to the aforesaid application dated 22/11/2019. After hearing the arguments, this Authority passed **order on 25/11/2019** the relevant portion of which is reproduced herein below for ready reference:-

“-----Both the parties shown the willingness to settle the matter amicably and in pursuance of the same the parties file memo/reply thereof and the manner in which pending work to be completed as per the direction of the Mapusa Municipal Council.

I have heard both the Advocates, perused the record.

As the respondent agreed to carry out the works in compliance with the order dated 12/09/2019 of Mapusa Municipal Council relating to work of water logging in the basement and in the lift duct to be abated, shifting of electrical panels and installation of transformer and set back area to be cleared by demolishing the kiosk as per the NGPDA approved plan, the respondent is hereby directed to carry out the said work within 30 days from today. In so far as the set back area is concerned, the respondent has to expedite demolition of the kiosk before the competent authority that is Mapusa Municipal Council and such other Statutory Authority as may be required and the said Authority to expedite the matter in accordance with law.



As regards parking area to be made functional, the same will merge with the compliance of the first direction that is clearing water logging in the basement and in the lift duct.

Respondent also to expedite to obtain final NOC from Fire Department on compliance of their requirement.

It is also made clear that 60 days time sought by the respondent is not permitted and instead they are directed to complete all the work within 30 days. ---

As per the request of the advocate for the respondent the commencement date of the work is fixed on 28/11/2019.---”

54. Thus, by the aforesaid order, the respondent was directed to complete all the works within 30 days from 28/11/2019. Though the respondent kept on asking for extension of time to complete the works by moving various applications before this Authority and by filing various “report of compliance”, which in fact mentioned inter-alia the grounds for non-compliance of the aforesaid order, **the fact remains that till date the respondent has not fully complied with the aforesaid order dated 25/11/2019.** Thus, the complainant moved an application dated 07/02/2020 wherein, at paras 7 and 8, it is mentioned as follows:-

“7.) It is relevant to mention that, the orders passed by this Hon’ble Authority were at the instance of the Respondent, who had volunteered to finish the pending works so as to make the building habitable and operational. It was therefore necessary for

the Respondent to complete the installation of transformer, finish the work in the basement of the building to arrest the water logging problem as well as abating the water logging in the lift duct so as to make the lift functional throughout, obtain NOC for the entire building from the Department of Fire Safety, initiate steps for clearing the setback area and the parking area to be made functional in all respects.

8.) It is respectfully submitted that, none of the above works have been completed in its proper perspective and hence, the Respondent has miserably failed to comply with the directions of this Hon'ble Authority."

55. Though the "Report of Final Compliance" is filed by the respondent, however, as admitted by the respondent, the Mapusa Municipal Council has still not given the occupancy certificate after revoking part occupancy certificate and this itself is sufficient to show that the respondent till date has not fully complied with the aforesaid order of this Authority. Various documents produced on record by the complainant also corroborate the same.

56. Secondly, though the respondent has blamed the Statutory Authorities for the delay in completion of works of the said building, the Hon'ble Bombay High Court has clearly stated in **order dated 28/06/2021** passed in **Writ petition no. 1156 of 2021** that **"this is not a case where the Statutory Authorities can be faulted in any manner."** Thus, once the Hon'ble Bombay High Court

has come to a conclusion that there is no fault on the part of the Statutory Authorities, the statements of the respondent made in the various replies, compliance reports and during arguments casting blame on the Statutory Authorities for their acts/omissions, especially for revoking of part occupancy certificate and the consequent delay in completing the essential works in the said building by the respondent are without any merits.

57. In the aforesaid order dated 28/06/2021, the Hon'ble Bombay High Court gave the following directions to the respondent herein and the respondent herein gave an undertaking before the Hon'ble Bombay High Court and the said relevant para of the aforesaid order is reproduced herein below:-

“3. With respect to the aforesaid submission, we direct the Authorities of Mapusa Municipal Council, North Goa Planning and Development Authority and Directorate of Fire and Emergency Services to inspect the petitioner's site within a period of six weeks from today and certify whether there are any deficiencies in the construction put up by the petitioner comprising the Ground plus Five floors. The Authorities should then furnish the petitioner with the list of deficiencies, if any. **Mr. Joshi, learned Counsel states that the petitioner will then rectify the deficiencies, if any and once again apply to the Authorities for fresh inspection to ascertain whether such deficiencies are indeed rectified.**” (emphasis supplied)

58. Thus, before the Hon'ble Bombay High Court, the Ld. Advocate for the respondent herein gave an undertaking that the respondent/ promoter will rectify the deficiencies in the construction whenever and whatever pointed out

by the Statutory Authorities like Mapusa Municipal Council, North Goa Planning and Development Authority and Directorate of Fire and Emergency.

59. As per the directions given by the Hon'ble Bombay High Court, the Statutory Authorities inspected the said building and gave their respective reports to the respondent and the same were filed before this Authority and are on record.

The site inspection report dated 04/08/2021 of North Goa Planning and Development Authority pointed out the following deficiencies:-

“ i At the mouth (starting point of the ramp) on Southern side of the property for entry of vehicles to the basement, there is existing kiosk/ shop of size (8.7 mts. x 6 mts.) which is within road widening area and which was shown to be demolished in the approved site plan of the building but whereas it is not demolished. This kiosk/shop is completely blocking the access/entry to the basement parking and hence cars cannot enter in the basement reserved for parking and also the low height masonry wall is constructed at the entrance of the basement behind the kiosk.

ii The transformer installed for the building is partly within road widening area and party in setback area towards the Southern side of the property. The said transformer along with the other electrical equipments has been installed occupying the area of 3 numbers of approved car parking slots.

iii The diesel generator (DG set) is found installed in the road widening area of the Southern side of the property.

iv The unit holders informed that in the rainy season water gets accumulated in the basement area as well as the lift duct and therefore there is risk to life of the occupant of the unit holders, but whereas on the day of inspection there was no water logging in the basement and in the life duct was seen. It is seen on the site that the developer has made one pit next to the lift duct for accumulation of water and has installed two pumps in the pit to pump out the water from the basement area. **It is seen on the site that there was some accumulated water in the pit. It is also seen that there is some dampness in the basement and the lift duct.**

v Lid covers over the underground sump tank in the basement is found fixed little above the basement floor on the drive way which will obstruct free vehicle movements as said by the unit holders present on the site.”

60. NGPDA also recommended measures to be taken by the respondent for rectification of the aforesaid deficiencies. **Mapusa Municipal Council also pointed out various deficiencies**, however, regarding water logging in the basement parking and lift ducts, it was mentioned in the report as follows:-

“vi. To certify whether the measures under taken by the developer to abate water logging problem by injecting water proof compound as the water table in the area is very high as River Tar is in close vicinity, require services of expertise agency. Hence we may direct the developer/builder to carry out the scientific study and submit report with respect to water



logging issue and also to submit the structural stability certificate of the existing building from Goa Engineering College **as the water was noticed oozing out from the foundation during the previous inspection dated 07/07/2001.**” (emphasis supplied)

61. In the “compliance report” filed on 24/09/2021 by the respondent it is mentioned that some of the recommendation of the Statutory Authorities have been complied with i.e. lowering the level of the lid cover of the underground water tank to the level of the basement floor; obtaining NOC from the Directorate of Fire and Emergency Services; obtaining structural stability certificate dated 16/08/2021 from a structural engineer; that hand rail is fitted and resolving the issue of water logging, however, according to the respondent, it is the duty of Mapusa Municipal Council to remove the kiosk and accordingly Mapusa Municipal Council issued final notice/order dated 11/01/2021 directing the owner of the illegal kiosk to remove the same and the said owner has filed an appeal bearing no. 4/2021 before Municipal Appellate Tribunal which is still pending; that once the kiosk is removed, the respondent would take appropriate steps for shifting/ removal of transformers and other electrical equipments; that once the transformer and generator are shifted parking will be restored; that when DG set and other related accessories are shifted the road widening area will be free of obstruction and that the requirement suggested by the Municipal Council to vacate the four residential units which are occupied by the unit holders is illegal as the revocation of occupancy certificate is just temporary.



62. After perusing the aforesaid reports of Mapusa Municipal Council and NGPDA and the so called “compliance report” filed on 24/09/2021 by the respondent and in consonance with the aforesaid order dated 28/06/2021 of the Hon’ble Bombay High Court, **this Authority passed an order dated 24/09/2021** wherein after noting that “inspite of the aforesaid undertaking before the Hon’ble Bombay High Court, the respondent till date has not fully complied with the aforesaid undertaking before the Hon’ble High Court or in other words have not rectified all the deficiencies as mentioned in the said reports as is clear from the compliance report submitted by the respondent today, though time has been granted by this Authority for such compliance”, this Authority gave last and final opportunity to the respondent to rectify all the deficiencies as mentioned in the aforesaid reports.

63. The respondent in his Affidavit dated 07/10/2021 has reiterated that the kiosk is illegal and Mapusa Municipal Council passed an order dated 11/01/2021 for its removal and against the said order the owner of the kiosk by name Jeevan Mayekar filed Municipal appeal No. 4/2021 which is still pending before the Municipal Appellate Tribunal; that as soon as the said kiosk is removed on completion of the aforesaid proceedings, the respondent would shift the transformer, generator and DG set beyond the road widening area and will restore the three parking spaces shown in the approved plan; that the respondent has lowered the level of the lid cover of the underground water tank to the level of basement floor; that the recommendation of the Mapusa Municipal Council for eviction of four occupants is contrary to law and the said occupants cannot be evicted without due process of law to be initiated by the competent Statutory Authorities; that the respondent has been in contact

with Goa Engineering College for the structural stability certificate; that the respondent will not fix M S Grills on the windows as the said recommendation is illegal and will be challenged before the appropriate Authority and that “ except for accumulation of water in the basement, which according to us was a result of natural forces, there were no other defects in the construction done by us.”

64. Regarding the issue of water logging in the basement and the lift duct, the respondent in the aforesaid compliance report filed on 24/09/2021 has further stated that Naaman contractor has permanently solved the problem of discharge of ground water by treating lift pit raft with epoxy grouting by injection grouting method at all points where water outlets were noticed. The respondent has also produced on record water proofing report of Naaman contractor dated 04/11/2020 wherein it is inter-alia stated as follows:-

- “1. The pressure grouting was carried out as per the technology suggested by SIKA INDIA LTD. As per their technical data sheet we have strictly followed the specifications.
2. The pressure applied was 5 Kg/cm² to take the existing water level pressure from the surroundings.
3. The work was carried out on 15/10/2019 in the basement with 5 Kg pressure epoxy grouting.
4. The work carried out at Prabhu Chambers comes with 10 years warranty.
5. The warranty shall cover leakages, seepages and dampness only for the area where the treatment is given by us.”



65. As per the aforesaid Report of Naaman contractor, the aforesaid water proofing work was done on 15/10/2019. However, it is seen that inspite of aforesaid water proofing work done on 15/10/2019 and the warranty given, Mapusa Municipal Council has clearly stated in its Site Inspection Report dated 04/08/2021 that **“the water was noticed oozing out from the foundation during the previous inspection dated 07/07/2021”** i.e. inspection done during rainy season.
66. Moreover, though in its report dated 18/10/2021, professor in Civil Engineering in Goa College of Engineering has stated that the aforesaid “PU treatment followed by epoxy grouting is acceptable to the team of GEC”, as the “only option was pressure grouting”, still it is stated in the said report that the leakage or seepage from the floor of basement slab is firstly “due to the water pressure between the space of footings” as the water table level is very high there and secondly the said “leakage or seepage in the basement is also attributed to unprecedented rainfall in Goa.”
67. However, whatever may be the reasons and whatever treatments carried out by the respondents on 15/10/2019, the fact still remains that even after the aforesaid treatment at the basement, the Mapusa Municipal Council when visited the site for inspection on 07/07/2021 found water oozing out from the foundation.
68. As rightly pointed out by the Ld. Advocate for the complainants there is no Affidavit relied upon from a certified engineer stating that the method adopted by the developer is fool proof method to stop the oozing out of water from basement even during rainy season or during heavy rains which Goa

witnesses frequently and even when water table level is very high due to River Tar in its close vicinity.

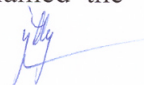
69. Even the Report of Goa College of Engineering which states that the said Report may not be construed as legal documents or certificate of endorsement, though mentions that “the PU treatment followed by epoxy grouting is acceptable to the team GEC”, especially when pressure grouting is the only option and when the work is warranted for ten years, does not whisper any statement to the effect that the aforesaid treatment at the basement has finally and permanently resolved the issue of water logging in the basement and lift duct and/or that with the said treatment there will be no water logging in the basement and lift duct in future and/or henceforth there will be no risk in operation of lift installations irrespective of rainy season/heavy rains or high level of water table in the said area. As stated above, the Ld. Advocate for the complainants has also produced on record Compact Disk which contains video recording to show that “the lift duct is still filled with water which is coming from all directions and there is dampness making it prone to mishap and hazard whereby on operation of lift installations there is a high risk of electrocution”.

70. It is also material to note that NGPDA in its Site Inspection Report dated 04/08/2021 has specifically stated that **“it is also seen that there is some dampness in the basement and lift duct”**.

71. Even the Ld. Advocate for the respondent in his written submissions dated 09/11/2021 clearly admitted in para 52 thereof that “the water proofing also failed on account of excessive rains and flooding in the area.



72. Though the aforesaid observations are made from the documents/ reports produced on record, however, **final conclusion has to be arrived at by Mapusa Municipal Council and NGPDA/ competent Authorities as to whether the measures taken by the respondent in the basement and lift duct for fool proof prevention of water logging are sufficient to give occupancy certificate to the respondent since the said competent Authorities revoked the same.**
73. Regarding kiosk, the respondent has submitted in the Compliance Report that since it is the duty of Mapusa Municipal Council to remove the same, the said council issued final notice/ order dated 11/01/2021 directing the owner of the said kiosk to remove the same against which the owner filed an appeal bearing no. 4/2021 which is still pending. Regarding shifting of transformer and other electrical equipment and restoration of parking, the respondent submits that “once the kiosk is removed, the respondent would take appropriate steps for shifting/removal of transformers and other electrical equipments” and that “once, the transformer and generator is shifted, parking will be restored”.
74. It has been rightly pointed out by the Ld. Advocate for the complainants that removal of said illegal kiosk is the responsibility of the developer/ respondent who was very well aware of its existence since the time when he commenced construction on site. It is very material to note that both the competent Authorities i.e. NGPDA and Mapusa Municipal Council have blamed the



respondent for the existence of said illegal kiosk. NGPDA in its Site Inspection Report dated 04/08/2021 has clearly stated as below:-

“ i. At the mouth (starting point of the ramp) on Southern side of the property for entry of vehicles to the basement, there is existing kiosk/ shop of size (8.7 mts. x 6 mts.) which is within road widening area and which was shown to be demolished in the approved site plan of the building but whereas it is not demolished. This kiosk/shop is completely blocking the access/entry to the basement parking and hence cars cannot enter in the basement reserved for parking and also the low height masonry wall is constructed at the entrance of the basement behind the kiosk.”

Similarly Mapusa Municipal Council in its report dated 04/08/2021 has stated that the kiosk which is completely blocking the access /entry to the basement park “is shown as to be demolished in the approved site plan”.

75. From the aforesaid statements of the competent Authorities it is clear that in the site plan submitted by the respondent to the competent Authorities, the said kiosk was shown as to be demolished and accordingly the said site plan was approved by the competent authorities. Without getting the kiosk demolished as per the site plan, the respondent obtained the occupancy certificate, which was later revoked. Hence, because of the aforesaid fact, the respondent cannot escape his liability either by putting blame on the competent authorities or by taking the stand that the matter is pending before the Municipal Appellate Authority.



76. Regarding the recommendation of Mapusa Municipal Council that windows have to be fitted with MS grills, it is submitted by the respondent that such requirement/ recommendation of the council is illegal.
77. Regarding the recommendation of Mapusa Municipal Council that four residential units which are occupied are to be vacated immediately since council has already revoked the part occupancy issued to the building, the respondent has submitted that the said requirement suggested by the council is illegal and inserted in the recommendations at the instance of the complainants out of malice.
78. Regarding the directions of Mapusa Municipal Council that the parking shown on approved plan and that actual available on site should be tallied by the developer, the respondent has stated in his compliance report that the respondent has provided the parking in terms of the plan approved by the North Goa Planning and Development Authority and the said plan is available with the Municipality.
79. In the compliance report, however, the respondent has submitted that few recommendation of the council have been complied with like lowering of the level of lid cover of the underground water tank to the level of basement floor; NOC from the Directorate of Fire and Emergency Services and fitting hand railing to the opening of first floor overlooking the lobby. The Site Inspection Report of Goa Engineering College dated 18/10/2021 has also given structural stability certificate by mentioning therein that “the structural liability certificate issued by the proprietor may also be treated as valid.”

80. In para 6 of the compliance report dated 22/09/202, the respondent has submitted that the requirements suggested by the Municipal Council of removal of kiosk, shifting of transformers and other electrical equipments “are contrary to the requirements set out by the Municipal Council in the final order dated 12/09/2019” and that “in the first place, occupancy certificate should not have been revoked only on the ground of water logging”. **It is material to note that aforesaid statement is made in the compliance report inspite of undertaking given by the respondent before the Hon’ble Bombay High Court, as stated above, to the effect that the respondent will rectify all the deficiencies pointed out by the Statutory Authorities.**

81. As admitted by the respondent himself, the respondent has till date not rectified fully the deficiencies pointed out by the Statutory Authorities either by terming few deficiencies as “illegal recommendations” or by showing his incapability of complying with the same due to some reasons mentioned above. However, once the respondent has given an undertaking before the Hon’ble Bombay high Court in Writ petition no. 1156 of 2021 to the effect that he will rectify all the deficiencies pointed out by the Statutory Authorities and once again apply to the Authorities for fresh inspection to ascertain “whether such deficiencies are indeed rectified” and secondly when this Authority also in consonance with the order dated 28/06/2021 passed by the Hon’ble Bombay High Court in the aforesaid Writ petition ordered the respondent by order dated 24/09/2021 to rectify all the deficiencies as mentioned in the Reports of Mapusa Municipal Council and NGPDA, **it was incumbent on the part of the respondent either to get the recommendations made by /deficiencies pointed out by said Statutory Authorities modified/substituted/deleted/revoked by the said Authorities,**

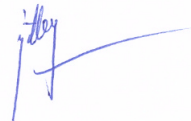


if the respondent considered the said recommendation illegal, as only aforesaid Statutory Authorities have the power and jurisdiction either to accept or reject or modify any such recommendations/deficiencies as mentioned in their reports or to get appropriate direction in this regard from the Hon'ble Bombay High Court before which the respondent gave clear undertaking of rectifying all deficiencies. Without getting modification of the recommendations/deficiencies pointed out by the Statutory Authorities, the respondent cannot flout the order dated 24/09/2021 passed by this Authority on any ground. Similarly the respondent could not have flouted the order dated 25/11/2019 passed by this Authority. The respondent flouted both the above orders dated 25/11/2019 and 24/09/2021 passed by this Authority, without challenging the same before the higher Authorities to get them set aside or modified and without challenging before the appropriate forum the deficiencies pointed out by the Statutory Authorities in their reports.

82. Hence, the respondent is liable for penalty under Section 63 of RERA Act, which states as follows:-

“63. Penalty for failure to comply with orders of Authority by promoter.- If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five percent., of the estimated cost of the real estate project as determined by the Authority.”

As stated above, the estimated cost of the project is Rs.142,502,973.00/-.



83. POINT NO-5 whether the respondent/promoter has failed to give possession of the units to the respective allottees/complainants as per the date specified in their respective agreements for sale and if so, the legal consequences thereof. In this regard, it is necessary to give a chart below containing details pertaining to allottees, their unit numbers, agreement execution date, addendum execution date, payment received, date of possession and extended date:-

Sr.No	Unit No	Names of Complainants	Agreement Execution Date	Addendum Execution date	Payment Received	Date of possession	Extended Date
1	3TF-14	Kishor Bhaidkar	17.10.2012 for 3TF-10	22.07.2014 for 3TF-14	19,99,402	24 months	9 months
2	4FF-11	Devkinandan Prabhu & Neha	20.05.2014		11,10,835	24 months	9 months
3(a)	5FF-3	Hussen Xekh	16.05.2017		16,02,000	12 months	6 months
3(b)	5FF-4	Hussen Xekh	15.11.2016		16,02,000	12 months	6 months
3(c)	5FF-5	Hussen Xekh	22.05.2017		16,02,000	12 months	6 months
3(d)	5FF-6	Hussen Xekh	22.05.2017		20,81,600	12 months	6 months
3(e)	5FF-7	Hussen Xekh	15.11.2016		10,39,200	12 months	6 months
3(f)	5FF-8	Hussen Xekh	15.05.2017		10,17,200	12 months	6 months
3(g)	5FF-9	Hussen Xekh	18.04.2017		11,81,600	12 months	6 months
3(h)	5FF-10	Hussen Xekh	15.05.2017		18,94,000	12 months	6 months
3(i)	5FF-13	Hussen Xekh	22.05.2017		11,81,600	12 months	6 months
3(j)	5FF-14	Hussen Xekh	15.05.2017		24,48,000	12 months	6 months
3(k)	6SF-18	Hussen xeth	15.05.2017		8,62,000	12 months	6 months
3(l)	6SF-19	Hussen xeth	15.05.2017		10,39,200	12 months	6 months
3(m)	6SF-20	Hussen xeth	15.05.2017		10,39,200	12 months	6 months
3(n)	6SF-21	Hussen xeth	15.05.2017		12,32,400	12 months	6 months
4	3TF-10	Tony Victor	09.02.2015		28,41,000	24 months	9 months
5	2SF-20	Tushad D Kanekar	24.06.2014		16,87,675	24 months	9 months
6	2SF-12	Jitesh Kamat	10.08.2015		12,42,000	12 months	6 months
7	2SF-14	Harshat S Pednekar	05.06.2014		29,45,000	24 months	9 months
8	2SF-13	Deepti H Pednekar	05.06.2014		15,20,000	24 months	9 months
9	3TF-16	Bashir Shaikh	22.04.2013 for 3TF-12	06.03.2017 for 3TF-16	10,63,000	24 months	9 months
10	4FF-2	Munir Ibrahim Shaikh	19.07.2013 for 4FF-5	20.10.2016 for 4FF-2	13,08,151	24 months	9 months
11	2SF-5	Viona sherly Monteiro	13.06.2016		28,03,500	24 months	9 months
12	3TF-12	Rosie mascarenhas	21.01.2016		18,63,000	24 months	9 months

13	5FF-19	Pooja Mayekar	28.03.2016		16,00,000	24 months	9 months
14	5FF-16	Tenant-Suhasini Kerkar	19.09.2014		-	24 months	9 months
15	2SF-19	Mahesh Shetye	28.11.2012	Demand letter dated 20.05.2019 for 2SF-19	13,99,209	24 months	9 months
16	2SF-9	Manali Parsekar	10.09.2012		14,50,000	24 months	9 months
17	4FF-3	SUBHASH Sawant	19.09.2014		-	24 months	9 months
18	3TF-17	Girish Pednekar	27.07.2013	Demand letter dated 18.06.2014	11,34,650	24 months	9 months
19	3TF-15	Suresh Pednekar	20.11.2013		15,52,348	24 months	9 months
20	2SF-2	Shabana Shaikh	23.01.2017		16,02,000	12 months	6 months
21	1FF-12	Rakesh Kadam	14.11.2012	25.08.2014	21,55,000	24 months	9 months
22(a)	2SF-16	Deepak Kolambkar	27.11.2012	Demand letters for 2SF-16, 17 and 18	8,91,900	24 months	9 months
22(b)	2SF-17	Deepak Kolambkar	27.11.2012	-do-	8,91,900	24 months	9 months
22©	2SF-18	Deepak Kolambkar	27.11.2012	-do-	8,91,900	24 months	9 months
23	4FF-13	Kunal Shirodkar	16.04.2013	22.07.2014 for 4FF-13	11,66,937	24 months	9 months
24	3TF-4	Daniel Agnelo D'Souza	08.07.2016		16,43,200	24 months	9 months
25	3TF-7	Suryakant Naik	20.04.2016		11,25,360	24 months	9 months
26	3TF-18	Neelesh Takkekar	12.06.2013	Demand letter dated 27.06.2019 for 3TF-18	11,42,150	24 months	9 months
27	3TF-8	Adv. Subhada	25.10.2016		18,34,590	24 months	9 months
28	4FF-10	Kishor Ajgaonkar	26.07.2019		21,00,000	6 months	3 months
29	2SF-1	Dasharath Petkar	21.03.2013	Demand letter for 2SF-1	12,00,000	24 months	9 months
30	5FF-15	OSCAR GOMES	01.11.2017		36,72,600	12 months	6 months
31	4FF-16	Mahesh Narvekar	02.09.2016		14,46,400	24 months	9 months
32	4FF-14	Anand Kumar Singh	24.03.2015		17,61,500	24 months	9 months
33	3TF-13	Jesus Barreto	20.09.2016		16,27,654	12 months	6 months
34(a)	1FF-10	Ashlyn Aranja	12.07.2019		8,00,000	To be counted from the date of agreement	
34(b)	1FF-9	Ashlyn Aranja	12.07.2019		18,00,000	To be counted from the date of sale deed	

35	2SF-11	Krutika Tari	24.02.2015		17,70,021	24 months	9 months
36	2SF-9	Raaj Chodankar	03.07.2013	16.10.2015	13,95,000	24 months	9 months

Though no receipts relating to payment/part payment towards sale consideration are produced on record by the complainants in most of the complaints, however, the payments received by the respondent from the respective complainants as mentioned in the above chart are admitted by the respondent and the complainants. Moreover the date of delivery of possession is to be assessed from the date of possession including extended date as mentioned in each agreement for sale, especially when the aforesaid dates of possession are not changed in the addendums/ demand letters wherever applicable in some of the complaints and in the addendums it is clearly mentioned "that except for the above amendment, the said Principal Agreement shall remain with full force and effect". Thus the addendums/ demand letters, wherever applicable do not change/ amend the date of delivery of possession as mentioned in the agreements for sale and therefore, the aforesaid dates for delivery of possession including the extended date will be taken into consideration.

84. Admittedly, the respondent has failed to give possession of the units/ apartments to the complainants as per the dates specified in their respective agreements for sale or extensions given. Section 18 of RERA Act is therefore, squarely applicable and is quoted below:-

"18. Return of amount and compensation.- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

85. In the instant case, the complainants are not praying for refund of their amount and hence they are entitled for Statutory interest on their paid amount from

the date fixed for delivery of possession. In this context it is relevant to quote **Rule 18 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosures on websites) Rules, 2017:-**

“18. Rate of interest payable by the promoter and the allottee.— The rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent:

Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use it would be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

86. Thus, invoking Section 18 and Rule 18 of the RERA Act the benefit of the aforesaid Statutory interest goes to the complainants, who have entered into agreements for sale with the respondent. **The instant point is, therefore, answered in the affirmative and as a consequence thereof Section 18 and Rule 18 of RERA are squarely attracted in each complaint.**

87. POINT NO.6 whether the respondent has violated any provisions of RERA Act and if so, its legal consequences thereof?

At the outset it is relevant to reproduce here under the relevant portion of Section 11(4) (a) and (b) of RERA Act:-

“11.Functions and duties of promoter.- (1) --- (2) --- (3) ---

(4) The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as

per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;"

88. In the instant case the promoter/respondent has neither given possession of units to the complainants as per the terms specified in the Agreements for Sale nor obtained the occupancy certificate till date either by fully rectifying the deficiencies pointed out by the Statutory Authorities or by satisfying the Statutory Authorities that the deficiencies rectified by him are sufficient to give occupancy certificate and hence has violated his obligations, responsibilities, duties and functions under Section 11 (4) (a) and (b) of RERA Act.

89. It is brought to the notice of this Authority by the Ld. Advocates for the complainants that in the report prepared by the Directorate of Fire and

Emergency Services communicated by communication dated 31/08/2021 the area of floors are mentioned after Site Inspection and that there is a discrepancy in the area of fifth and sixth floor as mentioned in the Agreements for Sale with the complainants vis-a-vis the area actually calculated and mentioned in the aforesaid report i.e. regarding fifth floor the shortfall is around 20 sq. mts and regarding sixth floor the shortfall is almost 50 sq. mts of built up area. Thus, the area on said floors to be sold to the complainants is not the area as per the terms of Agreements for sale executed with the complainants. This also amounts to violation of Section 11 (4) (a) of RERA Act.

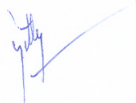
90. Further Section 14(1) of RERA Act states as follows:-

“14. Adherence to sanctioned plans and project specifications by the promoter.- (1)

The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.”

91. In the instant case however, the Site Inspection Report dated 04/08/2021 submitted by Mapusa Municipal Council, while pointing out the deficiencies in the construction work, interalia states as follows:-

“At the mouth of the ramp on Southern side of the property for entry of vehicles to the basement, there stands **kiosk/shop** of size 8.70 mts. X 6 mts. Which is within the road widening area and **the same is shown as to be demolished in the approved site plan**. This kiosk is completely blocking the access/entry to the



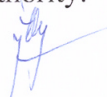
basement parking and hence cars will not be accommodated in the basement reserved for parking.----”

92. Similarly, NGPDA in its Report dated 04/08/2021 interalia mentions that **“there is existing kiosk/shop of size 8.7 mtrs X 6 mtrs. which is within road widening area and which was shown to be demolished in the approved site plan of the building but whereas it is not demolished”**

93. It is clear therefore, that even before taking the earlier occupancy certificate, which was revoked later on by Mapusa Municipal Council, the respondent had not got demolished the said kiosk though in the approved site plan it was mentioned that the same has to be demolished. The aforesaid demolition of the kiosk is one of the conditions for granting occupancy certificate. The respondent, therefore, did not adhere to the sanctioned plan or in other words the project is not constructed as per the sanctioned plan.

94. Thus the respondent has violated Sections 11(4) (a), 11 (4) (b) and 14 (1) of RERA Act and made himself liable for penalty under a **Section 61 of RERA Act** which reads as under:-

“61. Penalty for contravention of other provisions of this Act.- If any promoter contravenes any other provisions of this Act, other than that provided under Section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of real estate project as determined by the Authority.”



The instant point is therefore answered in the affirmative and accordingly Section 61 of RERA Act is attracted.

As stated above, the estimated cost of the project is Rs.142,502,973.00/-.

95. POINT NO. 7 whether in the instant cases, the issue of non registration of the project can be raised by the complainants?

It is an admitted fact that in a complaint filed by Mr. Sanjay Raut bearing No. 3/RERA/Completed Project(533)/2019 by order dated 17/03/2020 the respondent herein was ordered to pay penalty of Rs.5,00,000/- (Rupees Five Lakhs only) and get the instant project registered. Since the aforesaid order has already been passed in the aforesaid case, the instant point cannot be again raised in the present complaints. **Hence, the instant point is answered in the negative.**

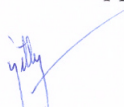
96. POINT NO. 8 Whether the complainants are entitled for compensation?

Under **Section 71 of RERA Act**, compensation under Sections 12, 14, 18 and 19 of the Act has to be adjudged only by the Adjudicating Officer. Accordingly, the prayers for compensation by the complainants have to be referred to the Adjudicating Officer for adjudging the compensation, if any.

97. In the premises aforesaid, I pass the following

ORDER

The respondent is directed to obtain occupancy certificate and give possession of the respective units to the respective complainants as per the chart given above in para 83 and as per the area/ revised area given in the respective agreements for sale/ addendums/ demand letters etc. and with all the essential facilities/ supplies / connections and the quality of work as mentioned in the



agreements for sale executed with the complainants, within two months from the date of this order.

Further, under Section 18(1) of RERA Act, the complainants are entitled and the respondent is liable to pay to the complainants interest for every month of delay till the handing over of the possession, at such rate as may be prescribed. As per Rule 18 of “The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules, 2017, the rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent. On enquiry from the State Bank of India, it is revealed that at present such Lending Rate of interest by SBI is 7.30% per annum. Adding two percent to the said interest as per Rule 18, it comes to 9.30% per annum. Hence, the respondent is directed to pay 9.30% per annum interest for every month of delay to each complainant on the amount paid by each complainant as mentioned in the chart above in para 83 from the date of delivery of possession including extended date as mentioned in the respective agreements for sale with the complainants and also as mentioned in the above chart, till the handing over of the possession to each complainant. However, no such interest to be paid to the complainants who have not paid any amount to the respondent towards sale consideration—the details of such complainants are mentioned in the above chart in para 83.

Further, though for violation of Section 63 of RERA Act, the respondent is liable to a penalty for every day during which such default continues, which may cumulatively extend up to five percent of the estimated cost of the real estate project as determined by the Authority, and as stated above, the

estimated cost of the project, as per Chartered Accountant's Certificate submitted by the respondent for registration of the instant project is Rs. 142,502,973.00/- however, for violating this Authority's order dated 07/02/2020, order dated 25/11/2019 and order dated 24/09/2021, the ends of justice will be met if the respondent pays the penalty of Rs. 30,00,000/-. The respondent is, therefore, further directed to deposit in this Authority, penalty of Rs. 30,00,000/- (Rupees Thirty Lakhs only) under Section 63 of RERA Act within two months from the date of this order.

Further, though for violation of Section 61 of RERA Act, the respondent is liable to a penalty which may extend to five percent of the estimated cost of the real estate project as determined by the Authority, however, for violating Sections 11(4) (a), 11 (4) (b) and Section 14 (1) of RERA Act, the ends of justice will be met if the respondent pays the penalty of Rs.20,00,000/- (Rupees Twenty Lakhs only). The respondent is, therefore, further directed to deposit penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs only) in this Authority under Section 61 of RERA Act within two months from the date of this order.

All the instant complaints are now referred to the Adjudicating Officer to adjudge compensation, if any, as per Section 71 of RERA Act.

Vijetley 17/3/2022
(Vijaya D. Pol)
Member, Goa RERA

Corrigendum

In the above order, the estimated cost of the project as submitted by the respondent in the Chartered Accountant's Certificate while applying for registration of the project be read as Rs. 14,77,03,143/- (i.e Rupees fourteen crores, seventy seven lakhs, three thousand one hundred and forty three only) instead of Rs. 14,25,02,973/- which was typographical error.

Vijetley 21/3/2022
(Vijaya D. Pol)
Member, Goa RERA