GOA RERA

GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:3/RERA/Complaint (410)/2024/ 1110 Date:29/07/2026

Conrad Ferdinand
House No.392/7, Opp Mafia Bar,
Pilerne Panchayat, Marra, Pilerne,
Bardez, Goa 403114 .... Complainant

V/s

Sunstar Homes
C/o National Narvekar Chambers,
Opp Municipal Market,
Mapusa Bardez, Goa 403507 .... Respondent

ORDER

(29 /07/2026)

This order disposes of the online complaint bearing file No. 3/RERA/Complaint (410)/2024 filed by Mr. Conrad Ferdinand (complainant) before the Goa Real Estate Regulatory Authority (Goa RERA) against Sunstar Homes (Respondent) under Section 31 of Real Estate (Regulation and Development) Act, 2016 (herein after referred to as 'the Act of 2016'), alleging that the Respondent has failed to construct and deliver the complete possession of the Flat No. A-3, First Floor, admeasuring 102 sq. mts super built-up area together with one car parking space (subject property) booked by the complainant in the project

"TARA GARDEN PHASE-II" registered vide registration No. PRGO06190732 (herein after referred to as 'subject property'); within the agreed time period as per the terms of the agreement and even till date inspite of making the complete payments as per agreement for Sale dated 08.07.2019 (herein after referred as 'the said Agreement dated 08.07.2019'), besides non allotment of car parking, demand of unreasonable charges for handing over the possession including GST, construction of Additional One Floor on Building without consent of existing allottees, non-formation of Legal Entity as under clause (e) of sub-section (4) of section 11 of the Act.

2. In support of his complaint, the complainant has stated that he entered into a registered Agreement for Sale dated 8 July 2019 with the respondent promoter for purchase of subject property. The agreed consideration for the flat was Rs. 40 lakhs, which the complainant paid in full on 24 June 2019, along with stamp duty of Rs. 1,16,000. Further, under the Agreement for Sale, the promoter undertook to complete and hand over possession of the apartment by the first week of August 2019. However, in Form II filed before the Goa RERA Authority, the promoter declared the date of completion as 30 September 2019. Despite receiving the entire sale consideration, the promoter failed to complete the project and hand over valid and complete possession within the promised time and a part occupancy certificate could be obtained by the Respondent from the Mapusa Municipal Council only on 15 November 2021. The complainant has further stated that external development works and other promised amenities however, remained incomplete. The complainant has also contended that only a part occupancy certificate has been issued and not a final occupancy certificate, thereby indicating incomplete completion of the project.

3. The complainant has further alleged that the promoter vide letter dated 22 December 2021, while offering possession demanded additional sums totaling Rs. 3,85,700 under various heads, including Goods and Services Tax (GST),

transformer charges, meter charges, infrastructure charges, garden maintenance charges, and society formation charges. The complainant objected to these demands terming these unreasonable and unjustified since these charges were never part of the consideration agreed under the Agreement for Sale. It specifically contended that only limited charges, namely meter charges of Rs. 5,000 and society formation charges calculated at Rs.300 per sq. mtr. of super built-up area, were contractually agreed to. With regards to demand for GST, the complainant has submitted that the promoter had orally assured at the time of booking that no GST would be payable by purchasers and that the agreed consideration of Rs. 40 lakhs represented the full and final price. Since the Agreement for Sale does not expressly provide for recovery of GST, the complainant contended that the promoter cannot subsequently demand GST and that such demand amounts to harassment. The complainant has further drawn attention to Clauses 25 and 26 of the Agreement, as well as Section 11(4) of the Real Estate (Regulation and Development) Act, 2016 which stipulate that the promoter remains responsible for all obligations and expenses relating to the project until conveyance of the apartments and common areas. The complainant further contended that in view of above the promoter be directed not to collect the charges which are not in terms of Agreement for Sale.

4. Another major grievance of the complainant concerns delayed possession and compensation under Section 18 of the Act. The complainant has stated that despite the committed completion date of August/September 2019, the complete possession including car parking space has not been lawfully handed over due to absence of a final occupancy certificate and incomplete development works. The complainant therefore sought interest and compensation for delayed possession from 1 August 2019 until actual handover of lawful possession. It also alleged that the promoter cannot seek relaxation on account of the COVID-

19 pandemic because construction of an additional floor on the building continued during the pandemic period.

5. The complainant has further alleged that the promoter illegally constructed one additional floor in the building without obtaining consent of two-thirds of the allottees, as required under Section 14(2)(ii) of the Act and besides the sanctioned plans and permissions for such additional construction were not properly disclosed on the Goa RERA website, contrary to the Goa RERA Rules, 2017. The complainant has claimed that this unauthorized increase in construction has adversely affected the ownership interests and rights of existing allottees and therefore prayed for compensation on this account.
6. Besides, the complainant has also pleaded that the promoter failed to form a legal entity or association of allottees within the period prescribed under Section 11(4)(e) of the Act, despite more than 51% of apartments having been booked. The complainant therefore sought directions compelling the promoter to constitute the association of allottees. In this regard the complainant also drew attention to the order dated dated 28.02.2025 of Hon'ble district Court of Panaji whereby the Hon'ble Court appointed receiver to act in place of builder to facilitate formation of the society. The complainant also stated that though the above referred order of Hon'ble District Court has been challenged before the high court of Bombay vide writ petition number 2195 to 2198 of 2024, no stay was granted by Hon'ble High Court so far against above noted order of district court.
7. In the above context, the complainant has prayed for the following reliefs:-

   a) Interest from 1st August 2019 till date of handing over possession on the amount paid of Rs. 40 Lakhs Plus Stamp Duty Rs. 1.16 Lakhs u/s. 18 of the Goa RERA Act, 2016.

   b) Compensation from developer from 1st August, 2019 till date of handing over possession.

c) Order the developer to handover the possession of the flat along with One dedicated Car Park and Full Occupation Certificate with all amenities as committed in order to avoid further inconvenience to the complainant.

d) Builder be directed not to collect unreasonable charges for handing over of possession. Also, provide proper account along with supporting documents for expenses and charges which are to be reimbursed as per terms of agreement of sale and not to keep profit margin on this.

e) Compensation be granted for alteration of sanctioned building plan and construction of One additional floor without consent of 2/3rd allottees of project as per Sec 14 of the Act.

f) Direct Builder not to collect Goods and Service Tax amount, since as per terms agreed there is no such clause warranting collection of Goods and Service Tax.

g) Direct Promoter to Form Legal entity of Association of allottees of the project

h) Direct builder to pay to complainant, Compensation and other costs including legal costs incurred for filing of complaint and suffering mental agony due to delay in handing over of possession.

8. Per contra, the respondent while denying all allegations made in the complaint, has contended that the complaint is not maintainable under Section 31 of the Real Estate (Regulation and Development) Act, 2016, asserting that there has been no violation of the provisions of the Act, Rules, or Regulations.
9. The respondent has contended that under Clause 19 of the Agreement for Sale, possession of the flat was to be delivered in the first week of August 2019 and accordingly, construction of the entire project had in fact been completed by 25 July 2019, as certified by the project architect. The respondent submits that delay in handing over possession occurred however due to circumstances beyond its control, particularly delays in issuance of statutory approvals and certificates by the concerned authorities. It further stated that an application for completion

certificate was submitted before the North Goa Planning and Development Authority (NGPDA) on 28 August 2019, but the certificate remained pending due to administrative delays and the onset of the Covid-19 pandemic and despite continuous follow-up, the completion certificate was issued only on 02 February 2021. Thereafter, the respondent applied for occupancy certificate before the Mapusa Municipal Council on 15 February 2021 and, upon compliance with requisite formalities and payment of charges, obtained the occupancy certificate on 15 November 2021. Following receipt of the occupancy certificate, the respondent issued a possession letter to the complainant in December 2021 within the period prescribed under the RERA framework.

10. The respondent has further sought to rely upon Clause 20 of the Agreement for Sale, which provides for extension of time in the event of unforeseen circumstances beyond the control of the promoter, including delays caused by government authorities, shortage of materials, acts of God, and withholding of completion or occupancy certificates. On this basis, the respondent has pleaded that the delay was justified and excusable, particularly due to the Covid-19 pandemic and delays attributable to statutory authorities, and therefore no liability can be fastened upon the promoter.

11. The respondent has further submitted that the complainant had earlier filed Complaint No. 3/RERA/Complaint(132)/2020 before the Goa RERA Authority seeking compensation and damages for delayed possession of Flat No. A-3 in the project "Tara Garden Phase II" situated at Khorlim, Mapusa, Goa.

12. Goa RERA in the said proceedings vide Order dated 05 November 2021, imposed a penalty of Rs. 20,000/- per month for delay in handing over possession from August 2019 till December 2021, amounting to Rs. 5,40,000/- together with continuing interest. The respondent has further stated that since the said order was passed without proper hearing and without recording adequate reasons, the respondent aggrieved by the said order, preferred Appeal No. G-05/2022 before

the Maha REAT. However, the appeal was dismissed on 08 August 2023 on account of non-compliance with the mandatory pre-deposit requirement under Section 43(5) of the Act. Thereafter, the respondent challenged both the Appellate Tribunal's order and the original Goa RERA order before the Hon'ble Bombay High Court at Goa by filing **Writ Petition No. 963 of 2025(F).** The respondent has further submitted that by order dated 03 April 2025, the High Court stayed execution of the Goa RERA orders and that the issues raised in the present complaint are substantially connected with the earlier proceedings presently pending adjudication before the High Court. A copy of the Writ Petition No. 963 of 2025(F) and the order dated 03 April 2025.

13. The respondent has further submitted that although possession of the flat was initially offered to the complainant vide letter dated 22 December 2021 subject to payment of certain additional charges, the complainant failed to comply with the same. Nevertheless, during pendency of the proceedings and without prejudice to its rights and contentions, the respondent handed over possession of the flat to the complainant on 31 July 2024 in an attempt to amicably resolve the dispute. Despite this, the complainant has continued with the present proceedings seeking further reliefs linked to the earlier RERA complaint and the impugned orders presently under challenge before the High Court. With regard to formation of the society or legal entity of allottees, the respondent has stated that the said issue is also pending consideration before the Hon'ble High Court and therefore ought not to be independently adjudicated in the present proceedings. To sum up, the respondent has prayed that in view of the pendency of the writ proceedings and the facts and circumstances set out herein above, the present complaint be disposed of accordingly.

14. During the proceedings, the Complainants filed rejoinder to the reply filed by the Respondents, and both parties filed additional submission in response of the queries of the Authority, besides affidavits in evidence.

15. **Issues raised**

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
A.	whether the present complaint was maintainable particularly in view that some of the issues related to determination of interest liability of the promoter for delay in handing over the possession of the subject property, formation of the association or co-operative society/legal entity of allottees and execution of conveyance deed etc. are already sub-judice OR the other issues raised by the complainant related to the validity of the possession handed over on 31.07.2024, demand relating to unjustified charges, the liability of the complainant to pay GST, allotment and handing over possession of car parking space, violation of section 14(2)(ii) of the Act as well as relief sought for compensation could be considered and examined herein for taking a view as to the relief sought by the complainant qua these other issues??	In affirmative and as per para 16 of the order

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B.	Whether the stand of the complainant that the possession of the subject property handed over to the complainant vide letter dared 31 July 2024; does not amount to valid possession either under the provisions of the Act or as per the provisions of the Agreement for Sale dated 08.07.2019; is tenable??	In negative and as per para 17 of the order
C.	Whether the demand of approximately Rs. 4.12 lakhs made by the promoter vide demand letter dated 22 December 2021 and further reiterated at the time of handing over of possession on 31.07.2024; was unreasonable and unjustified ??	In affirmative and as per para 18 of the order
D.	Whether the demand raised by the Promoter in respect of Goods and Services Tax on the Consideration amount; is incorrect??	In negative and as per para 19 of the order
E	Whether the respondent is liable to immediately handover the possession of the subject property to the complainant without seeking any additional payment barring deposit of the electric meter charges if required and the deposit of house tax by the complainant?	In affirmative and as per para 20 of the order

F	Whether the Respondent has violated Section 14(2)(ii) of the Act read with rule 3(2)(f)(iv) & (v) of the Goa Rules 2017 and is also liable for compensation under section 18(3) of the Act on account of additional ownership interests created without previous consent of the allottees.	As per para 21 of the order
G	Whether the Complainant is entitled to compensation in terms of para 5(b), 5(e) and5(h) ??	As per para 22 of the order

16. Point No. A

i. The Respondent in support of his submission that reliefs sought by the complainant are essentially in terms of the earlier RERA complaint and the orders passed therein which are presently under challenge before the High Court; also submitted copy of the order dated 03.04.2025 passed by Hon'ble High Court of Bombay at Goa in **Writ Petition No.963 of 2025 (F) case titled Anup Vishram Prabhu Walavalkar V/s Conrad Ferdinand,** relevant part of which is extracted here below:-

> "3. The petition assails the order dated 08.08.2023 of the RERA Appellate Tribunal in Appeal No. G05/2022 dismissing an Appeal of the Petitioner filed against order dated 05.11.2021 of the Goa Real Estate Regulatory Authority, which directs the Petitioner to pay a penalty of Rs.20,000/- per month from December, 2021 till delivery of possession to the Respondent. The order also awards compensation of Rs.5,40,000/- to be paid within 30 days to the

respondent failing which interest @ 8% per annum would have to be paid from 01.12.2021 till payment.

4. Consequent upon the dismissal of the Appeal, the matter went in execution under the Land Revenue Code to recover these amounts and an attachment notice came to be passed by the Mamlatdar of Bardez on 17.03.2025 seeking to attach the two vehicles of the Petitioner bearing Nos.GA03AF-3484 and GA03Z-1937 registered in the name of the Petitioner. Pending hearing of the petition, the Petitioner seeks a stay of the execution of the notice of attachment dated 17.03.2025.

5. Considering the subject matter of the petition, issue notice to the Respondents returnable on 22.04.2025. In the meantime, on deposit of an amount of Rs.5,40,000/- before the Registry of this Court by 04.04.2025, the attachment notice of the Mamlatdar dated 17.03.2025 shall stand stayed until the next date of hearing. Registry to accept the demand draft of Rs.5,40,000/-."

It is further noted that information available at the site of Hon'ble High Court reveals the case status as pending. Further, vide order dated 26.06.2025, the interim orders dated 03.04.2025 extracted herein above, were continued until further orders.

ii. Pertinently, the petitioner (Respondent herein) in the above noted writ petition while challenging the orders of the Authority dated 05.11.2021, has pleaded that he in terms of provisions of clause 20 of the Agreement of Sale dated 08.07.2019, was entitled to extension of time for completion of the construction and delivery of the subject property in the instant case as certified by the architect or agreed mutually between the parties. Besides, the petition also alleged that the said order dated 05.11.2021 of the Authority was in complete violation of order of the

Authority bearing No.F.No.3/RERA/Tech.Orders/2020/278 dated 29.05.2020 regarding invoking of 'force majeure' for Covid-19 pandemic granting extension of completion of project by 06 months.

iii. The complainant has however, pleaded that the present complaint involves distinct grounds and seeks various other reliefs also beyond the penalty amount primarily related to liability of the promoter for delay in handing over of the possession of the subject property to the allottee; determined in those earlier orders by Goa RERA. Further, the Writ Petition filed by the opponent before the Hon'ble High Court of Bombay at Goa bearing W.P. No.963 of 2025 (F) relates solely to the execution proceedings arising from the order passed by Goa RERA in Complaint No.3/RERA/Complaint(132)/2020/671 and thus the same has no relevance or bearing on the present complaint, as the grounds and reliefs claimed herein are distinctly different.

iv. It is pertinent to note that the complainant herein vide its earlier online complaint number 3/RERA/Complaint(410)/2024, had stated as follows:-

> "As per the said agreement dated 08.07 .2019, the delivery of the said flat was promised by the first week August, 2019, however possession of the said flat has not been delivered till date. The delay in handing over possession of the said flat is willfully and intentionally done. By virtue of this said agreement dated 08.07.2019, an amount of Rs. 20,000/- (Rupees Twenty Thousand only) is payable from the promised date of possession, which agreed amount of compensation / Penalty has not been paid despite the delay and and/ or Failure to hand over possession of the said flat" and further sought the relief in terms of penalty and damages from RERA in above terms.

v. The above complaint was disposed of by the authority vide it's order dated 05.11. 2021, observing as follows

"6. in view of above, Respondent is directed to pay Rs. 5,40,000/- to the complainant within 30 days after receipt of the order. Respondent is also directed to pay a penalty of Rs. 20,000/- per month December 2021 onwards (between 1st to 10th of every month) till delivery of possession to the Respondent. In default of payment of Rs. 5,40,000/- within 30 days, Respondent will be liable to pay Interest at the rate of 8% with the effect from 1st December, 2021 till the amount is paid/ recovered in terms of Rule 18 of The Goa Real Estate(Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules , 2017(herein after referred to as 'The Goa Rules of 2017'). Similarly, Respondent will also pay interest at the rate of 8% per annum for monthly amount of rupees 20,000/- if he does not pay the same before 10th of every month as per this order"

vi. In the above context, it is clear that the issue pertaining to the amount of compensation/penalty in terms of clause 19 of the said Agreement dated 08.07.2019 which are somewhat in the nature of the liability of the Promoter for delay in handing over of the possession of the subject property to the allottee as stipulated under section 18 of the Act; being claimed by the complainant in the present complaint for alleged delay has already been decided by the Authority vide its order dated 05.11. 2021which is presently under challenge before the Hon'ble High Court of Bombay at Goa. Thus, the prayer of the complainant as to grant of interest from 01.08.2019 till the date of handing over of the possession on the amount paid by him cannot be considered at this stage and till the disposal of the above referred writ petition.

vii. With regard to formation of the society or legal entity of allottees, the plea of the respondent is that the issue with regard to formation of legal entity is also pending consideration before the Hon'ble High Court and therefore ought not to be independently adjudicated in the present proceedings.

viii. In this regard, the submissions of the complainant are also not at variance as the complainant vide its application dated 21.11.2024 also submitted the Copies of daily order *dated 23rd Oct 2024 passed during proceedings before Hon'ble High Court Of Bombay at Goa in WP 2195(F),2196(F), 2197(F) and 2198 of 2024 (F),* whereby Hon'ble High Court vide para 2 & para 3 of the said order observed as follows:

> "2. In all these petitions, the developer challenged the order passed by the Executing Court wherein, certain directions have been issued to the developer to execute the Sale Deed and to form a Society of the flat owners and execute the Conveyance Deed.
>
> 3.Mr. Mulgaonkar submits that since the Petitioner has already executed individual Sale Deed to other allottees with proportionate share in the land, question of executing Conveyance Deed in favour of the Society is impossible."

It is further noted that the case status information available at the site of Hon'ble High Court reveals that vide order dated 07.05.2025, the case was listed for 19.06.2025 and is still pending.

ix. The complainant while filing additional arguments in January 2026 further brought to the notice of this forum the observations made by Hon'ble High Court of Bombay at Goa as issued vide order dated 26.06.2025 in **Writ Petition No. 1211 of 2025 (F)** whereby the Hon'ble Court while disposing of the petition, noted that the application dated 31.07.2024 made by the petitioner for registration of the proposed housing society was rejected by the Registrar of Cooperative Societies. Further, the complainant also placed on record an order dated 05.08.2025 in **Writ Petition No. 1851 of 2025 (F)** whereby the Hon'ble High Court while disposing of the petition, noted as follows:-

"1. The petitioner has approached this Court seeking a direction to process and approve the application for registration of the Tara Garden Phase II Co-operative Housing Society Ltd.

2. In view of the alternative remedy available to the petitioner by way of an appeal before the Cooperative Tribunal under Section 8(3) of the Goa Cooperative Housing Societies Act, 2001, this Court is not inclined to entertain the writ petition. If the petitioner prefers such an appeal, the Cooperative Tribunal is requested to decide the same as expeditiously as possible, in accordance with law."

x. While the complainant itself has submitted the copies of the above noted orders of Hon'ble High Court on record, it has however, also drawn attention to the order dated 28.02.2025 of Hon'ble district Court of Panaji whereby the Hon'ble district Court observing that the rights of purchasers who entered into agreements relying on assurance of the builders to form the society cannot be frustrated merely because the builder in some of the cases has executed the conveyance deed to individual allottees, appointed receiver and authorised receiver to act in place of builder to facilitate formation of the society. The para 15 of the order dated 28.02.2025 of the Hon'ble District Court of Panji is extracted as follows;-

"the point which is required to be answered is whether Housing Cooperative Society can be constituted when the vendor has entered into sale deed with some of the flat purchasers. First of all, the vendor ought not to have entered into sale deed with individual flat purchaser. By entering into agreement with other purchasers, the vendor has agreed to form Housing Cooperative Society. That means every person who have entered into agreement for sale would acquire right to the undivided right, share and interest in the land area. This right of some of the purchasers cannot be frustrated by other flat purchases by entering into deed of sale. In fact the sale reeds entered into buy other flat purchases is subject to right of the other occupants of the purchasers who agreed to purchase upon an assurance of the vendor to form Housing Cooperative Society and execute conveyance deed which would give them undivided right, share and interest in the land"

xi. The complainant also pleaded that though the above referred order of Hon'ble District Court has been challenged before the high court of Bombay vide writ petition number 2195 to 2198 of 2024, no stay was granted by Hon'ble High Court so far against above noted order of district court. It was further submitted that since the Assistant Register of cooperative society vide its order dated 25.06.2025, had refused to register the society on technical grounds, an appeal was filed in the Cooperative Tribunal which is pending decision presently. It was also pleaded that promoter, however, is still duty bound under section 11(4)(e) read with rule 9(iv) of Goa rules for formation of a legal entity (society/ association /company) and cannot bypass the statutory requirement merely an account of executing of the sale deeds to few allottees and such an arrangement needs to be rectified to comply with the provisions of the act.

xii. Keeping in view the submission made by the parties and various order of Hon'ble High Court of Bombay at Goa, copies of which are placed on record, it is evident that the issues related to the determination of interest liability for delayed completion of the project and handing over of possession of the subject property to the complainant, particularly in view of the plea of the respondent as to the applicability of clause 20 of the agreement as well as the circular of the authority 29.05.2020 to the instant case which relate to extension of time for completion and delivery of the subject property/moratorium period for the purposes of interest liability under section 18 of the Act; cannot be considered at this stage and until the writ petitions pending before Hon'ble High Court of Bombay at Goa are disposed of. The issues related to formation of cooperative society or the legal entity of allottees can also not be considered at this stage and until the writ petitions pending before Hon'ble High Court of Bombay at Goa are disposed of and the decision of the cooperative tribunal is also available. Similarly, the consideration of relief sought by the complainant in terms of execution of the conveyance deed in favor of the complainant along with conveyance of the common areas to the society particularly in the context of the observations made by Hon'ble District Court vide para 15 of its order dated 28.02.2025, would have to await the decision of the Hon'ble High Court of Bombay at Goa particularly in view of its order dated 23.10.2024 in Writ Petition No. *WP 2195(F),2196(F), 2197(F) and 2198 of 2024 (F)* wherein the above referred order of Hon'ble District Court has been challenged.

xiii. In view of what has been noted at the preceding para, it is apparent that barring the issues noted in the said para; the other issues raised by the complainant related to the validity of the possession on 31.07.2024, demand relating to unjustified charges, the liability of the complainant to pay GST, allotment and handing over possession of car parking space, violation of section 14(2)(ii) of the Act as well as relief sought for compensation could be considered and examined herein for taking a view as to the relief sought by the complainant qua these other issues.

17. Point No. B

i. With regard to the validity of the handing over of the possession of the subject property given to the complainant vide letter dated 31/07/2024, the complainant has argued that the promoter's act of handing over keys and issuing a possession letter on 31 July 2024; does not amount to valid possession, either under the Real Estate (Regulation and Development) Act, 2016 (RERA) or as per the provisions of the Agreement for Sale dated 08.07.2019. In this regard, the complainant has sought to rely on Section 17 and Section 11(4)(f) of the Act as well as Clause 18 and clause 21 of the Agreement for Sale.

ii. Per contra, the respondent has claimed that it had initially vide letter dated 22.11.2021 informed the complainant about handing over of the possession subject to payment of the pending dues. However, the complainant did not comply with the demand for payment of pending dues. The respondent further stated that despite the fact, it had during the course of the proceedings, handed over the possession of the subject property to the complainant on 31.07.2024 with a view to achieve amicable settlement of the matter albeit without prejudice to the rights and claims of the respondent. It was further stated that despite above and the matter being pending before Hon'ble High Court of Bombay at Goa; the complainant is still pressing the issue before the authority for its resolution. The respondent also placed the copy of an undated letter (claimed to be issued on 22.12.2021) offering possession to the complainant subject to a payment of Rs.4,11,950/- and also a copy of letter dated 31.07.2024 informing the complainant that they had handed over key of flat No. A3 on 1st floor of Tara Garden Phase II to his mother as per his instructions.

iii. The complainant has though stated that the letter dated 22.11.2021 could not be delivered to the complainant due to his non availability at the address but confirmed knowledge of contents of the said letter dated 22.11.2021 whereby the promoter had asked payment of certain charges amounting to Rs.4,11,950/- which were not part of the consideration as per Agreement for Sale and has thus opposed the levy of said charges in the instant complaint as well. The complainant has also pleaded that the promoter has failed to handover complete possession in accordance with Section 17 of the REAR Act, which mandates that possession is effective only upon execution and registration of the Sale Deed alongwith the transfer of undivided share in land to the allottee and the transfer of common areas to the association of allottees. The complainant further referred to the provisions of clause 18, clause 21 particularly the clause 21(b),(c) and clause 21(d) of the Agreement of Sale dated 8.07.2019, to support his contention that merely handing over the flat keys, without complying with legal formalities stipulated in the Agreement, constitutes incomplete possession. Besides, the

Respondent failed to allot and handover the possession of the car parking space as committed in the Agreement for Sale and also the alleged possession of flat handed over on 31.07.2024 was based on part Occupancy Certificate granted only for stilt plus four floors. The complainant thus sought to plead that the alleged possession as given, in any case was legally and contractually incomplete.

iv. The complainant also has also submitted that the NOC given by the promoter for transferring its name on electric connection meter is apparently infructuous since no electric meter is installed at the premises. The complainant further submitted that vide letter dated 16.08.2024, it had as per clause 17 of agreement for sale informed opponent promoter, about the discrepancy in allotment of Parking, Non-Availability of Electric Meter, pending execution of sale deed of Flat, Transfer of proportionate share in land to complainant and also the common areas to the association of allottees, execution and signing of society formation documents, documents pertaining to transfer of house tax and electricity connection.

v. Per contra, the Respondent has claimed that despite of the pending dues, it handed over the possession of the subject property to the complainant in the course of its efforts to settle the dispute mutually and amicably. During arguments, the respondent also pointed out that the possession of the subject property was handed over to the mother of the complainant as per his instructions and no objections were raised at that time. The stand of the complainant in this regard has been that vide letter dated 16.08.2024, it had duly informed opponent promoter, about the discrepancy including non allotment of Parking, Non-Availability of Electric Meter, pending execution of sale deed of Flat with transfer of proportionate share in land to complainant and also the common areas to the association of allottees, etc. as also noted above in the preceding para.

vi. As far as the issue of handing over of possession of the subject property on the basis of an Occupancy Certificate issued in respect of a part of the building is concerned, it is noted that a perusal of the said part Occupancy Certificate dated 15.11.2021 reveals that the said occupancy certificate was issued in respect of the following portion of the building:

"Details of portion of building released for occupation: Stilt floor (Parking), First floor, Second floor, Third floor and Fourth floor only of the Residential building (R.C.C. Framed Structure building)".

vii. Notably, the Occupancy Certificate dated 15.11.2021 has been issued for the Residential building. Further, the observation/conditions listed in the occupancy certificate nowhere provides that the said NOC in respect of the above noted building was subject to any conditions or compliances except the following observations extracted here below:

"This Part Occupancy Certificate is granted for Stilt plus floors only i.e. First Floor, Second floor, Third floor & Fourth floor of the building, Fifth floor and Sixth floor (Disputed) are kept on hold in accordance to Completion Certificate dtd.02.02.2021 issued by the NGPDA".

viii. Further, Occupancy Certificate has been defined under Section 2 (zf) of the Act as follows:-

"(zf) "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity".

ix. In view of what has been noted above, it is clear that the Occupancy Certificate dated 15.11.2021 was issued in respect of stilt floor (parking) and upto the 4^{th} floor of the residential building which were permitted for occupation and had the requisite provision for civic infrastructure such as water, sanitation and

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electricity. Accordingly, the said objection of the complainant as to handing over of the possession being on the basis of part OC was invalid or improper, does not hold water as the said OC qua the subject property did not suffer any such infirmity so as to render handing over of the possession of the same either invalid or improper .

x. It is also noted that the complainant is apparently yet to make the payment of Rs. 5000/- for the electric connection which would include installation of meter also. Further the complainant vide its letter dated 16.08.2024 had asked for the transfer forms and applications for electricity meter including specific NOC for change in names of electric meter which was accordingly issued by the promoter vide its letter dated 19.08.2024 addressed to AE, Electricity Department, Mapusa, a copy of which has been placed on record by the complainant himself. As the occupancy certificate for the subject property had already been granted on 15.11.2021 and the said letter dated 19.08.2024 was also issued, it was for the complainant to pursue the matter further. No such details have, however, been furnished on record by the complainant.

xi. The complainant has though asserted that the execution of Conveyance Deed in favour of allottee as well as to the association of allottees in terms of Section 17 of the Act, should precede or be concurrently executed with the handing over of the possession; it needs to be noted that Section 18 of the Act which stipulates the liability of the promoter in such cases, is applicable only when a promoter fails to complete or is unable to give the possession of the subject property to the allottee in accordance with the terms of the agreement for sale , as the case may be, and for a period from the date of possession agreed to in the Agreement of Sale and till the date of handing over of the possession.

xii. Besides, the other deficiency as pointed out by the complainant in terms of non-allotment of car parking as provided under Clause 3 of the Agreement of Sale dated 08.07.2019; has neither been contested nor even been explained by the respondent in its various submissions. The factum of handing over and taking over of the subject property on 31.07.2024 is not contested by either of the parties though complainant has raised some objections to the validity of the handing over of possession. Also, the possession of the subject property handed over on 31.07.2024 was admittedly sans the car parking space.

xiii. It is further pertinent to note that the said handing over of the possession of the subject property on 31.07.2024 though happened during the proceedings being held in the present matter, was decided and executed by the parties entirely on their own accord. Also, the said possession has been handed over after obtaining a valid Occupancy Certificate and no deficiency in terms of development of common areas / infrastructure except the issue of installation and transfer of electric meter in the name of the complainant has been pointed out by the complainant in its communication dated 16.08.2024.

xiv. Accordingly, it is evident that the possession of the subject property particularly when it was taken over by the complainant on its own violation without raising any objection and after grant of Occupancy Certificate to the project; was duly handed over on 31.07.2024 sans the car parking space in terms of Clause 3 of the said Agreement dated 08.07.2019 and is thus deficient to that extent only.

xv. Accordingly, 31.07.2024 would be the relevant date for assessing the liability of the promoter in respect of delay in handing over of the subject property sans parking space under Section 18 of the Act. It goes without saying that the period for liability for delay in allotment and handing over of the possession of car parking space, would have to be calculated separately with respect to the date on which the car parking space is allotted and handed over to the complainant and for a part of the composite consideration paid for the subject property, which is relatable to the cost incurred for providing of car parking space. This raises the issue of as to what should be deemed to be the proportionate cost of the said car parking space.

xvi. It is obvious that the provision of stilt car parking space cannot be made without incurring expenses on the land and development component of the same and therefore, it would be safe to infer that a certain portion of the total composite consideration charged by/amount paid to the promoter, would be apportionable and relatable to the provision of one car parking space. It is noted that none of the provisions of the said agreement dated 08.07.2019 or the Schedule appended hereto, provide any details as to what could be taken as the basis for ascertaining proportionate cost for the provision of the car parking space. That being the case, this forum was constrained to check the same through AI mode of Google search which in view of the information available; has suggested the cost of the stilt car parking space for a 2BHK apartment in the location of the project/Goa costing approximately ₹40 lakh should be approx. 6% of the total consideration paid for the property. Keeping in view the location of the project adjoining Mapusa City and also having a prominent college etc. in the vicinity, I consider it appropriate to apportion a cost of Rs.2.75 lakhs out of the total consideration of Rs. 40,00,000/- for the purposes of providing a car parking space and also for assessing the interest liability of the Promoter for delay in this regard.

18. Point No. C

i. With regard to demand of unreasonable and unjustified charges totalling approximately 4.12 lakhs made by the promoter vide demand letter dated 22 December 2021 and further reiterated at the time of handing over of possession on 31.07.2024; the complainant has argued that additional sums of Rs. 4,11,950/- fall under various heads including GST, transformer charges, meter charges, infrastructure charges, garden maintenance charges, and society formation charges. Also, these were never part of the consideration agreed under the Agreement for Sale.

ii. With regard to transformer charges, it has been argued that Transformer infrastructure is part of the promoter's development obligations and no provision of levy of transformer charge is provided in the Agreement for Sale. Similarly, the Agreement only provides for electricity connection charges of ₹5,000 and that the demand of ₹25,000 being made in this regard is excessive and should be restricted to the agreed amount. It was further contended that since none of these charges i.e. Infrastructure, Garden Maintenance, Society Formation and House Tax are supported by the Agreement; the promoter remains liable for paying the project outgoings under Section 11(4)(g) of the Act until possession is lawfully transferred and as such these demands are unlawful.

iii. In support, the complainant has also cited a previous Goa RERA decision involving the same promoter in **Irappa L. Patil & Others v. Sunstar Homes** stating that there by Goa RERA held that similar charges were illegal and void, permitting only limited electricity and society-formation charges. The complainant has thus argued that the same reasoning should apply here.

iv. A perusal of the said agreement dated 08.07.2019 reveals that it nowhere specifically refers to the any such charges relating to Transformer, infrastructure tax and garden maintenance etc. being demanded by the Respondents from the Complainants now. As to the payment of House Tax, the Clause 28(b) of the said agreement dated 08.07.2019 stipulates that the house tax in respect of the subject property from the date of issue of the Occupancy Certificate and till the date of the delivery of the said premises and also thereafter, shall be the exclusive responsibility of the prospective purchaser to bear and pay the same. Similarly, as against the demand of a lump sum amount of Rs.50,000/- for society formation, the clause 23(a) stipulates a charge of Rs.300/- per meter, besides Rs.500/- as contribution towards share capital [clause 23(b)] for the purpose, the payment of which in terms of the provisions of the Agreement has not been opposed by the complainant herein. The clause 27 further prescribes the charges for obtaining electric connection to be Rs. 5,000/- instead of Rs. 25,000/- demanded by the Respondents, the payment as prescribed in the agreement is also agreed to by the complainant. With regard to the payment of house tax, it is observed that house tax would be payable by the complainant in this case w.e.f. 31.07.2024, when the possession of the subject property sans car parking space was voluntarily taken over by the complainant from the respondent.

v. It is pertinent to note at this stage that Section 19(6) of the Act provides that the allottee i.e. the Complainants shall be responsible to make timely payments as per the agreement of sale and also pay the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges if any. It evident that out of various other charges demanded by the Promoter, only maintenance charges and House Tax appear to be covered by the provisions of the Section 19(6) of the Act.

vi. With regard to the demand of the promoter for payment of infrastructure tax and transformer charges, it is noted that the consideration charged under the Agreement dated 28.06.2022 was for sale of the subject property after completing the construction in all respects for delivery of ready possession to the purchaser upon grant of occupancy certificate; which cannot be contemplated without installation of a basic necessity/facility like transformer. Further, Occupancy Certificate to a project is granted only upon the provision of civic infrastructure such as water, sanitation and electricity. Also, the payment of infrastructure tax should be the liability of the developer as he was required to obtain completion and occupancy certificate of the project Section 11(4)(b). Further, as per the provisions of The Goa Tax on Infrastructure Act, 2022, such tax has to be levied and paid on any construction to be undertaken by any person and such tax would be payable in two installments 50% at the time of issue of

Technical Clearance/ Development Permission and 50% at the time of issue of Completion Certificate/Order. Taking note of the fact that consideration charged was for completing the construction of the subject property in all respects for delivering ready possession to the purchaser upon grant of Occupancy Certificate; the demand for Infrastructure tax as well as of Transformer charges is not at a justified particularly when the same is also not supported in terms of the agreement of sale.

vii. Similarly, the one time garden maintenance of Rs.15,000/- on the face of it does not appear to be the part of the regular maintenance and is neither supported in terms of any clause of the said agreement dated 08.07.2019 nor by the provisions of the Section 19(6) of the Act and as such the respondent is not entitled to claim these charges from the complainant.

viii. In view of the above, it can be safely inferred that the demands made by the promoter in respect of transformer charges, infrastructure charges and garden maintenance are neither supported in terms of the agreement of sale dated 08.07.2019 nor hold water in view of the statutory position as noted herein above and as such the respondent is not entitled to claim these charges from the complainant. To sum up as against the payment of Rs.4,11,950/- claim to be pending dues by the promoter, it is concluded that the demands relating to Rs.75,300/- as transformer charges, Rs.20,400/- as infrastructure charges and Rs.15,000/- in respect of garden maintenance being apparently unjustified, cannot be enforced by the Promoter particularly when the said demands are neither supported in terms of the agreement nor by the law. Further, meter charges amounting to Rs.25,000/- shall be payable by the complainant to the extent of Rs. 5000/- in terms of the clause 27 of the Agreement of Sale dated 08.07.2019. Similarly, Rs.50,000/- being demanded for society formation shall be payable to the extent of Rs.300/- per sq. mts. besides Rs.500/- as contribution towards share capital as per the clause 23(a)(b) of the Agreement only when the process for formation of the society is initiated and as per the outcome of pending litigations in this regard. As far as payment of house tax is concerned, it forms the part of municipal taxes and keeping in view the facts and circumstances of the case, by the complainant house tax would be payable by the complainant w.e.f. 31.07.2024, when the possession of the subject property sans car parking space was voluntarily taken over by the complainant from the respondent. The issue related to liability to pay GST is being dealt with in the succeeded para.

19. Point No. D

i. While challenging the promoter's demand for GST, the complainant states that at the time of booking and execution of the Agreement, the promoter had represented to him that GST would not be charged as the agreed consideration was inclusive of applicable taxes. It was further stated that the said Agreement dated 08.07.2019 refers only to Service Tax and does not even make a mention of GST. It was further pleaded by the complainant that though a service tax clause has been incorporated in the said agreement, the Service Tax had already been abolished before execution of the Agreement. Therefore, the complainant has pleaded that any GST demand is contrary to the Agreement and legally unsustainable.

ii. In this regard, it would be expedient to refer to clause 28 (d & e) which are extracted here below:-

"28. The Prospective Purchaser shall also be liable to pay to the Builders at the time of taking delivery of the said premises or on demand, the following.

(d) The Prospective Purchaser shall be liable to pay Service Tax to the Builder either at the time of taking possession or from time to time called upon by the Building during construction till completion stage, the amounts applicable and specified by the law.

(e) Any expenditure to be incurred on account of any taxes levied or to be levied by the Government/quasi Government/ any competent authority, in respect of the said premises and the proportionate share in the said property shall be totally borne by the Prospective Purchaser."

iii. It needs to be noted that the service tax is one of the prominent tax which was subsumed in the composite tax namely GST. That being the case, the reference to service tax in clause 28 would naturally imply a reference to GST which has replaced the erstwhile service tax as was applicable to the transaction in question. The complainant's pleading that he was assured that GST would not be separately charged as the agreed consideration was inclusive of applicable charges is neither supported by any of the provisions contained in the agreement of sale dated 08.07.2019 nor appears to be in consonance with the statutory position. The complainant has also not been able to produce i.e. any letter, email etc. in support of his above contentions.

iv. Thus the payment of GST being statutory liability would be required to be paid by the complainant unless the grant of Occupancy Certificate in the interregnum has some bearing on the issue of liability of the complainant in this regard and if there is a case for the same, the same would have to be adjudicated from the competent Authority under GST regime.

20. Point No. E

i. With regard to the prayer of the complainant seeking directions to the promoter to allot and handover the possession of the car parking space to the complainant, it is noted that the complainant has already made the payment of entire consideration amount of Rs 40,00,000/- (Rs forty lakhs only) which as per clause 4 of the agreement of sale dated 08.07.2019 includes the cost of a car parking space, the details of which have further have been noted at clause 3 of the said agreement as one car parking space on the ground level stilt of the building in which the subject property situates. The factum of having received the full consideration is also noted at clause 4 of the said agreement itself and the non- allotment of a car parking space, has neither been denied by the Respondent nor controverted in any manner. Notably, the occupancy certificate dated 15.11.2021 granted in respect of the project building covering stilt plus four floors only i.e. first floor, second floor, third floor and fourth floor specifically stipulates that the said Certificate was issued for the Residential building which were permitted for occupation and had the requisite provision for civic infrastructure such as water, sanitation and electricity. It has already been held at para 17 (ix) that the said objection of the complainant as to handing over of the possession being on the basis of part OC was invalid or improper, does not hold water as the said OC qua the subject property did not suffer any such infirmity so as to render handing over of the possession of the same either invalid or improper .

ii. The additional demand of Rs 4,11,950/- raised by the promoter for the alleged pending dues has also been examined in detail in the point C above and it was observed that most of the demands raised by the promoter were neither supported in terms of the agreement nor by the law and the complainant was liable only for payment of society formation charges @ Rs 300/- per sq. m of the super built up area and Rs 500/- as share capital as stipulated under clause 23, meter charges of Rs 5000/- as per clause 27 and the house tax w.e.f. 31.07.2024. Evidently, the society formation charges would be payable only when the process for formation of the society is initiated and as per the outcome of pending litigations in this regard. In case the installation of meter is still pending and is required to be done through the promoter, the complainant allottee would be required to pay the requisite amount of Rs 5000/- to the promoter immediately and also deposit the house tax as due on the relevant date.

iii. Thus upon the payment of Rs 5000/- for meter charges and the house tax as due or only the house tax as due as the case maybe; the promoter shall handover the possession of the car parking to the complainant immediately and in any case within 10 days of the making of the payments by the complainant as above. Since the consideration itself included the cost of car parking space and was paid as early as on 24.06.2019, no additional payment barring the electric meter charges if need be and the deposit of house tax shall be asked for or insisted upon by the promoter.

21.Point No. F

i. While alleging violation of Section 14(2)(ii) of the Act, the complainant has stated that though the project was registered with building construction permission for stilt plus five floors, the respondent without obtaining the requisite approval; carried out unauthorized construction of additional floor i.e. sixth floor for the project under consideration. Further the consent of the 2/3rd allottees as required under Section 14(2)(ii) of the Act, has also not been obtained thereby violating the provisions of Section 14(2)(ii) which stipulates that any alterations/additions in sanctioned plan needs consent of 2/3rd allottees of the project. Further, the building permission and sanctioned layout in respect of additional construction of floor are not updated on the project webpage on the website of Goa RERA and constitutes the violation of rule 3(2)(f)(iv) & (v) of the Goa Rules 2017. The complainant has further drawn attention to the Part Occupancy Certificate dated 15.11.2021 whereby it is clearly observed that the 5th and 6th floors were disputed and kept on hold as per the completion certificate issued by NGPDA. Accordingly, the complainant has sought action against violation of Section 14(2)(ii) of the Act read with rule 3(2)(f)(iv) & (v) of the Goa Rules 2017 as well as compensation under section 18(3) of the Act on account of additional ownership interests created without previous consent of the allottees.

ii. Admittedly, the project was sanctioned with building construction permission for stilt plus five floors and also there has been no updation by the Promoter Respondent at the website of Goa RERA with regard to additional construction of 6th floor. The factum of the Part Occupancy Certificate dated 15.11.2021 observing that the 5th and 6th floors were disputed and kept on hold as per the completion certificate issued by NGPDA; has also neither been denied nor controverted by the Promoter Respondent.

iii. However, the authority vide another reference made by some allottees of the project, was apprised that the completion certificate and occupancy certificate in respect of the fifth floor of the project building, have been granted subsequently on 18.10.2023 and on 08.08.2025 respectively but the current status of the action taken by the local authority in respect of the alleged unauthorized construction of sixth floor is still not available with the authority. Similarly, the number of allottees existing at the time of undertaking alleged alterations of additions in the sanctioned plan by the promoter and whether any consent in this regard was obtained by the promoter from 2/3rd of the allottees etc.; 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.

22.Point No. G

i. The complainant has as part of its prayer for relief, has sought the relief of compensation on the following counts: -

a) Compensation from developer from 1st August, 2019 till date of handing over of possession till July 31, 2024 for hardship caused to complainant by making alternate stay arrangements and depriving of peaceful possession of his apartment even after payment of entire consideration amount.

b) Compensation be granted for alteration of sanctioned building plan and construction of One additional floor without consent of 2/3rd allottees of project as per Sec 14 of the Act.

c) Direct builder to pay to complainant legal costs at Rs. 1 Lakhs incurred for filing of complaint and suffering mental agony due to delay in handing over of possession under Sec 18(3) of the Act.

ii. As noted at para 16 (xii) in this order, the issues related to the determination of interest liability for delayed handing over of possession of the subject property to the complainant; cannot be considered at this stage and until the writ petitions pending before Hon'ble High Court of Bombay at Goa are disposed of. As far as the violation of Sec 14 of the Act in terms of alteration of sanctioned building plan and construction of One additional floor without consent of 2/3rd allottees of the project, is concerned; the registry vide para 21(iii) above, has been directed to issue notice to Promoter in this regard with a copy the same endorsed to the complainant herein.

iii. However, the above observations at preceding sub-para which in succinct, capture the view of the Authority on the issues noted therein, would in no manner impact the liberty of the complainant to prefer an application under Sec 71 of the Act before the Adjudicating Officer for adjudging the compensation if he chooses to do so. Thus, the Complainant is hereby granted the liberty to proceed accordingly.

Directions

23. In view of the findings arrived at in respect of various points of determination listed from para 16 to 22, it will be just to issue the following directions in the matter.

i.In respect of the demand of additional charges of Rs.4,11,950/- by the promoter, the complainant is directed to make a total payment of Rs.31,100/- (Rs.300*102=Rs.30,600/-+Rs.500/-) as society formation charges to the promoter only when the process for formation of the society is initiated and as per the outcome of pending litigations in this regard. Besides, Rs.5,000/- for electric meter connection if need be, would be paid by the complainant to the promoter within a period of 15 days of receipt of this order.

ii. The complainant is held liable for making the payment of applicable GST charges claimed herein as Rs.2,25,000/- to the promoter within a period of 30 days of receipt of this order unless the grant of Occupancy Certificate in the interregnum has same bearing on the issue of liability of the complainant in this regard and if there is a case for the same, the same would have to be adjudicated from the competent Authority under GST regime and in such case, the enforcement of this direction would await the said adjudication as to the liability of the complainant to pay the GST.

iii. Since the total consideration of Rs.40 lakhs already paid by the complainant to the promoter, also includes the consideration for the car parking space as per Clause 4 of the Agreement of sale dated 08.07.2019; the promoter is directed to immediately and in any case within 15 days, allot and handover the possession of the car parking space to the complainant without asking for any further payment.

iv. In view of the directions noted at para 21(iii) above, the registry is hereby directed to issue notice to the Promoter in this regard, a copy the same may also be endorsed to the complainant herein.

v. It is made clear that the observations noted at para 21(iii) above which in succinct, capture the view of the Authority on the issues noted therein; would in no manner impact the liberty of the complainant to prefer an application under Sec 71 of the Act before the Adjudicating Officer for adjudging the compensation if he chooses to do so. Thus, the Complainant is hereby granted the liberty to proceed as deemed fit at his end.

Kumar 29/07/2026

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