GOA REAL ESTATE REGULATORY AUTHORITY

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F No. 3/RERA/Complaint(391)/2023 |208 **Date:** 14 **/02/2025**

Lalit Chaudhary
B 2 303 Sunny Valley Apts
Plot No 27 Sector 12 Dwarka
Delhi South west Delhi 110078. .....**Complainant**

V/s

1. **M/s Ryago Homes Private Ltd**
   (Land Owner)
   Through its Director:
   Mrs. NeelamNagpal
   REGI. Office Address:
   61, VirajSilverene CHS Ltd,
   321, Hill Road opp Mehboob Studio,
   Bandra (W) Mumbai -400050

2. **M/s Vianaar Infra LLP**
   (Promotor/ Developer)
   Through its Partner
   Mr. Akshay Chaudhary
   REGI. Office Address:
   378, MMM Road, Amritsar, Punjab- 143001
   Also at:
   E-210/176, KhalapWaddo,
   Canca, North Goa. .....**Respondents**

ORDER
(Date: 14/02/2025)

1. This order disposes of the online complaint dated 08.12.2023 bearing No. 680891 filed by Mr. Lalit Chadhury (complainant) before the Goa Real Estate

14/02/25

Regulatory Authority (Goa RERA) against the M/s Ryago Homes Private Ltd and M/s Vianaar Infra LLP(Respondent) under Section 31 of RERA Act, 2016 alleging allurement and misrepresentation as to the specification of the Villa including that of garden area by the Promoter for purchase of Villa in their project in LA Verona, subsequent reduction of carpet area and non adjustment of the payment received against the same and also pertaining to garden area, violation of Section 3, Section 4, Section 14 and Section 13 of the Act, delay in completion and handing over of possession of the property, involvement of the promoter in various unfair practices and irregularities, unauthorized cancellation of allotment and agreement to sale etc.

2. The complainant is an allottee of Villa No. 1 in Project- La Verona registered under the Act vide no. PRGO08201171, vide Agreement for Sale dated 12.01.2021registered at the Office of Sub Registrar (Office of the Civil Registrar-cum-Sub Registrar, Bardez, Goa) on 12/01/2021.

3. Consequent to the receipt of the above referred complaint, a notice was issued to the respondents who during the proceedings filed their reply to the complaint, Affidavit in evidence as well as written synopsis.

4. Various contentions and submissions made by the complainant vide its complaint, Affidavit in evidence and written submissions are summed up as follows.

5. The complainant has stated that the Respondent had launched their project namely "LA VERONA @ LA VERONA ESTATE" (herein after referred as the said Project) at Village Assagao, Bardez, Goa-403507 under a false and misleading campaign that they would complete the said Project by 31.07.2023 and through their representative namely Kabir Mayra approached the Complainant, and allured him to buy a Villa in their project LA Verona, with projected gains over a period of time. Relying on the representation of the above

said Kabir Mayra to be true and genuine, the complainant agreed to invest his hard earned money in the project of respondents and booked for the allotments of the Villa/unit in the aforesaid project of the respondent vide booking form No. BOO0198/00005/20-21 dated 23.04.2020 and consequently the Respondent No 2 vide Allotment letter dated 04.09.2020 allotted the Villa bearing No. Unit No. 1, Ground Floor in the said Project with area admeasuring 1845 Sq. Ft. for the consideration Rs. 8781.03 per Sq.Ft i.e. Rs. 16,201,000.35/- (Rera carpet area) and Garden area admeasuring 807 Sq.Ft for the consideration of Rs. 2000/- per Sq.Ft i.e. Rs. 1,614,000/- and the total consideration of both area is Rs. 17,815,000.35/- (One Crore Seventy Eight Lakhs Fifteen Thousand Thirty Five Paisa Only) without taxes. This was followed by execution of documents between complainant and another AR Shardha Nikhil Kamat of Respondent No1.

6. It was further stated that while as per Booking form, allotment letter dated 04.09.2020 etc., "carpet area of 1845 sq. ft." was sold but it was really surprising to note that carpet area was reduced to 1350 sq. ft. and another misleading term of "super built area" was incorporated to the disadvantage of the complainant at the time of registration of Agreement to sell thereby reduced carpet area. It was further averred that section 4 (Promoter's Obligations) mandates the submission of detailed project information during registration, including carpet area and other specifications and the respondent's conduct of a'tering the area and charging based on super built area i.e. sold the carpet area of 1350 sq. ft. and demanded payment towards 1845 sq. ft. instead of carpet area suggests non-compliance with the information disclosed during registration and thus violation of section 4 of the RERA Act and also Section 14 of RERA Act, which mandates that no alterations or additions to the sanctioned plan or specifications can be made without the prior written consent of the allottee and also that the sale should be based on carpet area, as defined U/s 2(k) as the net usable floor area of an apartment. Also the updation of RERA website also

disclosed that the respondents changed the layout of the project without consent or knowledge of the complainant, which also violated the terms of the ATS and provision of the RERA Act and thus amounts to misleading the complainant and other buyers.

7. It was further submitted that Garden Area of 807 Sq. Ft., at the rate of 2,000/- per sq. feet was in addition to the Built Up Area of 1845 Sq. Ft., (Now reduced to 1350 Sq. Ft.) forming part of villa and the above said amount was paid by the complainant on the basis of booking form, which clearly mentioned RERA carpet area of the villa as 1845 sq. feet @8781/-per square feet and garden area of 807 sq. feet @2000 PSF dated 23.04.2020. Further, it does not show that the garden was only for the exclusive use and it also does not show that 1845 sq. feet is super built area which respondents later on manipulated the facts in Agreement to sell(ATS) dated 12.01.2021. It was also stated that as the said ATS prepared by the Respondent mentioned carpet area as 1350 sq.feet and said garden for exclusive use, so complainant raised objection and the respondents for covering this manipulation, played trick/fraud by issuing certificate on Rs.50/- stamp paper which was anti dated as 11.01.2021 and they assured that the garden area is part of Villa and respondents further confirmed through Email dt.20.10.2023 also that they will make it part of Sale Deed, which was left in ATS as registrar was not allowing it to be mentioned in it at the time of ATS. The complainant also alleged that this certificate would prima facie prove to be anti dated if we go through its contents.

8. It was further stated that Complainant was allured with a malafide intention that an area of 807 Sq. Feet, would form a part of the Villa, under exclusive ownership of the Complainant, which turned out to be a part of Common Area. When the said Garden area of 807 Sq. feet was not allowed to be part of agreement to sell by registrar, the Complainant on enquiry from registrar's office came to know that the said Garden area is not saleable since the same is

area is for the project and one cannot claim selling right over it. Thereafter, Complainant kept on raising the issue with respondents to reconsider their amount plan and adjust the payment made for Garden area against cost of the Villa but respondents kept on assuring that on final sale deed, they will get it allowed from registrar to be mentioned it in sale deed, which is totally false and incorrect proposal of Respondent No.1 as this is not permissible in law.

9. It was further submitted that charging based on super area instead of carpet area constitutes breach of U/s 39 of the Indian Contract Act, 1872, entitling the injured party (the complainant) to rescind the contract or claim damages and thus respondents rendered themselves to be proceeded against as per law. In support, complainant also referred to the case law whereby Hon'ble Supreme Court in Fortune infrastructure V. Trevor D'Lima (2018) held that any deviation from the agreed terms regarding the area of the property must be compensated and also the orders of Maha RERA in "Kumar Urban Development Pvt. Ltd. V. Ram Anil Joshi (2019)" which held that the practice of charging on super built area rather that carpet area is unlawful, and the builder must refund the excess amount. Further the unilateral reduction in carpet area constitutes a breach of contract U/s 39 of the Indian Contract Act, 1872, entitling the injured party (the complainant) to rescind the contract or claim damages and charging amount without selling garden area is also illegal and unjustified. The complainant sought to support his submission by citing the case Law whereby the Hon'ble Supreme Court in Wg. Cdr. Arifur Rahman Khan & other V. DLF Southern Homes Pvt. Ltd. (2020) held that any deviation from the agreed terms, particularly concerning the size and specifications of the property, is a breach of contract, and the buyer is entitled to compensation or specific performance. Similarly, the Haryana RERA in Sandeep Singla V. Emaar MGF Land Ltd. (2019) ruled that reducing the carpet area without the consent of the buyer is illegal and entitles the buyer to compensation. Also, the National Consumer dispute redressal commission

(NCDRC) in Emerad Court Owner resident welfare Association V. Supertech Limited (2019) held that common areas, including gardens, cannot be sold or charged separately as they are meant for common enjoyment of all residents. Similarly, the RERA in Mantri Developers Pvt. Ltd. V. K.S Suresh (2019) ruled that any attempt to charge for common areas like gardens is unlawful, and such charges must be refunded.

10. It is further being submitted that the Respondents had already received INR 20,25,075/-, which was above 10%, before registration of ATS, violating mandatory provisions of Section 13 of the Act which prohibits the promoter from accepting more that 10% of the cost of the apartment as an advance payment without entering into a written agreement for sale. If the respondents have taken amounts beyond this limit without executing a proper agreement that reflects the correct carpet area and other conditions, it is a clear violation of section 13. Moreover, the issuance of a certificate (written statement) on Rs.50/- stamp paper regarding the garden area, which is not registered, further contravenes this section and it clearly establish unfair practices.

11. Complainant further submitted that it gets established through the contents of the reply of respondents that the said villa was offered for sale to the complainant much prior to registration of above project with RERA Authority GOA in August 2020 as payment of Rs.9 lakhs was received by respondent No.1 from complainant on 23.03.2020 and Rs. 1 Lakh on 24.04.2020 on the basis of booking form whereby Section 3 of RERA Act was grossly Violated. Further, said payment was fraudulently shown to be received by respondents on 04.09.2020 through the same was paid through Bank account in April 2020 to the respondent No.1 and duly acknowledged by respondents. Besides, of the respondents actions including charging for super built area instead of carpet area, reducing the area without consent, and imposing charges for the garden area, indicated a lack of compliance with the mandatory registration

requirements U/s 3 of the RERA Act. Also any project that is advertised, marketed, or sold without prior registration with RERA, is illegal and void ab initio and if the respondents have not complied with these provisions, the entire sale transaction is vitiated by illegality and rendered respondents to be proceeded against as per law.

12. Alleging that the respondent are adopting unfair trade practices, it was stated that the above shows the extent of height of unfair trade practices on the part of the respondent who cheated the complainant with an with an ulterior motive to grab the hard earned funds of the Complainant, by misinforming the real facts. Firstly, they without registration of the project invited buyers and received earnest money on the basis of booking form, secondly, they induced the buyers on the basis of contents of booking forms and later on denied to have given any such booking form. It is the very same booking form, on the basis of which, complainant paid Rs.10 Lakh in April 2020. The payment, which was received by respondents towards garden area has neither been adjusted, nor agreed to be Refunded, by Respondents till date and respondents are still showing it towards garden area. The respondents further played fraud by giving certificate on Rs.50/- stamp paper when complainant raised objection of exclusive of garden area instead of sale which respondents assured to sell it and received amount towards it and actually the same was not saleable, which clearly established fraud and cheating committed by respondents. Thus, it was unfair practice on the part of the respondents that earlier they did not mention the above terms in booking form which they later on mentioned in ATS like "exclusive use area" and super built up area due to which complainant suffered wrongful loss. The act of the Respondent is in utter disregard and gross violation of the mandatory provisions of the Statutory Norms under the Act for which Sec 7 of the RERA Act provides provision of revocation of registration of project and in this case, it is clearly established that respondents played fraud not only with complainant but also with all the buyers. It was further submitted that the Respondents inter

alia had floated in several large projects which the Respondents have defaulted in completing, causing loss and damages to their investors /purchasers against the spirit of Section 34 (f) of the RERA Act.

13. Complainant further submitted that it was pertinent to state that the Villa No. 01, was booked with a construction linked payment plan and though the pace of Construction was not carried out as per commitments, the Complainant preferred to make payments as per demands raised even though the same were not due and as per the payment plan of respondent paid approximately 80% i.e. Rs. 1,21,70,950/- of total due payment but project was still completed only upto 56% as per report updated by them on internet. The complainant also submitted copies of receipts as ANNEXURE C-4 and also stated that it is pertinent to mention here that raising a Demand in Delayed period, which does not commensurate with the gravity of pace of Construction and pressurizing the Complainant to pay remaining amount otherwise they will cancel the above said agreement to sale and forfeit the amount of the complainant, which he had paid towards said Villa, is totally unauthorized. Further threatening to cancel and that too in a delayed period of the project, is totally in violation of the norms set under the Act.

14. It was submitted that the Respondent had launched the project subject of this complaint under a false and misleading campaign that they would complete the said Project by 31.07.2023. However, not only did they breached the initial commitments but have also failed to deliver the said Project as per commitments made to the complainant as they have failed to construct, complete and hand over the possession of allotted "**Villa**" to the Complainant within the stipulated time period as per the terms of agreement dated 12.01.2021 and in addition the Respondents have committed several other unfair/ restrictive trade practices. It was further submitted that the respondents not only delayed the project in completing it within time schedule, but also insisted the

complainant to make the payment as per plan and Complainant have been honoring all the demands made by Respondent as and when necessary and, Complainant have made payment for a sum of Rs.1,21,70,950/- approximately till date as per Respondents timely requirements which is 77.47% of total consideration amount as per their payment plan. Further submitted that the respondents as per Agreement to Sell dated 12.01.2021, has represented that in case of delay in handing over the possession, it shall compensate the Complainant @ 12%, on the amount deposited up to the date of actual possession, as per Clause 16 of ATS.

15. It was further stated that despite of assurance made in said allotment letter, for handing over the possession of the said booked Villa within stipulated time and receipt of advance payment regarding the said booked Villa, have not handed over the possession of the said booked apartment till the date, which has led to huge financial losses to the Complainant and also blatantly show the ulterior motives from the very inception. That the time of delivery has been lapsed a long time ago and the Respondents are not ready to consider the claim of the Complainant as stated above and have conveniently ignored the same. Even when the complainant has tried to contact the respondents many times but without any success. The Complainant visited on numerous occasions at the site of the said project to check the status of the aforesaid booked Villa, whereas it was utterly shocking to the Complainant, as even after investment, the construction of the Project has not been completed yet and there is deficiency in service on the part of the respondents and as a result of which, the Complainant could not re-locate and has to stay back and is also suffering losses in terms of Rentals and Interest on the amount paid, besides great hardship and mental harassment. It was also stated that the Respondents have indulged in unfair trade practice as there is a deficiency in service on part of the Respondents by misleading the Complainant and thereafter, the Respondents illegally delaying in handing over possession to the Complainant.

16. That the respondents are hand in glove and they had conspired with each other and after hatching criminal conspiracy, they induced the complainant to invest in their project by showing rosy picture and alluring him for good return. The complainant kept on requesting the respondents to adjust the amount which they took on the pretext of selling garden area of approx 807 Sq feet @ 2000/- per Sq feet which is neither permissible in law nor in their capacity to sell it but they usurp the said amount and despite various e-mails they did not return it, rather vide notice dated 17.10.2023 & 14.11.2023 they intended to terminate the agreement to sale for raising above issue. Copies E mails and notice were also submitted on record. Complainant felt cheated also as the respondents have cancelled the agreement to sell of above said Villa on the pretext of not paying amount to them which is not even due as per schedule of payment plan.

17. It was further submitted that the complainant is entitled to a refund of the excess amount, charged due to super area instead of carpet area alongwith interest for the period the amount was wrongfully retained by the respondents and also the Respondent's act of charging for the garden area, despite its non-registration by the sub-registrar, constitutes a breach of contract and violation of RERA Act. This unlawful charge should be refunded to the complainant alongwith interest from date of payment until the date of refund. The complainant raised disputes regarding this issue from the very beginning but instead of solving this disputes respondents decided illegal cancellation of the unit despite receiving payment.

18. Further, the respondent's action of issuing a notice of cancellation despite the complainant having raised dispute since date of ATS as well as despite making the required payments, constitutes fundamental breach of Contract under Section 37 and 39 of the Indian Contract Act, 1872 as well as para No.47 of the ATS. Once the complainant has fulfilled their contractual obligations by making the payment, the Respondent is legally bound to honour the contract. The issuance of a cancellation notice in such circumstances is unlawful and void in

view of para 47 of the ATS, moreover if disputes were resolved by respondents there was no such payment found due.

19. It was further stated that despite delay in the completion of the project by respondents and inspite of making payment as per the construction liked plan, the allotment was cancelled by respondents intentionally and without resolving disputes, which complaint was raising since the date of registration of agreement to sell and thus it was a clear violation of Para 47 of the ATS which mandates that the disputes be settled amicably or if not settled, then it be sent to RERA authority. The respondents have not settled disputes, raised by complainant rather they cancelled the allotment on the ground of non-payment of dues which is totally false and incorrect. The respondents are also liable to pay interest on amount delay period in completion the project.

20. It was also averred that under Section 13 of the RERA Act, once the promoter accepts more that 10% of the cost of the apartment as an advance payment, they are legally bound to enter into an agreement for sale, and they cannot unilaterally cancel the unit without a valid reason. The respondent's action of cancelling the unit despite receiving the payment is a direct violation of this Section and must be declared illegal by this Hon'ble Authority. The provision of Section 14 of ATS were not even complied in letter and spirit. There was serious dispute between the parties and instead of sending the said dispute to RERA Authority the cancelled the Villa, which was clear violation of para 47 of the ATS.

21. That on beliefs and assurances of the Respondents, the Complainant trusted and had invested his hard earned money and personal savings in respect of the said booked unit. That the Complainant have continuously contacted the Respondents regarding the information about the construction and possession of the aforesaid booked Villa whereas the Respondents and its officials deliberately avoided the queries of the Complainant turning a deaf ear to

complainant's issues and requests on one or the other pretext and did not make any effort to resolve the complaints/requests made to them. The act of not informing about the status of the Project is another violation under the Act as the same amounts to suppression and concealment of requisite information and facts.

22. **Relief(s) sought by the complainant are as follows:**

1) Revocation of alleged cancellation and restoration of the unit as well as direct the Respondents to hand over the Possession with delay interest @ MCLR + 2%, w.e.f. the date of possession as per ATS, till the actual possession or to adjust so calculated delay Interest, in the final Demand, and in the event of Interest exceeding the Balance due, excessive part may be ordered to be refunded.

2) Direct the Respondents to charge only towards carpet area and not to charge towards super built-up area.

3) Direct the Respondents not to charge towards garden area and refund the amount charged under the pretext of garden area, with interest @ mclr+2%, or adjustment of the same in final price.

4) Revoke the license of the builder/developer for doing unfair trade practice.

5) Compensation equivalent to Losses in terms of Rentals and Interest, alongwith Compensation on account of Mental harassment and Litigation Costs, in the sum of Rs. One Crore.

6) Any other Relief, which this Hon'ble Authority may deem fit and proper, may also be awarded, in the interest of justice, equity and fair-play.

23. The complaint also submitted copies of Booking Application, Allotment Letter, Agreement to Sale, Certificate on Stamp Paper in respect of Garden

area, Receipts of the payment made, E-mails as considered relevant to his case and copies of Cancellation Notice with the complaint.

24. Various contentions and submissions made by the Respondent vide its reply to the complaint, Affidavit in evidence and written synopsis are summed up as follows.

25. The Respondents while stating that the entire case of the Complainant is based on misrepresentation and suppression of material facts disentitling the Complainant for any reliefs from this Authority, further submitted that the Complainant contacted Sales Representative of the Respondent for purchase of Villa in Project La Verona and made enquiries with respect to the details of the Villas available in the Project and also the cost of the Villa including the payment options etc. The Complainant was accordingly appraised and also that the total consideration of the Villa subject of the instant complaint was Rs. 1,78,14,991/-. Besides, these details were also shared through whatsapp, the Complainant tried to re-negotiate the price of the Villa but the Company offered to sell the Villa at the total consideration noted above. Consequently, the Complainant requested the employee of Respondent No. 1 to share Application Form for booking the Villa which was filled, signed and sent by the Complainant after perusing the particulars of the Application Form which clearly specified the details/specification of the Villa including unit area 153 sq. mtrs, SBU-1845 sq. ft, Carpet -1350 sq. ft. and Garden/Terrace Area: 807 sq. ft. The Complainant along with the aforesaid Application form also made remittance of Rs. 10,00,000/- vide cheque of Rs. 9,00,000/- dated 23/04/2020 & 2 RTGS transfers of Rs. 50,000/- one on 23/04/2020 and another on 24/04/2020. Thereafter, the Respondents issued the Complainant Allotment Letter dated 04/09/2020 which clearly made a reference to Application dated 23/04/2020 and also provided the details of the Project and Schedule of payments including milestone name and the amount due against each

milestone showing total basic consideration of unit as Rs. 1,78,14,991/- exclusive of taxes. A copy of the said Application Form and the Allotment Letter dated 04/09/2020 was also submitted.

26. The Respondents has further stated that the Complainant has relied upon one Booking form which is computer generated (at Annexure C1 at page 24 of the Complaint) and printed on 04/09/2020 and sent to the Complainant by inadvertence and does not pertain to the representation made to the Complainant based on which decision was formed by the Complainant in booking the Villa. The Complainant was aware about the details of the unit and the consideration for the unit way back on 23/04/2020when he had himself filled and signed the Application Form and applied for purchase of the said Villa. Further the details and the break-up shown in the said booking form does not reflect the correct calculations and hence it is denied that the Complainant applied for the villa based on this Representation i.e booking form as the Complainant was very well aware that the unit was a 2 BHK Villa constructed on an area of 153 sq. mts which was having super built up area of 1845 sq. feet/ Carpet area of 1350 sq. feet and as such there was no reduction of carpet area as claimed by the Complainant as the said signed Application Form has clearly mentioned the details of the area etc. the Complainant cannot claim ignorance about what was being purchased by the Complainant. It was further stated that there was no discrepancy in the built upon area which was stated in the Allotment Letter dated 04/09/2020 which itself refers to Application dated 23/04/2020 which was signed by the Complainant himself and as such no grievance can be made by the Complainant of being misled by Respondents in any manner. Further, no grievance was made by Complainant of any misrepresentation nor any clarification was sought by Complainant with respect to details in the built up area or the garden area upon issuance of the Allotment Letter on 04/09/2020.

27. It was further stated that a draft of Agreement was forwarded to the complainant for his perusal, which gave the description of said Villa and specified that super built up area is admeasuring 171 sq. mts (1845 sq. feet) having Carpet area admeasuring 125 sq. mts (1350 sq. feet) and an exclusive right to use the garden along with undivided proportionate share in land. Receipt of the said email was acknowledged by the Complainant and a response email dated 23/11/2020 was sent by the Complainant pointing out that area of garden was missing from his ATS which is 805 square feet which was apparently missing. Further, pursuant to a request made by the Complainant for a specific document with reference to the exclusive use of garden area, the same was prepared by Respondent No. 1 and sent to the Complainant. In response, the Complainant vide Email dated 25/11/2020 requested for sending this along with all the documents through courier and also informed that he needs this Certificate to be registered as a part of his Agreement to Sale by Sub-Registrar. Evidently, Garden Certificate dated 25/11/2020 was issued at the request of the Complainant and the same, however, could not be registered as a part of the Agreement to Sale since the Sub-Registrar did not allow it to be made part of the Agreement to Sale as there was already a reference to exclusive right to use the garden mentioned in Schedule II of the Agreement. Thereafter the Complainant approved the Draft Agreement and requested the Respondents to issue a Certificate with respect to the Garden area at the time of execution of Agreement of Sale. A Copy of Email dated 25/11/2020 was also submitted.

28. The Respondents further stated that after pursuing the matter with complainant vide Email dated 30/12/2020 & 05/01/2021 for paying the registration charges, Agreement to Sale was executed before Sub-Registrar on 12/01/2021 and a Certificate was issued to the Complainant dated 11/01/2021 which clearly made a reference to the sale of Villa No. 1 in Project La Verona having Super built up area of 171 sq. mts (1845 sq. feet) and exclusive right to use

Garden area admeasuring 75 sq. mts (807 sq. feet) and thus the Complainant was certainly aware at the time of execution of Agreement of Sale dated 12/01/2021 about the description of the Villa as detailed in Schedule II and also the exclusive right to use of garden area constructed in said plot which was approved by the Complainant himself after perusing Draft of the Agreement sent to him as early as on 23/11/2020. Further, it is obvious that the Complainant signed the Agreement to Sale dated 12/01/2021 after going through the documents and in particular *paragraphs 2 & 3 of the said document* which clearly specifies the details of the unit and the total basic aggregate consideration for the villa as Rs. 1,78,14,991/- which includes the Villa along with exclusive right to use the garden as shown in the floor plan in Schedule 9 of the said Agreement. Also since the Complainant had agreed to purchase said villa no. 1 and vide Agreement dated 12/01/2021, he was therefore bound to comply with the schedule of payment which was reproduced in the said Agreement at para 4, page 10 of the said document.

29. Respondent further submitted that the Complaint has deliberately and with malafide intention not produced on record Application Form duly signed by himself at the time of applying for the Villa which clearly gives details of unit, floor area and garden area and has instead relied upon so called Booking Form dated 23/04/2020 apparently printed on 04/09/2020 which does not pertain to the area specifications of the Villa and was not signed by either parties. The Application form dated 23/04/2020 signed by the Complainant was the basis of entering into Agreement for Sale dated 12/01/2021 and even otherwise the Allotment Letter makes a reference to the Application Form dated 23/04/2020. It was thus stated that there is absolutely no discrepancy between the Application Form dated 24/03/2020, Allotment Letter dated 04/09/2020 and Agreement to Sale dated 12/01/2021 which was signed by Complainant and Respondent voluntarily and after having fully understood the contents thereof. Besides, from the date of execution of agreement to sale i.e. 12.01.2021 till

17.04.2023 and even thereafter there was no issue or grievance made by the complainant with respect to the area of the Villa or about the non-reference of garden area in the Agreement to sale. The Respondents has also submitted that the Agreement of Sale dated 12/01/2021 duly registered with Sub Registrar, is an undisputed document which has been executed by both the Complainant & Respondents herein and the contents of the said documents are deemed to true and correct since there is no challenge to this documents by the Complainant, hence the contents of this document has to be accepted by this Authority for the purpose of ascertaining the specification of the Villa in question and also consideration agreed upon by the parties to the said documents. Referring to the provisions of Section 54 of Transfer of Property Act, 1882, Section 17 & 50 of Registration Act, 1908 and also clause 36 of the agreement for sale dated 12.01.2021, respondent further stressed that from a conjoint reading of these provisions, it would be evident that Agreement for Sale dated 12/01/2021 registered before Sub-Registrar of Bardez will supersede and take effect over the Booking Form dated 23/04/2020 or the Allotment Letter dated 04/09/2020.

30. With reference to the claim of the complainant as to misrepresentation with reference to specification of the Villa, it was stated that besides that ATS would be binding upon both parties, being registered document it shall also supersede against any of the documents relied by both the parties and as such the contents of the Agreement for Sale should be considered binding on both the parties. Respondent further referred to the recitals in the initial part, at para 2 and Schedule II of the ATS to support his submission that while these recitals provide detailed description of the specification of the Villa, Para 2 of the Agreement for Sale specifically mentions that the said specifications/ details were also agreed to by the complainant.

31. With reference to the violation of Section 13 of the Act, it was stated that total amount payable in terms of Annexure I of the Allotment Letter before

execution and registration of the Agreement to Sale was Rs. 17,81,500/- which is only 10% of the total basic consideration exclusive of taxes. Accordingly, at the time of execution and registration of the Agreement to Sale a sum of Rs. 20,25,075/- (Rupees Twenty Lakhs Twenty Five Thousand & Seventy Five only) inclusive of taxes was received from the Complainant which included Rs. 9,00,000/- (Rupees Nine Lakhs only) which was paid as Application fee as provided in Section 13 of the Real Estate (Regulation & Development) Act and the rest of the amount was paid by the Complainant in order to avail loan approval for purchase of the said Villa. It was thus submitted that hence there was no violation of the mandatory provision of the Act nor there is any unfair trade practice on the part of the Respondents with an intention to cheat the Complainant.

32. With reference to the claim of the complainant that it made payments as per demands raised though the pace of construction was not as per the commitments, the same was denied by the Respondents and referring to multiple emails raising demands upon the complainant; it was stated that the chronology of dates and events of these communications would reveal that on many occasions the complainant failed to make payment of the outstanding dues or made part payments or just made assurances that too after repeated communications and further denied that respondents adopted unfair trade practices in this regard.

33. It was also submitted that on account of the repeated defaults qua the demands raised, the Complainant vide Email dated 22/05/2023 was put to Notice that upon termination of Allotment Agreement 15% of the total sale price would be retained by the Respondents and the balance would be refunded within 60 days from the date of termination which was in accordance with Clause 14 of Agreement to Sale. Further, even after issuance of this mail, the Complainant made further part payments in May 2023, June 2023, July 2023 & on

07/07/2023, the total outstanding dues was Rs. 49,95,810/-. Further, on 10/07/2023 yet another demand was raised at the time of start of paint, polish and electrical work for amount of Rs. 9,35,288/- (inclusive of taxes) and on 28/07/2023 last part payment of an amount of Rs. 3,10,000/- was made. Thereafter on account of repeated defaults and non-payment of pending dues, a 2nd reminder was sent to the Complainant on 12/07/2023 whereby the Respondents cautioned the Complainant that if the default of payment continues, Respondents would be constrained to exercise their right to terminate the Agreement against the Complainant. Consequently, two small part payments were made by the Complainant on account of which email dated 17/08/2023 was sent to the Complainant whereby Complainant was informed that the flooring was completed and the paint, polish & electrical work had commenced. Copies of emails dated 22/05/2023, 12.07.2023 and 17.08.2023 were also submitted.

34. It was further stated by the Respondents that on 27/09/2023 yet another reminder i.e. 3rd reminder was sent to the Complainant informing the Complainant that the total outstanding dues were Rs. 55,99,498/- and since it was not responded by the Complainant, Letter dated 17/10/2023 was issued to the Complainant whereby the Complainant was given a Notice of intention to terminate Agreement for Sale dated 12/01/2021 for not complying with the obligations under the Agreement for Sale in terms of Clause 4, Clause 11, Clause 13 and Clause 14 of the said Agreement. Copy of Letter/Notice dated 17/10/2023 filed by the complainant was also referred to.

35. With regard to the issue raised by complainant as to refund or adjustment of the payment received by the respondent towards garden area, it has been stated that the total basic aggregate for the Villa along with garden and pool was Rs. 1,78,14,991/- as categorically recorded at paragraph 3, page 9 of Agreement to Sale and the nature of rights which were given to the Complainant vide

Agreement of Sale included an exclusive right to use garden as shown in the floor plan and as such there was no question of adjusting any payment received towards garden area. Further, the schedule of payment did not make any reference to any amount to be payable specifically for garden area and the entire consideration was composite in nature for the rights conveyed to the Complainant in terms of Schedule II of Agreement of Sale which provides description of the Villa and also the exclusive right to use of garden area and the allottee also agreed to purchase the said villa with the facility of exclusive right to use garden only and there was no sale of garden area in the Agreement. It was also submitted that it was made clear to the Complainant vide clause 3 of the ATS and the Complainant had agreed that the consideration of Rs.1,78,14,991/- was an aggregate consideration inclusive of the Villa and exclusive right to use garden. It was further submitted that, the reliance placed upon Certificate dated 11/01/2021 at Annexure C-3 does not change the aforesaid position since in any event the Agreement for Sale dated 12/01/2021 supersede even this Certificate although there is no discrepancy in this Certificate along with the contents of Agreement for Sale dated 12/01/2021. It was also denied that the complainant at any point of time requested for adjustment of the amount which was allegedly taken on the pretext of selling garden area. Further, the complainant has failed to produce on record any communication made to the effect either after issuance of allotment letter on 04.09.2020 or even after execution of Agreement to Sale on 12.01.2021 and in fact the Complainant started making payments to the Respondent based upon payment schedule for almost 2 & ½ years without any questions with respect to the interpretation of the Agreement or without seeking any explanation for non-inclusion of the area of the garden. Further stated that the complainant had gone ahead with execution of Agreement for Sale dated 12.01.2021 only upon being fully satisfied with the terms of the Agreement and after being appraised about the fact that the garden area would

be exclusively for use and benefit of the Complainant. It is further relevant to add that although 3 reminders were sent to the Complainant on 17/04/2023, 12/07/2023 & 27/09/2023, there was no dispute raised by Complainant of being cheated or that the construction was not being carried out in a time bound manner and it is only after the issuance of Notice of intention to terminate on 17/10/2023 and an obvious afterthought, email correspondence dated 17/10/2023 was addressed to the Respondents inter-alia raising issues with respect to delay in completion of the work and non-mentioning of garden area etc. which was otherwise settled upon execution of Agreement of Sale dated 12/01/2021 signed by the Complainant after reading the said documents.

36. The Respondents further stated that the Complainant vide Reply dated 20/11/2023 issued by M.R. Legal has also acknowledged that certain amount is left to be paid before the delivery of possession and this Acknowledgment of dues by the Complainant in Response dated 20/11/2023 is a clear admission of pending dues and gives a clear right to the Respondent to terminate the Agreement for Sale. As there was no response to Notice dated 17/10/2023, the Respondent exercised their vested right under Clause 14 of Agreement to Sale by issuing Termination Notice dated 14/11/2023 which was duly served upon the Complainant and the whereby the Agreement stood terminated. The bank details of the complainant to deposit the refund to him was also sought along with. It was further stated that the Termination of the Agreement to Sale was therefore in accordance with terms of the Contract and was not contrary to any provisions of the RERA Act, 2016.

37. The Respondents also denied that it failed to construct, complete and hand over possession of Villa in terms of Agreement dated 12/01/2021 and also that the it committed any unfair or restricted trade practices as alleged by the Complainant. It was further stated that though actual RERA completion date of LA VERONA project was on 31/07/2023, the Respondent applied for

extension which was granted till 31/01/2024. Further, the project was completed on 18/09/2023 and Occupancy Certificate was granted on 03/11/2023 by the Village Panchayat. Thus there is no delay or default on part of Respondents in completing the Project within extended time granted by the Authority or loss and damage to the Complainant against the spirit of Section 34 (b) of the RERA Act, 2016. (A copy of the Completion Order, Occupancy Certificate & Extension Certificate were also submitted). The Respondents also denied that there have been several complaints in the past by Villa owners and the Respondents have continued to dupe the people of hard earned money and continue to default on their commitments and further asked that the Complainant be put to strict proof thereof. Further stated that when Complainant himself had grossly defaulted in making the payments after being aware that the project was based upon payment linked plan, no grievance can be made. Further, stated that from the conduct of the Complainant it is apparent that the Complainant was unable to fulfill his obligations under Agreement dated 12/01/2021 due to which the Complainant started raising issues of carpet area, built up area and garden area after being totally silent for about 3 years from the execution of the Agreement to Sale in January, 2021.

38. It was further denied that there was deficiency in service on the part of the Respondents, by not delivering possession within stipulated time and that the Complainant could not re-locate and has to stay back and is also suffering losses in terms of Rentals and Interest on the amount paid. Further the amount of Rs. 1,21,70,950/- which is claimed to have been paid was an obligation on behalf of the Complainant to pay said amount. The Respondents further submitted that making part payments does not absolve the Complainant from making further payments which he was otherwise required to make in terms of payment plan which formed part of Agreement dated 12/01/2021 and also under Section 19 (6) of the RERA Act, 2016 it is the duty of the allottee to make necessary payments in the manner and within the time as specified in the

Agreement for Sale. It was also stated that while there is no breach of trust by the Respondents and on the contrary there is failure on part of the Complainant to perform his part of the Contract as it appears that the bank loan obtained by the Complainant must have been diverted towards other personal undertaking of the Complainant.

39. Responding to plea of complainant as to the interest for delayed liability of possession, it has been stated that since as on date the Agreement to Sale between the Complainant & Respondent No. 1 has been terminated vide Letter dated 14/11/2023 and as such the Respondent No. 1 cannot enforce the Agreement of Sale dated 12/01/2021 and further in any event possession cannot be handed over to the Complainant after having failed to pay basic consideration towards the Villa and as such the Respondents are not liable to compensate the Complainant for handing over the possession of the Villa.

40. The Respondents further stated that failure on the part of the Complainant to pay basic consideration disentitles him from having possession of the Villa and merely receipt of advance payment is not sufficient to maintain the present claim against the Respondents and having accepted terms of contract and acting on the same for nearly 3 years, it appears that the entire modus operandi of the Complainant is to threaten the Respondents and attempt to get the Villa for a discounted price by filing the present complaint which cannot be permitted to be succeeded at any cost particularly when from the date of execution of Agreement to Sale dated 12/01/2021 till 17/10/2023 there was absolutely no allegation made by the Complainant of either delay or non-completion of work.

41. In response to the submission of the Complainant that it visited on numerous occasions at site of the said project to check the status of the aforesaid booked Villa, whereas it is utterly shocking to the Complainant, as even after

investment, the construction of the project has not been completed; the same was denied being false. It was further denied that the Respondents have given false and frivolous statement of assurances that the above said project is in progress which has led to financial loss, loss of mental equilibrium and mental agony and harassment to the Complainant being false and the Complainant be put to strict proof thereof. It was further denied being false that the Respondent has deliberately chosen not to reply/provide solution to the repeated requests/queried made by the complainant to the Respondent and have turned a deaf ear to complainant's issues and requests and further that Complainant be put to strict proof thereof. It was also further denied that the Respondents have indulged in unfair trade practice and there is a deficiency in service on part of the Respondents by misleading the Complainant and thereafter, in illegally delaying handing over possession to the Complainant. It was further submitted by the Respondent that in fact the Respondents have been made to suffer financial losses for having built the Villa at the costs of the Company's funds and presently Villa is lying vacated without being out to use thereby depriving the Respondents of future income.

42. It was further stated that there is no deficiency on the part of the Respondents and on the contrary the voluminous email correspondence and other documentation record is sufficient to demonstrate that material information was suppressed by the Complainant in order to obtain a favourable ex-parte order. Also, there was no misrepresentation made to the Complainant at any point of time with respect to the area of Villa to be sold. The Application Form which is duly signed by the Complainant is sufficient to expose the falsity in claim of the Complainant that there was discrepancy in super built up area and the carpet area since the carpet area which was made available to the Complainant is 1350 sq. feet while the super built up area was 1845 sq. feet and these details were clearly incorporated in Schedule II of Agreement to Sale dated 12/01/2021. It was finally prayed, the Complainant is not entitled

for any reliefs prayed in paras 5(a), (b), (c), (d), (e), (f), (g) & (h) in the present Complaint after issuance of Termination Letter dated 14/11/2023, more particularly on account of default in payments of the basic consideration for the Villa.

43. During the course of the proceedings held on 19/09/2024, it was pointed out by the Complainant that the Respondents have filed their reply on behalf of Ryago Homes Pvt. Ltd. as against the notice served to Ryago Hotels Pvt. Ltd. (Land owner) and Vianaar Infra LLP (Promoter/Developer) and as such there was no reply of Respondent No. 1 or Respondent No. 2 on record. However, the advocate for the respondents submitted that the name of the Company has been changed from RYAGO HOTELS PVT. LTD. to RYAGO HOMES PVT. LTD. with effect from 15/11/2022 and that pursuant to change of name granted by Registrar Of Companies(ROC), the Respondents have filed their reply on behalf of Ryago Homes Pvt. Ltd. as against the notice served to Ryago Hotels Pvt. Ltd. and further prayed leave to place on record Certificate of Incorporation in respect of change of name issued by ROC Mumbai. The Respondents also pointed out that the complainant was aware of this change even before filing of this complaint in view of the communication annexed to the complaint at P-218. It was noted that the present complaint has been filed by the Complainant against M/s. Ryago Hotels Pvt. Ltd. and Vianaar Infra LLP. Accordingly, liberty was granted to Respondents to file appropriate Application in this regard.

44. Accordingly, the Respondents filed applications praying for taking on records the certificate of Incorporation pursuant to change of the name of the company and also to file Vakalatnama on behalf of (Respondents No. 2) and response to the complaint inter alia submitting that the Complainant was fully aware even before filing of this Complaint that the name of the Company has been changed from RYAGO HOTELS PVT. LTD. to RYAGO HOMES PVT. LTD

as the Complainant has himself placed on record a Letter dated 14/11/2023 as annexure to the complaint which clearly indicates that Ryago Homes Pvt. Ltd. was formally known as Ryago Hotels Pvt. Ltd. **The** Respondents further prayed that the replies filed by Ryago Homes Pvt. Ltd. should be considered as being filed on behalf of Respondent No. **1** and the same also applies to Affidavit of Evidence filed by Respondent No. 1 as no prejudice will be caused to the Complainant since the complainant was very well aware about the change of name of the Company on receipt of Letter dated 14/11/2023 and also that the present complaint was filed by the Complainant against M/s. Ryago Hotels Pvt. Ltd. and Vianaar Infra LLP.

45. The Respondents vide the other Application seeking leave to file Vakalatnama on behalf of Respondents No. 2 and response to the complaint, submitted that on 08/02/2024 Vakalatnama was filed on behalf of Respondent No. 1 & Memo of Appearance was filed on behalf of Respondent No. 2. However by inadvertence, no Vakalatnama could be filed on behalf of Respondent No. 2 till date and therefore prayed for taking on record the wakalatnama of Respondent No.2 and also to refer and rely on the Replies/Applications/Affidavit in Evidence filed by the Respondent No. 1 and adopt all the said Replies/Applications/Affidavit in Evidence filed by the said Respondent No. 1 as no prejudice will be caused to the Complainant if the present Application is granted as the reliefs are jointly against both the Respondents and no additional/new defense was taken in the present Application.

46. Further the Complainant also vide an application filed for amendment of memo of parties, prayed for amendment of memo of parties and taking the amended memo of parties on record in view of the change in name of company i.e. respondent No.1 and also that no prejudice would be caused to opposite parties, if the same was allowed. The Complainant, however,

opposed the other application filed by the Respondents seeking leave to file Vakalatnama on behalf of Respondents No. 2 and response to the complaint stating that the said application is not maintainable in the eyes of law being misconceived, wrong and against the law and also that the respondent No.2 is LLP firm and has not authorized S.K. or counsel to file vakalatnama or to represent respondent No.2 and also no justified reason of not appearing or not filing reply/contesting in above case has been shown and that it was deliberate and intentional omission/ commission on the part of respondent No.2 and there is no valid representation on behalf of respondent No.2 till date. It further stated that the role of respondent No.1 and respondent No.2 are totally different and they cannot claim it inadvertent mistake or seek permission to adopt reply/ evidence of respondent No.1 and that non appearance and non representation on part of respondent No.2 amounts to admission of facts.

47. The Respondent vide Rejoinder dated 04/11/2024 to the above reply of the complainant submitted that board resolution clearly Authorizes Mrs. Neelam Nagpal to appoint Mrs. Shraddha Nikhil Kamat to represent the company Respondent No.2 before local Athorities including courts and to do all such deeds and acts as may be necessary to give effect to board resolution on behalf of LLP. Further, Board resolution dated 09/07/2024 is signed by Mrs. Neelam Nagpal who is designated partner of Vianaar Infra LLP hence neither POA nor Affidavit is required. Further, to avoid unnecessary objection Mrs. Neelam Nagpal has also issued Authority letter pursuant to Board Resolution dated 09/07/2024.

48. The Respondents further filed an application to file a fresh Vakalatnama on behalf of Respondent No. 1 (M/s Ryago Homes Pvt Ltd) and supporting Affidavit to the reply dated 10/04/2024 which is already on record and also submitted a copy authorization in favour of Mrs Shraddha Nikhil Kamat to represent M/s Ryago Homes Pvt Ltd. Responding to the application filed by

the Complainant for amendment of memo of parties, it was stated that the Respondent have no objection to the complainant making necessry amendments wherever there is a reference to Ryago Hotels Pvt. Ltd. to Ryago Homes Pvt. Ltd. Further stated that though the Replies/Applications/Affidavit in Evidence have been filed by Ryago Homes Pvt. Ltd., it was prayed to permit to file fresh Vakalatnama and supporting Affidavit by attaching authorization in favour of Mrs Shraddha Nikhil Kamat to represent M/s Ryago Homes Pvt. Ltd; to the reply dated 10/04/2024 already on record, as the Affidavit and Power of Attorney which is filed along with reply of M/s Ryago Hotels Pvt Ltd is much prior to the change of name.

49. The Respondent No.1 referring to its applications supported with fresh authorization and Board Resolutions; further filed an affidavit dated 06/11/2024 through their Authorized representative Mrs. Shraddha Nikhil Kamat on behalf of Ryago Homes Pvt Ltd based on General Power of Attorney dated 06.11.2024 supported by Board Resolution dated 05.11.2024 praying that Affidavit-in-Evidence of RW1 filed by the Respondent be considered as being filed on behalf of Ryago Homes Pvt. Ltd. pursuant to the amendment made in the Memo filed by the complainant and further submitted that vide Board Resolution dated 14.10.2024 the Board of Directors of the Respondent No.1 have ratified and affirmed each and every action undertaken by the deponent which was done on behalf of Ryago Hotels Pvt. Ltd. now known as Ryago Homes Pvt. Ltd. including the reply to interim application dated 06.03.2024, Reply to the Complaint dated 10.04.2024, Affidavit-in-Evidence dated 03.06.2024, etc.

50. I have heard the arguments advanced by both sides as well as perused the various applications, reply and rejoinder filed by the Respondent as well as the Complainant.

51. It may be seen that while respondent moved an application for taking the certificate of Incorporation on record pursuant to change of the name of the company and further prayed that the replies and Affidavit of Evidence filed by Ryago Homes Pvt. Ltd. should be considered as being filed on behalf of Respondent No. **1,** the Complainant also vide an application filed for amendment of memo of parties, prayed for amendment of memo of parties and taking the amended memo of parties on record in view of the change in name of company i.e. respondent No.1 and also that no prejudice would be caused to opposite parties, if the same was allowed. Responding to the application filed by the Complainant for amendment of memo of parties, it was stated that the Respondent have no objection to the complainant making necessary amendments wherever there is a reference to Ryago Hotels Pvt. Ltd. to Ryago Homes Pvt. Ltd. The complainant did not make any further submissions on this point.

52. In view of both the parties having filed Applications to the same effect, the proceedings were continued and the applications moved by the Respondent as well as by the complainant as above, stand allowed and disposed off accordingly.

53. The Respondent while submitting other application seeking leave to file Vakalatnama on behalf of Respondents No. 2 and response to the complaint, pleaded inadvertence in filing of Vakalatnama and for taking on record the Vakalatnama of Respondent No.2 and also to adopt, refer and rely on the Replies/Applications/Affidavit in Evidence filed by the Respondent No. 1 as no prejudice will be caused to the Complainant particularly when the reliefs are jointly against both the Respondents and no additional/new defense had been taken in the present Application. The said Application was, however, opposed by the complainant stating that the lapse on the part of respondent cannot be termed as an inadvertence and it was deliberate and intentional

omission/ commission on the part of respondent No.2. It was further stated that the role of respondent No.1 and respondent No.2 are totally different and they cannot seek permission to adopt reply/ evidence of respondent No.1 and that non appearance and non representation on part of respondent No.2 amounts to admission of facts.

54. It is observed that in cases of joint development of real estate, all the promoters are held jointly and severely liable under the various provisions of the act and rules made thereunder and thus the liability of both the promoters in the instant case is co-terminus with each other and cannot be differentiated on any count. It is further relevant to note that the Respondent No.2 has sought to adopt reply/ Applications/affidavit etc. of the Respondent No.1 and no additional/ new defense has been taken in the application seeking leave to do so. Further the complainant has not been able to show as to what prejudice would be caused to him if the said application is allowed particularly when the reply by Respondent No.1 is already on record and the complainant has also preferred an Application for amending the memo of parties in view of the change in name of company i.e. respondent No.1. The proceedings therefore were continued and the application made by the Respondent stands allowed. The other applications for placing revised affidavit and authorization etc. being consequential and also not opposed by the complainant, also stand allowed.

55. Accordingly, all the above referred miscellaneous Applications stand disposed off in above terms.

56. Further the complainant along with the complaint had also filed an Application for passing an ad-interim order enter-alia praying direction to the respondent not to create any third party interest in the unit in question. Upon consideration and pending submission of reply by the Respondent, the Respondent on instructions undertook not to create any third party interest in

the unit till the disposal of the Application. The complainant further moved a contempt application during the course of the proceedings held on 10.04.2024 alleging that the respondent did not allow it to enter or see the property. Advocate for Respondent on instructions, however, stated on behalf of the Respondent that it shall not create any third party interest till disposal of the matter and further undertook to facilitate a visit of the complainant to the property at a mutually decided time without any photography or videography. The complainant further moved an application opposing restrictions as to photography or videography and for modification of the directions. However, in view of the disposal of the complaint this miscellaneous Application does not survive and hence stands disposed off. I further proceed to deal with the main complaint.

57. I have heard the arguments advanced by both sides as well as perused the records of the case. After going through the entire records of the case, the points which arise for my consideration and findings thereon for the reasons to follow are as under:-

Sr. No.	Points for Determination	Findings
I.	Whether there was change of nature of property rights of garden area from 'exclusive ownership' to 'exclusive right to use', reduction of carpet area and also revision of pricing details/ total consideration; at the stage of execution of Agreement for Sale(AFS) dated 12.01.2021 by altering and manipulating the information provided earlier vide booking form, Application form and allotment letter and also in the 'CERTIFICATE' dated 11.01.2021 issued in respect of garden area or whether the said 'CERTIFICATE' was an agreed document intended to be read as an addendum to AFS dated 12.01.2021?	In negative

II.	Whether the garden area was part of common area and thus could not have been sold and charged separately?	As per para 44 (xx) to 44(xxx)
III.	Whether the Respondent charged for super built-up area instead of carpet area and despite reduction of carpet area to 1350 sq. feet, Promoter has charged for/demanded payments for the 1845 sq. feet carpet?	In negative
IV.	Whether the complainant is entitled to relief of refund along with interest on account of reduction of carpet area and change of nature of property rights of garden area from 'exclusive ownership' to 'exclusive right to use?	In negative
V.	Whether the Respondent allured and cheated the complainant herein to buy the villa in question (subject property) by misrepresenting the facts with regard to the carpet area, super built up area and garden area and whether the 'CERTIFICATE' issued in respect of garden area on a Rs. 50/- stamp paper is merely a trick/fraud played by the Respondent?	In negative
VI.	Whether the Respondent has violated Section 3 of the Act by booking or offering the villa in question (subject property) in project 'LA Verona' for sale to the complainant, prior to registration of said project?	In affirmative
VII.	Whether the Respondent has violated Section 13 of the Act by accepting more than 10% of the cost of the villa in question (subject property) without entering into written Agreement for Sale?	In negative

VIII.	Whether termination of the Agreement for Sale and cancellation of the allotment by the Promoter is in accordance with Section 11(5) of the Act, particularly in view of the claim of the Complainant that approximate 80% of the total consideration had already been paid by him which exceeded the extent of construction completed and the demands raised during the delay period were not commensurate with the extent/pace of construction?	In negative
IX.	Whether the Respondents are liable to hand over the Possession with delay interest @ MCLR + 2%, w.e.f. the date of possession as per ATS, till the actual possession or to adjust delay Interest so calculated in the final Demand or to refund the interest exceeding the Balance due, as the case may be?	As per para 63 of the order
X.	Whether the Respondent has violated Section 4(2)(h) of the Act by not providing the detailed Project information during the registration of the Project?	As per para 64 of the order
XI.	Whether the Respondent has violated Section 14 of the Act by effecting changes in the layout of the project without the consent or knowledge of the Complainant?	

XII.	Whether the respondent has engaged in unfair trade practice including deficiency in service in terms of failure to hand over possession of the subject property on time and whether in the facts and circumstance of the matter, there is a case made out for revocation of the registration granted to the project under Section 7(1) of the act?	In negative
XIII.	Whether the Complainant is entitled to compensation equivalent to Losses in terms of Rentals and Interest, alongwith Compensation on account of mental harassment and Litigation Costs?	As per para 66 of the order

Analysis and findings

58. **Point No. I, II, III& IV**

i. The case of the Complainant in brief is that he applied for the villa in question (herein after referred to as subject property) and made initial payment on the basis of booking form which clearly mentioned rera carpet area of the villa as 1845 sq. feet@8781/-per square feet and does not show that 1845 sq.feet is super built area. Pursuant thereto, allotment letter dated 04-09-2020 was also issued. The Respondents, however, later on manipulated these details at the time of registration of Agreement for Sale (herein after referred as AFS) which was prepared by the respondent and wherein the said carpet area was mentioned as 1350sq.ft and another misleading term of "super built area" was incorporated thus reducing the carpet area to the disadvantage of the complainant. With regard to the garden area, the complainant has submitted that the booking form dated 23.04.2020, clearly mentioned garden area of 807 sq.feet @2000 PSF and it did not stipulate that the garden was only for the exclusive use as later

manipulated and mentioned in the said AFS prepared by the respondent. When complainant protested and raised objection, the respondent to cover its manipulation played trick/fraud by issuing, a certificate on Rs.50/- stamp paper which was anti dated as 11.01.2021 whereby they assured that the garden area is part of Villa and respondents further confirmed the same through Email dt.20.10.2023 stating that they will make it part of Sale Deed as the same could not be mentioned in AFS. The complainant further stated that while he was informed that garden area of 807 Sq. Feet, would form a part of the Villa under its exclusive ownership but the same turned out to be a part of Common Area and being not saleable, could not have been charged separately. Accordingly, the said Garden area of 807 sq.ft. was also not allowed to be part of agreement for sale by Registrar. In support of its contentions, the **complainant** referred to Booking form claimed to be pertaining to booking date 23.04.2020 (Annexure C-I), Allotment Letter dated 04.09.2020 and Agreement for Sale dated 12.01.2021 besides certificate issued by respondent on a Rs. 50/- stamp paper with reference to garden area.

ii. **Per contra, the Respondent** has submitted that the Complaint has deliberately and with malafide intention not produced on record Application Form duly signed by himself at the time of applying for the Villa which clearly gives details of unit, floor area and garden area and has instead relied upon so called Booking Form dated 23/04/2020 apparently printed on 04/09/2020 which does not pertain to the area specifications of the Villa and was not signed by either parties. It was further averred that thus the Application form dated 23/04/2020 signed by the Complainant was the basis of entering into Agreement for Sale dated 12/01/2021 and even otherwise the Allotment Letter makes a reference to the Application Form

dated 23/04/2020. Respondent further referred to the recitals in the initial part, at para 2 and Schedule II of the AFS to plead that these provisions clearly establish that the complainant was not only specifically apprised of specification of subject property as well as the consideration but also agreed to the same. Further Clause 3 of AFS clearly mentioned that complainant had agreed that the villa along with Garden and Pool shall be treated as a single unit for all purposes and the consideration of Rs. 1,78,14,99 was an aggregate consideration for the same. It was thus stated that there is absolutely no discrepancy between the Application Form dated 23/04/2020, Allotment Letter dated 04/09/2020 and Agreement to Sale dated 12/01/2021 which was signed by Complainant and Respondent voluntarily and after having fully understood the contents thereof. The Respondents further pleaded that the AFS dated 12/01/2021 duly registered with Sub Registrar, is an undisputed document which has been executed by both the Complainant & Respondents herein and the contents of the said documents are deemed to true and correct since there is no challenge to this documents by the Complainant, hence the contents of this document has to be accepted by this Authority for the purpose of ascertaining the specification of the Villa in question and also consideration agreed upon by the parties to the said documents. Referring to the provisions of Section 54 of Transfer of Property Act, 1882, Section 17 & 50 of Registration Act, 1908 and also clause 36 of the agreement for sale dated 12.01.2021, respondent further stressed that from a conjoint reading of these provisions, it would be evident that Agreement for Sale dated 12/01/2021 registered before Sub-Registrar of Bardez will supersede and take effect over the Booking Form dated 23/04/2020 or the Allotment Letter dated 04/09/2020. It was further pointed out that, besides from the date of execution of Agreement for Sale (AFS) i.e. 12.01.2021 till 17.04.2023 and even

thereafter there was no issue or grievance made by the complainant with respect to the area of the Villa.

iii. With regard to the issue raised by complainant as to change of nature of property rights of garden area and refund or adjustment of the payment received by the respondent towards garden area since the same was not saleble being part of common area; the respondent has stated that the total basic aggregate for the Villa along with garden and pool was Rs. 1,78,14,991/- as categorically recorded at paragraph 3, page 9 of AFS and the nature of rights which were given to the Complainant vide Agreement for Sale included an exclusive right to use garden as shown in the floor plan. It was further stated that since the same was specifically agreed to, there was no question of adjusting any payment received towards garden area and even, the schedule of payment did not make any reference to any amount to be payable specifically for garden area and the entire consideration was composite in nature for the rights conveyed to the Complainant in terms of Schedule II of AFS which provides description of the Villa and also the exclusive right to use of garden area and thus there was no sale of garden area in the Agreement. It was further pleaded that draft of proposed Agreement for Sale (AFS) was forwarded to the complainant vide email dated 23.11.2020 and after going through the same, the complainant had gone ahead with execution of Agreement for Sale dated 12.01.2021 only upon being fully satisfied with the terms of the Agreement and after being appraised about the fact that the garden area would be exclusively for use and benefit of the Complainant. Respondent has further stated that upon receiving the draft of AFS, the complainant pointed out that area of garden was not mentioned in the AFS. Consequently, there was a telephonic conversation with the complainant and at the request of the complainant, a certificate was prepared and shared with the complainant. In response, complainant requested for registration

of the said certificate as part of Agreement for Sale to be registered by Sub-Registrar, however, the same could not be registered as part of AFS since the Sub-Registrar did not allow it to be made part of AFS on account of the already existing reference of exclusive use of garden area in the AFS. It was also pointed out by the Respondent that the Complainant kept on making payments to the Respondent based upon payment schedule for almost 2 & ½ years without any questions with respect to the interpretation of the Agreement or without seeking any explanation for non-inclusion of the area of the garden. The respondent in support of its submissions referred to application form dated 23.04.2020 (Annexure R-1) filled and signed by the complainant and allotment letter dated 04.09.2020 and also the agreement for sale besides emails dated 23.11.2020 and 25.11.2020.

iv. It was also submitted that, the reliance placed upon Certificate dated 11/01/2021 at Annexure C-3 does not change the aforesaid position since in any event the Agreement for Sale dated 12/01/2021 supersede even this Certificate although there is no discrepancy in this Certificate along with the contents of Agreement for Sale dated 12/01/2021.

v. In view of the contentions raised by the Complainant and Respondent as above, cumulative effect of various documents referred to herein above needs to be ascertained for determination of point No. I, II, III & IV. It thus becomes necessary to carefully analyze the five documents i.e. Booking form claimed to be pertaining to booking date 23.04.2020 (Annexure C-I), the application form dated 23.04.2020 (Annexure R-1) filled and signed by the complainant Allotment Letter dated 04.09.2020, Agreement for Sale dated 12.01.2021(AFS)and also, the certificate issued by respondent on a Rs. 50/- stamp paper with reference to garden area in conjunction with the relevant legal provisions including that of Real Estate (Regulation and Development) Act, 2016 and Registration Act, 1908.

vi. As far as 'Allotment Letter' and 'Agreement for Sale'(AFS) is concerned, both the parties while at times varying in the interpretation of these documents; acknowledge the issue or execution of these documents as placed on record. The complainant and respondent, however, differ diametrically on the point of the initial document subsequent to which the Allotment Letter dated 04.09.2020 has been issued. While the complainant has pleaded that he had applied and made initial payment for the subject property on the basis of 'Booking Form' (Annexure C-1) and hence AFS should have been in consonance with the contents of booking form, the respondent has averred that the complainant had applied for the villa vide application form dated 23.04.2020(Annexure R-I) which was the basis of entering into AFS and even otherwise the Allottment letter makes a reference to the Application Form dated 23.04.2020. A glance at the copy of the booking form placed on record by the complainant as Annexure C-1 which has also been mentioned by him sometimes as booking application; does not reveal that the same was in the nature of an application form as neither it is signed by the applicant nor it is claimed that it was an online application etc. Further, it records the booking status as 'approved' and booking date to be 23.04.2020. Per contra, the copy of the 'Application Form' (Annexure R-I) dated 23.04.2020 placed on record as Annexure R-1, has the format of application form with the first line reading as 'I/We wish to apply for provisional registration .....' and further records in the hand of the complainant, the relevant details of the subject property interalia mentioning super built up area as 1845 sq.ft and carpet area as 1350 sq.ft. The said application form is duly signed by the applicant and also mentions about the remittance of money as booking amount by the complainant along with the application, besides the particulars of the complainant/applicant as well as the basic selling price of the subject

property as Rs. 1,78,14,991/- all written in the hand of the complainant/applicant.

vii. It is obvious that the copy of the 'Application Form' (Annexure R-I) submitted on record by the respondent not only clearly demonstrates the act of applying for registration of the subject property by the applicant but the making of the application in the 'Application Form'(R-I) is also corroborated by the actual remittance of an amount of Rs.9 lakh on 23.04.2020 out of total Rs.10 lakh mentioned in the application form dated 23.04.2020 and also the remittance of remaining Rs. 1 lakh on 24.04.2020. The factum of the making of the application by complainant in the said application form is further supported by the contents of the allottment letter dated 04.09.2020 relied upon by both the parties as the same has been issued with reference to the application dated 23.04.2020. It is further noted that the complainant did not make any mention of the said 'Application Form (R-I)' or specifically deny the said document and also did not elaborate as to the context and purpose of issuance of 'Booking Form' particularly when he had applied for the allotment in the said project in 'Application Form (R-I)' in his own hand. The respondent, on the other hand has questioned the reliance of complainant upon the said Booking Form apparently printed on 04/09/2020 stating that it does not pertain to the area specifications of the Villa and was not signed by either parties. However, the respondent also did not elaborate with regard to the context and purpose of issuance of 'Booking Form'. It was further averred by the respondent that there is absolutely no discrepancy between the Application Form dated 23/04/2020, Allotment Letter dated 04/09/2020 and Agreement to Sale dated 12/01/2021 which was signed by Complainant and Respondent voluntarily and after having fully understood the contents thereof.

viii. In the above conspectus and taking note of the fact that the details mentioned in the 'Booking Form' (Annexure C-1)' vary with the details mentioned in 'Application Form (R-I), allottement letter and AFS which also inter se differ in terms of details/ elaboration; it would be relevant to examine the issue at this stage in terms of the provision of RE (R&D) Act, 2016 as well as the provision of the Registration Act, 1908.

ix. A perusal of various sections of RE(R&D) Act, 2016 reveals that a definite primacy and finality has been assigned to agreement for sale as the functions and duties of the promoter and allottees as well as various protections in favour of the allottees have been specified with reference to execution and Registration of the Agreement for Sale. While, Section 11(4)(a) and Section 14(3) mandate the responsibility of the promoter to the allottees as per Agreement for Sale which has been further guaranteed even in the case of transfer of a real estate project to a third party under Section 15(2) of the Act. Further, Section 11(4)(h) protects the allottees against creation of any mortgage or charge subsequent to execution of AFS and Section 13(1) of the Act provides for protection to the allottee in terms of barring the promoter from accepting the sum of more than 10 percent before execution of the Agreement for Sale. Similarly, the relief provided under Section 18 of the Act is also available for failure of compliance of the terms of Agreement for Sale. Various rights and duties of Allottees under Section 19 of the Act have also been stipulated with respect to Agreement for Sale. Besides, Rule 10(2) of The Goa RE(R&D)(Registration of Real Estate Project, Registration of Agents, Rate of Interest and Disclosures on Website) Rules, 2017 also recognizes the Primacy and finality of Agreement for Sale over any application, allotment letter or any other document signed by the allottee and reads as follows:

'Any application, allotment letter or any other document signed by the allottee, in respect of the apartment, plot or building, prior to the execution

and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale or the Act or the rules or the regulations made thereunder.'

x. From the submissions made by both the parties, it is clear that the only document executed between the respondent and the claimant which was registered under the Registration Act, is Agreement for Sale executed and registered on 12.01.2021. Further, the execution of the AFS as placed on record, has not been disputed and is agreed by both the parties.

xi. As observed herein above, the details mentioned in the 'Booking Form' (Annexure C-1)' vary with the details mentioned in 'Application Form (R-I), allottement letter and AFS which also inter se differ in terms of details/ elaboration. The Respondent has further sought to draw attention to the provisions of Section 50 of Registration Act, 1908 to argue that the AFS which is a registered document would supersede other previous documents related to subject property. It would thus be expedient to refer to the provisions of the section 50(1) of the Registration Act, 1908 which reads as follows:-

"Section 50(1) – Every document of the kinds mentioned in clauses (a)(b)(c) and (d) of Section 17, Sub-Section(1) and Clauses (a) and (b) of Section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not."

xii. In view of the conflicting claims made by the parties and the centrality of the issue in question as well as that neither of the parties have furnished any pertinent case law on the issue noted above, an attempt was made to ascertain the relevant case law. It was noted that the legal position with

regard to the application of the provisions of the section 50(1) of the Registration Act, 1908 was dealt with by Hon'ble High Court of Karnataka (Dharwad bench) vide its Judgment dated 05.02.2016 in case titled Shivakka vs Halappa and Others (R.S.A. No. 100165/2014). It was observed as follows:-

"It may be that K. R Nadiger, for whom the family of plaintiff and defendants served may have, in recognition of their services, granted some lands or even house properties for their use. But what we are concerned in this appeal is with regard to the suit schedule properties, namely, house and backyard, which is subject matter of Gift Deed dated 31.05.1958 and registered on 27.6.1958 Ex.P.4 by which the suit schedule property was gifted to plaintiffs father. Since the plaintiffs father was in possession and enjoyment of the same and on his death plaintiff, as his successor, has been in possession and enjoyment of the same along with members of his family. Whatever may have been granted to defendants" father Yallappa and also the father of plaintiff, under Ex.D.1 the fact Ex. D.1, the fact remains that Ex. D.1 is an unregistered instrument, whereas Ex. P.4 Gift Deed is a registered instrument under which the suit schedule property was gifted by K.R. Nadiger to the father of plaintiff Therefore, there was conveyance and transfer of title from K.R. Nadiger in favour of the donee who is father of plaintiff.

15. Under Section 50 of the Registration Act, 1908, every document of the kind mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1), and clauses (a) and (b) of Section 18, shall, if duly registered, take effect as regards the property comprised therein against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as registered document or not. From this it becomes clear that even if it is assumed that

Ex. D.1 related to the suit schedule property it has no validity in the eye of law in the face of Ex. P.4 which is a registered instrument. There is thus a valid conveyance from K.P. Nadiger to plaintiffs father under Ex. P.4 Gift Deed. Plaintiff has succeeded to his father's estate on the demise of his father in the year 1976 and he has been enjoying the suit property since then. Defendants have no right, title and interest in respect of the subject matter of gift. They therefore illegally got their names entered in the revenue records pertaining the suit schedule property."

xiii. Further, Hon'ble Supreme Court in B. Santoshamma vs D.Sarala Civil Appeal No. 3574 of 2009 observed as follows:-

"77. As argued by Mr. Navare, a registered deed of conveyance takes effect, as regards the property comprised therein against every unregistered deed relating to the same property as provided in Section 50 of the Registration Act."

xiv. In view of the above, it becomes evident that the provisions of Section 50 of Registration Act, 1908 would be squarely applicable in the facts and circumstances of the present case.

xv. It is further noted that the complainant has not challenged the agreement for sale and in fact the first and the foremost relief sought by the complainant is the revocation of termination of agreement for sale. Besides, the Respondent has also contended that from the date of execution of Agreement for Sale (AFS) i.e. 12.01.2021 till 17.04.2023 and even thereafter there was no issue or grievance made by the complainant with respect to the area of the Villa and the Complainant kept on making payments to the Respondent based upon payment schedule for almost 2 &½ years without any questions with respect to the interpretation of the Agreement or without seeking any explanation for non-inclusion of the area of the garden. These contentions of the Respondent does find some

support in the facts of the case except that the Complainant at the very initial stage vide its email dated 23.11.2020 had raised the issue of non mentioning of garden area in the draft of AFS which was followed by the issuance of a 'CERTIFICATE' dated 11.01.2021 by the Respondent and the same was to be registered as part of the AFS as per the request of the Complainant. The same, however, could not be registered due to reasons already noted herein above.

xvi. Maharashtra Real Estate Appellate Tribunal in case titled Kamal Kishore Uniyal v/s Accord Builders (Appeal no. AT006000000011117 of 2019) with facts almost similar to the present case, observed as follows:

"However, Appellant Complainant is claiming compensation for the alleged deficit in the carpet area by citing primarily two documents issued by the Promoter namely (a) challan dated 18.07.2018, which shows the carpet area as the of 71.21 sq. mtr. (767 sq. ft.) and (b) the clause 3.2 of the draft agreement sent by Promoter on 19.07.2018 to Complainant, shows the carpet area is of 71.21. sq. mtr. However, the claim made by the Appellant for compensation for the loss owing to the purported carpet area deficit is legally not sustainable on account of the following:-

(a) Clause no. 3.2 of the agreement for sale duly executed and registered among the parties clearly reveals that the carpet area promised by the Promoter is that of 50.29 sq. mtrs.

(b) Moreover, Clause nos. 63 and 64 of the said agreement for sale dated 10.08.2018, which are dully accepted, executed and registered by the parties further clearly stipulates as hereunder:-

"63. Entire Agreement:- This Agreement, along with its schedules, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes any and all understandings, any other agreement, allotment letter, correspondences, arrangements

whether written or oral, if any, between the Parties in regards to the said Flat(s)/ Apartment(s).

64. Right to Amend:- The agreement may only be amended through written consent of the Parties.""

C. The agreement of sale is duly executed without any comments protest by complaint and in view of the stipulations mentioned in Clause No.63 and 64 therein, the agreement for sale will supersede all the previous documents. The said two documents based on which Appellant is making claims for compensation on account of the alleged deficit in carpet area are mainly based on the challan dated 18.07.2018 and on the draft agreement for sale dated 19.07.2018. These documents are clearly that of the prior date of the execution/ registration of the said agreemen. for sale. Therefore, the captioned sale transaction will be governed by the terms and conditions of the duly executed / registered agreement for sale and not based on the said previous documents as being referred and relied upon by Appellant Complainant for seeking the relief of compensation."

xvii. It is relevant to note that Clause 36 & 37 of AFS executed between Promoter and allottee in this case correspond exactly to clause 63 & 64 referred to and quoted in the order of MahaREAT cited above.

xviii. In view of the above analysis, the Agreement for Sale dated 12.01.2021 executed between the promoter and the allottee and also registered before Sub- Registrar would supersede all other previous documents relating to the subject property i.e. Application Form, Booking Form, and Allotment Letter being unregistered documents. Accordingly, the specifications of subject property with regard to carpet area and super built up area as well as the total consideration/ pricing details as agreed to by the Parties to the said Agreement would be determined as per the said agreement for sale

dated 12.01.2021 and not based on the previous documents and also that the 'Booking Form' cannot be considered as actionable document in view of the observation and analysis noted herein above.

xix. Accordingly, the point no.I in respect of the issue whether there was reduction of carpet area and also revision of pricing details/ total consideration; at the stage of execution of Agreement for Sale by altering and manipulating the information provided earlier vide booking form, Application form and allotment letter; is answered in negative. The other part of the point no.I i.e. whether there was change of nature of property rights of garden area from 'exclusive ownership' to 'exclusive right to use'at the stage of execution of Agreement for Sale by altering and manipulating the information provided earlier vide booking form, Application form and allotment letter and also in the certificate dated 11.01.2021 issued in respect of garden area or whether the said 'CERTIFICATE' was an agreed document intended to be read as an addendum to AFS; would be discussed in succeeding paras.

xx. The above issue(latter part of Point No.1) which is in respect of change of nature of property rights of garden area from 'exclusive ownership' to 'exclusive right to use' and the implication of the 'CERTIFICATE' dated 11.01.2021qua the AFS; besides observations noted above, has also to be dealt with in the light of facts & circumstances relating to execution of the document namely 'CERTIFICATE' relating to the garden area as available in the submission made by the parties including emails pertaining to the issuance of the said 'CERTIFICATE' exchanged between the complainant and the respondent. It is relevant to add that issuance of the said 'CERTIFICATE' dated 11.01.2021 happened almost coterminous with the execution and registration of AFS dated 12.01.2021.

xxi. The record of the case reveals that the size of the garden area mentioned in all the five document i.e booking form, application form, allottement letter, AFS dated 12.01.2021 and the 'CERTIFICATE' has been the same i.e 807 sq ft. While, Agreement for sale provides for exclusive right to use the garden area, the Promoter vide the 'CERTIFICATE' dated 11.01.2021 has also covenanted that the garden area solely and exclusively belongs to allottee and forms part and parcel of his villa No. 1. The remaining three documents, however, do not provide any details as to the nature of property rights pertaining to garden area being transferred to Allottee. To appreciate the context of issuance of the said 'CERTIFICATE', it is relevant to note that the draft of the proposed AFS was forwarded by the Respondent to the Complainant vide email dated 23.11.2020. The Complainant upon receiving the draft of AFS immediately on the same day pointed out to the Respondent that area of garden was not mentioned in AFS which was followed by a telephonic conversation between the respondent and the complainant and a certificate relating to garden area was prepared by the respondent and shared with the complainant vide email dated 25.11.2020. Upon receipt of the same and in response, complainant asked for registration of the said certificate as part of Agreement for Sale to be registered by Sub-Registrar. However, the same could not be registered as part of AFS since the Sub-Registrar as per the version of the complainant, did not allow it to be made part of AFS due to garden being part of the common area, the Respondent, however, submitted that the said 'certificate' was not allowed to be made part of AFS on account of the already existing reference of exclusive use of garden area in the AFS. However, the version of complainant as well as respondent as to why the Sub-Registrar did not permit the registration of 'CERTIFICATE' as part of AFS, appear to be based on hearsay basis.

xxii. The 'CERTIFICATE' dated 11.01.2021 issued by the respondent to the complainant reads as under:-

"With reference to the Registration of the Agreement for Sale of Villa No.1 in the project known as 'LA VERONA' having a super built up area of 171sq mts. (1845 sq.ft.) and the right, title and interest to the land along with exclusive right to use the Garden admeasuring 75 sq mts. (807 sq.ft.) adjoining the said villa No.1 and an undivided proportionate share in the land surveyed under Survey No. 186/19 of village Assagao, Bardez, Goa.

We hereby covenant that your Garden area admeasuring 75 sq mts. (807 sq.ft.) is a garden which solely and exclusively belongs to you and forms part and parcel of your villa No. 1."

xxiii. The use of the phrase 'we hereby covenant' demonstrates a clear intent on the part of the Promoter and lends an enhanced credibility to the document as the word 'Covenant' has been defined in legal parlance as a formal agreement or promise, usually included in a contract or deed, to do or not do a particular act. Further, the verb 'Covenant' has been defined in Merriam – Webster Dictionary as follows:-

Transitive Verb

To promise by a covenant (Pledge)

Intransitive Verb

To enter into a covenant (Contract)

xxiv. It would be clear from above that the Respondent vide the said 'CERTIFICATE' covenanted that the garden area solely and exclusively belongs to allottee and forms part and parcel of his villa No. 1.As the said 'CERTIFICATE' could not be registered as part of AFS, the Respondents vide Email dt.20.10.2023 further confirmed the same stating that they will

make it part of Sale Deed. The relevant extract of the said email reads as follows:

'With reference to the point related to the garden area of 807 sq.ft. please note that at the time of registration of the ATS, the Sub-Registrar was not allowing garden areas to be mentioned in the ATS document that is why Vianaar gave the confirmation on the stamp paper. The same will be mentioned in the sale deed; if we happen to go ahead in the future'.

xxv. From the submissions made by both parties, one gets a distinct impression that, there has been apparent ambivalence on the part of both parties with regard to the status of garden area. While the Agreement for sale executed and registered on 12.01.2021, provided for exclusive right to use the garden area; the Respondent vide the said 'CERTIFICATE' further covenanted that the garden area solely and exclusively belongs to allottee and forms part and parcel of his villa No. 1. The complainant on the other hand has pleaded ownership rights of garden area on the basis of the Booking Form but at the stage of execution and registration of AFS dated 12.01.2021, agreed to the contents of the certificate dated 11.01.2021 as revealed from the email dated 25.11.2020 at 1.24p.m. where by the respondent had forwarded the draft of garden certificate for the perusal of the complainant and in response, the complainant vide email dated 25.11.2020 at 1.32 p.m. confirmed the same subject to the said 'CERTIFICATE' being registered as part of the AFS.

xxvi. It is, however, evident that the said certificate executed by the respondent on 11.01.2021 is a document agreed to by both the parties after mutual discussion and was further intended to be registered as part of AFS and could not be so done as noted herein above. None of the parties have challenged or disowned the said 'CERTIFICATE' dated 11.01.2021 in their submissions made during the course of the proceedings except the

mere assertion made by the complainant as to garden area being part of common area etc., Further, the promoter vide its email dated 20.10.2023 again confirmed its commitment, almost after three year when the said 'CERTIFICATE' was discussed, finalized interse the parties and was further executed by the respondent in the favour of the complainant.

xxvii. In view of what has been noted herein above particularly the intension of both the parties as manifested in the communications on the issue exchanged between the parties and also the use of the phrase 'we hereby covenant' in the 'CERTIFICATE', it can be safely inferred that the said 'CERTIFICATE' which was intended to be registered as part of AFS, needs to be read as Addendum to the AFS executed and registered on 12.01.2021. The latter part of point No.I as to whether the said 'CERTIFICATE' was an agreed document intended to be read as an addendum to AFS; is answered accordingly.

xxviii. With regard to the plea of the complainant that garden area of 807 Sq. Feet, is a part of Common Area and could not have been charged separately; it is relevant to note that while the term "common areas" has been defined under Section 2(n), Section 13(2) of the act stipulates that the particulars of the same have to be specified in the agreement for sale executed between the promoter and allottee. Sec. 13(2) read as follows:

Section 13. No deposit or advance to be taken by promoter without first entering into agreement for sale

"(1)-------

(2) The agreement for sale referred to in sub-section *(1)* shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards

the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."

xxix. As the particulars of the "common areas" are to be specified in the agreement for sale, the common areas including its usage in the present case would have to be construed as per various clauses of the Agreement for sale executed and registered on 12-01-2021 between the promoter and the complainant and also the Annexures theirto, besides the approvals granted and plans sanctioned by the competent Authorities.

xxx. The record of the case reveals that the details of common areas of the project (Schedule X) have been furnished only in terms of the total area i.e 273.17 sq.mts. and does not provide any other details or about the garden areas with exclusive right of use along with a particular villa. Further, the Agreement for Sale in the initial recitals, para 2 of the Agreement and also in Schedule II (description of the said villa) only provide for an exclusive right to use of Garden to the allottee. The report furnished by the Technical section of the Authority while confirming this position mentions that the other documents relating to sanctioned plan, also do not reveal any details to support the claim of the complainant that the said garden areas form part of the common area. The averments made by the complainant that the said certificate dated 11.01.2021 relating to garden area was not allowed to be part of Agreement for Sale by Registrar since the garden area is part of common area and hence not saleble; appears to have been made on hearsay basis as no further details or any supporting documents were furnished by him in this regard. Similarly, the version of the Respondent that the said 'CERTIFICATE' was not allowed to be made part of AFS on account of

the already existing reference of exclusive use of garden area in the AFS, prima facie appears to be impressionistic.

xxxi. Since besides making an assertion, nothing has been brought on record by the complainant to show that the said garden area for which exclusive right to use was provided in AFS; forms part of the common area and the content of AFS as well as the report of the Technical Section of the Authority also does not support the version of the complainants. Point No. II is accordingly answered in negative.

xxxii. It is thus evident that the 'CERTIFICATE' dated 11.01.2021 was an agreed document which has not been specifically challenged except the mere assertion made by the complainant as to garden area being part of common area etc., which has already been dealt with herein above. Further, the said 'CERTIFICATE' was intended to be registered as part of AFS.As the same could not be done; the respondent vide its email dated 20.10.2023 again confirmed its commitment and assured to do the needful at the stage of execution and registration of sale deed. It has already been held in the preceding paras that the said 'CERTIFICATE' intended be registered as part of AFS, needs to be read as Addendum to the AFS executed and registered on 12.01.2021. In the facts and circumstances of the case and in view of the analysis and observations made herein above it would be fair and in the interest of justice to direct that the said 'CERTIFICATE' shall be read as addendum to the AFS and a specific clause in terms of the last para (operative para) of the said 'CERTIFICATE' would be added in the sale deed as and when it happens and subject to the findings in respect of Point No. VIII.

xxxiii. With regard to the Point No. III, it is noted at the outset that various clauses of AFS sufficiently disclose the specifications of the subject property

including the carpet area and the details of carpet area was also specified in AFS in terms of Section 2(k) of the Actas below: -

"AND WHEREAS the carpet area of the Villa has been determined as per clause (k) of Section 2of the Act and is 125 square meters (1350 sq. ft.)"

xxxiv. Also, the Respondent vide clause 3 of AFS had made it clear to the Complainant to which he had agreed that the consideration was an aggregate consideration inclusive of the Villa and exclusive right to use garden. The said clause 3 reads as follows:-

"It is made clear by the Promoter/Developer and the Allottee agrees that the Villa along with Garden and Pool shall be treated as a single indivisible unit for all purposes. The total basic aggregate consideration amount for the Villa is thus Rs. 1,78,14,991/- (Rupees One Crore Seventy Eight Lakhs Fourteen Thousand Nine hundred & Ninety one only) (Total Basic Price")"

xxxv. In view of the above and also what has been discussed in the context of Point No. I and the findings arrived at herein above available at para xviii & xix stating that the specifications of subject property with regard to carpet area and super built up area as well as the total consideration/ pricing details as agreed to by the Parties to the said Agreement would be determined as per the said agreement for sale and not based on the previous documents and also that the 'Booking Form' cannot be considered as actionable document; the Point No. III is answered in negative.

xxxvi. With regard to issues raised at Point No. IV, it is noted that substantive aspects related to reduction of carpet area and change of nature of property rights of garden area from 'exclusive ownership' to 'exclusive right to use; has already been discussed in detail under Point No. I and II. In view of

analysis made and conclusion drawn in respect of Point No. I and II, the issue raised vide Point No. IV is answered in negative.

59. **Point No. V**

i. The claim of the complainant that he was allured and cheated by the Respondent to buy the villa in question (subject property) by misrepresenting the facts with regard to the carpet area, super built up area and garden area etc. is based on the details available in the booking form. This aspect has been discussed in detail under Point No. I and it was held as follows:-

"In view of the above analysis, the Agreement for Sale dated 12.01.2021 executed between the promoter and the allottee and also registered before Sub- Registrar would supersede all other previous documents relating to the subject property i.e. Application Form, Booking Form, and Allotment Letter being unregistered documents. Accordingly, the specifications of subject property with regard to carpet area and super built up area as well as the total consideration/ pricing details as agreed to by the Parties to the said Agreement would be determined as per the said agreement for sale and not based on the previous documents and also that the 'Booking Form' cannot be considered as actionable document in view of the observation and analysis noted herein above."

ii. The other related point for determination noted in the latter part of point no.V is whether the 'CERTIFICATE' issued in respect of garden area on a Rs. 50/- stamp paper is merely a trick/fraud played by the Respondent? In this regard, one needs to appreciate in the first instance the context of issuance of the said 'CERTIFICATE'. It is relevant to note that when the draft of the AFS executed and registered on 12.01.2021, was shared with the Complainant vide email dated 23.11.2020; the only query raised by the Complainant upon receipt of the same, was regarding absence of any

mention about the area of garden. The matter in this regard is stated to be discussed between the parties and a draft of the 'CERTIFICATE' (issued by the respondent and notarized on 11.01.2021) was shared with the Complainant vide email dated 25.11.2020. In response, the Complainant raised no further query and asked for registration of the said 'CERTIFICATE' as part of AFS.

iii. It is thus evident that the said certificate executed by the respondent on 11.01.2021 is a document agreed to by both the parties and was further intended to be registered as part of AFS and the same, however, could not be done as noted herein above. None of the parties have specifically challenged or disowned the said 'CERTIFICATE' dated 11.01.2021 in their submissions made during the course of the proceedings except the mere assertion made by the complainant as to garden area being part of common area etc., which has already been dealt with herein above. Further, the promoter vide its email dated 20.10.2023 again confirmed its commitment to make a mention of garden area in sale deed, almost after three year when the said 'CERTIFICATE' was discussed, finalized inter se the parties and was further executed by the respondent in the favour of the complainant.

iv. In view of the above including that draft of AFS as well as 'CERTIFICATE' were duly shared by the Respondent with the Complainant and in turn were deliberated upon by the Complainant and a query was also raised as well as that the detailed discussion and finding arrived in respect of Point No. I &II including the directions that the the said 'CERTIFICATE' shall be read as addendum to the AFS and a specific clause in terms of the last para (operative para) of the said 'CERTIFICATE' would be added in the sale deed; the averments of the

complainant that he was allured and cheated, does not hold water and thus the Point No. V is answer in negative.

60. **Point No. VI**

i. The Complainant while alleging violation of Section 3 of the Act has stated that the villa in question was offered for sale to the complainant prior to registration of the project 'La Verona' with Goa RERA and the payment of Rs.9 lakhs was received by respondent No.1 from complainant on 23.04.2020 and further of Rs. 1 Lakh on 24.04.2020, much prior to registration of above said project i.e in August 2020. The Respondents vide para 10 of its reply to the Complainant has admitted the making of an application dated 23/04/2020 by the complainant for an allotment in the project 'La Verona' along with remittance of Rs. 10,00,000/- vide 1 cheque of Rs. 9,00,000/- dated 23/04/2020 & 2 RTGS transfers of Rs. 50,000/- one on 23/04/2020 and another on 24/04/2020. The submission made both parties reveals that some interactions prior to making of the said Application Form also happened between the Promoter and Complainant.

Section 3(1) of the Act clearly prohibits such actions on the part of the Promoter and reads as follows: -

> **3. Prior registration of real estate project with Real Estate Regulatory Authority**: -
>
> "(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:"

ii. In view of the above admission on the part of the Respondent Promoter, the conduct of the Promoter amounts to contravention of Section 3(1) of the Act and attracts penalty under the provisions of Section 59 of the Act.

iii. It is further noted that the Complaint in instant case, was filed in December. 2023 i.e much after the registration of the Project on 06.08.2020 and completion certificate for project was obtained on 18.09.2023 and further occupancy certificate was also granted to the Project on 18.11.2023.

iv. Keeping in view that the Project has been already been registered since 06.08.2020 and has also been completed, a nominal penalty of Rs. 09 lakh for violation of provision of Section 3(1) read with Section 59 of the Act is imposed upon the Respondent.

61. **Point No.VII**

i. Alleging violation of Section 13 of the Act, the complainant has stated that the respondent had received Rs.20,25,075/- before the execution and registration of Agreement for Sale which was in excess of 10% of the cost of the subject property and has thus violated the provision of Section 13 of the Act which mandates the promoter not to accept a sum more than 10% of the cost of the subject property without first entering into a written Agreement for Sale with Allottee and register the said Agreement for Sale.

ii. In response, the Respondents while admitting receipt ofRs.20,25,075/- before the execution and registration of Agreement for Sale; has stated that at no point of time the Respondents have violated Section 13 of the Act, 2016 in as much as Annexure I of the Allotment Letter clearly indicates that an amount of Rs. 8,90,750/- (Rupees Eight Lakhs Ninety Thousand Seven Hundred & Fifty only) is required to be paid at the time of booking the unit and an amount of Rs. 8,90,750/- is to be paid upon receiving the

Bank approvals. Hence total amount payable in terms of Annexure I of the Allotment Letter before execution and registration of the Agreement to Sale is Rs.17,81,500/- which is only 10% of the total basic consideration exclusive of taxes. Accordingly, at the time of execution and registration of the Agreement to Sale a sum of Rs. 20,25,075/- (Rupees Twenty Lakhs Twenty Five Thousand & Seventy Five only) inclusive of taxes was received from the Complainant which included Rs. 9,00,000/- (Rupees Nine Lakhs only) which was paid as Application fee as provided in Section 13 of the Real Estate (Regulation & Development) Act (the Act) and the rest of the amount was paid by the Complainant in order to avail loan approval for purchase of the said Villa.

iii. It was further pointed out that since the total amount Rs.20,25,075/- received by the Respondent prior to execution and registration of agreement was inclusive of taxes, the basic price received from the Complainant till then was only Rs. 17,81,500/- in terms of the agreement for sale. It was thus submitted that hence there was no violation of the mandatory provision of the Act nor there is any unfair trade practice on the part of the Respondents with an intention to cheat the Complainant. The Complainant did not rebut these contentions of the Respondent by filing rejoinder etc. It is further noted that the complaint in instant case, was filed in December. 2023 i.e much after the execution and registration of AFS on 12.01.2021.

iv. In view of what has been noted herein above, there does not appear any actionable contravention of the provisions of Section 13 of the Act in the facts and circumstances of the case.

62. **Point No. VIII**

i. The case of the complainant is that the termination of Agreement for Sale and cancellation of Allotment despite the complainant having raised

dispute since date of ATS and also that the same till date remains unresolved as well as making the required payments which is substantial being 80% of the total amount, though the pace of construction was not as per the commitments and there was delay in completion of Project; constitutes fundamental breach of Contract under Section 37 and 39 of the Indian Contract Act, 1872 as well as para No. 47 of the AFS. The complainant has further pleaded that once it has fulfilled its contractual obligations by making the payment, the Respondent is legally bound to honor the contract. The issuance of a cancellation notice in such circumstances is unilateral, unlawful and Void in view of para 47 of the AFS. Besides, it was also stated that the requirements laid down in Clause 14 of the Agreement for sale were not complied with including the refund of the amount deposited by the Complainant.

ii. With reference to the claim of the complainant that it made payments as per demands raised though the pace of construction was not as per the commitments, Respondents referred to multiple emails raising demands upon the complainant, to submit that on many occasions the complainant failed to make payment of the outstanding dues or made part payments or just made assurances that too after repeated communications and further denied that respondents adopted unfair trade practices in this regard.

iii. It was further stated by the Respondents that on account of repeated defaults and non-payments of dues by the Complainant despite issuance of many reminders, Letter dated 17/10/2023 was issued to the Complainant whereby the Complainant was given a Notice of intention to terminate Agreement for Sale dated 12/01/2021 for not complying with the obligations under the Agreement for Sale in terms of Clause 4, Clause 11, Clause 13 and Clause 14 of the said Agreement. As there was no response to Notice dated 17/10/2023, the Respondent exercised their right under

Clause 14 of Agreement to Sale by issuing Termination Notice dated 14/11/2023 which was duly served upon the Complainant and whereby the Agreement stood terminated. The bank details of the complainant to deposit the refund to him were also sought along with, however the same were not furnished. It was further stated that the Termination of the Agreement for Sale was therefore in accordance with terms of the Contract and was not contrary to any provisions of the RERA Act, 2016.

iv. At the outset, it is noted that Section 11(5) of the Act provides the relevant provisions to deal with the issue in question. A perusal of the Clause 14 of AFS and Sec 11(5) of the Act would reveal that the promoter is entitled to cancel the allotment only in terms of Agreement for Sale and the only condition or contingency where cancellation of allotment can happen in terms of clause 14 of the Agreement is default in payment. Admittedly, the notice dated 17.10.2023 and the termination notice dated 14.11.2023 issued to the complainant in this case were also on the ground of non-payment or default in payment of dues. However, an allottee aggrieved by such cancellation can approach the Authority under Section 11(5) of the Act for relief not only on the ground that such cancellation is not in accordance with in terms of agreement for sale but also if the same is unilateral or without any sufficient cause. The provision of Sec 11(5) of the Act are extracted here below:-

"The promoter may cancel the allotment only in terms of the agreement for Sale: provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause."

v. Though the Respondent referring to multiple emails raising demands, sought to demonstrate that there were instances of delay in making

payments on the part of the Complainant or part payments were made but the record of the case reveals that the same were accepted by the respondent without initiating any coercive action and thereby condoning the delays. The termination notice dated 14.11.23 which gives details of the payments receipts from the complainant and the amount of taxes paid while calculating the refund amount; does not reveal that any interest for the delay were claimed/enforced by the Respondent Promoter. Also, the allottee has been raising the issue of delayed construction vis a vis the payment demanded (email dated 17.10.2013) and sometimes no specific clarification to the issues raised by the complainant were furnished or the replies furnished were in standard form and were vague or inadequate. It is further relevant to note the contents of the email dated 20.10.2023 exchanged between the promoter and the Complainant whereby the promoter has admitted the instance of delays in completing the construction milestone in time. It is further relevant to note that neither the Complainant nor the Respondent has given specific and comprehensive details as to when a particular payment was due and whether it was made in time or delayed and if so the extent of delay in terms of number of days etc.

vi. The extracts of email dated 17.10.2013 and email dated 20.10.2023, exchanged between Complainant and Promoter being the last few emails on the issue, are extracted here below and provide an overview of this aspect.

Email 17/10/2023 (from Allottee to Promoter)

"Hi there is a lot of issue which was not solved from your end like you have charged that elevation work has been completed but it was not completed only wall putty has been done outside in VILLA 1 you can check on your APP as well as on 23 October 2023, tiling work is still not

completed 100 percent, but you have raised the demand already See I have no problem to pay but you have to complete the work before sending the demand, See overall my villa is completed approx 60 to 70 percent and I have already paid you 71 percent on 06 October."

Email 20/10/2023 (From Promoter to Allottee)

"Firstly the flooring is completed in the villa. The staircase work will be done towards the end since there is a consistent movement of labours workers which can cause damage. Video is attached herewith for your reference.

The last demand that was sent towards paint polish electrical was to be paid at the start of the stage and not on the completion. Apart from that, there are pending dues towards masonry stage which was completed in the month of February and conducting plumbing plastering stage that was completed in the month April.

You are well aware that the payment plan is construction linked. All the demands have been sent as per the construction. Wherever there was a delay, the same was communicated to you and we no payments were forced till the time stage were completed."

vii. From the above, it becomes clear that there were failures on the part of the Promoter as well as allottee in complying with their respective obligations relating to making of payments and completion of construction as laid down under various Clauses of the Agreement for sale dated 12.01.2021.

viii. The stand of the Complainant is that he had made the required payments and in fact the payment made by him exceeded the extent of construction completed. This contention of the complainant also gets supported from the records of the case as the payment of Rs. 1,21,70,950.00 claimed and admitted to have been made as on 28.07.2023 was 68.3 percent of the total basic cost of Rs. 1,78,14,991.00 and the extent of construction completed

on 12.07.2023 as per building details submitted by the Promoter was also appx. 70%. The Complainant himself vide his email dated 17.10.2023 has stated that while the villa was completed approx. 60 to 70 percent and he has already paid 72 percent of the cost to the Promoter as on 06.10.2023. As building development details to some extent, provide granular information as to the extent of construction completed and are somewhat relatable to various stages of payment schedule mentioned in terms of the milestones in the AFS, the extent of construction completed as per building details made available by the Respondent at web page of the Project at the website of Authority and also the information submitted by both parties during the proceeding of the case; are being referred to for ascertaining the extent of construction completed at a given point of time. These details as noted above confirm that the payment made by the Complainant and the extent of construction were almost equal at the time when the respondent first cautioned the Complainant vide email dated 12.07.2023 about initiation of the termination process. This is also substantiated by the subsequent updating of building details done by the Promoter on 10.10.2023 when the extent of completion of construction in respect of building was reported to be around 75%.

ix. Another relevant aspect that needs to be considered is that the date of completion of the Project as mentioned in the AFS was 31.07.2023. Though an extension of the Project was granted till 31.01.2024 by the Authority but the same does not result into change in the date of possession as recorded in the AFS as the allottee cannot be held responsible for the delay in construction of a project. Further in the present case, as revealed from the contents of the request for extension of Project made by the promoter, the primary reason for delay in this case was 'discovery of a large tree at site' and to preserve the same a thorough reassessment and adjustment in construction were done which led to delay.

This reason for delay is obviously entirely attributable to promoter as the discovery of large significant tree does indicate lack of proper Project Planning on the part of the Promoter.

x. In view of the above, the contention of the Complainant as to the initiation of the process of the termination during the period of delay of the completion of the Project particularly when the extent of payment made was almost equal to the extent of construction completed and a substantial portion of total consideration had already been paid; is unlawful and does hold water and the termination of Agreement for sale dated 12-01-2021cannot be taken to be legally valid or reasonable and for a sufficient cause.

xi. Besides, the contention of the Complainant that he had raised certain issues at the stage of execution of AFS and also several other issues during the period and without resolving the same in the spirit of the Clause 47 of the AFS, Promoter proceeded with termination of contract; is also supported by the facts of the case. It was noted that initially there was an issue of non-mentioning of garden area in AFS which was however sought to be resolved through issuance of the said 'CERTIFICATE' proposed to be registered as part of AFS but could not be done for the reasons noted herein above. The observation and analysis made in respect of point No. I & II hereinabove particularly in the context of the directions that the said 'CERTIFICATE' shall be read as addendum to the AFS and a specific clause in terms of the last para of the said 'CERTIFICATE' would be added in the sale deed; also lend support to the contention of the Complainant. Similarly, the record reveals that there were frequent issues relating to the extent of construction completed etc. Further the issues raised by the Complainant at times, were not properly clarified or inadequately replied. Also the Promoter has not claimed taking of any

steps to resolve these issues amicably in the spirit of Clause 47 of the Agreement for sale.

xii. Though the complainant has not raised the specific issue, the communication dated 14.11.2023 conveying termination of the Agreement for Sale dated 12.01.2021; is also assailable on the ground of stated retention of 15% of the total price which prima facie appears to be unreasonable. Though the Respondent has stated that the retention or collection of 15% of the total price is on account of clause 14 of the Agreement for Sale as well as on account of the loss suffered by the company due to the breaches of the Agreement for Sale made by the complainant; the Respondent has however neither furnished any details of such losses in the said communication nor opted to provide such details in the pleadings submitted during the course of the proceedings. It is pertinent to add that the Hon'ble National Consumer Disputes Redressal Commission in Revision Petition No.3860 of 2014, while deciding the case ***of M/s DLF V/s Bhagwanti Narula*** on 06.01.2015 has discussed the cases of Maula Bux, supra, and Satish Batra, supra, and has clearly laid down that only a reasonable amount can be forfeited as earnest money in the event of default on the part of the purchaser and it is not permissible in law to forfeit any amount beyond a reasonable amount unless it is shown that the person forfeiting the said amount had actually suffered loss to the extent of the amount forfeited by him. Further, the Maharashtra Real Estate Regulatory Authority, Mumbai vide Order No. 35/2022 dated 12.08.2022 has permitted forfeiture of 2% of the sale price in case of default on the part of the respondent. Though no such circular is issued by this Authority, the stated retention of 15% of the total price upon termination of the Agreement for Sale in view of the observations made herein above, is prima facie unreasonable and thus vitiates the

communication dated 14.11.2023 conveying termination of the Agreement for Sale dated 12.01.2021.

xiii. Admittedly, a major portion of the full consideration i.e. around 70% had already been paid by the allottee to the Promoter. And as can be seen from the text of email dated 17.10.2023 referred to herein above; the allottee had infact at one stage, offered to pay the entire balance consideration to the vendor subject to the resolution of the issues raised by him.

xiv. It is further observed that though the Promoter has tried to justify the termination of Agreement For Sale and the allotment of the subject property in terms of exercise of the right provided under Clause 14 of the Agreement For Sale, the Authority when approached by an allottee for relief against the cancellation, however has to examine the issue not only on the ground that such cancellation is not in accordance with the terms of the agreement for sale, but also if the same is unilateral and without any sufficient cause. It goes without saying that the use of phrase 'unilateral and without any sufficient cause' used in the latter part of the Section 11(5) of the Act carries wider connotation particularly when the preamble of the Act itself emphasizes transparency in the sale of real estate sector and 'protection of interest of the consumers in real estate sectors' as its object.

xv. Admittedly, the notice dated 17.10.2023 and the termination notice dated 14.11.2023 issued to the complainant in this case were also on the ground of non-payment or default in payment of dues. As noted herein above, the payment made by the Complainant and the extent of construction were almost equal at the time when the respondent first cautioned the Complainant vide email dated 12.07.2023 about initiation of the termination process and even thereafter. Also the stated retention of 15% of the total price upon termination of the Agreement for Sale was held to

be prima facie unreasonable in view of the observations made herein above. On both of these counts, the communication dated 14.11.2023 conveying termination of the Agreement for Sale dated 12.01.2021 gets vitiated. Besides when the substantial part of the total consideration had already been paid by the allottee i.e. extent of payment made constituted around 70% of the total consideration and also that the issue related to garden area was still unresolved and the Promoter does not appear to have taken any steps to resolve the pending issues in the spirit of Clause 47 of the Agreement For Sale dated 12.01.2021; the Act of the Respondent in terminating the Agreement For Sale dated 12.01.2021, is not only without sufficient cause but also unilateral..

xvi. In view of what has been discussed herein about under Point No. VIII and particularly at preceding para, I hold that the termination of Agreement For Sale dated 12.01.2021 vide communication dated 14.11.2023 is not in consonance with the provision of Section 11(5) of the Act and accordingly, the communication dated 14.11.2023 terminating the Agreement For Sale dated 12.01.2021 issued by the Promoter; is hereby quashed and termination of Agreement For Sale dated 12.01.2021 is revoked restoring the status of the Complainant as allottee with all rights and obligations under the Act subject to the observations made in terms of point No. IX in the succeeding paras.

63. **Point No.IX**

i. In the preceding para, it has been held that the communication dated 14.11.2023 terminating the Agreement For Sale dated 12.01.2021 issued by the Promoter; stands quashed and termination of Agreement For Sale dated 12.01.2021 was revoked restoring the status of the Complainant as allottee with all rights and obligations under the Act.

ii. A perusal of the issues raised and relief sought by the complainant reveals that the complainant Allottee does not intend to withdraw from the project in as much as the first and the foremost relief sought by the complainant is the revocation of termination of agreement for sale besides handing over of the possession of the subject property with delay interest at the rate of MCLR plus 2% w.e.f. the date of possession as per Agreement for Sale, till the actual possession in addition to compensation equivalent to losses in terms of rentals and interest etc.

iii. Accordingly, the case of the complainant is squarely covered under the proviso to Section 18(1) of the Act and issue listed at Point No. IX, would have to be dealt with under the said provisions and in conjunction with the facts and circumstance of the case. Proviso to Section 18(1) of the Act further stipulates 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.

iv. It is a matter of record that as per the clause 16 of AFS, the possession of the subject property was to be handed over to the allottee on or before 31.07.2023. Though an extension of the Project was granted till 31.01.2024 by the Authority and also that 2nd proviso to the Clause 16 of AFS provides that the Promoter shall be entitled for extension of time as per extension of registration of project granted; the same, however, does not result into change in the date of possession as recorded in the AFS as the extension granted by the Authority is without prejudice to the rights of the allottees since it is granted to the Promoter on his request and in this case was granted on ground of delay for which allottee cannot be held responsible. As revealed from the contents of the request for extension of Project made by the promoter, the primary reason for delay in this case

was 'discovery of a large tree at site' and to preserve the same a thorough reassessment and adjustment in construction were done which led to delay. This reason for delay is obviously entirely attributable to promoter and the discovery of large significant tree does indicate lack of proper Project Planning on the part of the Promoter. In this regard, Hon'ble High Court of Bombay in second Appeal No. 512 of 2022 titled **Sanvo Resorts Pvt. Ltd. & Ors. Versus Mrs. Shital Nilesh Deshmukh & Anr.** while dismissing the appeal filed by the Promoter Appellant observed as follows:-

"In this context, the Supreme Court in the case of **Newtech Promoters ad Developers Pvt. Ltd. (supra)** in paragraphs 22 and 25 has expressly observed that the allottee has an unqualified right to claim interest under Section 18(1) of the RERA Act if the promoter fails to discharge his obligation in accordance with the terms and conditions of the agreement. This unqualified right is not dependent on any contingencies or stipulations and therefore the legislature has consciously provided this right of refund as an unconditional absolute right to the allottee if the promoter fails to give possession within the stipulated time regardless of unforeseen events or stay order of the Court which is in either way not attributable to the allottee."

v. It is also matter of record that the Completion Certificate for the project was issued on 18.09.2023 followed by Occupancy Certificate dated 03.11.2023. The total payment of Rs. 1,21,70,950/- (One Crore Twenty one Lakhs Seventy Thousand Nine Hundred and Fifty Only) made by the complainant as on 28.07.2023 against the total basic cost of Rs. 1,78,14,991/- (One Crore Seventy Eight Lakhs Fourteen Thousand Nine Hundred Ninety One Only) which is also not disputed by the Respondent; was around 70 percent of the total basic cost. It also gets revealed from the record that the extent of construction completed on 12.07.2023 as per

building details submitted by the Promoter was also around the same extent. Further Complainant himself vide his email dated 17.10.2023 has stated that the villa was completed upto the extent of approx. 60 to 70 percent.

vi. It is further observed that neither the Complainant nor the Respondent has given specific and comprehensive details as to when a particular payment was due and whether it was made in time or delayed and if so the extent of delay in terms of number of days etc in a consolidated manner so as to facilitate calculation of the interest liability under Sec 18 of the Act, nor the said details were discernible from records in the manner and style as required. Accordingly, it would be expedient to dispose off the issue by taking 28.07.2023 when the payment made by the complainant as noted herein above was approximately equal to the extent of construction completed on that as well as 14.11.2023 i.e the date w.e.f which the termination of AFS is claimed by the Promoter when alternatively the possibility of handing over of the possession was also available; as cutoff dates for ascertaining the relevant period for the purposes of ascertaining the interest liability of the Respondent as well as the Complainant. Further, Rule 18 of The Goa Real Estate (Regulation and Development) (Registration of Real estate Projects, Registration of Real Estate Agents, Rates of internet and Disclosures on Website) Rule, 2017 provides as follows:-

"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:"

vii. Upon revocation of termination of Agreement For Sale dated 12.01.2021, the complainant as allottee of the subject property becomes entitled to the possession of the property in terms of Clause 17 of AFS upon making

payment of balance of the Total basic cost i.e Rs.56,44,041/- which happens to be 32% of the total basic cost.

viii. Taking note of what has been discussed herein above and also that balance of the Total basic cost i.e Rs.56,44,041/- which happens to be 32% of the total basic cost, is yet to be paid by the allottee; as well as in view of the provision contained in Section 18 & 19 of the Act, it would be just and fair if it is directed that the Respondent shall pay to the Complainant or adjust the same against the balance of total basic cost as due, interest @ 11.10% (highest rate of MCLR as on 14.02.2014 i.e 9.10% + 2%) for the period from 28.07.2023 till 14.11.2023, the date till possibility of handing over of the possession was available; on the total payment of Rs. 1,21,70,950/- (One Crore Twenty one Lakhs Seventy Thousand Nine Hundred and Fifty Only) made by him till 28.07.2023 at the time of making the balance of total basic cost as due. Similarly, the allottee would also be liable to pay if so claimed by the Promoter, the interest @ 11.10% for the period from 28.07.2023 till the completion of the project i.e 18.09.2023 on the installments/payments as due and for the respective durations for each amount and for the balance of the total basic cost i.e Rs. 56,44,041/- for the entire period from 18.09.2023 to 14.11.2023, at the time of making of balance payment as due.

ix. Accordingly, the Complainant allottee is directed to make the balance payment as above with in a period of 04 weeks and the Respondent Promoter is further directed to handover the possession of the subject property within two weeks from the date of making of balance payment by the Complainant allottee as occupancy certificate in respect of the subject property has already been granted since 03.11.2023 and also apply for registration of the sale deed with the concerned Sub-Registrar and further execute and register the sale deed in favour of the Complainant on the date

fixed for the purpose by Sub-Registrar. Needless to add that the convenience of the Allottee be ascertained while applying to the Sub-Registrar so as to complete the process expeditiously. It is further clarified that in case of any delay beyond the time limit prescribed herein on the part of any of the parties, the interest liability @ 11.10% for the delay period would be leviable upon the complainant for the balance of total basic cost as due and upon the respondent in respect of the total amount received.

64. **Point No. X & XI**

i. The complainant has further alleged that the updation of RERA website disclosed that the respondents changed the layout of the project without the consent or knowledge of the complainant thus violating the provision of Section 14 of RERA Act, which mandates that no alterations or additions to the sanctioned plan or specifications can be made without the prior written consent of the allottee and thereby also violated the terms of the ATS and further this amounts to misleading the complainant and other buyers.

ii. A report in this regard was sought from the Technical Section of the Authority which has also confirmed that revised plan documents were uploaded by the Promoter on 22.09.2023. The scrutiny of the revised plan by technical section reveals that there are minor changes in the total built up area of the project i.e from earlier 1984.26 sq.mts to revised 1992.98 sq.mts. and the number of villas was reduced from earlier 13 to 11 besides, no change in carpet area of the unit villa No.1 was observed. However, the record of the Authority does not reveal the reasons for revising the plan and exact implication thereof and whether the consent of 2/3rd of the allottees as stipulated under the provisions of Section 14(2) of the Act was obtained or not. Further, the project file reveals that the application for seeking

extension of the project mentions that to preserve a large tree noticed at the site, a thorough reassessment and adjustment in construction were done.

iii. These aspects including the obtaining of consent from 2/3rd of the allottees need to be ascertained and clarified from the Promoter to reach at a finding as to the violation of Section 14 of the Act by the Promoter. The registry is accordingly directed to issue notice to Promoter in this regard, a copy the same may also be endorsed to the complainant herein.

iv. Complainant has also alleged violation of section 4(2)(h) which mandates the submission of detailed project information during registration, including carpet area and other specifications. The Technical Section in this regard has reported that the requisite information pertaining to Section 4(2)(g) of the Act as asked for vide online application, has been furnished by the promoter.

v. The point No. X and XI are disposed off in above terms.

65. **Point No. XII**

The complainant alleging multiple violations of the Act, has prayed the revocation of the registration of the Project granted to the Promoter under Section 7 of the Act. It was submitted by the complainant that the Promoter invited buyers and received earnest money on the basis of booking form without registration of the project and also induced the buyers to purchase the property on the basis of contents of booking form and later on denied to have given any such booking form. Further, the Promoter did not mention the terms i.e "exclusive use area" and super built up area in booking form which they later on mentioned in ATS due to which complainant suffered wrongful loss.The respondents further played fraud by giving certificate on Rs.50/- stamp paper when complainant raised objection to mention of exclusive use of garden area instead of sale of garden area in AFS whereas

the respondents assured to sell the same and received amount towards it while the same was not saleable, which clearly established fraud and cheating committed by respondents.

It was also alleged that the Respondent failed to construct, complete and hand over the possession of allotted "**Villa**" to the Complainant as per the terms of agreement dated 12.01.2021 within the stipulated time and dispite this raised demands though the same were not due. Further there is a deficiency in service on part of the Respondents by misleading the Complainant and the same amounts to unfair trade practice. In addition the Complainant also alleged violation of Section 13 and 14 of the Act. The Respondent has denied all these allegations.

The issues related to change of nature of property rights of garden area from 'exclusive ownership' to 'exclusive right to use', reduction of carpet area and also revision of pricing details/ total consideration; at the stage of execution of Agreement for Sale(AFS) dated 12.01.2021 etc. and whether the garden area was part of common area and thus could not have been sold and charged separately; have already been dealt with in detail under Point No. I and II and have been answered in negative. Further, whether the Respondent allured and cheated the complainant herein to buy the villa in question (subject property) by misrepresenting the facts with regard to the carpet area, super built up area and garden area and whether the 'CERTIFICATE' issued in respect of garden area on a Rs. 50/- stamp paper is merely a trick/fraud played by the Respondent has been dealt with in detail under Point No. V and have been answered in negative. With regard to the violation of Section 3(1) of the Act, a penalty of Rs. 9,00,000/- (Rupees Nine Lakhs only) has been imposed upon the Promoter considering the totality of the circumstances. The allegation of violation of Section 13 of the Act raised by the Complainant, have been examined in

detail under Point No. VII and is answered in negative and in respect of violation of Section 14 of the Act, the Registry have been directed to issue a notice as noted under the Point no. X and XI. The issue of delay interest and deficiency in service have also been examined herein above and the Complainant has also been given liberty to prefer the claim before Adjudicating officer if he so desires.

It needs to be noted that the relief sought is for revocation of the Registration of the project granted to the for commitng unfair trade practices. As per the provision of section 7 of the Act, the term 'unfair practice' has been defined as follows:-

"Explanation.-- For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:--

(A) the practice of making any statement, whether in writing or by visible representation which,--

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;

(d) the promoter indulges in any fraudulent practices."

In view of what has been noted above in this para and also the details of analysis and reasoning pertaining to the determination of Point No. I to XI, no case is made out for initiation of action under section 7 of the Act.

66. **Point No. XIII**

The complainants alleging deficiency in service on account of failure of the Promoter to construct, complete and hand over the possession of allotted **"Villa"** to the Complainant as per the terms of agreement dated 12.01.2021; have prayed compensation equivalent to losses in terms of rentals and interest, alongwith compensation on account of mental harassment and litigation cost, in the sum of Rs. 1 crore. Besides, violation of the Sec 14 has also been alleged for which the registry has already been instructed under Point No. X & XI to issue notice to the respondent for ascertaining & clarifying the relevant details. Further, compensation under Sections 12, 14, 18, and 19 of the RERA Act has to be adjudged only by the Adjudicating Officer Under Section 71 of the Act. Accordingly, the above prayers for compensation have to be dealt with by the Adjudicating Officer for adjudging the compensation, if any. The complainants may prefer an application before the Adjudication Officer for compensation, if so desires. Hence, the point No. XIII is answered accordingly.

67. **Case law cited/referred to by the Complainant**

i. During the course of the proceedings, the Complainant also sought to support its version with the case law and referred to the orders passed in Manju Kherwa V/s Signature Global Pvt Ltd decided on 11/03/2024 by Haryana RERA, Lt Colonel Pratap Singh V/s Pearllite Real Properties Pvt Ltd order dated 07/06/2024 passed by Maharashtra RERA and also the decision of Hon'ble Apex Court in M/s Fortune Infrastructure V/s Trevor D Lima dated 12.03.2018, Wg Cdr Arifur Rahman Khan & others V/s DLF Southern Homes Pvt Ltd 24.08.2020, Supertech Ltd V/s Emerald Court Owner Resident Welfare Association dated 31.08.2020 as well as in DLF Home Developers Ltd. and Ors. vs. Capital Greens Flat

Buyers Association and Ors. dated 14.12.2020. Besides the Complainant also sought to refer the case of Kumar Urban Development Pvt Ltd V/s Ram Anil Joshi (2019), Sandeep Singla V/s Emaar MGF Land Ltd (2019), Emerald Court Owner Resident Welfare Association V/s Supertech Ltd (2019) and Mantri Developers Pvt Ltd V/s K S Suresh (2019) but neither proper citation nor copies of these judgements were made available. The Respondent also filed an application praying the Authority to direct the complainant to furnish the copies of the judgements referred to by the complainant in his written submissions but were not referred or cited during the course of oral arguments. However, the complainant also could not provide the requisite details when requested by the registry for the purpose in respect of these cases i.e Kumar Urban Development Pvt Ltd V/s Ram Anil Joshi (2019), Sandeep Singla V/s Emaar MGF Land Ltd (2019), Emerald Court Owner Resident Welfare Association V/s Supertech Ltd (2019) and Mantri Developers Pvt Ltd V/s K S Suresh (2019).

ii. The Complainant vide para 15 of its written submissions has submitted that The Hon'ble Supreme Court in 'Fortune infrastructure V. Trevor D'Lima (2018)' held that any deviation from the agreed terms regarding the area of the property must be compensated. Further submitted vide para 19 that the Hon'ble Supreme Court in 'Wg. Cdr. Arifur Rahman Khan & Other V. DLF Southern Homes Pvt. Ltd. (2020)' held that any deviation from the agreed terms, particularly concerning the size and specifications of the property, is a breach of contract, and the buyer is entitled to compensation or specific performance and the Respondent needs to restore the carpet area to the originally agreed- upon size or, in the alternative, provide adequate compensation for reduction in area, as per the Judgements in "Wg. Cdr. Arifur Rahman Khan V. DLF Southern

Homes Pvt. Ltd." It is however, relevant to note that no deviation from the terms of the agreement for sale has been specifically alleged in the present case and infact the first & foremost relief sought by the Complainant is revocation of termination of AFS dated 12.01.2021. Further, the issue related to change of nature of property rights of garden area from 'exclusive ownership' to 'exclusive right to use', reduction of carpet area and also revision of pricing details/ total consideration; at the stage of execution of Agreement for Sale (AFS) dated 12.01.2021 by altering and manipulating the information provided earlier vide booking form, Application form and allotment letter etc. and also whether the garden area was part of common area and thus could not have been sold and charged separately; have been discussed herein above in detail under Point No.I & II, citing the relevant provision of law as well as the case law.

iii. The complainant also submitted vide para 20 that The National Consumer dispute redressal commission (NCDRC) in 'Emerad Court Owner resident welfare Association v. Supertech Limited (2019)' held that common areas, including gardens, cannot be sold or charged separately as they are meant for common enjoyment of all residents. With reference to this case, the Complainant, however, submitted copy of the order of the Hon'ble Supreme Court in 'Super Tech Limited vs. Emerad Court Owner resident welfare Association & Ors'. The issue before the Hon'ble Apex Court in this case mainly related to challenge to the revised plans and whether the 'sanction' subject of consideration in the case, was in violation of the building regulation. The complainant has apart from citing these judgement, has not explained the applicability of the said judgement to the facts of the case.

iv. The other two cases relied upon by the complainant 'Manju Kherwa vs. Signature Global Pvt. Ltd.', decided on 11.03.2024 by Haryana RERA and 'Lt. Colonel Pratap Singh vs. Pearl Lite Real Properties Pvt. Ltd.', Order dated 07.06.2024 passed by Maharashtra RERA deal with besides other issues, the interest liability of the promoter under Section 18(1) of the Act taking note of the observation of the Hon'ble Supreme Court of India in Newtech Promoters & Developers Pvt. Ltd. vs. State of Uttar Pradesh & Ors. which has been followed while dealing with this aspect in the present case also. Further while relying upon 'DLF Home Developers Ltd. and Ors. vs. Capital Greens Flat Buyers Association and Ors.', complainant has apart from citing this judgement, has not brought out the applicability of the said judgement to the facts of the case. However, the aspect of compensation for delay would be dealt by the Ld. Adjudicating Officer and the liability of interest in this regard has already been discussed in view of Section 18(1) of the Act and in view of the observation of the Hon'ble Supreme Court of India in Newtech Promoters & Developers Pvt. Ltd. vs. State of Uttar Pradesh & Ors.

v. The Complainant also referred to notification No. 22/RERAGGM Regulations 2021 issued by Govt. of Haryana which essentially mandates the Promoter to disclose the carpet area. As noted herein above, the same has been done by the Promoter specifically at page 07 of AFS dated 12.01.2021. The relevant portion of the AFS is extracted here below:-

"AND WHEREAS the carpet area of the Villa has been determined as per clause (k) of Section 2of the Act and is 125 square meters (1350 sq. ft.)"

68. **Case law cited/referred to by the Respondent**

i. During the course of hearing, the respondent relied upon Newtech Promoters & Developers Pvt Ltd V/s State of Uttar Pradesh &others reported in 2021(18)SCC Pg.1, Naik navare Constructions Pvt Ltd V/s Pradeep S Shah, order dated 28/06/2023 passed by Goa RERA, H.R.Basavraj & Anr V/s Canara Bank & Others reported in 2020(12)SCC Page 458, Nalini Singh Associates V/s Prime Time –IT Media Services Ltd reported in 2008 (106) DRJ 734, and Prem Singh and Ors vs. Birbal and Ors. reported in 2006(5) SCC Page 353.

ii. The first two cases i.e. judgement in 'Newtech Promoters & Developers Pvt Ltd V/s State of Uttar Pradesh &others reported in 2021(18)SCC Pg.1' and 'Naik navare Constructions Pvt Ltd V/s Pradeep S Shah, order dated 28/06/2023 passed by Goa RERA' has been cited to submit that the promoter has a right to cancel the allotment in terms of Section 11(5) of the Act which is not under dispute in the present proceedings and termination of the Agreement for sale and cancellation of allotment challenged by the complainant has been dealt with under proviso to Section 11(5) of the Act. The other two judgements 'H.R. Basavraj & Anr V/s Canara Bank & Others reported in 2020(12)SCC Page 458', and 'Nalini Singh Associates V/s Prime Time –IT Media Services Ltd reported in 2008 (106) DRJ 734', did not appear of much relevance in view of the analysis and determination arrived at in respect of point No. I & II. In the remaining judgement referred to by the Respondent 'Prem Singh and Ors vs. Birbal and Ors. reported in 2006 (5) SCC Page 353',Hon'ble Apex Court observed that there is a presumption that registered document is validly executed and a registered document, therefore, prima facie would be valid in law. It is further observed that the agreement for sale executed and registered on 12.01.2021 as placed

on record; was not disputed by either of the Parties in the present case and infact the first & foremost relief sought by the Complainant is revocation of termination of AFS dated 12.01.2021.

Directions

69. In view of the findings arrived at various points of determination listed at para 28, it will be just to issue the following directions in the matter.

i. It is directed that the 'CERTIFICATE' dated 11.01.2021 issued by the Promoter Respondent and addressed to the Complainant Allottee also further notarized, shall be read as addendum to the Agreement For Sale dated 112.01.2021 and a specific clause in terms of the last para (operative para) of the said 'CERTIFICATE' would be added in the sale deed as and when it happens.

ii. The respondent no. 1 is directed to pay Rs. 9,00,000/- (Rupees Nine Lakhs only) penalty under Section 59 of the Act for violation of Section 3(1) of the Act. The amount shall be deposited before the Authority within 30 days failing which necessary proceeding will be initiated against the respondent No. 1.

iii. The communication dated 14.11.2023 terminating the Agreement For Sale dated 12.01.2021 issued by the Promoter; is hereby quashed and termination of Agreement For Sale dated 12.01.2021 is revoked restoring the status of the Complainant as allottee with all rights and obligations under the Act with immediate effect.

iv. The Complainant allottee is directed to make the balance payment as above to the Promoter Respondent with in a period of 04 weeks. Respondent Promoter is further directed to handover the possession of the subject property within two weeks from the date of making of balance payment by the Complainant allottee and also apply for registration of the sale deed with the concerned Sub-Registrar and

further execute and register the sale deed in favour of the Complainant on the date fixed for the purpose by Sub-Registrar. Needless to add that the convenience of the Allottee be ascertained while applying to the Sub-Registrar so as to complete the process expeditiously. It is further clarified that in case of any delay beyond the time limit prescribed herein on the part of any of the parties, the interest liability @ 11.10% for the delay period would be leviable upon the complainant for the balance of total basic cost as due and upon the respondent in respect of the total amount received.

v. It is directed that the Respondent shall pay to the Complainant within four weeks from the date of issue of the order or adjust the same against the balance of total basic cost as due, interest @ 11.10% (highest rate of MCLR as on 14.02.2014 i.e 9.10% + 2%) for the period from 28.07.2023 till 14.11.2023, the date till possibility of handing over of the possession was available; on the total payment of Rs. 1,21,70,950/- (One Crore Twenty one Lakhs Seventy Thousand Nine Hundred and Fifty Only) made by him to the Promoter till 28.07.2023. Similarly, the allottee would also be liable to pay along with balance amount of the total basic cost, the interest @ 11.10% for the period from 28.07.2023 till the completion of the project i.e 18.09.2023 on the installments/payments as due and for the respective durations for each amount and for the remaining period i.e from 18.09.2023 to 14.11.2023 on the balance of the total basic cost i.e Rs. 56,44,041/- if so claimed by the Promoter.

vi. The registry is directed to issue notice to Promoter in respect of the violation of Section 14 of the Act keeping in view the observation made at para 64 above. A copy the said notice shall also be endorsed to the complainant herein.

vii. The Respondent as well as the Complainant are directed to file compliance report of the order in the form of an affidavit within 60 days of this order, failing which further legal action will be initiated by the Authority under the RERA Act, for execution of the order.

14/02/25

Virendra Kumar, IAS (Retd.)
Member, Goa RERA