



GOA REAL ESTATE REGULATORY AUTHORITY

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FN0: 3/RERA/New Proj.(1435)/2024/581

Date: 13/05/2025

ORDER

(Dated: 13.05.2025)

Sub: In the matter of Registration of the Real Estate Project “Edcon Crown Konkan Suites”.

A. Brief Facts of the Case

Edwin Theophilus Menezes (hereinafter referred as the Promoter/Applicant), had applied online at Goa RERA Portal for registration of the project ‘Edcon Crown Konkan Suites’ under Section 3 of the Real Estate (Regulation and Development) Act, 2016 read with the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates on interest and Disclosures on website) Rules 2017.

2. During the initial scrutiny of application and documents, several deficiencies relating to non submission of document/information i.e. complete ownership documents, Development Agreement, contractor details and Project Agent details were noticed and also some of the submissions were not in prescribed format i.e. Draft Agreement for sale not being as per Annexure-A under Rule 10(1), CA certificate submitted without Annexure-A, Affidavit (Form II) not submitted on Rs. 500/- stamp paper and as per the prescribed format, Copy of Sanad submitted for Area of 2675 sq mts as against project area of 3050 sq.mts. In response to the query made by this office in respect of these deficiencies, the vide its compliance reply dated 26/11/2024 submitted a copy of draft agreement

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as per prescribed format, Copy of inventory proceedings along with the copy of Power of Attorney issued by the land Owner Joaquim Vicente Leitao in favour of Mr. Allen Carmo Lobo, CA certificate mentioning the project name with Annexure-A, Affidavit (Form II) on Rs. 500/- stamp paper. Further, the Applicant as to the submission of Sanad for 2675 sq mts as against the project area of 3050 sq.mts., clarified that as per Form No. I and XIV the total area of land under Sy. No. 184/6 is 3050 sq. mtrs. and an area of 375 sq. mts. is Class (a) with existing structure as per Survey Plan and during the processing of Conversion Sanad applied by the Applicant, he was instructed by Dy. Collector (Revenue) to submit the site plan for an area of 2675 sq. mtrs. after deducting class (a) area of 375 sq. In support, the Applicant also submitted copies of letter of Dy. Collector (Revenue) & relevant office noting besides copy of ISLR city survey, Mapusa, in Schedule II where in remarks column mentions that structures existing as per survey plan were excluded from conversion area. It was further informed that the applicant promoter have not appointed any project Contractors / Project Agent.

3. As the query/deficiency with regards to landownership documents and joint development agreement were not clarified/rectified, another email inquiry on 27/11/2024 for submission of latest NIL encumbrance certificate, Form I & XIV and copy of Joint Development agreement between Promoter & landowner with reference to project area of 3050 Sq.mts was sent. The Promoter/ Applicant was also informed that though the landownership documents submitted by him i.e Legal Title report, sanad and the Inventory proceedings show the name of 'Joaquim Vincento Leitao' as landowner of the project land, however name of one 'Edwin Theophilus Menezes' is mentioned as promoter and promoter/landowner in the Application and promoter type is shown to be partnership firm. The Applicant was also apprised that the Title report submitted by him also dates back to 21/11/2015 and the promoter was requested to submit the latest Title report which needs to be in compliance of Rule 3(c) of the Goa



Real Estate (Regulation & Development) (Registration of Real Estate Projects, registration of Real Estate agents, Rates of interest and Disclosures on website) Rule, 2017 i.e the Legal title report reflecting the flow of title of the owner or promoter to the land on which development is proposed, with authentication of such title by legal practitioner. The Promoter/Applicant was further requested to indicate the correct position along with supporting documents. It was further observed that Form II submitted on behalf of M/s Edcon Real estate developers as promoter is by its authorised person Mr. Edwin Theophilus Menezes and would have to be amended accordingly in case the project is being Jointly developed with landowner, etc or in accordance with the correct position.

4. The Promoter/Applicant vide his response email dated 05/12/2024 however submitted only a notarized copy of Agreement dated 01/02/2020 without responding to any of the queries raised by this office vide email dated 27/11/2024. The Promoter/Applicant had also visited the Authority's office on 05/12/2024, to enquire about the requirement of registration of such type of agreements and he was apprised that as per the Circular no. 3/RERA/Off.Matters/2019/718 dt. 04/10/2022 of this Authority such agreements needs to be registered for consideration of registration of the project. The Promoter/Applicant had during his visit orally submitted his view that such documents do not require registration, the Promoter/Applicant was accordingly requested to submit representation in this regards bringing out the detailed reasons for the same so that the matter could be examined and considered further. However, the Promoter/Applicant instead of furnishing the requisite information/ clarification in response to various queries raised by this office or making any representation as to the requirement of registration of the agreement dated 01.02.2020 submitted by the promoter; filed a Writ Petition No. 3101 of 2024(F) before Hon'ble High Court of Bombay at Goa which has now been disposed vide order dated 02/04/2025 and Goa RERA has been



directed to dispose the application for registration of the project 'Edcon Crown Konkan Suites' filed by the promoter.

5. Pursuant there to, a representation from the Partner of Edcon Real Estate Developers with reference to the said project and Order passed by the Hon'ble High Court was received on 09.04.2025 informing this office that, the agreement is not required to be registered in view of Section 17(2) Registration Act read with explanation under Section 54 Transfer of property Act and also that clause 45 of the Agreement dated 01/02/2020 submitted by the promoter states that possession has not been handed over. An opportunity of personal hearing in the matter was also requested before passing any order. Further copies of two judgment passed by the Bombay High Court were also attached with the representation.
6. Accordingly, a notice dated 10.04.2025 was issued to the Promoter Applicant (Petitioner) giving an opportunity to rectify the deficiencies as noted herein above or submit any representation/ additional submission by 22/04/2025 by email and also an opportunity of personal hearing on 24/04/2025 at 11:00 a.m. and furnish a hard copy of its representation/ additional submission before this Authority for facilitating disposal of application for registration of project 'Edcon Crown Konkan Suites'.

B. Gist of the submissions made by the Promoter Applicant (Petitioner)

7. Consequently the Promoter Applicant (Petitioner) submitted its response in respect of the deficiencies and also furnished copies of the Nil Encumbrance Certificate, Form No. I&XIV and original of amended Affidavit II vide communication dated 16.04.2025.

As regards to registering of development agreement, it was stated that pursuant to the Judgement passed by Hon'ble Court in writ petition No.3101 of 2024(F), it had already submitted its representation dated 09/04/2025 stating that





the Agreement dated 01/02/2025 not required to be registered for the reasons mentioned therein (already noted at para 5. above). The Applicant Promoter further requested to grant its application for registration and also sought the opportunity to clarify its case during the hearing fixed on 24/04/2025 at 11.00 a.m.

8. On 24/04/2025, the matter could be heard by two members of the Authority available on the day as the Chairperson was indisposed and the matter was kept for further hearing. Accordingly, further hearing in the said matter as per Roznama dated 24/04/2025 was conducted on 07/05/2025 at 11: 00 a.m.by all three members including Chairperson of this Authority.
9. The essential points stated by the Promoter Applicant (Petitioner) in the CWP No. 3101 of 2024(F) preferred before Hon'ble Court and in its written submission/ representations dated 09.04.2025, 16.04.2025 and written submissions and oral arguments made during personal hearing on 24.09.2025 made pursuant to the order dated 02.04.2025 of Hon'ble High Court and the Notice dated 10.04.2025 issued by this Authority, are summed up here below.
10. Referring to the Agreement dated 01.02.2020 (hereinafter referred as the said Agreement) , it was stated that the Petitioners (Promoter/ Applicant) executed the said Agreement with Joaquim Vicente Leitao and Maria Esperanca Leitao by which it was agreed that the Promoter Applicant (Petitioner) would develop the subject Property as per plans approved and conditions imposed by the concerned authorities, of which 40% of built-up area was to be allotted by petitioner to Joaquim Vicente Leitao and Maria Esperanca Leitao, 10% of built up area was to be allotted to M/s Carmo Lobo Developers, the confirming party therein, alongwith payment of Rs. 8,67,280/- being the amount incurred by towards development fees and



infrastructure tax and 50% of built up area was to be retained by the Promoter Applicant (Petitioner). It was further submitted that Clause 45 of the said Agreement, stipulates in clear terms that during the currency of the agreement, possession of the subject Property would always be vested with Joaquim Vicente Leitao and Maria Esperanca Leitao, and the Promoter Applicant (Petitioner) was only granted a license to enter upon the subject Property, as defined in the Easements Act, which was to be irrevocable and Joaquim Vicente Leitao and Maria Esperanca Leitao would continue to remain in possession of the subject property.

11. With regard to the requirement of registration of Agreement dated 01.02.2020, it was submitted that the said agreement was not required to be registered in view of Section 17(2) (v) of the Registration Act which provides that the requirement of registration of documents under Section 17 (1)(b) and section 17(1)(c) of the Registration Act would not apply to any document (other than the documents specified in Section 17 (1-A) of the Registration Act) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest. It was further clarified that Section 17(1)(b) of the Registration Act Mandates the compulsory registration of documents that create, declare, assign, limit, or extinguish any right, title, or interest in immovable property. When an agreement does not transfer possession of the property or create any legal interest or charge over it, then its registration is not compulsory. Indeed, development agreements, a mere development agreement, without possession, like the Agreement dated 01.02.2020, does not create any interest in the property and hence is not compulsorily registrable, and the Respondent has no power, authority and/or jurisdiction to insist on the registration thereof.



12. It was also stated that the Respondent failed to appreciate that development agreement without possession are treated as contracts for services, and they do not fall under the category of compulsorily registrable documents and the Respondent has no power, authority and/or jurisdiction to insist on the registration thereof.
13. It was thus averred that it is abundantly clear, that if a document does not effect any transfer, either of title, and/or of possession, and/or of both, inter vivos, nothing in section 17(1) & 17(1)(A) of the Registration Act require them to be mandatorily registered at The office of the jurisdictional Sub-Registrar. Further it is amply clear that if an indenture is executed, which does not transfer title and/or possession, and only, creates a right to have a documents which effects such a transfer in the future, Section 17(1)(a) and Section 17(1)(b) of the Registration Act, will not apply to such a document and it will not be required to be mandatorily registered.
14. Elaborating upon the nature of the Agreement dated 01/02/2020 (the said Agreement), it was stated that the said Agreement does not transfer any title from the Owners, either to the Developer, or to any other and a plain reading of the said Agreement shall reveal that Clauses (a), (d) and (e), of Section 17(1) of the Registration Act are wholly inapplicable to it. Further, Clause 45 of the Agreement dated 01/02/2020 is clear and unambiguous that possession of the said Property would remain vested in the Owners. The Developer was only granted a license to enter into the said Property, for the purpose of construction therein. A 'license' under Section 52 of the *Indian Easements Act*, 1882 is a permission granted by one person to another to do something on immovable property that, without such permission, would be unlawful and would not amount to an easement or interest in the property.

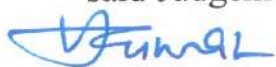




Thus on consideration of Clause 45 of the Agreement dated 01/02/2020 as possession of the said Property is not transferred, nor is there any acknowledgement of payment of whole or part of the consideration, the Agreement dated 01/02/2020 does not fall within the scope and/or amplitude of Clauses (b) and (c), of Section 17(1) of the Registration Act, and does not require registration under these provisions either. Per contra, the Agreement dated 01/02/2020 is squarely covered by Section 17(2)(v) of the Registration Act. While it does not itself create or affect any right, title or interest in the said Property worth ₹100 or more, and it only creates a right to obtain another document in the future, which would create, affect and/or transfer right, title and/or interest in the said Property, either in favour of the Developer, and/or in favour of prospective/eventual purchasers of the built up units in the proposed project, i.e., assurance of proportionate undivided share of right, title and/or interest in the said Property corresponding to the individual units of which the said Project shall be comprised, (as borne out of various clauses, including but not limited to Clauses 7, 16 & 34). The Explanation to Section 17(2) of the *Registration Act* provides that a document purporting or operating to effect a contract for sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money. For all of these reasons, the Agreement dated 01/02/2020 cannot absolutely, by even the wildest stretch of imagination, be held to require mandatory registration under Section 17 of the Registration Act.

C. Case Law cited by the Promoter Applicant (Petitioner)

15. The petitioner in support of his submissions further relied upon the Judgment of the Hon.Bombay High Court *Annappa Maruti Zalke v. Ramu Balappa Bogarnal* (2025DGLS(Bom)748) and referred to para 18 of the said Judgement where the Hon.Court held thus:



“18. On the aspect of the registration of an Agreement for Sale, the provisions of Registration Act 1908 are absolutely clear. An Agreement for Sale is not one of those instruments which is required to be compulsorily registered under the Section 17 of the Act. On the contrary, the Explanation to Section 17(2) provides that a document purporting or operating to effect a contract for sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money”.

16. The Petitioner also referred to the following para from the Judgement in *Manisha w/o Balkrushna Kodev vs Madanlals/o Uttamchan Desarda and Others* (2023 DGLS (Bom) 3401)

“c] In the case of *K. Arumuga Velaiah Vs. P. R. Ramasamy and another*, reported in (2022) 3 SCC 757, at para No. 45 has held as under:

45.....The test in such a case is whether the document itself creates an interest in a specific immovable property or merely creates a right to obtain another document of title. If a document does not by itself create a right or interest in immovable property, but merely creates a right to obtain another document, which will, when executed create a right in the person claiming relief, the former document does not require registration and is accordingly admissible in evidence vide *Rajangam Ayyar vs Rajangam Ayyar*.







d] In the instant case, perusal of agreement to sell would indicate that it only gives right in favour of the party to get sale deed executed of the immovable property, on payment of balance consideration and thus in terms of the law laid down in the case of Tehmi P .Sidhwa [supra] and K. Arumuga Velaiah [supra] the document i.e. the agreement to sell merely creates a right to obtain another document of title. Since the agreement to sell does not by itself create a right or interest in immovable property, but merely creates a right to obtain another document, which will, when executed creates a right in the person claiming relief, the agreement to sell does not require registration and is accordingly admissible in evidence and will be covered with the scope of Section 17(2)(v).”.

17. It was thus pleaded that the law that emerges from *Annappa Maruti Zalke* and *Manisha w/o Balkrushna Kode, supra*, squarely apply to the facts of the present case.
18. With regards to Interpretation of the contracts including Agreement in question, it was submitted that If the terms of the contract are clear and unambiguous, the Authority has to give effect to the plain and ordinary meaning of those terms and the duty of the Authority is not to delve into the supposed intention of the parties, but to give effect to the words used in the contract according to their plain, ordinary, and grammatical meaning. Further, other clauses must be read harmoniously and Authority cannot contradict an express declaration. In this regard, the Petition relied upon *Adani Power (Mundra) Limited v. Gujarat*

Electricity Regulatory Commission and Others ((2019) 19 SCC 9) and further clarified that when a clear clause stipulates that possession shall remain with the Owners, and no other interest is shown to be created in the said Property in favour of the Developer by Agreement dated 01/02/2020 itself, which only reserves a right to the Developer to have the title to the said Property conveyed at the future date, no such intention can be read into Agreement dated 01/02/2020 and to now read such a clause and/or intent into it, would contradict what the parties have expressly and unambiguously expressed and stated in Agreement dated 01/02/2020 by way of clause 45.

19. It was thus sought to be concluded that the Agreement dated 01/02/2020 is not required to be registered, and the project, '*Edcon Crown Konkan Suites*' must be registered, without requiring the parties to mandatorily register the Agreement dated 01/02/2020 at the office of the jurisdictional Sub-Registrar.

D. Analysis and Findings

20. The Applicant Promoter (Petitioner) appeared for personal hearing before this Authority initially on 24-04-2025 and thereafter on 07-05-2025 and filed written submissions and also made oral submissions/arguments. We have gone through the records of the case and also heard the oral submissions/arguments made by the Applicant Promoter (Petitioner).
21. Before proceeding further with the issue of requirement of registration of the said Agreement, it is at the outset, observed that some of the deficiencies noted in the notice dated 10.04.2025 relating to furnishing of NIL encumbrance certificate, Form I & XIV and latest title report, have been rectified by the Promoter/ Applicant in the interregnum. The other deficiencies i. e. clarification with regard to type of Promoter and submitting of amended affidavit in Form ii are yet to be responded to by the Promoter/ Applicant.

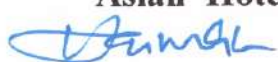


22. In support of its contention that the Agreement dated 01/02/2020 is not required to be registered, the Promoter/ Applicant has vehemently argued that it does not transfer any title from the Owners, either to the Developer, or to any other. As per the Clause 45 of the Agreement dated 01/02/2020, the possession of the said Property would remain vested in the Owners and the Developer was only granted a license to enter into the said Property, for the purpose of construction therein which under Section 52 of the *Indian Easements Act*, 1882 is a permission granted by one person to another to do something on immovable property and such right would not amount to an easement or interest in the property. It was thus sought to be concluded that on consideration of Clause 45 of the Agreement dated 01/02/2020 as possession of the said Property is not transferred, nor is there any acknowledgement of payment of whole or part of the consideration, the Agreement dated 01/02/2020 does not fall within the scope and/or amplitude of Clauses (b) and (c), of Section 17(1) of the Registration Act, and does not require registration under these provisions either.

23. It is well established that the exact nature of an agreement and what is intended by the parties, has to be ascertained by reading the agreement as a whole. Here, it would be beneficial to refer to para 22(iii) of the decision of Hon'ble Supreme Court of India in Civil Appeal No. 1129 of 2012 in the **Sushil Kumar Agarwal Vs Meenakshi Sadhu & ors.** which reads as follows:

“(iii) In order to determine the exact nature of the agreement signed between the parties, the intent of the parties has to be construed by reading the agreement as a whole in order to determine whether it is an agreement simpliciter for construction or an agreement that also creates an interest for the builder in the property. ----- and”

24. Further, Hon'ble Delhi High Court in the matter of **Dharamvir Khosla Vs Asian Hotels (North) Ltd** wherein hon'ble Court while looking in to the



question whether plaintiffs were mere licensees or agreements created a right and interest in favour of the plaintiffs beyond that; vide para 78 & 79 of its decision dated 21.07.2020 observed as follows:

“78. Supreme Court in the decision reported as (2009) 10 SCC New Bus-Stand Shop Owners Association Vs. Corporation of Kozhikode and Another also reiterated that the true test is the nature and quality of occupation and that exclusive possession though not a decisive test but its absence signifies that the agreement is for the license and not for lease. It was held as under:-

30. Reference in this connection can be made also to a later judgment of the Court of Appeal in Marchant Vs. Charters - (1977) 3 All E.R. 918, where again Lord Denning reiterated these principles in a slightly different form by holding that the true test is the nature and quality of the occupation and not always whether the person has exclusive possession or not. The true test in the language of the learned Judge is as follows:

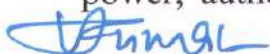
".....It does not depend on whether he or she has exclusive possession or not. It does not depend on whether the room is furnished or not. It does not depend on whether the occupation is permanent or temporary. It does not depend on the label which the parties put on it. All these are factors which may influence the decision but none of them is conclusive. All the circumstances have to be worked out. Eventually the answer depends on the nature and quality of the occupancy. Was it intended that the occupier should have a stake in the room or did he have only permission for himself personally to occupy the room, whether under a contract or not, in which case he is a licensee?"

79. It is thus settled that mere nomenclature of the agreement will not make the agreement a mere license with no further right to the plaintiffs except user of the premises and to discern the true intention between the parties, terms of the



agreements and conduct of the parties have to be looked into
.....
... made by the defendants.”

- 25.** The other related contention raised by the Promoter/ Applicant is that the Agreement dated 01.02.2020 was not required to be registered in view of Section 17(2) (v) of the Registration Act which provides that the requirement of registration of documents under Section 17 (1)(b) and section 17(1)(c) of the Registration Act would not apply to any document (other than the documents specified in Section 17 (1-A) of the Registration Act) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest. It was further clarified that Section 17(1)(b) of the Registration Act mandates the compulsory registration of such documents only that create, declare, assign, limit, or extinguish any right, title, or interest in immovable property. Further, a mere development agreement without possession, like the Agreement dated 01.02.2020 which essentially is in the nature of contract for services; does not create any interest in the property. It was also contended that while the Agreement dated 01.02.2020 does not itself create or affect any right, title or interest in the said Property worth ₹100 or more, and it only creates a right to obtain another document in the future, which would create, affect and/or transfer right, title and/or interest in the said Property either in favour of the Developer and/or in favour of prospective/eventual purchasers of the built up units in the proposed project, i.e., assurance of proportionate undivided share of right, title and/or interest in the said Property corresponding to the individual units (as borne out of various clauses, including but not limited to Clauses 7, 16 & 34) and hence is not compulsorily registrable and the Respondent has no power, authority and/or jurisdiction to insist on the registration thereof. The







Promoter/ Applicant also made a reference to the Explanation to Section 17(2) of the Registration Act but did not provide any details as to its relevance to the issue.

26. In this regard, it would be helpful to refer to para 19 & 20 of the decision of Hon'ble Patna High Court in case No. A F A D 1024 of 1958 in the matter of **Brahmanath Singh And Ors. vs. Chandrakali Kuer and Anr.** wherein hon'ble Court elaborated upon the meaning of the words "create, declare, assign, limit or extinguish", occurring in Section 17(1) (b) of the Registration Act as follows:

"19. From the above authorities, therefore, it is plain that the expressions "create", "assign", "limit" or "extinguish" imply definite change of legal relation to a property by an expression of will embodied in the document and the expression "declare therefore, must also import a similar meaning. No doubt, the word "declare" might be given a wider meaning, but, here, implies a declaration of will, not a mere statement of fact The distinction, as such, is between a mere recital of a fact and something which in itself creates a title.

20. The above, therefore, is the true scope and meaning of the words "create, declare, assign, limit or extinguish", which occurring in Clause (b), of Sub-section (1) of Section 17 of the Act."

27. It would be pertinent to refer to the relevant clauses of the Agreement dated 01/02/2020 at this stage including clause 7, 16 & 34 referred to by the noticee, to ascertain as to what is intended from the document as per its content and whether the Promoter/ Applicant is a mere licensees or agreement created a right and an interest beyond that in favour of the Promoter/ Applicant. The







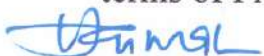
relevant clauses of the Agreement dated 01/02/2020 are extracted below for ready reference. Clause 2, 3, and 4 of the said Agreement read as follows:

“2. In PURSUANCE of the aforesaid agreement the OWNERS shall permit the DEVELOPERS to develop and put up construction of proposed building in the SAID PROPERTY at its own risk as per the approved plans and as per the terms and condition imposed by the concerned authorities and in consideration thereof the DEVELOPERS on behalf of the OWNERS shall pay to the CONFIRMING PARTY a sum of Rs Rs.8,67,280/- (Rupees Eight Lakhs Sixty Seven Thousand Two Hundred and Eight Only) which was incurred by the CONFIRMING PARTY* towards the development fees and infrastructure tax as stated above and additionally construct and allot 10% of the total super built up area proposed to be constructed in the SAID PROPERTY and in future consideration construct and allot 40% of the total super built-up area to the OWNERS in the SAID PROPERTY at the exclusive cost of the DEVELOPERS herein and retain for themselves the balance 50% super built-up area in the SAID PROPERTY, on the following terms and conditions herein. The building to be constructed in the SAID PROPERTY shall be known as SAID PROJECT for the sake of brevity.”

*(*Already paid to CONFIRMING PARTY at the time of execution of this agreement as noted at Clause 6.1)*

“3. It is further agreed by the parties hereto that the name for SAID PROJECT shall be decided by the OWNERS herein with the consensus of the DEVELOPERS.

4. Therefore, on execution of these presents, the total super built-up area along with the undivided share of the land relatable to such super built-up area in terms of FAR utilized in the SAID PROJECT shall be vested as under:







a. OWNERS	-	40%
b. CONFIRMING PARTY	-	10%
c. DEVELOPERS	-	50%”


28. Clause 5 of the Agreement dated 01/02/2020 relates to OWNER’S CONSIDERATION and defines ‘OWNERS PREMISES’ vide clause 5.1 as follows:-

“5.1 That the DEVELOPERS shall construct and allot to the OWENRS 40% of the total super built-up area in the SAID PROPERTY in the form of shops & flats, which is more particularly described under Schedule No.11 written hereunder and identified in yellow colour of the ground, first, second, third & fourth floor in the plans annexed herewith and hereinafter referred to as the “OWNERS PREMISES” for the sake of brevity.”

A similar provision exists in respect of the Confirming party at clause 6.2 (under clause 6 – CONFIRMING PARTY’S CONSIDERATION) where the proportion of super built up area allotted to it has been restricted to 10%.

29. The relevant clauses from Clause 7 onwards of the Agreement dated 01/02/2020 are extracted here below:

“7. The OWNERS and the CONFIRMING PARTY shall be entitled to sell their respective premises forming their consideration under this Agreement, along with proportionate undivided share of land in the SAID PROPERTY corresponding to the super built up area of such shop/flat and appropriate the sale proceeds thereof without any recourse to the DEVELOPERS, but such sale shall always be subject to the terms and condition of this Agreement and the DEVELOPERS shall be confirming party in such sale. However, the OWNERS/CONFIRMING PARTY shall intimate the DEVELOPERS of the







said intention and if the DEVELOPERS consider it appropriate that they shall be at liberty to purchase the same at the best rate offered by any prospective purchaser to the OWNERS/CONFIRMING PARTY.”

“8. The OWNERS hereby permit the DEVELOPERS to revise the existing approved plans of NGPDA before the North Goa Planning and Development Authority at Panaji, relating to the SAID PROJECT in the SAID PROPERTY as per the draft revised plans annexed herewith and thereafter secure all NOCs from all the competent government authorities and obtain construction licence from the Village Panchayat of Calangute and approval of Real Estate Regulatory Authority (RERA) to develop and construct on the SAID PROPERTY*.”

*(*Expenses to be borne and paid by the DEVELOPER as per clause 9)*

“16. The DEVELOPERS shall be entitled to construct the balance 50% of the total super built up area in the SAID PROPERTY for itself in the form of shops/flats, at their own cost and expense which shall belong to the DEVELOPERS as their share in the SAID PROJECT and the DEVELOPERS shall be free to retain the same exclusively for itself or sell the same to any third party purchaser along with proportionate undivided share of land in the SAID PROPERTY corresponding to the super built up area of such shop/flat. The DEVELOPERS may enter into Agreement/s for sale of their super built up area in the form of shops/flats/offices along with the proportionate undivided share of land in the SAID PROPERTY to any third party, accept and retain the monies for itself towards the sale therein as their share at their own risk and responsibility without involving the OWNERS in the said transaction and do so only after all the construction approvals are obtained. However, the OWNERS shall sign any such agreement as confirming party or conveying party as and when requested by the DEVELOPERS.



22. POSSESSION

22.1 The DEVELOPERS upon securing Occupancy Certificate.....

.....
However, physical possession of the OWNERS PREMISES/CONFIRMING PARTY'S PREMISES shall be handed over to the OWNERS/CONFIRMING PARTY only after the receipt of all outstanding amounts under this Agreement. The delivery of possession shall be acknowledged in writing and will be given simultaneously to the OWNERS/CONFIRMING PARTY on the signing and handing over of the acknowledgement letter of possession to the DEVELOPERS.

29. It is hereby agreed that the DEVELOPERS shall be entitled, and are hereby permitted to make such variations and alterations/revision in plans or in the layout/ elevation of the scheme of buildings including relocating the open spaces/all structures/building/and/or varying the location of the access to the building, provided that the super built up area of the OWNERS PREMISES/ CONFIRMING PARTYS PREMISES agreed to be allotted to the OWERS/CONFIRMING PARTY shall not be reduced in any manner. The OWNERS/CONFIRMING PARTY hereby give their express consent to the above and on execution of this Agreement shall be considered as deemed consent in writing of the OWNERS/CONFIRMING PARTY as required by law.

31. The DEVELOPERS shall be entitled to unilaterally select/revise the specifications relating to the exterior of the proposed building/s and/or all common structures/area/amenities in and around the proposed building/s in the SAID PROPERTY.



32. The OWNERS/CONFIRMING PARTY shall be bound, from time to time to sign all paper and documents and to do all acts, deeds and things as may be necessary from time to time, for safeguarding the rights of the DEVELOPERS and of the other purchasers of super built up area subject to and in accordance with terms and conditions stated in this agreement.

34. upon handing over possession along with the Occupancy Certificate and permanent Electricity connection for the OWNER'S PREMISES and CONFIRMING PARTY'S PREMISES, the OWNERS immediately shall either convey the proportionate undivided share in the SAID PROPERTY in favour of premises purchasers/ holders/ DEVELOPERS corresponding to their super built up area, in such manner, as may be determined by the DEVELOPERS or convey the SAID PROPERTY as a whole in favour of the Society/ Entity as and when formed

..... shall be borne by the OWNERS and CONFIRMING PARTY respectively.

36. It is hereby agreed by the parties hereto that presently the maximum permissible floor area ratio (F.A.R) in te SAID PROPERTY is 80%. Any increase in the F.A.R. of the SAID PROPERTY shall be appropriated in the same ratio agreed as aforesaid viz.:

36.1 OWNERS	- 40%
36.2 CONFIRMING PARTY	- 10%
36.3 DEVELOPER	- 50%

38. It shall be entirely at the discretion of the DEVELOPERS to decide whether to form an Association of Owners/Society for maintenance or such other Society/Entity. When the DEVELOPERS take a decision in this matter, as stated above the OWNERS/CONFIRMING PARTY or their nominees or the



Purchasers of their super built up area/s shall sign all form/s, application/s, deed/s and other document/s paper/s, as may be required for the formation of the Association of Owners/Society for maintenance or such other Society/Entity.

41. It is clearly understood that the DEVELOPERS shall be entitled to absolutely hold, allot, put to use or in any manner to deal with the covered car park spaces, if any, and open space car park spaces, of the proposed building in the SAID PROPERTY, except those allotted herein to the OWNERS CONFIRMING PARTY, subject to the condition that any such use shall only be those permitted in accordance with Regulations in force.

45. It is agreed and understood between the parties hereto that during the currency of this agreement, possession of the SAID PROPERTY shall always be vested with the OWNERS and the DEVELOPER is hereby granted license to enter upon the SAID PROPERTY for the purpose of construction on the SAID PROPERTY as defined in the Easements Act which shall be irrevocable license and the OWNERS shall continue to be vested with possession of the SAID PROPERTY.

52. All parties hereto shall bear their respective costs towards the premises allotted to them hereunder such as income tax, capital gains tax, if any, and any tax/cess towards income received under this Agreement.”

30. Before delving further into the contents of the Agreement dated 01/02/2020, It would be beneficial to refer to para 16 of the decision of Hon’ble Supreme Court of India in Civil Appeal No. 1129 of 2012 in the **Sushil Kumar Agarwal Vs Meenakshi Sadhu & ors.** which reads as follows:

“16. The expression “development agreement” has not been defined statutorily. In a sense, it is a catch-all nomenclature which is used to be describe a wide



range of agreements which an owner of a property may enter into for development of immovable property. As real estate transactions have grown in complexity, the nature of these agreements has become increasingly intricate. Broadly speaking, (without intending to be exhaustive), development agreements may be of various kinds:

(i) An agreement may envisage that the owner of the immovable property engages someone to carry out the work of construction on the (11 Hudson's Building and Engineering Contracts, Eleventh Edition, Volume 1, page 677 12 [1978] 1 Ch. 337 at page 359) property for monetary consideration. This is a pure construction contract;

(ii) -----

(iii) An agreement where the owner or a person holding any other rights in an immovable property grants rights to another person to carry out development. In consideration, the developer has to hand over a part of the constructed area to the owner. The developer is entitled to deal with the balance of the constructed area. In some situations, a society or similar other association is formed and the land is conveyed or leased to the society or association;

(iv) -----

(v) -----

When a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreements, the developer may have acquired a valuable right either in the property or in the constructed area. The terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights.

31. Accordingly, the relevant clauses of the Agreement dated 01/02/2020 noted at para 25 above needs to be analyzed to ascertain whether any rights or interest has been created in the subject property in favour of the developer and if so, the nature and extent of such rights. At the outset, it is noted that various clauses of the Agreement dated 01/02/2020 executed by the applicant (referred to as 'Developers' in the Agreement dated 01/02/2020 and also here in after) as extracted above, itself do not support the case of the Applicant ('Developers') that the said agreement does not create any interests or rights in respect of the subject property in favour of the developer.

32. It is evident that clause 2 of the said agreement specifies the consideration in cash and in kind to be paid by the Applicant ('Developers') in lieu of grant of permission to develop the subject property i.e. payment of Rs Rs.8,67,280/- and 10% of the total super built up area to the CONFIRMING PARTY and 40% of the total super built-up area to the OWNERS at the exclusive cost of the DEVELOPERS. It further unambiguously authorizes the Promoter/ Applicant to retain for themselves the balance 50% super built-up area. Clause 4 of the said agreement further vests the shares of super built-up area along with the undivided share of the land relatable to such built-up area specified vide clause 2 in the respective parties including the 'Developers' and is reproduced again here below for the sake of clarity

"4. Therefore, on execution of these presents, the total super built-up area **along with the undivided share of the land relatable to such super built-up area** in terms of FAR utilized in the SAID PROJECT **shall be vested as under:**

- | | | |
|---------------------|---|------|
| a. OWNERS | - | 40% |
| b. CONFIRMING PARTY | - | 10% |
| C. DEVELOPERS | - | 50%" |





Clause 36 of the agreement further provides that the rights of respective parties in terms share of super built up area would remain the same even in the eventuality of any increase in FAR of the subject property.

33. Clause 7 of the said agreement while providing for the rights of The OWNERS and the CONFIRMING PARTY to sell their respective premises mandates that DEVELOPERS shall be confirming party in such sale. It further creates a preemptory right of purchase the real estate subject of such sale in favour of the 'Developers'. Clause 16 of the said agreement further creates distinct rights in favour of the Applicant ('Developers') which amounts to parting of some of the incidents of ownership of the immovable property and is extracted here below;

"16. The DEVELOPERS shall be entitled to construct the balance 50% of the total super built up area in the SAID PROPERTY for itself in the form of shops/flats, at their own cost and expense which shall belong to the DEVELOPERS as their share in the SAID PROJECT and the DEVELOPERS shall be free to retain the same exclusively for itself or sell the same to any third party purchaser along with proportionate undivided share of land in the SAID PROPERTY corresponding to the super built up area of such shop/flat. The DEVELOPERS may enter into Agreement/s for sale of their super built up area in the form of shops/flats/offices along with the proportionate undivided share of land in the SAID PROPERTY to any third party, accept and retain the monies for itself towards the sale therein as their share at their own risk and responsibility without involving the OWNERS in the said transaction and do so only after all the construction approvals are obtained. However, the OWNERS shall sign any such agreement as confirming party or conveying party as and when requested by the DEVELOPERS."

34. The above noted aspects get further supported by clause 52 of the said agreement which makes all parties to the agreement including Applicant



(‘Developers’) liable for income tax, capital gains etc in respect of the premises allotted to them which itself indicates creation/transfer of interest/rights in the subject property in favour of the respective parties including the ‘Developers’.

35. It is pertinent to note that while Clause 5.1, 6.2 and 29 of the said agreement contemplate allotment of built up space by the Applicant (‘Developers’), Clause 22 & 34 mention of handing over of possession by the Applicant (‘Developers’) to owners and confirming party. Further, Clause 8 & 9 authorize the Applicant (‘Developers’) to get the plan revised and the expenses for the purpose would be borne by him alone. Clause 29 & 31 authorize the Applicant (‘Developers’) to make variations and alterations in plans/layout including relocation of open spaces/structures/access etc. and also to select/revise specifications of exteriors. Clause 38 further empowers the Applicant (‘Developers’) to form the society and name of the Project has to be decided in consensus with him (Clause 3). These clauses collectively constitute a bundle of valuable rights in favour of the Applicant (‘Developers’) and appears to have been provided for by implication of what has been noted at para 28 above.

36. Their Lordship of the Hon’ble Supreme Court of India in the matter of Sushil Kumar Agarwal (supra) vide para 17 of the said judgment observed as follows:

“17. In a construction contract, the contractor has no interest in either the land or the construction carried out on the land. But, in other species of development agreement, the developer may have acquired a valuable right either in the property or the constructed area. There are various incidents of ownership of in respect of an immovable property.-----

----- An essential incident of ownership of land is the right to exploit the development, potential to construct and to deal with the constructed area. In some situations, under a development agreement, an owner may part with such rights to a developer. This in essence is a parting of some of the incidents of ownership of the immovable property. There could be situations where pursuant



to the grant of such rights, the developer has incurred a substantial investment, altered the state of the property and even created third party rights in the property or the construction carried out to be carried out. -----

----- and the rights created under it.”

37. Further, their lordship of the High Court of Judicature at Bombay in WP No. 8030 of 2017 in the case of **Suhas Damodar Sathe Vs State of Maharashtra and othr**, while referring to *Chheda Housing Development Corporation v. Bibijan Shaikh Farid* (2007) 3 Mah.L.J 402 noted that in development agreement where the owner handed over rights of construction and sale to the developer, the agreement ceases to be a simple license for construction and further observed vide para 22 of the said judgment that Instead, it vests in the developer an enforceable interest in the land, rendering the owner duty-bound to complete the ultimate conveyance to the purchasers or their society.

38. Their lordships vide para 23 &30 of the said judgment further observed as follows:

23. -----
----- The underlying rationale is that the developer’s right to carry out construction and to sell the resultant premises amounts to an immediate transfer of certain rights in land, be it the development rights or attendant possessory interests. Thus, while the original owner may retain title in name, a portion of the estate or interest passes to the developer in a legally cognizable manner, -----
-----.

30. “In the present matter, whilst the document is labeled a “Development Agreement,” a closer examination reveals that the developer has been granted an extensive authority—indeed, a right—to occupy the property for construction, to build new structures, and to negotiate their sale. By these very terms, the developer is clothed with a proprietary stake in the project land, one

that extends well beyond the ordinary scope of a mere building contract. The jurisprudence of this Court, notably in earlier decisions, has recognized that a contract conferring upon the developer a right to deal with or alienate newly constructed units is effectively transferring a property interest, though described in the language of “development rights.”

- 39.** Apart from the content of the document, the conduct of the parties there to also becomes relevant to determine the intent of the parties and to infer the exact nature of the agreement signed between the parties. In the instant case, the Applicant (‘Developers’) while making application for registration of the project to Goa RERA on 01.10.2024, represented itself as Promoter Developer and also as landowner despite the ownership of the land being in the name of owners Joaquim Vicente Leitao and Maria Esperanca Leitao with whom it had executed the Development agreement dated 01.02.2020. This further clarifies that the parties to the said agreement had intended to create/transfer interest/rights in the subject property in favour of the ‘Developers’. Perusal of various clauses of the Agreement dated 01.02.2020 reveals beyond doubt that substantial rights have been created in favour of the Applicant (‘Developers’). Vesting of 50% of the super built up area along with proportionate undivided share of the land in the ‘Developers’ (clause 4) which would remain fixed even in the eventuality of increase in FAR (clause 36), coupled with the fact that the developer would be free to retain or sell the same to any third party along with proportionate undivided share of land in the subjects property and accept and retain monies for itself towards the sale therein as their share; requires no further elaboration to infer that the said Agreement is clearly required to be Registered under the provision sec 17(1) (b) of the Registration Act. It gets further supported by clause 52 of the said agreement which makes all parties to the agreement including Applicant (‘Developers’) liable for income tax, capital gains etc in respect of the premises allotted to them, which itself indicates creation/transfer of interest/rights in the subject property in favour of the



developer. Also Clause 7 of the said Agreement provides preemptory rights in favour of the 'Developer' for purchase of the real estate allotted to the OWNERS and the CONFIRMING PARTY. Besides, the word 'Licence' has neither been used in initial recitals nor in any other clause of the agreement excepts clause 45 which does not contain any non obstante provision and thus cannot be deemed to negate the intention of the parties to the agreement as manifest from the contents of the said agreement.

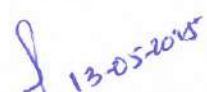
40. The Applicant Petitioner in support of his submissions relied upon the Judgment of the Hon.Bombay High Court *Annappa Maruti Zalke v. Ramu Balappa Bogarnal* (2025DGLS(Bom)748) and Judgement in *Manisha w/o Balkrushna Kodev vs Madanlals/oUttamchan Desarda and Others* (2023 DGLS (Bom) 3401). In view of the factual matrix and its analysis noted herein above, the case law cited above does not support the case of the Applicant Petitioner. Further, *the other judgement namely Adani Power (Mundra) Limited v. Gujarat Electricity Regulatory Commission and Others* ((2019) 19 SCC 9) was kept in view while analyzing the contents of the Agreement dated 01.02.2020.


E. Order

41. This Authority is of the view that various clauses of the Agreement dtd 01.02.2020 are eloquent of the substantial rights that have been created in favour of the Applicant Promoter(Developer) and therefore, the said Agreement dated 01.02.2020 is compulsorily registrable under the provisions of the Registration Act. Pertinently, both the developer and the land owners are jointly liable for the functions and responsibilities of the promoter specified under RERA Act as per the explanation under Section (2)(zk) RERA Act, 2016. The Joint Development Agreement thus becomes the basis of the joint liability of both the promoters. Therefore the requirements of registration of the said agreement dated 01.02.2020 being applicable in the instant case, needs to be

complied with before registration of the Project applied for is granted. Accordingly, the Promoter Applicant is given two months time to submit a copy of the Agreement dated 01.02.2020 duly registered with jurisdictional Sub-Registrar and also to rectify the other deficiencies noted at para 19 to facilitate the disposal of its pending application for registration of the project 'Edcon Crown Konkan Suites' under Section 3 of the Real Estate (Regulation and Development) Act, 2016 read with the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates on interest and Disclosures on website) Rules 2017.


Virendra Kumar 13/05/25
Member, Goa RERA


Vincent D'Silva
Member, Goa RERA


Dharmendra Sharma
Chairperson, Goa RERA 18/5/25

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