



## GOA REAL ESTATE REGULATORY AUTHORITY

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Goa

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F.No: 3/RERA/Complaint (411)/2024/20

Date: 02/01/2025

### Parvesh Puri

J302, Sector 2, Phase 5,

Aldeia de Goa, Opposite Grand Hyatt Hotel,

Bambolim, Goa, 403206.

.....Complainant

V/s

### Goan Real Estate and Construction Pvt. Ltd.

Mr. B. K. Satish, Branch office: Aldeia de Goa,

P.O. Goa University, Bambolim, Goa, 403206. ....Respondent

### ORDER

(Date: 02.01.2025)

An online complaint bearing No. 451827 dated 15.01.2024 was filed by Mr. Parvesh Puri (complainant) before the Goa Real Estate Regulatory Authority (Goa RERA) against the M/s Goan Real Estate and Construction Pvt. Ltd. (Respondent) alleging violation of Section 14(2), Section 7, Section 11 and Section 17 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act'). The complainant also later through an add on/ additional complaint submitted vide his email dated 14.03.2024, alleged that the whole of the Phase 5

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ought to have been registered with Goa RERA and not just a part of the Phase 5.

2. The complainant is an allottee in Project-Phase V Sector 2 Apartment registered under the Act vide no. PRGO03180177 and has purchased an Apartment bearing No. Phase V, Sector 2/J302/2BHK, admeasuring 1122 sq. ft. (104.23 sq. mts.) built up area vide a Deed of Transfer, Sale And Conveyance, dated 04.02.2019, registered at the Office of Sub Registrar (Office of the Civil Registrar-cum-Sub Registrar, Tiswadi, Goa) on 05.02.2019.
3. The proceedings related to the said complaint were disposed of vide detailed order dated 09.08.2024 and following directions were issued to the respondent vide para 87 of the said order:-
  - 1) Keeping in view the observation noted by undersigned while dealing with Point No. A (i) and (ii) and also Point A (v) (para 48), it is directed that the promoter shall arrange to convene an exclusive meeting of the allottees of the project registration No. PRGO03180177 under the Act for taking a decision as to formation of an association or society or co-operative society, as the case may be, of the allottees or a federation of the same under the laws which may be applicable to particular choice made for this purpose by the majority of the allottees. The promoter shall ensure to give a notice of at least ten days to the allottees of the project registered under the Act vide Registration No. PRGO03180177, by all modes including through speed post, email and notification on the website and other social media platforms used by the company for interaction with the allottees. This meeting of allottees would be convened within three weeks of the issue of this order.

  
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2) Consequent upon the decision made in above regard and upon formation of an association or society or co-operative society, as the case may be, of the allottees or a federation of the same, the promoter shall transfer common areas through conveyance deed as well as transfer corpus funds to such a body only.

3) Keeping in view the observation noted by undersigned while dealing with Point B (i) and also the submissions made by the respondent during course of the proceedings that it has all the Accounts related to corpus fund and maintenance charges and is willing to produce the same as and when directed, the promoter is hereby directed to provide the year wise detailed accounts of the maintenance expenses specifically for the project registered under the Act vide registration No. PRGO03180177 for the entire period, to all the allottees of the said project within a period of four weeks as an association of allottees of the said project is yet to be formed.

4) The Promoter is further directed to forward a copy of this order to all the allottees of the project registered vide no. PRGO03180177 for their information.

4. Subsequently, the complainant vide emails dated 27/08/2024, 28/08/2024, 31/08/2024 and 07/09/2024 raised certain issues as to the compliance of these directions. Further, an email dated 31/08/2024 was also separately received from the respondent giving the details of the action taken by it so far to comply with the various directions made vide order dated 09.08.2024. Perusal of these communications made by both parties however, revealed conflicting claims as to the compliance of the said order.

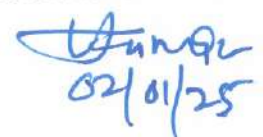
5. Accordingly and with a view to ascertain status of compliance and the need for further proceedings/ directions if any, a notice dated 11.09.2024 was

  
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issued to both the parties providing them the copies of email received by this office on the issue of compliance from the respective opposite parties and directing the respondent to submit its written submissions/ response by 23.09.2024 after serving an advance copy of the same upon the complainant. Further, the complainant was to file his reply to the written submissions submitted by the respondent within a week.

6. However, no written submissions were made by the respondent till 23.09.2024 and a mail dated 26/09/2024 was received from the respondent acknowledging the receipt of the notice dated 11.09.2024 and further stating that the emails by complainant cannot be construed as Complaint/Appeal under RERA Act 2016 as the Act contemplates filing of a formal Complaint/Appeal and further pleading in the form of emails are not recognized in law and also submitted that, in absence of any formal Complaint/Appeal to this Authority by Mr. Parvesh Puri, it was unable to respond to the emails. The complainant vide email dated 24/09/2024, further conveyed that since it has not received to date any written response as an advance copy by the respondent GRECP, no further submission was thus possible by the complainant.
7. The objections raised by the respondent vide its email dated 26.09.2024 were disposed of by observing as follows:-

“It needs to be noted that one of the functions of the Authority as enumerated in Section 34 of RERA Act, 2016 is to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act for which elaborate provisions have been provided under the law. It needs to be noted that ascertaining status of compliance before taking any view would naturally be continuation of the proceedings and so separate complaint case need not be instituted for the limited purpose. It is

  
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also relevant to observe that the notice dated 11.09.2024 was issued on the basis of the emails received from both the parties providing them the opportunity to file their formal replies/ responses on the issue of the compliance of the order dated 09.08.2024 so as to decide what further proceedings/ directions are needed.”

Accordingly, the matter was fixed for a hearing on 18/10/2024 at 3:00 p.m. and the respondent was again given an opportunity to file its submission by 09.10.2024 after serving a copy upon the complainant through email and the complainant was also given further opportunity to file its response by 15.10.2024 after serving a copy upon the respondent through email.

8. The reply by the respondent & response of complainant to notice & reply of respondent were filed and arguments of both side were heard when it was also decided to seek certain clarification from both the parties as below and the matter was kept for order thereafter. The respondent and complainant (as indicated below each point) were accordingly requested to provide the following information.

(i) Details of the members to whom notice was served along with confirmation of attendance in the below format

Sr No	Name of the Member	Mode by which notice served	Notice served/ unserved	Attended/Not attended

**(To be responded by the Promoter)**

(ii) Whether the minutes of the meeting held on 24/08/2024 as well as copy of the resolution passed in the said meeting were circulated among all the members. It was further directed to file the response of the members to the minutes of meeting as well as resolution in the format given below.

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Sr No	Name of member	Whether confirmed the minutes or concurred with resolution and whether members filed objection /suggested any modification including by Mrs Naina Bashin, Mr. Venu Narayan, Ms. Madhana Ratnavel, copy of the same may be provided

**(To be responded by the Promoter as well as complainant as per information available with them)**

(iii) It may be explained as to why the requisite details of accounts in term of Para 87(3) of the order dated 09/08/2024 could not be furnished to individual allottees so far and by what time the same would be complied with.

**(To be responded by the Respondent)**

9. Various submissions made by the respondent in reply to the emails of the complainant and also in response to the clarifications sought, are summed up as follows:-
10. As regards compliance of the direction pertaining to communicating the details of the accounts of maintenance to the allottees, it was submitted that the same has been complied with and details were communicated to all the Allottees/Owners as well as to the Authority vide email dated 12.09.2024. It was also stated that submission of accounts to all the allottees also shows that this Respondent has been doing the maintenance with absolute clarity and to keep the accounts straight though there is no obligation on this Respondent under the provisions of Real Estate(Regulation & Development) Act, 2016 to provide any such details to the allottees once the project has been

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granted the final completion certificate. Infact, a reading of section 11(4)(d) would reveal that the responsibility of the promoter to provide and maintain the essential services is only till the formation of the association/ society and there is no provision for providing accounts to allottees. It was also stated that on one hand the allottees are not forming the association/society and on the other hand they want this Respondent to provide and maintain the essential services and the Complainant, definitely, cannot blow hot and cold air at the same time and also he cannot dictate the manner in which he requires the accounts. Further, even reference to Section 4 (2) (1) (D) is completely misplaced in as much as the same relates to deposit of 70% amount received from allottees in a scheduled bank to cover cost of construction and cost of land and it is relevant to note that the project of respondent being already complete and completion certificate having been obtained; the said section does not come in play. It was further submitted that this Hon'ble authority has no power under any provision of the Act to direct any promoter to maintain maintenance account once the project has obtained completion certificate.

11. With regards to direction to convene a meeting of all the RERA registered Allottees/ Owners so as to enable them to take decision with regards to formation of society, it was stated that a meeting of all the RERA registered Allottees/Owners was convened on 24.08.2024 which was attended by 18 Allottees/Owners physically and other 12 Allottees/Owners attended the same virtually including the Complainant. It was further stated that the Complainant did not attend the meeting physically despite being available and is approaching this Hon'ble Authority with unclean hands and with oblique motive and that the Complainant has an axe to grind against this Respondent and hence

the baseless complainant and various emails complaining alleged violations, defiance and non-implementation of this Hon'ble Authority's Order. It was further submitted that in the said meeting majority of the Allottees/Owners resolved that there would be one society namely "Sector 2 Co-operative Housing Maintenance Society" for the entire sector 2 which includes block A to R and A, B, C villas and that there would be no separate society for RERA registered Allottees/Owners. Also, the choice as to what association /society is to be formed is with the allottees/ owners and it's only they who make the choice and take decision accordingly. Further stated that this is the decision of majority of allottees/ owners and this Respondent has no say in this decision so taken and it at all the Complainant has any objection to the said decision, he has to get the same resolved amongst the allottees/ owners. A Copy of the Resolution dated 24.08.2024 along with minutes of the meeting dated 24.08.2024 were also placed on record.

12. It was further submitted that neither this Authority and/or the Complainant single handedly and/or this Respondent can have any role in what association/ society is to be formed and the choice to form a society made by the allottees/owners in meeting dated 24/08/2024 is binding on the Complainant. Further, the Act, neither contemplate any powers to the Authority to direct formation of "a particular" society and/or association, etc. nor does it give any power to the Respondent to force "a particular" society and/or association, etc. on the Allottees/Owners. Respondent further submitted that if the Complainant has any grievance with regards to the said Resolution 24.08.2024, he is at liberty to take legal recourse available in law including calling for meeting of all the Allottees/Owners to object to the resolution or otherwise. Further stated that the direction to Respondent was to convene the meeting which has been complied with and Respondent has



role to play in the resolution adopted by the Allottees/Owners.

13. It was thus stated that the Respondent has complied with all the directions passed by this Hon'ble Authority and with reference to the objections raised by the Complainant complaining violations, defiance and non-implementation of this Authority's Order dated 09.08.2024, it was stated that no fault of whatsoever nature can be attributed to the Respondent if majority of Allottees/Owners did not attend the meeting despite the notice dated 14.08.2024 in fact, the Act puts onus on the allottees to form the association/ society. Also, pointed out that the Complainant besides playing the blame game has not stated what efforts were made by him to call upon all the Allottees/Owners to attend the meeting and to form association/ society. It was further submitted that the decision with regards formation of society is that of the Allottees/Owners and not of the Respondent and if at all there is any dispute amongst Allottees/Owners as regards formation of society, the same is their internal issue and this Respondent has no say in that.
14. Respondent also raised the issue of non-impleadment of all the Allottees/Owners, to the present Complaint and submitted that just like the Complainant all the Allottees/Owners also have a right to raise their issues before the Authority and hence all the Allottees/Owners are necessary party and the Complainant solely cannot maintain the complaint for himself and/or on behalf of all the other Allottees/Owners. It was also stated that it is very hard to believe that the Complainant is unable to bring any support amongst the allottees as not even a single allottee has till date joined hands with the Complainant supporting the alleged case of the Complainant which makes it very clear that the Complainant under the garb of the present proceedings wants to


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challenge the decision taken by the majority without making them part to the present proceedings.

15. The submissions made by the Complainant's as comments on the response submitted by the respondent to the notice dated 01/10/2024 and also in response to clarification sought are in-succinct, as follows:-
16. At the outset, the Complainant submitted that the respondent via their response have themselves admitted that they have violated para 36 and para 87 of the Directions of the RERA order dated 09/08/2024, by admitting a resolution and agreeing to a NOC for a Sector 2 society which includes non-RERA blocks A, B, C, D and thereby requested to initiate action under Section 63 of the Act effective 24/08/2024, the date of the meeting of the allottees and published resolution by the respondent. It was further submitted that since the Directions contained in para 87(1) of RERA order dated 9.8.2024 was for taking a decision as to formation of an association or society or coop society, as the case may be of the allottees the proposed society could be of the allottees of the RERA project only.
17. Responding to claims of respondent as to furnishing of details of accounts of maintenance, it was stated that the same are adhoc and arbitrary allocation of expenses between the RERA project and non-RERA buildings and does not constitute compliance with the directions of the RERA authority as the actual accounts that were required to be furnished, would be audited accounts duly checked by a chartered accountant and requested that GRECPL be directed to furnish audited accounts. Since under the companies Act, all companies are required to get their accounts audited by a chartered accountant, it should not be difficult for GRECPL to furnish these audited accounts. It was further submitted that the respondent has further admitted during the hearing dated 20/11/2024 that they have not kept year wise separate accounts for

the RERA project and the interest from the maintenance corpus has been used for maintenance of other common areas not under the RERA project. This is in direct conflict with section 87(3) of the RERA order dated 09/08/2024 wherein the Authority has noted that during the proceedings the respondent has confirmed to have kept separate accounts for the RERA project and is willing to produce the same as and when directed by the Authority.

18. It was further submitted that a conjoint reading of the provisions of sections- 11(4)(d), 11(4)(g), 4(2)(l)(d) of the Act and also clause (G) of the sale deed, makes it clear that as per RERA norms the accounts have to be audited accounts, and the respondent is responsible for the maintenance of the common areas and is to pay all outgoings until the respondent transfers the physical possession of the common areas to the association of allottees. It was thus prayed that the respondent be directed to produce audited maintenance accounts and corpus fund accounts year wise for the RERA project since inception, not charge any additional maintenance charges until the transfer of common areas through a registered conveyance deed and return to the allottees any monthly additional maintenance already charged to date as an association of allottees has not yet been formed.
19. It was further prayed for issue of appropriate directions for an audit and other means to ensure that there has been no misuse and embezzlement of the RERA project maintenance corpus fund and the yearly interest on the maintenance corpus fund for which the promoter becomes liable under Section 7(1)(c)(A)(iii) and 7(1)(d) of the Act.
20. Referring to para 36 of the order dated 09.08.2024 and also the directions issued thereby, it was submitted that the same cannot be overruled by such a decision taken and a NOC for society formation cannot be issued by GRECPPL to include non-RERA blocks A, B, C, D of Sector 2 as an

  
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exclusive society has to be formed for the RERA project. It further stated that since GRECPL has mentioned in the meeting of allottees dated 24/08/2024 that they will issue the NOC for all of Sector 2 which includes non-RERA blocks, this is a clear violation of the order besides complete contempt of lawful directions and the NOC issued by GRECPL for a Sector 2 society needs to be withdrawn immediately by GRECPL. Further, it is misleading to say that the society is a matter between the owners as no such society can be formed without issue of an NOC by the respondent.

21. It was further stated that besides being violative of law, the so-called resolution is defective and illegal as no such resolution could have been passed for the simple reason that the agenda of the meeting did not contain any such proposal of including non- RERA block outsiders in the society. Also the agenda was strictly to comply with the directions of the RERA authority regarding formation of an exclusive society of allottees and the resolution is on its face false as it talks of the meeting dated 19/4/2024 when no such meeting was held on that day. GRECPL has admitted in the body of the minutes that the meeting was held in GRAND HYATT on 5th April 2024 and not on 19/04/24 also, there was no mention of this meeting of 19/04/2024 during the RERA proceedings. It was further submitted that no resolution passed by 16 owners (presuming a majority out of 30 members present) can have any validity in a community consisting of 131 owners and such resolution passed by only 16 owners cannot take away the legal property rights of the remaining  $(131-16=105)$  owners in respect of the common areas, as such a resolution would have the effect of diluting those property rights. Theoretically even a resolution by 130 members would not be able to take away these rights of the remaining member.

  
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22. It was further stated that since complainant was not in Goa on 24/08/2024, the day of the meeting of allottees called for by GRECPL, hence it is a false accusation by GRECPL that he was in Goa and still attended the meeting virtually. Also there is no axe to grind nor any oblique motive as suggested by the respondent, and his sole intention is that all have to follow the law and the RERA order dated 09/08/2024.
23. It was also averred that the respondent should have called for a meeting of allottees with a clear agenda to form an exclusive society only for the RERA project, as a NOC cannot be issued by the respondent for a society to include non-RERA blocks A, B, C, D of Sector 2 as this was the responsibility of the respondent as per the order and the act and the allottees can only decide by majority what kind of society they desire exclusively for the RERA project and Non-RERA blocks cannot be included in the proposed society for the RERA project as per the order.
24. It was also argued that GRECPL is wrong in saying that RERA does not contemplate powers to the Authority to issue directions regarding the nature of owner's body to be formed and also the issue here is not the nature of the body, the issue is whether outsiders can be members of such a society and this issue has been properly adjudicated in accordance with the law by the authority and specific orders have been issued and GRECPL had no right to disregard the clear cut directions of the authority in this regard, by issuing an NOC to an illegal owner's body. Further, the complainant has taken legal recourse by bringing the non-compliance on the part of GRECPL to the notice of the RERA authority.
25. It was thus prayed that in view of the blatant disregard for the law and for the directions of RERA authority displayed by GRECPL, suitable action under the law be taken and it be directed to furnish the actual audited accounts and also immediately withdraw the NOC issued by GREC to the illegal joint society proposed to be formed and the registrar of societies

be informed. The complainant also requested that a timeline for conveyance of common areas by a registered conveyance deed be also specified by authority with the formation of the society for the RERA project as both these issues are now long overdue as per Section 17 of the act.

26. The complainant also placed on record the details of objections raised by the allottees during the meeting dated 24/08/2024 and via emails to the respondent thereafter along with the copies of respective emails sent by these allottees. In total, five of the allottees i.e. Aditya Bhasin/Nina Bhasin, Madhana Ratnavel, Lloyd Rodrigues, Madhuri Banerjee, and Parvesh Puri were stated to have objected to the resolution passed in the meeting. Further, referring to the provisions of Section 89 of the Act, it was stated that individual contract/sale deed or resolution cannot supersede legal provisions, the Act will supersede any other contract or resolution or law in this matter.
27. As the present proceedings are meant to ascertain the status of compliance of various directions/ observations made vide order dated 09.08.2024, the reference to the relevant extract of the said order and some discussion as to the scope of these observations/ directions becomes imperative.
28. One of the issue raised by the complainant relates to compliance of the direction vide which the respondent/ promoter was directed to convene an exclusive meeting of all the Allottees of the Project registered under the Act for taking a decision with regards to formation of an association or society or co-operative society, as the case may be, of the allottees or a federation of the same and consequent to decision taken therein by the allottees, the Promoter was to transfer common areas through conveyance deed as well as transfer corpus fund to such a body only. The complainant has alleged that the decision taken in the meeting of the Allottees held on 24-08-2024 i.e. to form one society for entire Sector 2 namely 'Sector 2

Cooperative Housing Maintenance Society’; is violative of the directions issued vide order dated 09.08.2024.

29. In this regard, it needs to be kept in view that while providing for analysis and findings for various points of determination in the order dated 09.08.2024; Point No. A (i), (ii), (iii) and (iv) were dealt with together. The issue involved in these points related to formation of association of allottees exclusively for owners of RERA project and transfer of common areas as well as corpus fund to such a body only despite the fact that entire Phase V was sanctioned/ approved by TCP as one single project with common areas specified for the entire project. The other related point was whether all the residents including those of buildings not registered under the Act, were equally entitled to all the common areas and amenities as promised to them under their individual sale deeds.

30. While deliberating on the above aspects, it was noted that one of the key issue emerging from the arguments advanced by both parties; related to whether the project registered with Goa RERA was a standalone project distinct from the remaining part or whether whole of the project as approved by TCP constitutes one single project irrespective of the fact that only a part of the project was registered under the Act. The perusal of para 29 to para 48 of the order dated 09.08.2024 which relate to ‘Analysis and Findings’ in respect of Point No.A(i), (ii), (iii) and (iv) interalia deals with the determination of this key aspect in para 35 and 36 and the other related paras are para 43 and 48.

It would thus be apposite at this stage to refer to para 35, 36, 43 and 48 of the Order dated 09.08.2024 which are extracted here below for ready reference.

“35.A conjoint reading of the above provisions clearly bring out that any project registered under the Act would be a stand alone project be it any

phase of the project or the entire project. Further the respondent itself has stated that the project registered under the Act was the only part of the entire development which was ongoing at the time when the provisions of the Act came into force and the remaining development had already been completed for which the respondent has also submitted the relevant Completion Certificates and Occupancy Certificates issued by competent Authorities. The complainant has also argued on the same lines on this point.

36. Based on the submissions of both the parties and also in view of the above provisions, it is evident that the instant project is a stand alone project and no person other than the allottee can become member of association of allottees for a project registered under the Act and the Promoter is liable to transfer common areas through conveyance deed as well as transfer corpus fund to such a body only. Further, the plea of the Respondent for formation of a combined association of allottees of the project registered under the Act and owners of the buildings on the ground that the project has been sanctioned by TCP as one single project with common areas, open spaced and amenities specified for the entire project; also does not hold water as respondent has not referred to any provisions of TCP Act to show as to how mere sanction of the Project by TCP as above, supports formation of a combined association of allottees and also entitlement of owners of other building as to the usage of common areas of the project.


43. That being the case and also keeping in view the provisions of Section 88 of the Act referred to hereinabove, I am inclined to infer that the description including rights of usage of common areas by the allottees would be construed as per Deed of transfer, sale and conveyance executed between the promoter and the allottee besides approvals granted and plans sanctioned by the competent Authorities and would



further be subject to compliance of section 17 of the Act which requires the promoter to execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees. The Point No. A (iii) part and A(iv) are answered accordingly.

48. While dealing with Point no. A (i), (ii) and (iii), it has already been held that the instant project is a stand alone project and also in view of the provision of the Act referred, no person other than the allottee can become member of association of allottees for a project registered under the Act and the Promoter is liable to transfer common areas through conveyance deed as well as transfer corpus fund to such a body only. Further while deliberating upon the issues relating to point no.A(v), it was observed that an association or society or cooperative society, as the case may be, of the allottees or a federation of the same under the laws applicable; can only be formed at the instance of the members eligible for the purpose. As for formation of any such body, the member/ allottees desirous of constituting such a body have to apply for the same and before making such an application, they are suppose to make a decision in this regard, thus the decision as to what kind of association of aloottees would be formed, is to be taken by the allottees only. Any association of allottees in the manner as prescribed under the Act can only be formed at the instance of the eligible members for that body as prescribed under the relevant statute pertaining to such a body.”

31. In view of the various provisions of the Act, it was held that any project registered under the Act, would be a standalone project be it any phase of the project or the entire project. Taking note of this determination, it was observed in para 36 of the order that no person other than the allottee can

  
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become member of association of allottees for a project registered under the Act and the promoter was liable to transfer common areas through conveyance deed as well as transfer corpus fund to the association of allottees. Referring to para 36 of the order, the complainant has alleged that the decision taken in the meeting of allottees convened on 24.08.2024 to form one society for entire Sector 2 namely 'Sector 2 Cooperative Housing Maintenance Society'; is violative of the directions issued vide order dated 09.08.2024.

32. A perusal of Para 35 & para 36 of the order as extracted herein above, reveals that the part of para 36 quoted by the complainant was qualified by the main findings of para 35 & 36 whereby it was decided that the project in question was a standalone project and thus the initial part of para 36 referred to by the complainant essentially takes note of determination of the issue of standalone project and in this context only, it was observed that no person other than the allottee can become member of association of allottees for a project registered under the Act. Para 36 of the order dated 09.08.2024 further needs to be read in conjunct with para 48 of the said order where the part of para 36 quoted by the complainant gets further qualified by the observations made in that para which imply that it is an unqualified right of allottees to decide as to what kind of association of allottees would be formed. It is further relevant to add that the term "association of allottees" has neither been defined under the Act nor under the Rules made there under. Section 11(4) (e) of the Act even provides that the association of allottees could be any entity by whatever name called.
33. Evidently, the legislature has not restricted the choice and manner of formation of association of allottees to the Society or Cooperative Society or a Federation of the same ( which are required to be formed under the relevant laws as applicable) but kept it widely open particularly when no definition of the term 'Association of Allottees' has been provided under

the Act and also by using the words 'by whatever name called' in Section 11(4)(e) which casts a duty upon the Promoter to enable formation of association of allottees. The use of words 'federation of the same' i.e. an association, society or cooperative society further broadens the arena of the choice and manner of formation of association of allottees and consequently in respect of transfer of common areas to such entities and for the specific purpose of transfer of common areas; the competent authority is also added under Section 17(2) of the Act. Further the competent authority has been defined in Sec.2 (P) of the Act as follows:-

“ Sec2 (P) "competent authority" means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property”

34. It would be relevant at this stage to peruse the direction issued at para 87(1) and (2), which are reproduced here below for ready reference.

“1) Keeping in view the observation noted by undersigned while dealing with Point No. A (i) and (ii) and also Point A (v) (para 48), it is directed that the promoter shall arrange to convene an exclusive meeting of the allottees of the project registration No. PRGO03180177 under the Act for taking a decision as to formation of an association or society or co-operative society, as the case may be, of the allottees or a federation of the same under the laws which may be applicable to particular choice made for this purpose by the majority of the allottees. The promoter shall ensure to give a notice of at least ten days to the allottees of the project registered under the Act vide Registration No. PRGO03180177, by all modes including through speed post, email and notification on the website and other social media platforms used by the

company for interaction with the allottees. This meeting of allottees would be convened within three weeks of the issue of this order.

2) Consequent upon the decision made in above regard and upon formation of an association or society or co-operative society, as the case may be, of the allottees or a federation of the same, the promoter shall transfer common areas through conveyance deed as well as transfer corpus funds to such a body only.”

35. It would be evident from perusal of para 87(1) & (2) as above, that the direction issued in essence were that promoter was to arrange an exclusive meeting of the allottees of the project registered under the Act for taking a decision as to formation of association of allottees and further promoter was to transfer common areas through conveyance as well as corpus fund to the body as decided by the allottees in the said meeting. Further, it goes without saying that the issue of compliance of these directions needs to be examined and interpreted in the light of what has been discussed herein above.
36. As the part of para 36 being quoted by the complainant herein needs to be read in the context of the determination that any project registered under the Act is a standalone project and also that the provisions contained in the Act do not restrict the choice and manner of formation of association to certain categories mentioned in the relevant provision only and in fact provide the liberty to allottees to form an association of allottees as possible in a given situational matrix; the decision taken by the allottees in their meeting held on 24.08.2024, to associate themselves with a wider association of allottee/ owners i.e. of the entire sector 2 cannot be termed as violative of law or the direction issued vide order dated 09.08.2024. It is relevant to note that vide para 48 of the order, it was clearly stipulated that the decision as to what kind of association would be formed, can be taken

by the allottees only. The issue with regard to transfer of common areas to association of allottees of the project and entitlement of residents of other building of Phase V not registered under the Act as promised to them under their respective sale deeds, has already been discussed in para 43 of the order dated 09/08/2024 which has also been extracted hereinabove. However, in view of the provisions of Sec 17 of the Act and also the observation contained in para 43; necessary stipulations to the effect in the deed pertaining to the transfer of common areas to the association as well as in the byelaws of the proposed society would have to be incorporated or any other arrangement known to law as may be decided by the Allottees for the purpose could be effected provided that the same meets the objectives, enshrined under the Act and is in consonance with the observations contained in para 43 of the order.

37. The other objection raised by the complainant is regarding lesser attendance in the meeting and thereby the decision taken in the meeting dated 24.08.2024 lacks validity qua the community of 131 allottees of the project and the said resolution in any case cannot impact legal property rights of the remaining owners in respect of the common areas. Further emphasized that even the resolution passed by the all the members could not have theoretically altered this position. The other related issue raised by the complainant is that whether the meeting attended by 30 allottees and the resolution passed by the allottees in the said meeting can be treated as a decision taken by the majority of the allottees. In this regard, it is observed that the record reveals that the notice of the meeting was served upon each and every allottee for the meeting held on 24.08.2024 which was attended by 30 allottees. Further the minutes of the meeting and the copy of the resolution passed were forwarded to each and every allottee seeking their confirmation and 36 allottees submitted their response, 28 out of 36 confirmed the minutes of the meeting and the resolution and 05 declined,


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the remaining 03 neither declined nor confirmed the same. It is further noted that out of the 30 attendees who participated in the meeting held on 24.08.2024, 22 of the attendees confirmed the minutes as well as the resolution passed in the said meeting, 04 declined and no response was received from the remaining attendees. This makes it clear that out of 28 allottees who have confirmed the minutes of the meeting and the resolution passed on 24.08.2024, 22 allottees had attended the meeting and 6 others did not attend the meeting but confirmed the minutes and the resolution. Similarly, out of the 5 allottees who declined to confirm the minutes and resolution, 04 allottees attended the meeting and the remaining 01 did not attend the meeting. It is further relevant to observe that section 19(9) mandates every allottee to participate towards the formation of an association of the allottees. In view of the provisions contained in Sec 19(9) of the Act and also that each and every allottee was served the notice for the meeting and after the meeting the minutes as well as copy of resolution passed were also circulated to all the allottees and further some of the allottees who did not attend the meeting have also responded to the minutes and resolution by way of confirmation or decline; it is obvious that the proceedings held in the meeting dated 24.08.2024 and the minutes and resolution passed thereof cannot be considered as lacking validity particularly when neither any provision of the Act nor even the order, specifies as to how many members would constitute the quorum for the said meeting. Since out of 30 allottees who attended the meeting, 22 have confirmed the minutes of the meeting and resolution passed; the contention the complainant on this aspect is apparently without merit and does not hold water.

38. Further the submissions made by the complainant as well as the Respondent reveal that 5 allottees raised objections to the minutes and resolution passed in the meeting dated 24.08.2024. In this regard, it is

observed that only one allottee out of 05 has clearly supported the issue raised by the complainant while others have inter alia raised some other issues i.e lack of order and decorum in the meeting, one society for entire sector phase V, demarcation of common areas between two or more societies, registration of blocks not registered under the Act earlier with Goa RERA, schedules of transfer of common areas and corpus funds etc. and one of the objector allottee has simply rejected the resolution without any observations.

39. With regard to furnishing of details of accounts of maintenance, complainant has alleged that information provided by the respondent is adhoc and arbitrary allocation of expenses between the RERA project and non RERA building and does not constitute compliance of the directions of the authority. In this regard, it is observed that the issue of furnishing of the maintenance account was dealt with in para 62 and 63 of the order. The perusal of the same as well as of the direction contained at para 87(3) would reveal that this issue was disposed of in view of clause G(page 10 of Deed of Transfer, Sale and Conveyance) executed between the promoter respondent and the complainant which essentially provides that the accounts of the maintenance expenses by the respondent would be given to the association of allottees and also taking note of the submission made by respondent during the course of the proceedings that it has all the accounts related to corpus funds and maintenance charges and is willing to produce the same as and when directed. The promoter was accordingly directed to provide the year wise detailed accounts of the maintenance expenses specifically for the project registered under the Act for the entire period to all the allottees of the project since the issue of formation of an association of allottees was still not resolved.

  
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40. It would be relevant to refer to para 63 of the order at this stage and the same is extracted here below:-

“The complainant has also alleged that the respondent has failed to upload the requisite statement of accounts at the RERA website at the prescribed intervals. At this stage it needs to be appreciated that the promoter is duty bound to submit annual report on statement of accounts certified and signed by Chartered Accountant in prescribed format, separately for every financial year, on the promoter’s Goa RERA webpage. The record reveals that the promoter has filed the said annual report on statement of accounts regularly since the year 2019-2020 upto 2022-2023.”

It would be thus clear from the above that issue of sufficiency of details of accounts of maintenance etc. can be examined only in terms of clause G(page 10 of Deed of Transfer, Sale and Conveyance) and also the submissions made by the respondent during the proceedings leading to order dated 09.08.2024 particularly when the promoter has complied with RERA mandate of the submission of annual report on statement of accounts certified and signed by Chartered Accountant in prescribed format, separately for every financial year. In this regard, the respondent has pleaded that it has already complied with the said directions inspite of the fact that a reading of section 11(4) (d) would reveal that the responsibility of the promoter to provide and maintain the essential services is only till the formation of the association/society and there is no provision for providing accounts to allottees and also that this Authority cannot issue any directions in this regard. Further, also stated that the complainant cannot dictate the manner in which he requires the accounts.

In this regard it is observed that the contentions of the respondent that it is not required to provide the details of the accounts or this authority cannot



direct it on this count, is prima facie misplaced as promoter as per the provisions contained in sec 11(4)(a) is responsible to the allottees or to the association of allottees for all that has been promised in Agreement for Sale and the stipulation available in the said clause G would thus be binding upon respondent. That being the case and also since allottees have already decided to form an association of allottees in terms of the resolution passed on 24.08.2024, this issue needs to be looked into by the said association as per clause G(page 10 of Deed of Transfer, Sale and Conveyance) particularly when the complainant has not pointed out any specific deficiencies or cited any details in support of his apprehensions besides seeking audit of the accounts. Further apart from the complainant, no other allottee has raised this issue either separately or even vide objections raised qua the minutes of the meeting dated 24.08.2024 and the resolution passed, as revealed from the copies of objections provided by the complainant himself.

41. As the observation contained at para 35 to para 39 above, deal with the issues raised by both the parties; no further directions are called for in the matter.

  
Virendra Kumar, IAS(Retd.)

Member, Goa RERA