IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.46 OF 2026

Edcon Real Estate Developers, a registered partnership firm, with registered office at 5th Floor, Sidharth Bandodkar Bhavan, Dr. P. Shirgaonkar Road, Panaji, Goa (represented by its partner, Mr. Edwin T. de Menezes, major, Sidharth Bandodkar Bhavan, Dr. P. Shirgaonkar Road, Panaji, Goa. ...Appellant

Versus

The Goa Real Estate Regulatory Authority, Through its Chairperson, "Spaces", Plot No.40, Block No.101, 1st Floor, EDC Patto Plaza, Panaji, Goa. .. Respondent.

Mr. A. F. Diniz, Senior Advocate with **Mr. Ryan Da Piedade Menezes, Ms. Stephanie Alvares** and **Ms. M. Silva, Advocates** for the Appellant.

Mr. Neehal Vernekar, Additional Government Advocate for the Respondent.

CORAM : HITEN S. VENEGAVKAR, J.

RESERVED ON: 16th JULY 2026.

PRONOUNCED ON: 18th JULY 2026.

<u>JUDGMENT</u>:

1. Registry to waive office objections and register the matter.

2. The present Appeal filed under Section 58 of the Real Estate (Regulations and Development) Act, 2016 raises an important question touching the powers exercisable by the Goa Real Estate Regulatory Authority while considering the application for registration of a RERA estate project under Section 3 read with Section 4 of the said Act. The actual controversy lies in a very narrow compass. The Appellant does not dispute the authority of RERA to scrutinise an application for registration of a project. Equally, the Respondents do not dispute that the Appellant had produced a Development Agreement executed between itself and the landowners. The dispute centres around the legal character of that Agreement/documents and therefore the question whether the Regulatory Authority was justified in refusing to process the application for registration of the project unless a Development Agreement itself was first compulsorily registered under Section 17 of the Registration Act, 1908.

The present Second Appeal came to be admitted by this Court on 24.04.2026 on following substantial questions of law:

(i) *Whether the Respondent and/or the Tribunal had jurisdiction to consider whether the Agreement dated 01.02.2020 between the appellant and the land-owners was required to be registered under the Registration Act?*

(ii) *Whether Section 13 of the Act restricts consideration to agreements for sale with allottees, and consequently de hors the said Section, the Respondent and/or the Tribunal could not consider registration of an agreement for sale between an owner/land-owner, and developer/promoter?*

(iii) *Whether the Said Agreement required registration under the Registration Act, in the light of Section 17 and Section 17(2) of Registration Act and proviso thereof, read with Section 54 of the Transfer of Property Act?*

(iv) *Whether in an agreement that related only to the land, reference to the manner in future built-up structures, proposed to be constructed therein, which were not themselves the subject matter of the agreement, were to be shared and/or allotted, could not amount to creation* *of right and/or interest, so as to render the agreement registration under the Registration Act?*

3. The factual matrix is that, the Appellant is a partnership firm engaged in the business of real estate development and construction. The owners of the property bearing Survey No.184/6 admeasuring about 3050 sq.mtrs situated at Calangute-Goa had entered into a Development Agreement dated 01.02.2020 with the Appellant firm for development of the said property. Under the arrangement recorded therein, the Appellant was entrusted with the responsibility of undertaking the development of the property after obtaining all statutory permissions. The consideration agreed between the parties was not in terms of monetary but instead it was agreed that the constructed area upon completion of the project would be apportioned amongst the contracting parties. It was agreed that 40% of the super built up area was earmarked for the landowners and 50% was for the Appellant Developer. The remaining 10% together with reimbursement of specified development expenses was allotted to the Confirming Party to the Agreement. The Agreement further contained provisions regulating construction, sale of Units, execution of conveyances in favour of ultimate purchasers and distribution of the completed project.

4. The Appellant submits that notwithstanding the aforesaid arrangement, ownership of legal possession of the land continue to remain with the landowners during the subsistence of the Agreement. In order to buttress this submission, particular emphasis has been placed upon Clause 45 of the Agreement which reads as under:

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

Referring to the aforesaid Clause, Appellant submitted that under Clause 45, possession of the property was expressly stipulated to remain with the owners and the Appellant was merely granted an irrevocable licence to enter upon the property for the limited purpose of carrying out development activity. According to the Appellant, the Agreement neither transferred nor purported to transfer any right, title or interest in the immovable property and merely created contractual rights regulating the future development of the property and the eventual allocation of the completed construction. The Appellant therefore argues that the Agreement was neither a Conveyance nor an instrument creating any proprietary interest in the immovable property requiring compulsory registration under Section 17 of the Registration Act.

5. The Appellant further submits that after obtaining the requisite statutory permissions, the Appellant had applied before the Goa Real Estate Regulatory Authority for registration of the proposed project under the provisions of the RERA Act, 2016. During scrutiny of the application, the Authorities called upon the Appellant to produce the Development Agreement and subsequently raised an objection that the Agreement had not been registered before the jurisdictional Sub-Registrar. The Appellant submits that an appropriate detailed reply contending that the Agreement was not compulsorily registerable and that production of a registered Development Agreement was not a statutory pre-condition for registration of the project under the RERA Act or the Goa Rules framed thereunder was specifically pleaded and brought to the notice of the Authorities.

6. The Appellant submits that the Regulatory Authority relied upon Circular dated 04.10.2022 dealing with registration of Joint Development Agreements between promoters and landowners. Apprehending that the Circular was being construed as requiring registration of every Development Agreement irrespective of its legal character, the Appellant by filing a Writ Petition No.3101/2024(Filing) in this Court challenged the very validity and scope of the Circular. During the course of those proceedings an affidavit was filed in reply by the Regulatory Authority in the above referred Writ Petition clarifying that the Circular was intended to apply only to those Agreements which otherwise attracted Section 17 of the Registration Act and it was not intended to mandate registration of every Development Agreement irrespective of its contents. The Appellant thus submitted that the Hon'ble Division Bench of this Court after recording the said clarification disposed of the Writ Petition by directing the Regulatory Authority to decide the Appellant's application for registration in accordance with law. The Order dated 02.04.2025 delivered in Writ Petition No. 3101/2024(Filing) reads as follows:

> "*1. The challenge has been raised to the Circular dated 04/10/2022 issued by the Goa Real Estate Regulatory Authority on the subject of registration of Joint Development Agreement between Promoter/Builder and Land Owner which comprised of the following clauses:-*
>
> > *2. Section 4 of The Real Estate (Regulation and Development) Act, 2016 read with Rule 3(2) (d) of the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017, mandates collaboration agreement, Development Agreement, joint Development Agreement or any other form of agreement, as the case may be, entered into between the promoters and owner of the land. Further,*

> *such documents/transactions are required to be registered under Section 17 of the Indian Registration Act, 1908.*
>
> *3. In the light of the above, all real estate promoters / builders and land owners are hereby directed to furnish registered joint Development Agreement or collaboration agreement or any other form of agreement, which comes within the purview of section 17 of the Indian Registration Act as the case may be, entered into between the promoters and land owners which is duly registered with the jurisdictional Sub-Registrar, in which, project is located for registration of the real estate project. In the event of non-submission of such document, the Authority would cause hearing of the applicant for submission of the same within given time frame or else the registration would be liable to be rejected.*

2. The learned Senior Counsel while challenging the aforesaid clauses has urged before us that the Circular travels beyond Section 17 of the Registration Act, 1908 and further that it is vague as it contemplates any agreement, Development Agreement or any other form of agreement in terms of promoter or owner of the land, to be registered under Section 17 of the Registration Act, 1908.

3. The Secretary of the Goa Real Estate Regulatory Authority, Mr. Paresh Fal Desai has affirmed on affidavit on 27/03/2025 responding to the petition, particularly, the statement made in paragraph 6 of this affidavit offers clarity to the petition and even redresses the grievance raised in the petition.

The affidavit in para 6 states as under:-

> *"6. I say that the entire basis of the challenge of the Petitioner is misconceived. I say that the Circular unequivocally directs that registered agreements should be produced before the Authority when the agreements are entered into between the promoters and land owners and which come within the purview of Section 17 of the Registration Act, 1908. I say that though it would have been permissible for the Respondent to otherwise require production of registered agreements in all cases of agreements between the promoter and the owner in light of the scheme, object and purpose of the Act, in the interest of*

protection of the buyers/allottees, no such direction has been issued by the said Circular. As already stated above, the Circular only seeks production of registered agreements which are otherwise required to be registered in terms of Section 17 of the Registration Act, 1908. I say that in the meeting of the Authority held on 29.10.2022, the draft Circulars on two subjects, one of which is the said Circular, were discussed and deliberated upon in detail and it was decided to add the words which comes within the purview of section 17 of the Indian Registration Act; in paragraph 3 of the draft Circular, which was accordingly done and the same is reflected in the said Circular. I say that this makes it very clear that the Respondent has considered the relevant provisions of law and consciously limited the scope of the direction in the said Circular to cover only those agreements which come within the purview of Section 17 of the Registration Act, 1908. I say that no promoter or owner can have any grievance and cannot be heard to contend that he will not register an agreement though the same is required to be registered in terms of law.

4. In the wake of the clarity that is now offered though the affidavit, we do not deem it necessary to test the challenge in this petition.

5. Needless to state that all those applications which are pending before the Goa Real Estate Regulatory Authority in the wake of the clarification offered, the Circular including the application of the petitioner will be disposed of within a period of 4 weeks from today.

6. Writ petition is disposed of.""

7. The Appellants after the Writ Petition was disposed of submitted a detailed representation to the Regulatory Authority reiterating that the Development Agreement merely regulated future development and contemplated execution of appropriate conveyances only after completion of construction and allotment of Units. The Appellant then submitted oral arguments as well as written submissions before the Regulatory Authority who upon considering the same by Order dated 13.05.2025 concluded that various clauses of the Development Agreement created substantive rights in favour of the developer in the movable property itself and therefore, the Agreement attracted compulsory registration under Section 17 of the Registration Act. The Authority proceeded to hold that compliance with the said statutory requirement was necessary before registration of the project under the RERA Act could be processed. The Authority thus granted two months' time to the Appellant to register the Agreement and to remove other deficiencies which were pointed out to the Appellant in his application. Aggrieved by the aforesaid determination, the Appellant preferred an Appeal before the Maharashtra Real Estate Appellate Tribunal. The Tribunal after hearing both sides and considering the rival submissions had dismissed the Appeal by delivering a Judgment dated 10.04.2026 and affirmed the view taken by the Regulatory Authority. It is the correctness of those concurrent findings which fall for consideration in the present Appeal filed under Section 58 of the RERA Act which necessarily requires to be decided in accordance with the scope and limitation of Section 100 of Civil Procedure Code, 1908.

8. The Appellants have assailed the concurrent Orders of the Goa Real Estate Regulatory Authority and the Appellate Tribunal principally on the ground that both Authorities travelled beyond the jurisdiction conferred upon them under the RERA Act and assumed unto themselves the powers of the Registering Authority under the Registration Act, 1908. According to the Appellant, the controversy before the Regulatory Authority was confined to the question whether the project satisfied the statutory requirements prescribed under Section 3 and 4 of the Act read with Rule 3 of the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017. Once the Appellant had produced the Development Agreement towards the evidence of the consent of the landowners to the proposed development together with the documents of title, then, according to the Appellants the statutory obligation required under Rule 3 of the said Rules stood fully complied with. The Appellant further argued that the Act nowhere authorises the Regulatory Authority or the Tribunal to undertake an adjudication regarding the registerability of such agreement under the provisions of the Registration Act. The Authority had no jurisdiction to refuse registration of the project under the RERA Act until the Agreement is compulsorily registered. According to the Appellant, assuming such jurisdiction by the Authority is completely *dehors* the statutory framework and is contrary to the limited jurisdiction vested in the Regulatory Authority.

9. The Appellant further contended that the entire approach adopted by both Authorities proceeds on an erroneous understanding of the legal character of the Development Agreement. It is urged that the Agreement when read as a whole merely records the contractual obligations undertaken by the parties for future development of the property and the eventual distribution of the constructed area after completion of construction. The land admittedly continue to remain vested in the owners. The Appellant then referred to Clause 45 of the Agreement and submitted that this Clause expressly provides that throughout the subsistence of the Agreement the owners would continue to remain in legal possession of the property and the Appellant would only have irrevocable licence to enter upon the land for the limited purpose of carrying out developmental activities. According to the Appellant the grant of a licence to enter upon a property for execution of construction cannot by itself amount to transfer of possession or creation of any proprietary rights in the immovable property. The Agreement therefore remains purely executory in nature and does not operate as a conveyance or agreement or transfer of any right in the Appellant towards the immovable property itself. The Appellant further submitted that the Authorities have segregated certain clauses of the Development Agreement particularly those relating to allocation of constructing areas and execution of future conveyance without appreciating the document as an integrated commercial arrangement between the parties. According to the Appellant the Agreement merely contemplates the manner in which the super built up area proposed to be constructed in future would ultimately be apportioned between the owners, the developers and the Confirming Parties. Thus, according to the Appellant such proposed allocation of future construction does not itself constitute the subject matter of the present Agreement. Equally, the Clauses obligating the owners to execute conveyances in favour of purchases of the Units falling to the share of the developer only recognise that a separate instrument of conveyance would necessarily be executed at the appropriate stage after completion of construction and issuance of Occupancy Certificate. The necessity of executing such future conveyance according to the Appellant itself demonstrate that the Development Agreement neither creates nor transfers any present right, title or interest in the movable property. Had any such proprietary interest already stood transferred, then there was no necessity of further conveyance to be executed between the parties. The Appellant has consistently emphasised that the Agreement consciously reserves ownership of the land with the owners and merely regulates the further commercial exploitation of the development. The Agreement authorise developer to construct, market and sell the units which would eventually fall to its agreed share only after completion of the project. The corresponding undivided share in the land is contemplated to pass only through the execution of appropriate conveyances in favour of the ultimate purchasers or such entity as may thereafter be constituted. Consequently, according to the Appellant the Agreement merely creates contractual rights enforceable inter se between the contracting parties and cannot be equated with an instrument which itself creates or declares proprietary rights in the immovable property.

10. During the course of the argument, the Learned Senior Advocate appearing for the Appellant has also questioned the reliance placed by the Regulatory Authority upon the Circular dated 04.10.2022. He submitted that the Circular as originally understood by the Regulatory Authority required production of registered Development Agreement as a condition precedent for registration of every real estate project. Such interpretation according to the Learned Senior Counsel imposed a substantive condition which is not found either in the RERA Act or in the Rules framed thereunder. He further argued that when the Appellant challenged the Circular before this Court the Regulatory Authority itself clarified in its affidavit that the Circular was consciously restricted only to those agreements which otherwise fell within Section 17 of the Registration Act. The Learned Senior Advocate therefore submits that after the clarification placed before this Court and the Order recording that clarification is passed, then the Circular itself ceased to have any independent operation and merely reiterated the position already emerging from the Registration Act. Consequently, the real controversy before the Regularity Authority was not the validity of the Circular but whether the Development Agreement upon its true construction was at all an instrument attracting Section 17 of the Registration Act.

11. The Learned Advocate has further contended that both the Regulatory Authority and the Appellate Tribunal have failed to appreciate the limited scope of Section 13 of the RERA Act. According to the Learned Senior Advocate, Section 13 deals exclusively with the agreement for sale executed between a promoter and an allottee and mandates registration of such agreements before accepting more than 10% of the consideration from the allottee. The present Development Agreement is neither an agreement for sale executed in favour of the allottee nor does it relate to acceptance of consideration from any purchaser. It is merely an agreement regulating the rights and obligations between the landowners and the developers. The Learned Senior Advocate for the Appellant therefore submits that the statutory requirement contained in Section 13 of the said Act has absolutely no application whatsoever to the present agreement and neither the Regulatory Authority nor the Tribunal has identified any other provision in the RERA Act expressly requiring compulsory registration of such Development Agreement. The Appellants have further contended that the Authorities have failed to correctly appreciate the distinction between a contract creating a right to future conveyance and an instrument itself creating an interest in immovable property. The Appellant further submits that the Development Agreements belongs to the former category. It records reciprocal obligation and contemplates execution of further conveyance in future and does not itself vest the developer with ownership or proprietary interest in the land. According to the Appellant, the Authorities have overlooked the statutory distinction between an executory agreement and an instrument of transfer thereby treating every Development Agreement as though it necessarily operates as a conveyance.

12. The written submissions filed by the Appellant before the Regulatory Authority as well as before the Appellate Tribunal substantially reiterate the above-referred propositions. The Appellant has consistently maintained that Rule 3 of the Goa Rules merely requires production of a collaboration agreement, joint Development Agreement or any similar agreement reflecting the consent of the landowners where the promoter itself is not the owner of the property. The Rule does not employ the expression "registered agreement". The omission of such a requirement, according to the Appellant, is deliberate and consistent with the legislative scheme. It is therefore submitted that the Regulatory Authority could not have imported into Rule 3 a requirement which the rule-making authority itself has consciously omitted to prescribe.

13. The Appellants have further asserted that both authorities have completely ignored the commercial realities of modern real estate development. Development Agreements are often executed at a stage when construction has not commenced and statutory permissions are yet to be obtained and future allocations of constructed premises remains contingent upon completion of the project. Such agreements merely regulates the contractual obligations between the owner and the developer and nothing more. According to the Appellant, treating every such agreement as compulsorily registerable irrespective of its contents would not only run contrary to the settled principles governing construction of commercial documents but would also unnecessarily impede registration of projects under the RERA regime. The very object of the RERA Act is to facilitate regulation and orderly development of the real estate sector.

14. The last limb of the arguments of the Appellant is that both Regulatory Authority and the Appellate Tribunal have proceeded upon an incorrect assumption that unless the Development Agreement itself is registered, the developer would acq2uire no enforceable rights against the owners and consequently the Regulatory Authority would be unable to enforce the obligations cast upon a promoter under the Act. According to the Appellant this reasoning of the Regulatory Authority as well as the tribunal fundamentally overlooks the distinction between enforceability of contractual obligation inter se the contracting parties and compulsory registration under the Registration Act. Every lawful agreement is capable of enforcement in accordance with law unless the statute expressly renders it enforceable for want of registration. The Appellant therefore submits that the authorities have conflated the issue of contractual enforceability with the entire distinct question as to whether the instrument itself falls within the category of documents requiring compulsory registration under Section 17 of the Registration Act.

15. Per contra, the Learned Counsel appearing and representing the RERA authorities have contended the appeal by filing a detailed affidavit in reply, before this Court and have also relied upon the written submissions filed before the Regulatory Authority as well as before the Appellate Tribunal and have also advanced elaborate oral submissions during the course of the hearing. The Respondent authority has consistently taken a stand that the controversy has never been whether every Development Agreement is compulsorily registerable. According to the Respondent the real issue is whether the particular agreement executed between the Appellant and the landowners upon its true construction, creates or declares rights and interest in the immovable property so as to attract Section 17 of the Registration Act? It is the Respondents case that the determination of that issue squarely falls within the jurisdiction of the Regulatory Authority while examining an application for registration of real estate project for the simple reason that the authority cannot permit a person to undertake the obligations of a promoter under the RERA Act unless the legal foundation of his right to develop the project satisfies the requirement of law.

16. The Respondent has contended that the scheme of the RERA Act proceeds upon complete transparency regarding the legal entitlement of the person seeking registration as a promote. Under the statutory framework, where the promoter is not the owner of the land, the promoter is required to produce the collaboration agreement, joint

Development Agreement or other similar agreement evidencing the authority under which he proposes to undertake development of the property. According to the Respondent, production of such agreement is not an anti-formality. The Regulatory Authority is required to satisfy itself that the document itself genuinely confers the legal authority necessary to enable the applicant to undertake development, market the project, execute agreements with allottees and discharge the various statutory obligations cast upon a promoter under the Act. Such examination according to the Respondent necessarily includes consideration whether the agreement itself is legally enforceable and whether by reason of registration act it was required to be compulsorily registered.

17. The respondent has further contented that the Appellants challenge proceeds upon a misconception of the scope of the circular dated 04.10.2022. It is pointed out that although the circular was initially challenged before this Court the Respondent in its affidavit in reply filed in the writ proceedings have categorically clarified that the circular was never intended to require registration of every agreement executed between a promoter and a land owner. The respondent consciously restricted the operation of the circular only to those agreements which independently fall within the ambit of Section 17 of the Registration Act. The respondent submits that it was specifically explained that the words "which comes within the purview of Section 17 of the Registration Act" were deliberately incorporated in paragraph no. 3 of the circular after due deliberation by the authority. The respondent therefore submits that the circular merely reflects the statutory position already existing under the Registration Act and does not enlarge or modify the legislative requirements. This Court while disposing of the earlier writ petition recording the clarification furnished by the respondent and directed the Regulatory Authority to examine the Appellant's application in accordance with law. According to the respondent the present controversy cannot be reopened by questioning either the validity or the scope of the circular as the same has been already clarified in the writ proceedings.

18. The respondent further emphasised that it was the Appellant itself who approached the Regulatory Authority seeking registration as a promoter under the Act without impleading the landowners as party co-applicants. According to the respondent, wherever the landowners and the developer are distinct legal entities then both are statutorily recognised as promoters in relation to the project and are jointly responsible for discharge of the obligations imposed under the Act. If the developer alone seeks registration as promoter then it becomes incumbent upon the Regulatory Authority to satisfy itself that the developer possesses a legally enforceable right flowing from the agreement with the owners failing which the statutory obligation cast upon the promoter would become incapable of effective enforcement. Developing this submission further it is argued by the respondent that the entire architecture of RERA Act is intended to secure the interest of purchasers and allottees by fixing accountability upon identified promoters. The obligations imposed upon the promoter under the Act are continuous obligations extended far beyond the stage of registration of the project. They include timely completion of construction, execution of conveyances in favour of allottees, transfer of common areas, formation of societies or associations and compliance with numerous statutory duties after completion of the project. According to the Respondent, unless the legal relationship between the developer and the owner rests upon a document having legal efficacy under the law the Regulatory Authority would be unable to effectively enforce these obligations in the event disputes subsequently arise between the developer and the landowners. The Learned Counsel appearing for the Respondent has particularly relied upon the statutory definition of "promoter" under the RERA Act and the explanation appended thereto. It is submitted that wherever development is undertaken by a person other than the owner of the land, both the developer and owner are treated as promoters for the purposes of the Act and are jointly responsible for compliance with the statutory obligations. The respondent submits that the joint Development Agreement constitutes the very foundation of this statutory relationship and consequently the Regulatory Authority is duty bound to ascertain whether such agreement validly creates the legal rights which the developer claims to possess.

19. The Learned Counsel for the respondent has further relied upon section 15 and 17 of the RERA Act to contend that the obligations imposed upon a promoter necessarily presuppose a legally recognised interest in the project capable of enforcement. It is submitted that Section 15 regulates transfer or assignment of the rights and liabilities of a promoter during the course of development, he further submitted that Section 17 imposes an obligation upon the promoter to execute conveyances in favour of the allottees together with proportionate undivided interests in common areas. According to the respondent these provisions indicate that promoters cannot merely function as contractors engaged for construction but must possess an enforceable legal relationship with the project itself. The Regulatory Authority therefore cannot ignore the legal character of the underlying Development Agreement while examining the promoter's application.

20. The learned advocate then by referring to the Development Agreement itself have emphatically disputed the Appellants description of the document as a mere executory agreement creating only contractual obligations. It is submitted that the nomenclature assigned by the parties is wholly immaterial. The legal consequences flowing from the instrument have to be gathered from the document after reading the entire document as a whole. According to the respondent, there are several clauses of the agreement which unmistakably disclose that the substantive rights in the immovable property have been created in favour of the Appellant. The respondent has relied particularly upon clauses, 2, 4, 16 and 34 of the Agreement which reads as under:

> *"clause 2: a. Clauses 2, provide that while landowners would be allotted 40% of built-up area, the Appellant/Developer shall retain the 50% of built-up area with proportionate undivided share in land, having the exclusive right to deal and alienate his share in such units, including but not limited to receiving monies against the same as advance or final consideration.*
>
> *a. Clause 4 operates to vest & total super built-up area in the Developer (50%), Owners (40%), and Confirming Party 10%) & execution of these presents demonstrating immediate transfer of proprietary interests.*
>
> *b. Clause 16 unambiguously declares that the Developer's 50% share shall belong to the DEVELOPERS with full rights to retain the same exclusively for itself or sell the same to any third-party purchaser along with proportionate undivided share of land;*
>
> *d. Clauses 34 contemplate that the rights of the Appellant herein to retain the possession of the constructed units and thereafter handing over the possession of the constructed units within the share of the*

landowners and the confirming party upon meeting the condition precedent stated in the said clauses."

Referring to the above referred clauses the respondent's advocate submits that these clauses respectively allocate 50% of the super built upon area to the developer and entitles the developer to exclusively retain or alienate the units falling to its share and also confers upon the developer an authority to nominate purchasers and oblige the owners to execute conveyances of proportionate undivided interest in the land in favour of such purchasers or in favour of any entity as per the choice of the developer. According to the respondents therefore these provisions are wholly inconsistent with a mere contractual licence and disclosed creation of valuable proprietary rights in favour of the developer.

21. The respondent has further submitted that the Appellants reliance upon the future execution of conveyances is misconceived. According to the respondent the existence of a future conveyance does not necessarily imply absence of any present or future interest created by the Development Agreement itself. The agreement presently determines the respective beneficial shares among the contracting parties and also recognises the developers' exclusive entitlement to dispose of its allocated share and obliges the owners to execute conveyances in favour of the developers' nominations. These provisions according to the respondent amount of creation or declaration of rights in movable property within the meaning of Section 17 of the Registration Act notwithstanding that legal title would formally pass only through subsequent conveyances.

22. The respondent has also refuted the Appellant's submission founded upon clause 45 of the Development Agreement. According to the learned counsel for the respondent the reservation of legal possession with the land owners and the grant of irrevocable licence to enter upon a property do not exhaust the legal consequences flowing from the agreement. According to the respondent the question is not merely whether possession has been transferred but whether the agreement read as an integrated commercial agreement creates an identifiable rights in the immovable property itself. It is thus submitted that possession constitutes only one of the several factors relevant under the Registration Act and that the present agreement goes considerably beyond a mere licence to enter upon the land for construction. He further argued that no promoter can legitably contain that an agreement otherwise compulsorily registrable under the law need not be registered merely because registration of a project is sought under the RERA Act. The respondents have finally supported the reasoning adopted by both the Regulatory Authority and the Appellate Tribunal. It is submitted that both authorities have carefully analysed the operative clauses of the Development Agreement and have appreciated the substance of the rights thereby created and have thus arrived at a concurrent finding that the agreement creates valuable rights and interest in favour of the developer in relation to the immovable property. According to the respondent, such findings arise from construction of the document itself and are neither arbitrary nor perverse. It is therefore contended that the appeal discloses no error of law warranting interference by this Court.

23. Having considered the pleadings, the impugned orders, the Development Agreement, the rival submissions advanced before the Regulatory Authority, the Appellate Tribunal and this Court, the controversy, in my considered opinion, is required to be examined not from the standpoint of the nomenclature employed by the parties but from the statutory framework governing registration of real estate projects and the legal incidents flowing from the Development Agreement itself. The controversy identified in the present petition is to what extent the Regulatory Authority, while exercising powers under Sections 3 and 4 of the Real Estate (Regulation and Development) Act, 2016, may examine the legal efficacy of the document produced by a promoter who is not himself the owner of the land ? and whether, upon a true construction of the particular agreement before it, the Authority was justified in insisting upon its compulsory registration before processing the application for registration of the project ?

To appreciate the above mentioned two questions, it is necessary to understand the Object and the scheme of RERA Act. The Real Estate (Regulation and Development) Act, 2016 was enacted to establish a transparent regulatory mechanism governing the real estate sector and to protect the interests of purchasers and allottees by ensuring accountability of promoters. The legislation does not merely regulate construction activity. It regulates the legal relationship between promoters, land owners, allottees, regulatory authorities and adjudicatory forums. Registration of a project under Section 3 is therefore not an empty administrative exercise but constitutes the statutory recognition of a promoter who thereafter assumes numerous obligations extending throughout the life of the project until conveyance of title and transfer of common areas are completed.

Perusal of Section 4 of the Act, which reads as under –

> *"Section 4. Application for registration of real estate -*
>
> *(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be 1 [prescribed].*

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;

(b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;

(c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;

(d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;

(e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including firefighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;

(f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;

(g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;

(h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or

verandah areas and the exclusive open terrace areas appurtenant with the apartment, if any;

(i) the number and area of garage for sale in the project;

(j) the names and addresses of his real estate agents, if any, for the proposed project;

(k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:—

(A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

(B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;

(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the *withdrawal is in proportion to the percentage of completion of the project:*

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Explanation.—For the purpose of this clause, the term "scheduled bank" means a bank included in the Second Scheduled to the Reserve Bank of India Act, 1934 (2 of 1934);

(E) that he shall take all the pending approvals on time, from the competent authorities;

(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

(m) such other information and documents as may be prescribed.

(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

It prescribes the information and documents which are required to accompany every application for registration of a real estate project. Where the promoter is not himself the owner of the land proposed to be developed. Further the Rule 3 of the Goa Real Estate (Regulation and Development) Rules which reads as under –

Rule - 3. Other Information to be furnished by the promoter for the registration of real estate project.

(1) The promoter shall furnish to the Authority such information as is required under the Act and documents, specified under sub-sections (1) and (2) of section 4 of the Act, for registration of the real estate project with the Authority.

(2) Without prejudice to the provisions of sub-rule (1), the promoter shall also furnish the following information and documents along with the Application under sub-section (1) of section 4 of the Act, namely:

(a) authenticated copy of the PAN card of the promoter;

(b) name, photograph, contact details and address of the promoter, if he is an individual or authorized representative; or the name, photograph, contact details and address of the chairperson, partners, directors, members, as the case may be, and the authorized representative in case of other entities;

(c) a copy of the legal title report reflecting the flow of title of the owner or promoter to the land on which development is proposed, with authentication of such title by legal practitioner;

(d) where the promoter is not the owner of the land on which development is proposed, a copy of the collaboration agreement, Development Agreement, joint Development Agreement or any other form of agreement, as the case may be, entered into between the promoter and owner of the land, reflecting the consent of such owner and authenticated copies of legal title report reflecting the title of such owner, on the land proposed to be developed;

(e) the information relating to the encumbrances in respect of the land where the real estate project is proposed to be undertaken and the details regarding the proceedings which are sub-judice (if any) in respect of such land;

(f) (i) sanctioned plan where the project is being developed along with information relating to the FAR/TDR and other entitlements which are proposed to be utilized in accordance with the relevant Development Control

Regulations for the time being in force, for carrying out such sanctioned plan and the amenities and common facilities (including common areas, parking spaces) to be provided in accordance with the sanctioned plan;

(ii) the Proposed Plan, Proposed Layout Plan of the whole project and Floor Area Ratio proposed to be consumed in the whole project, as proposed by the promoter;

(iii) proposed Floor Area Ratio to be consumed and sanctioned Floor Area Ratio. In case the sanctioned Floor Area Ratio is different than what is proposed to be consumed by the promoter, then the proposed Floor Area Ratio shall be disclosed at the time of registration and as and when the additional Floor Area Ratio is sanctioned, the same shall be uploaded on the website of the Authority by the promoter from time to time;

(iv) proposed number of building(s) or wing(s) to be constructed and sanctioned number of the building(s) or wing(s). In case the sanctioned number of building(s) or wing(s) is different than what is proposed to be constructed by the promoter, then the proposed number of building(s) or wing(s) shall be disclosed at the time of registration and as and when the additional number of building(s) or wing(s) are sanctioned, the same shall be uploaded on the website of the Authority by the promoter from time to time;

(v) proposed number of floors in respect of each of the building or wing to be constructed and sanctioned number of floors in respect of each of the building or wing. In case the sanctioned number of floors is different than what is proposed to be constructed by the promoter, then the proposed number of floors shall be disclosed at the time of registration and as and when the additional number of floors are sanctioned, the same shall be uploaded on the website of the Authority by the promoter from time to time;

(vi) aggregate area in square meters of the recreation space;

(vii) the number of covered parking spaces;

(g) the particulars in respect of Architecture and Design Standards, type of Construction Technology, Earthquake Resistant Measures and the like to be adopted for Buildings and for Common Areas and of amenities/facilities in the Layout Plan of the real estate project;

(h) the nature of the organisation of allottees to be constituted and to which the title of such land parcels is to be conveyed and the specific local laws to govern such organisation of allottees on completion of real estate project;

(i) the interest/rights of third parties in the project like banks, Housing Finance Companies, Non Banking Finance Companies etc;

(j) the GST registration number under the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017);

(k) the nature of land as per the Goa Land Revenue Code, 1968 (Act 9 of 1969) and the rules framed there under; and the zone of land as per the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act 21 of 1975) and the rules and notifications issued there under;

(l) the promoter shall also provide such other information and documents, as may be required by the Authority.

(3) The application for registration of a real estate project referred to in sub-section (1) of section 4 shall be made in Form of 'I'; hereto in writing by the promoter or his representative duly authorized by a letter of Authority or Board Resolution and shall be submitted in triplicate.

(4) As and when the web-based online system for submitting applications for registration of projects is operationalised by the

Authority under sub-section (3) of section 4, the provisions of sub-rule (3) shall not apply.

(5) (a) At the time of application for registration, the promoter shall pay a registration fee, calculated on the area of the land proposed to be developed at the rate of, rupees ten per square meter, subject to a minimum of rupees fifty thousand only and a maximum of rupees ten lakhs only.

(b) The fees for registration of real estate project shall be paid through NEFT or RTGS System or any other digital transaction mode.

(6) The declaration to be submitted under clause (l) of sub-section (2) of section 4 shall be in Form 'I'; hereto.

(7) The promoter may apply for withdrawal of application for registration of the real estate project before the expiry of the period of 30 days of its submission to Authority. In such cases, the registration fee to the extent of ten percent paid under sub-rule (5) above, or rupees fifty thousand, whichever is more, shall be retained as charges towards processing of application by the Authority and the remaining amount shall be refunded to the promoter within a period of thirty days from the date of such withdrawal.

(8) The promoter shall disclose,

(a) land cost in the real estate project for the purposes of sub-clause (D) of clause (l) of sub-section (2) of section 4;

(b) cost of construction in real estate project for the purposes of sub-clause (D) of clause (l) of sub-section (2) of section 4;

(c) estimated cost of the real estate project.

Rule 3 mandates the applicant to produce the collaboration agreement, Development Agreement, joint Development Agreement or other similar agreement entered into with the owner together with the documents evidencing title of the land. The object of requiring production of such agreement is self-evident. The Regulatory Authority cannot register a project merely because an applicant describes himself as a promoter. The Authority is required to satisfy itself that the applicant derives lawful authority from the owner to undertake development and to assume the statutory obligations imposed by the Act.

24. The submission advanced on behalf of the Appellant that production of the Development Agreement is a purely ministerial requirement incapable of any scrutiny by the Regulatory Authority cannot be accepted in its absolute form. Acceptance of such submission would reduce above referred Rule 3 to a meaningless formality. It would imply that irrespective of the contents of the document, the Regulatory Authority is bound to register the project once any paper bearing the title "Development Agreement" is produced before it. Such an interpretation would defeat the statutory object itself. Every statutory authority entrusted with the duty of examining documents necessarily possesses the incidental jurisdiction to ascertain whether the document relied upon satisfies the legal requirement contemplated by the statute. Such examination does not amount to adjudication of title between rival parties nor does it convert the Regulatory Authority into a civil court exercising plenary jurisdiction under the Registration Act. It merely enables the Authority to determine whether the applicant has established the legal foundation upon which registration of the project is sought.

25. The submission of the Appellant that the Regulatory Authority had absolutely no jurisdiction to examine whether the Development Agreement relied upon by the promoter required compulsory registration cannot be accepted. The Authority is undoubtedly not the Authority under the Registration Act nor can it finally adjudicate questions of title or validity of documents. Nevertheless, while exercising jurisdiction under Section 3 and 4 of the RERA Act read with Rule 3 of the Goa Rules, the Authority is statutorily required to satisfy itself that the applicant possesses the legal authority to undertake the proposed development. The power to examine the legal character of the document produced in support of such authority is merely incidental to the exercise of the express statutory power. An express conferment of statutory power necessarily carries with it a necessary implication, and such ancillary or incidental powers as are indispensable for effective exercise of that jurisdiction, but with a caveat that such implied powers are not inconsistent with the statutory scheme. The Regulatory authority therefore cannot be said to have exercised jurisdiction under the

Registration Act. They merely examined incidental with limited purpose of deciding the application under Section 4 of the RERA Act as to whether the document produced by the Appellant satisfied the legal requirements governing registration of the project. Thus, in the opinion of this Court, the RERA Authorities had incidental jurisdiction to examine for the limited purpose of deciding the application under Section 4 of the RERA Act, whether the development agreement relied upon by the promoter was a document which in law required compulsory registration. Such power directly flows from the statutory obligation cast upon the Authority under Section 4 of RERA Act read with Rule 3 of Goa Rules. It is once again reiterated for the purpose of clarification that if the statute requires the promoter to produce the development agreement as the foundation of his authority to undertake development then regulatory authority cannot be reduced to a mere receiving office obliged to accept every document without inspecting its legal efficacy. Examination of legal character of the document to the limited extent which is necessary for deciding whether the statutory requirement has been fulfilled or not, undoubtedly forms an integral part of the statutory function itself.

26. The contention of the Ld. Sr. Counsel for Appellant is, however, correct in one important aspect. Neither Section 4 of the Act nor Rule 3 of the Goa Rules expressly stipulates that every Development Agreement must necessarily be registered before a project can be registered. The Legislature has consciously refrained from employing such language. Equally, the Circular dated 4 October 2022, as clarified by the Respondent itself before this Court in the earlier writ proceedings, cannot be construed as introducing an independent substantive condition requiring compulsory registration of every Development Agreement irrespective of its contents. The clarification furnished by the respondent unequivocally restricted the operation of the Circular only to those agreements which otherwise fall within the ambit of Section 17 of the Registration Act. Once such clarification was accepted and recorded by this Court, the controversy necessarily narrowed to a single question, namely, whether the Development Agreement dated 1 February 2020 is one which, upon its own terms, attracts Section 17 of the Registration Act. The Circular therefore neither enlarges nor curtails the statutory obligation. It merely reiterates the existing legal position.

27. At this juncture, it becomes necessary to determine the exact nature and extent of the jurisdiction that is exercised by the Regulatory Authority. The Authority is not called upon to pronounce generally upon the validity of documents under the Registration Act. Nor can it assume the role of the registering officer under the Registration Act. At the same time, where an applicant relies upon a particular document as the source of his legal authority to undertake development of immovable property, the Authority cannot shut its eyes to the legal incidents flowing from that document. If the agreement is one which, by operation of law, requires compulsory registration and yet remains unregistered, the Authority cannot be compelled to ignore such statutory infirmity while determining whether the applicant possesses the legal status of promoter under the Act. Such scrutiny is merely incidental to the discharge of its statutory functions and cannot be equated with exercise of independent jurisdiction under the Registration Act.

28. The Appellant has repeatedly urged that the Regulatory Authority travelled beyond the confines of Section 13 of the Real Estate (Regulation and Development) Act. In my view, this submission proceeds upon an incorrect premise. Section 13 undoubtedly governs agreements for sale executed between promoters and allottees and has no direct application to a Development Agreement executed between the landowner and the developer. The respondent has also not founded its decision upon Section 13 of the said Act. The impugned order proceeds substantially upon the nature of the rights created by the Development Agreement and the consequences flowing from Section 17 of the Registration Act. Consequently, the inapplicability of Section 13 to the present agreement does not conclude the controversy in favour of the Appellant. The issue remains whether, independently of Section 13, the document relied upon by the Appellant answers the description of an instrument compulsorily registrable under the Registration Act.

29. Similarly, considerable emphasis was placed upon Clause 45 of the Development Agreement reserving possession of the property with the owners and granting to the developer only an irrevocable licence to enter upon the property for purposes of development. This clause undoubtedly constitutes an important circumstance in construing the document. It demonstrates that legal possession of the land itself was consciously retained by the owners during execution of the project. Nevertheless, the question before the Court is not confined merely to possession. Registration of Document under Section 17 of Registration Act does not depend exclusively upon transfer of possession. The decisive inquiry is whether, reading the instrument as a whole, it creates, declares, assigns, limits or extinguishes any present or future right, title or interest in immovable property. That determination cannot be reached by isolating one clause in the agreement while ignoring the remaining operative provisions.

30. Equally well settled is the principle that a commercial document must be construed as an integrated whole. Individual clauses cannot be torn out of context to support a predetermined conclusion. The rights created by the agreement must emerge from the cumulative effect of all its provisions. The Court must ascertain the true intention of the parties by harmoniously construing every operative clause so that each provision is given due effect and none is rendered otiose. It is therefore necessary to examine the Development Agreement clause by clause and determine whether, notwithstanding the reservation of legal possession with the owners, the agreement nevertheless creates substantive proprietary rights in favour of the developer or merely regulates future contractual obligations culminating in subsequent conveyances.

31. The respondent has relied principally upon Clauses 2, 4, 16 and 34, whereas the Appellant places reliance upon Clauses 16, 34 and 45. It is only after examining these provisions together that the Court can answer whether the agreement merely contemplates execution of future conveyances or whether it presently creates identifiable rights and interests in the immovable property itself. The answer to that question ultimately determines not merely the applicability of Section 17 of the Registration Act but also the correctness of the concurrent findings recorded by the Regulatory Authority and the Appellate Tribunal.

32. The controversy, therefore, now further narrows to the true construction of the Development Agreement. That exercise necessarily precedes any examination of the correctness of the conclusions recorded by the Authorities below.

33. The entire controversy in the present appeal ultimately turns upon the true legal character of the Development Agreement dated 1 February 2020. The Regulatory Authority as well as the Appellate Tribunal have concurrently held that the agreement creates an interest in immovable property and, therefore, falls within the ambit of Section 17 of the Registration Act. The Appellant, on the other hand, maintains that the agreement is merely executory and it creates no proprietary interest whatsoever and merely records reciprocal contractual obligations culminating in future conveyances after completion of the project. Since both authorities have rested their conclusions principally upon the contents of the agreement itself, it becomes necessary for this Court to independently construe the instrument. Such construction must proceed upon the settled principle that the legal character of a document is determined not by its nomenclature but by its operative provisions read as an integrated whole. Every clause must therefore be harmoniously construed with the remaining clauses so as to ascertain the true intention of the parties from the document itself.

34. Clause 2 of the Development Agreement records the basic commercial arrangement between the contracting parties. It envisages development of the property by the Appellant at its own cost and responsibility. The agreement does not contemplate payment of any monetary consideration by the developer to the landowners for acquisition of the development rights. Instead, the parties have agreed that the consideration payable to each of them shall be discharged by allocation of specified portions of the completed super built-up area. The developer is accordingly required to undertake construction and in return is to receive the agreed percentage of the completed construction. At this stage, the agreement merely records the commercial bargain between the parties and the way the consideration is proposed to be discharged. Clause 2 by itself, does not immediately transfer ownership of the land nor does it expressly convey title in any identified immovable property. It merely lays down the economic foundation of the transaction.

35. Clause 4 of the Agreement proceeds to identify the respective shares of the parties in the completed development. The agreement allocates forty per cent of the super built-up area to the owners, fifty per cent to the developer and ten per cent to the confirming party. This allocation undoubtedly goes beyond a mere promise to remunerate the developer in future. The commercial rights of the parties in the completed project stand identified with certainty from the very inception of the agreement. Nevertheless, identification of future entitlement to the completed construction cannot, in isolation, be equated with immediate transfer of ownership in the land itself. The significance of Clause 4 therefore cannot be appreciated independently of the remaining operative provisions.

36. Clause 16 then assumes considerable importance. Under this clause, the developer is expressly authorised to retain the fifty per cent share of the super built-up area allocated to it. The clause further provides that the developer shall be at liberty to deal with such constructed premises by retaining them for itself or by transferring the same to third-party purchasers. Simultaneously, the agreement recognises that such purchasers would ultimately receive proportionate undivided interests in the land corresponding to the units purchased by them. The clause also authorises the developer to determine the persons in whose favour the owners shall execute the necessary conveyances. It is this clause which principally persuaded the Regulatory Authority to conclude that the agreement creates valuable proprietary rights in favour of the developer. The Appellant has urged that even Clause 16 merely regulates future contractual obligations. It is submitted that the authority to sell units arises only after construction is completed and that no title passes until execution of subsequent conveyances. Considerable emphasis has been placed upon the fact that the clause itself contemplates future conveyances by the owners in favour of purchasers identified by the developer. According to the Appellant, the very necessity of such future conveyances negatives any inference that proprietary rights stood transferred by the Development Agreement itself.

37. The submission undoubtedly possesses considerable force. A distinction must always be maintained between a document creating contractual rights capable of specific enforcement and an instrument itself transferring proprietary rights. The fact that a party acquires valuable commercial rights under a Development Agreement does not automatically imply that an interest in immovable property has also been created. Modern Development Agreements frequently confer extensive commercial powers upon developers to market, negotiate and identify prospective purchasers. Such powers, by themselves, do not necessarily amount to transfer of ownership or creation of an estate in land.

38. However, Clause 16 cannot be read in isolation. It expressly recognises not merely the developer's authority to market the premises but its entitlement to the agreed fifty per cent share in the completed development together with the corresponding proportionate undivided share in the land. The language employed by the parties does not merely provide that the owners shall execute conveyances in future if and when they so decide. Instead, the agreement itself determines the beneficial allocation of the completed development and obliges the owners to complete the legal formalities necessary to perfect those rights. Thus, while legal title undoubtedly remains to be conveyed by future instruments, the beneficial allocation of rights between the contracting parties stands determined by the Development Agreement itself.

39. Clause 34 of the Agreement reinforces this position. It provides that after issuance of the Occupancy Certificate and handing over possession of the respective premises, the owners shall execute conveyances transferring proportionate undivided shares in the property either directly in favour of the purchasers identified by the developer or in favour of such society, association or legal entity as the developer may determine. The clause therefore does not leave the question of conveyance to future negotiations. The owners have, by the Development Agreement itself, irrevocably bound themselves to execute conveyances in accordance with the directions of the developer. The developer thus acquires a corresponding enforceable right to insist upon execution of those conveyances after fulfilment of the agreed conditions.

40. The Appellant has strongly relied upon Clause 34 to contend that because conveyances are to be executed in future, the present agreement cannot itself create any interest in immovable property. This argument, though attractive at first blush, does not entirely answer the issue. A distinction exists between transfer of legal title and creation of enforceable proprietary rights. Execution of a future conveyance is undoubtedly necessary to complete transfer of legal ownership. Nevertheless, the fact that the parties contemplate a future conveyance does not necessarily exclude creation of present rights of a proprietary character if the agreement itself identifies and allocates those rights with certainty. Whether such allocation ultimately falls within Section 17 of the Registration Act does not depends upon the existence of future conveyances but upon the nature of the rights already created by the agreement in the parties.

41. Clause 45, upon which considerable reliance has been placed by the Appellant, expressly records that possession of the property shall continue to remain with the owners and that the developer is merely granted an irrevocable licence to enter upon the property for purposes of construction. This clause undoubtedly negatives any inference that possession of the land itself was transferred in part performance of the agreement. The reservation of legal possession with the owners constitutes an important indicator that the parties did not intend immediate transfer of ownership in the land. Equally Clause 45 of the Agreement cannot be elevated into the controlling provision of the agreement so as to nullify the legal consequences flowing from Clauses 4, 16 and 34. The agreement must be construed harmoniously. Reservation of possession with the owners during execution of construction is entirely consistent with a commercial arrangement under which the developer simultaneously acquires enforceable rights regarding future allocation and disposition of the completed project.

42. One more circumstance of considerable significance emerges from the agreement itself. The developer has not merely undertaken construction on behalf of the owners for remuneration. The developer bears the financial burden of the project, acquires the right to exclusively appropriate fifty per cent of the completed development, enjoys authority to independently market and alienate that share, determines the identity of the purchasers in whose favour conveyances are to be executed and simultaneously acquires the corresponding benefit of proportionate undivided interests in the underlying land. The cumulative effect of these provisions reveals that the agreement is substantially different from an ordinary building contract under which a contractor merely executes construction for consideration. The developer assumes an independent commercial stake in the project itself.

43. At the same time, it would equally be incorrect to characterise the agreement as a completed conveyance. The agreement does not presently transfer ownership of the land. The legal estate remains vested in the owners until execution of subsequent conveyances. The agreement therefore occupies an intermediate position. It is neither a mere construction contract nor an outright conveyance of immovable property. It is a composite Development Agreement creating reciprocal contractual obligations coupled with allocation of defined commercial and beneficial rights in the completed project, while postponing transfer of legal title until completion of construction and execution of conveyances.

44. The authorities below have substantially concentrated upon the clauses allocating the developer's entitlement to the super built-up area and the corresponding undivided share in the land. The Appellant, on the other hand, has concentrated upon the clauses reserving ownership and possession with the owners and requiring future conveyances. In the opinion of this Court, neither approach if viewed in isolation can present the complete legal picture. The agreement possesses characteristics of both categories. The real question therefore is whether the cumulative effect of these clauses in Agreement satisfies the statutory ingredients of Section 17 of the Registration Act. That issue cannot be answered merely by referring either to the future conveyance clauses or to the reservation of possession. It requires examination of the legal consequences flowing from the document as an integrated commercial arrangement and the legislative purpose underlying compulsory registration.

Accordingly, I proceed now to examine the ambit of Section 17 of the Registration Act and determine whether the proprietary incidents emerging from the Development Agreement are sufficient to attract compulsory registration notwithstanding that legal title is contemplated to pass by subsequent conveyances. Section 17 of Registration Act reads as under-

> *17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—*
>
> *(a) instruments of gift of immovable property;*

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

Provided that the [State Government] may, by order published in the [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v)[any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by 3 [Government]; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

[(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

[Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

45. The central legal issue in the appeal does not depend merely upon the nomenclature of the document or upon the commercial wisdom of the parties. It depends upon the true construction of Section 17 of the Registration Act in the context of a composite Development Agreement executed between landowners and a developer. The Court is therefore required to determine whether the rights created under the Development Agreement amount to creation or declaration of an interest in immovable property attracting compulsory registration or whether the agreement merely creates contractual obligations culminating in future conveyances.

46. Reading of Section 17 of the Registration Act classifies documents which are compulsorily registrable. The legislative emphasis is not upon the title assigned to the document but upon the legal consequences produced by it. A document may be described as a memorandum of understanding, Development Agreement, collaboration agreement, licence agreement or agreement for sale. None of these descriptions is decisive. The Court is required to ascertain whether the document itself creates, declares, assigns, limits or extinguishes any right, title or interest in immovable property of the value prescribed by law. It is the legal operation of the instrument which attracts compulsory registration and not the nomenclature adopted and assigned to the document by the parties. Equally well settled is the distinction between transfer of ownership and creation of proprietary rights. Ownership constitutes the highest form of proprietary interest recognised by law. However, proprietary interests are not confined only to complete ownership. The law recognises numerous intermediate proprietary rights, whether present, future, vested, contingent, limited or conditional. Consequently, a document may not amount to a conveyance transferring ownership and yet may create an interest in immovable property sufficient to attract compulsory registration under Section 17. Conversely, every contractual arrangement concerning immovable property does not necessarily create such interest merely because it relates to land.

47. The Appellant has placed considerable emphasis upon the proposition that an agreement for sale does not create any interest in immovable property. That proposition is undoubtedly correct so far as an ordinary agreement for sale is concerned. Such agreement merely embodies reciprocal contractual obligations and entitles one party to compel execution of a conveyance in accordance with law. It neither transfers ownership nor, by itself, creates any charge upon the property. However, the present controversy cannot be resolved merely by invoking the legal incidents of a simple agreement for sale. The Development Agreement before this Court is not an ordinary bilateral agreement by which one party agrees to sell an existing immovable property to another for a fixed consideration. It is a composite commercial arrangement under which the developer undertakes to conceive, finance, construct, market and commercially exploit an entire real estate project while simultaneously acquiring specified rights in the completed development.

48. The Court must therefore guard against two equally erroneous approaches. The first would be to treat every Development Agreement as nothing more than an agreement for sale. The second would be to hold that every Development Agreement necessarily creates proprietary rights requiring compulsory registration. Neither proposition correctly reflects the statutory scheme. Every Development Agreement must be construed upon its own terms. The legal consequences flow not from the label attached to the document but from the rights and obligations which the parties have consciously incorporated therein.

49. In the present case, the Development Agreement does not merely authorise the Appellant to undertake construction upon the land belonging to the owners. Nor does it merely provide that after construction the parties shall negotiate further arrangements. The agreement itself determines the precise commercial entitlement of each contracting party in the completed project. It identifies the developer's share with certainty. It authorises the developer to independently retain or dispose of the units falling to its share. It obliges the owners to execute conveyances in favour of persons nominated by the developer. It further contemplates conveyance of proportionate undivided interests in the land corresponding to the units forming part of the developer's allocated share. These provisions are neither incidental nor ancillary. They constitute the very foundation upon which the commercial venture is structured.

50. The submission therefore advanced on behalf of the Appellant that Clause 34 postpones creation of all rights until execution of future conveyances does not commend acceptance in its entirety. Clause 34 postpones transfer of legal title. It does not postpone determination of the beneficial allocation of rights between the contracting parties. The allocation stands completed under the Development Agreement itself. Future conveyances merely complete the legal formalities required to perfect those rights in favour of the subsequent purchasers or the society to be constituted after completion of the project. The distinction between acquisition of contractual entitlement and perfection of legal title must therefore be maintained throughout.

51. At the same time, the Court is equally unable to accept the broader submission advanced on behalf of the respondent that the Regulatory Authority possesses unrestricted jurisdiction to determine every issue arising under the Registration Act. Such proposition travels beyond the statutory framework. The Regulatory Authority is not constituted under the Registration Act. It neither exercises supervisory jurisdiction over registering officers nor adjudicates disputes concerning title to immovable property. Questions involving cancellation of documents, declarations regarding title or adjudication of rival proprietary claims continue to remain within the exclusive jurisdiction of competent civil courts and authorities constituted under other enactments. The Regulatory Authority cannot convert proceedings under Section 4 of the RERA Act into a comprehensive adjudication regarding title or validity of documents.

52. Nevertheless, while exercising jurisdiction under Section 4, the Regulatory Authority cannot be expected to disregard the legal consequences flowing from the very document upon which the promoter founds his claim. The document constitutes the source of the applicant's authority to undertake development. Examination of its legal character is therefore incidental to discharge of the statutory duty entrusted to the Authority. Such examination does not amount to adjudication of title. It merely enables the Authority to determine whether the applicant possesses the legal capacity necessary to undertake obligations as promoter under the Act. The distinction between incidental examination and plenary adjudication must always be borne in mind.

53. The Appellant has also argued that unless the agreement itself transfers ownership, it can never attract Section 17 of the Registration Act. Such submission overlooks the language employed in the Registration Act. The expression "creates or declares any right, title or interest" is considerably wider than an instrument of conveyance. Every document which transfers ownership undoubtedly creates an interest. The converse, however, is not necessarily true. A document may create or declare valuable proprietary rights falling short of complete ownership and yet require compulsory registration. The statutory inquiry therefore is not confined merely to transfer of title but extends to the legal incidents flowing from the instrument itself.

54. Applying above principles to the Development Agreement under consideration, the cumulative effect of Clauses 2, 4, 16 and 34 cannot be ignored merely because Clause 45 reserves legal possession with the owners. Reservation of possession during execution of construction is commercially understandable and entirely consistent with orderly development of the project. Simultaneously, the agreement unmistakably allocates identifiable commercial rights in the completed project and also authorises their independent exploitation by the developer and obliges the owners to execute future conveyances in conformity with those predetermined rights. The agreement therefore creates considerably more than a mere contractual licence to construct. It defines the beneficial entitlement of the parties in relation to the completed project itself. It is equally significant to note that the Appellant's entitlement is not dependent upon any future discretion to be exercised by the owners. Once the conditions contemplated by the agreement stand fulfilled, the owners possess no contractual liberty either to redistribute the agreed shares or to refuse execution of conveyances in accordance with the developer's nominations. The agreement itself has irrevocably fixed those rights. The subsequent conveyances merely operationalise what already stands contractually determined. This aspect distinguishes the present document from a simple executory agreement where the parties remain free to negotiate or decline future transfer.

55. For these reasons, I find myself unable to accept the principal submission advanced on behalf of the Appellant that the Development Agreement merely creates contractual rights of the nature contemplated by a simple agreement for sale. Equally, I am unable to endorse the broader reasoning adopted by the respondent suggesting that every Development Agreement produced before the Regulatory Authority necessarily requires compulsory registration. The correct legal position lies between these two extremes. Whether registration is compulsory depends entirely upon the nature of rights created by the individual document. Upon a cumulative reading of the Development Agreement in the present case, the operative clauses create defined proprietary incidents in favour of the developer extending beyond a mere contractual licence or promise of future transfer. The agreement therefore falls within the class of instruments attracting compulsory registration under Section 17 of the Registration Act.

56. Once the above conclusion is reached by this Court then the foundation of the Appellant's challenge substantially disappears. The Regulatory Authority did not reject the application because the document was described as a Development Agreement. It rejected the application because, upon examination of the operative clauses, it concluded that the agreement created rights attracting compulsory registration and remained unregistered. The Appellate Tribunal independently re-examined the agreement and affirmed that conclusion. The exercise undertaken by both authorities remained confined to determination of the legal efficacy of the document produced by the Appellant in support of its application for registration of the project. Such exercise, in the facts of the present case, cannot be characterised as jurisdictional overreach.

57. Upon anxious consideration of the rival submissions, the pleadings, the Development Agreement, the statutory provisions and the reasoning adopted by both the authorities below, this Court is of the opinion that the controversy does not admit of an extreme interpretation in favour of either side. The Appellant is not correct in contending that the Regulatory Authority has absolutely no jurisdiction to examine whether the document produced before it is one which attracts compulsory registration under the Registration Act. Equally, the respondent cannot be understood to contend that every Development Agreement produced before the Authority must necessarily be compulsorily registered irrespective of its contents. The true legal position lies in between these two propositions. The jurisdiction of the Regulatory Authority is necessarily incidental to the discharge of its statutory obligation under Section 4 of the Real Estate (Regulation and Development) Act. It is entitled to examine whether the agreement relied upon by the promoter satisfies the legal requirements governing such document. Such examination, however, is confined to the limited purpose of determining whether the applicant possesses the legal authority to undertake the proposed development and cannot be expanded into a plenary adjudication of title or proprietary disputes between the contracting parties.

58. The Appellant has also argued that Rule 3 of the Goa Rules merely requires production of a Development Agreement and nowhere employs the expression "registered Development Agreement". This submission is undoubtedly correct as far as the language of the Rule is concerned. Rule 3 by itself does not mandate compulsory registration of every

Development Agreement. However, the consequence flowing therefrom is not that the Regulatory Authority is precluded from examining the legal character of the document. The Rule merely prescribes the nature of the document required to accompany the application. Whether the document itself answers the requirements of law necessarily remains open for examination by the Authority. Any other interpretation would oblige the Regulatory Authority to accept even an instrument which is ex facie unenforceable or contrary to the mandatory provisions of law merely because it bears the nomenclature of a Development Agreement. Such interpretation would defeat the very object underlying Section 4 of the Act.

59. The Appellant has relied upon following decisions:

(i) **Vayyaeti Srinivasarao v. Gaineedi Jagajyothi**[1]**;**

(ii) **Padma Nair v. Deputy Collector, Valuation and Stamp Duty**[2]**;**,

(iii) **Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana**[3]**.**

[1] 2026 SCC OnLine SC 84
[2] 1993 SCC OnLine Bom 255
[3] (2012) 1 SCC 656

The above referred case laws are in support of his submissions dealing with the distinction between an agreement for sale and a conveyance, scope and ambit of Section 53A and Section 54 of Transfer of Property Act and also to support his contention that the document of Agreement for Sale or Development Agreement would not transfer any interest in any immovable property. The ratio emerging from that decision, as relied upon by the Appellant, is that an agreement which merely creates a right to obtain a future conveyance does not itself transfer ownership or create an interest in immovable property merely because possession has been delivered or powers have been granted for development. The principles emerging from the said judgment undoubtedly continue to represent an important distinction recognised by law. However, the factual matrix of the present case is materially different. The Development Agreement before this Court goes considerably beyond the agreement examined in that case. The allocation of specific percentages in the completed project, the irrevocable authority conferred upon the developer to deal with its allotted share, the obligation imposed upon the owners to execute conveyances in favour of nominees of the developer, and the corresponding allocation of undivided interests in the land constitute operative features which were independently examined by both authorities below. Consequently, the Appellant cannot derive complete assistance from the aforesaid decision. On the contrary, the principle laid down in the case of **Suraj Lamp** (supra) is unexceptionable. The Appellant relies upon the said judgment overlooks that the present development agreement is not a mere agreement to sale simplicitor. The rights flowing under Clauses 4, 16 and 34 are considerably wider than those arising under an ordinary executory contract. The ratio of **Suraj Lamp** (supra) therefore does not conclude the controversy in favour of the appellant as the judgment lays down three important principles such as (i) an agreement to sale does not convey title (ii) ownership passes only by registered conveyance (iii) Courts must distinguish between contractual rights and transfer of proprietary rights. Though the judgment actually assists both sides it only supports the Appellant to the extent that mere agreement for sale creates no title. However, the judgment supports the respondent because the Court is then required to examine whether the document is merely an agreement for sale or something more.

60. Reliance has also been placed by the Appellant upon the statutory distinction embodied in Section 54 of the Transfer of Property Act. There can be no quarrel with the proposition that a contract for sale by itself does not create any interest in immovable property. That proposition has repeatedly been recognised by the Courts. Nevertheless, every

Development Agreement cannot automatically be assimilated to a simple contract for sale. The legal consequences depend entirely upon the operative provisions of the document. In the present case, the agreement embodies a composite arrangement creating reciprocal obligations coupled with predetermined beneficial allocation of the completed development. The document therefore has to be construed according to its own terms rather than by applying the principles governing ordinary agreements for sale in a mechanical manner.

61. The Respondent, on the other hand, has relied upon the provisions of Sections 15, 17 and 37 of the Real Estate (Regulation and Development) Act to contend that the Regulatory Authority is duty-bound to ensure that the promoter possesses legally enforceable rights before registration of the project. The respondent has also relied upon the statutory definition of "promoter" and has emphasised that where the landowner and the developer are distinct entities both become jointly responsible for compliance with the obligations under the Act. To that extent the respondent's submissions merit acceptance. The regulatory framework established by the Act proceeds upon transparency, accountability and enforceability of obligations. Registration of a project cannot proceed upon a document whose legal efficacy is itself rendered doubtful by non-compliance with mandatory statutory requirements. At the same time, the respondent's broader contention that the Authority possesses unrestricted jurisdiction to determine every question arising under the Registration Act cannot be accepted. The Authority's examination remains incidental to its functions under the RERA Act and cannot be equated with the jurisdiction exercised by civil courts or authorities constituted under the Registration Act.

62. The concurrent findings recorded by the Regulatory Authority and the Appellate Tribunal have also been criticised as being findings of law rather than findings of fact. In my considered opinion, the construction of a written instrument undoubtedly gives rise to a mixed question of law and fact. However, once the authorities have construed the document by reading all the operative clauses together and have recorded concurrent findings regarding the legal effect flowing therefrom, interference by this Court would be justified only if such construction is demonstrably contrary to the language employed in the document or proceeds upon an erroneous understanding of the governing statutory provisions. No such perversity has been demonstrated in the present case. The authorities have analysed Clauses 2, 4, 16, 34 and the remaining provisions of the agreement in considerable detail and have reached the conclusion that the document creates rights attracting compulsory registration. The reasoning adopted cannot be characterised as irrational or contrary to the plain language of the agreement.

63. The argument that the Development Agreement merely confers a licence to develop without creating any interest in the immovable property also cannot be accepted in its entirety. Clause 45 undoubtedly reserves legal possession with the owners and grants only an irrevocable licence to the developer for carrying out construction. However, Clause 45 does not exhaust the rights flowing from the agreement. When read together with Clauses 4, 16 and 34, the agreement creates a comprehensive commercial framework under which the developer acquires enforceable rights in relation to a defined portion of the completed project together with the corresponding undivided share in the land. Reservation of possession during construction cannot dilute the legal consequences flowing from the remaining operative provisions.

64. The object of the Real Estate (Regulation and Development) Act as already recorded above is to ensure certainty, transparency and accountability in real estate transactions. A promoter seeking registration of a project necessarily invites the Regulatory Authority to recognise the legal foundation upon which his right to undertake the development rests. Where the foundational document itself attracts compulsory registration under the Registration Act, the Authority cannot be faulted for insisting upon compliance with that statutory requirement before extending the regulatory recognition contemplated under the Act.

65. For all the aforesaid reasons, this Court is of the considered opinion that the Regulatory Authority did not exceed the jurisdiction vested in it under the Real Estate (Regulation and Development) Act by examining the legal character of the Development Agreement produced by the Appellant. The Appellate Tribunal was equally justified in affirming that exercise. Upon an independent construction of the Development Agreement, this Court is satisfied that the operative clauses create identifiable proprietary incidents extending beyond a mere contractual licence or executory promise. Consequently, the agreement attracts compulsory registration under Section 17 of the Registration Act and the Appellant was not entitled to seek registration of the project based on the unregistered instrument.

66. Having independently considered the rival submissions, the statutory scheme, the terms of the Development Agreement and the reasons recorded hereinabove, the substantial questions of law that arose for consideration and specifically framed at the time of admission are answered as follows:

(i) *Question No.1 – Whether the Respondent and/or the Tribunal had jurisdiction to consider whether the Agreement dated 01.02.2020 between the appellant and land-owners was required to be registered under the Registration Act?*

The question is answered in the affirmative. The Regulatory Authority does not exercise the powers of the Registering Authority under the Registration Act. However, while exercising jurisdiction under Sections 3 and 4 of the RERA Act read with Rule 3 of the Goa Rules it is very much competent to examine for the limited purpose of considering an application for registration of the real estate project as to whether the Development Agreement relied upon by the promoter is a document which, in law, attracts compulsory registration under Section 17 of the Registration Act. Such examination is incidental and ancillary to the discharge of its statutory function and does not amount to adjudication of title or assumption of the powers vested in the Registering Authority.

(ii) *Whether Section 13 of the Act restricts consideration to agreements for sale with allottees, and consequently de hors the said Section, the Respondent and/or the Tribunal could not consider registration of an agreement for sale between an owner/land-owner, and developer/promoter?*

The question is answered in the negative. Section 13 of the RERA Act regulates agreements for sale executed between a promoter and an allottee before acceptance of more than 10% of the sale consideration. The said provision neither governs nor exhausts the powers of the Regulatory Authority while consideration of application under Sections 3 and 4 of the Act. The authorities' jurisdiction in the present case arises from the statutory requirement of examining the Development Agreement produced as the source of the promoter's authority to undertake the project and is not founded upon Section 13.

(iii) *Whether the Said Agreement required registration under the Registration Act, in the light of Section 17 and Section*

17(2) of Registration Act and proviso thereof, read with Section 54 of the Transfer of Property Act?

The question is answered in the affirmative. Upon a true and harmonious construction of the Development Agreement dated 01.02.2020 particularly Clauses 2, 4, 16 and 34 and the connected provisions, the Agreement creates and declares the rights extending beyond a mere executory contract for sale. The Agreement therefore falls within the ambit of Section 17 of the Registration Act and is not saved by Section 17(2), merely because the legal conveyance of title is contemplated at a subsequent stage. Section 54 of the Transfer of Property Act does not assist the Appellant for the reason that the present document is materially distinguishable from a simple agreement for sale.

(iv) *Whether in an agreement that related only to the land, reference to the manner in future built-up structures, proposed to be constructed therein, which were not themselves the subject matter of the agreement, were to be shared and/or allotted, could not amount to creation of right and/or interest, so as to render the agreement registration under the Registration Act?*

The question is answered in the negative. The reference in the Development Agreement is not confined to a future method of distribution of the proposed construction. The agreement itself identifies the developers' entitlement to a defined share in the completed project together with the corresponding undivided interest in the land and this authorises the developer to commercially exploit such entitlement and obliges the owners to execute conveyances in accordance with the contractual allocation. The cumulative effect of the operative clauses creates identifiable rights in relation to the immovable property and consequently attracts the requirement of compulsory registration.

67. In view of the answers returned to the substantial questions of law, this Court finds no infirmity in the judgment and order passed by the appellate tribunal affirming the order of the Goa RERA Authority. The concurrent findings recorded by the authorities are founded upon correct appreciation of the development agreement and the governing statutory provisions. Consequently, the Second Appeal fails and stands dismissed as no substantial ground warranting interference is therefore made out.

68. Accordingly, the Appeal fails and is liable to be dismissed.

ORDER

(i) The Appeal stands dismissed.

(ii) The judgment and order passed by the Maharashtra Real Estate Appellate Tribunal affirming the order of the Goa Real Estate Regulatory Authority is upheld as confirmed.

(iii) It is declared that the conclusion recorded by the Regulatory Authority and affirmed by the Appellate Tribunal that Development Agreement in question required registration under Section 17 of the Registration Act does not suffer from any error of law warranting interference in this Appeal.

(iv) The Appellant shall be at liberty to present the Development Agreement for registration in accordance with law and thereafter pursue its application for registration of the real estate project before the Goa Real Estate Regulatory Authority.

(v) Upon production of the duly registered Development Agreement, the Regulatory Authority shall process the Appellant's application on its own merits in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Rules framed thereunder, uninfluenced by any observation in this judgment except on the issue decided herein.

(vi) There shall be no order as to costs.

69. Pending applications, if any, stand disposed of.

HITEN S. VENEGAVKAR, J.