

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI**

M.A. NO. 727/25 (Stay)

IN

Appeal No. AT07/00582/2025

In

Complainant No. F.No:3/RERA/New Proj (1435)/2024/581

Edcon Real Estate Developers
office at 5th floor, Sidharth Bandodkar Bhavan,
Dr. P. Shirgaonkar Road, Panaji, Goa

...Appellant

V/s

The Goa Real Estate Regulatory Authority
Plot No. 40, Block No. 101, 1st Floor, EDC, Patto
Plaza Panji Goa.

...Respondent

Adv. Mr. Ryan Menezes i/b Sr. Adv. Agnelo Diniz for appellant.

Adv. Ms. Akshata Bhat for respondent.

CORAM : SHRI S. S. SHINDE J., CHAIRPERSON &
SHRI SHRIKANT M. DESHPANDE, MEMBER (A)

RESERVED ON : 18th March, 2026

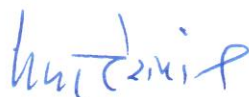
PRONOUNCED ON: 10th April, 2026

(Through Video Conference and Physical (Hybrid) Mode)

JUDGMENT

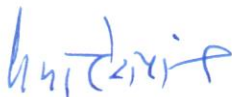
[PER: SHRIKANT M. DESHPANDE, MEMBER (A)]

1. The captioned appeal arises from the order dated 13.05.2025, passed by the Goa Real Estate Regulatory Authority (for short "the



Authority”) in complaint no. F. No:3/RERA/New Proj.(1435)/2024/581 filed by the appellant herein for seeking registration of the real estate project in the name and style “Edcon Crown Konkan Suites” under the provisions of RERA Act, 2016.

2. The appellant is a partnership firm registered under the Indian Partnership Act, 1932 and is promoter of the said project. The appellant has executed the development agreement dated 01.02.2020 with the land owners of the project land, Joaquim Vicente Leitao and Maria Esperanca Leitao (for short will be hereinafter referred to as “land owners”) with M/s. Carmo Lobo Developers as confirming party (for short will be hereinafter referred to as “confirming party”). By the said development agreement, it was agreed that the appellant develop the project property as per plans approved and conditions imposed by the concerned authorities of which 40% built up area to be constructed is to be allotted to land owners, 50% of the built-up area to the appellant and 10% of the built-up area is to be allotted to the confirming party along with payment of Rs. 08,67,280/- being the amount incurred towards development fees and infrastructure tax.
3. On or above 01.10.2024, the appellant applied online for registration of the said project under the Provisions of RERA Act, 2016 and/or Rules framed thereunder and along with the application appellant uploaded necessary documents.
4. By email dated 29.10.2024, the Authority informed a partner of the appellant about the various queries and inter alia called upon the appellant to submit a copy of the development agreement. Among others the appellant replied to these queries of the Authority regarding the development agreement by email dated 05.12.2024.



5. Upon receiving the email dated 05.12.2024, the Authority drew attention of the appellant to the circular dated 09.10.2022 regarding registration of the joint development agreement between the promoter/ and land owners. On the basis of the said circular, the Authority insisted that the appellant furnish it with a registered development agreement. Equally, the Authority refused to register the said project on the basis of an unregistered development agreement.
6. Thereafter, the appellant challenged the said circular by filing Writ Petition No. 3101 of 2024 (F) before the Hon'ble High Court of Bombay at Goa. The said writ petition was disposed of by the Hon'ble High Court by its order dated 02.04.2025. The said order is reproduced below.

"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*

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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:

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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*

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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.

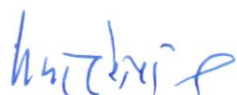
4. *In the wake of the clarity that is now offered through the affidavit, we do not deem it necessary to test the challenge in this petition.*
5. *Needless to state that all those applications which are pending before the Goa Real Estate Regulatory Authority in the wake of the clarification offered, 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. Pursuant to the said order of Hon'ble Bombay High Court, the Authority heard the appellant and disposed of the said application for registration by the detailed impugned order after consideration the submissions of the appellant and various judgments of which the appellant has placed reliance upon. The Authority passed the following order.

"41. This Authority is of the view that various clauses of the Agreement dtd 01.02.2020 are eloquent of the substantial rights that have been created in favour of the Applicant Promoter (Developer) and therefore, the said Agreement dated 01.02.2020 is compulsorily registrable under the provisions of the Registration Act. Pertinently, both the developer and the land owners are jointly Registration Act. Pertinently, both the developer and the land owners are

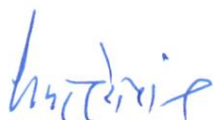
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jointly liable for the functions and responsibilities of the promoter specified under RERA Act as per the explanation under Section (2) (zk) RERA Act, 2016. The Joint Development Agreement thus becomes the basis of the joint liability of both promoters. Therefore, the requirements of registration of the said agreement dated 01.02.2020 being applicable in the instance case, needs to be complied with before registration of the Project applied for is granted. Accordingly, the Promoter Applicant is given two months' time to submit a copy of the Agreement dated 01.02.2020 duly registered with jurisdictional Sub-Registrar and also to rectify the other deficiencies noted at para 19 to facilitate the disposal of its pending application for registration of the project 'Edcon Crown Konkarn Suites' under Section 3 of the Real Estate (Regulation and Development) Act, 2016 read with the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates on interest and Disclosures on website) Rules 2017.

8. Aggrieved by the said impugned order, the appellant has filed the captioned appeal on the grounds set out in the memorandum of appeal seeking following reliefs.
 - i. Quash and set aside the impugned order with all legal effects and consequences.
 - ii. Directions to the Authority to register the project under the Provisions of RERA Act, 2016, without requiring the parties to the development agreement to mandatorily register the said development agreement dated 01.02.2020.



9. The controversy raised in the appeal is very narrow, i.e. whether the said development agreement comes within purview of Section 17 (1) (b) of the Registration Act, 1908 and therefore is required to be registered? We called upon the learned advocates for the parties to advance their arguments on this point.
10. We have heard the learned advocates for the parties at length. Their submissions are nothing but reiteration of the contents of the memorandum of appeal, reply, and written submissions.
11. The learned advocate for the appellant has placed reliance on the following judgments.
 - i. In the case of *Annappa Maruti Zalke V. Ramu Balappa Bogarnal* (2025 DGLS (Bom) 748) passed by the Hon'ble Bombay High Court.
 - ii. In the case of *Manisha w/o Balkrushna Kode V. Madanlal s/o Uttamchan Desarda and Others* (2023 DGLS (Bom) 3401) passed by the Hon'ble Bombay High Court.
 - iii. In the case of *K. Arumuga Velaiah Vs. P. R. Ramasamy and another* reported in (2022) 3 SCC 757 by the Hon'ble Supreme Court.
12. The learned advocate for the respondent/Authority has placed reliance on the following judgments.
 - i. In the case of *Suhas Damodar Sathe Vs. The State of Maharashtra And Another* Writ Petition No. 8030 of 2017, decided on 11.03.2025 by the Hon'ble Bombay High Court.
 - ii. In the case of *Brahmanath Singh And Others Vs. Chandrakali Kuer and Another* A.F.A.D. No. 1024 of 1958 decided on 30.08.1960 by the Hon'ble Patna High Court.



- iii. In the case of *Sushil Kumar Agarwal Vs. Meenakshi Sadhu & Ors* Civil Appeal No. 1129 of 2012 decided on 09.10.2018 by the Hon'ble Supreme Court.
13. The learned advocate for the appellant has submitted that Clause 45 of the Development Agreement expressly states that possession of the said project property would remain vested in the landowners. The appellant/developer was only granted a license to enter into the said property, for the purpose of construction therein. Registration of the proposed project in the said Property, by the name and style of "Edcon Crown Konkan Suites" under the Real Estate (Regulation and Development) Act, 2016 ("Act") is sought. In this context, the issue now arises whether the Agreement dated 01/02/2020, is required to be registered at the office of the jurisdictional Sub-Registrar.
14. The learned Advocate submitted that Section 17 of the Registration Act, 1908, provides for registration of documents as under (the said section is reproduced below):
- "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,*

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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 53-A 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

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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

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comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by 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

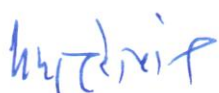
(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

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.

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(b) and (c) of Section 17(1), thereof, shall not apply, and Section 17(2)(v) expressly and in clear and unambiguous terms exempts from the requirement of mandatory registration a document that does not itself create or affect any right, title or interest in immovable property worth 100 or more, and only creates a right to obtain another document in the future.

19. The learned Advocate submitted that, it is thus abundantly clear, that Section 17(1) and 17(1A) of the Registration Act requires documents that effect transfer of either title, and/or of possession, and/or of both, *inter vivos*. Thus, if a document does not effect any transfer, either of title, and/or of possession, and/or of both, *inter vivos*, nothing in these two sections require them to be mandatorily registered at the office of the jurisdictional Sub-Registrar. Further it is amply clear that if an indenture is executed, which does not transfer title and/or possession, and only, creates a right to have a document which effects such a transfer in the future, Section 17(1)(a) and Section 17(1)(b) of the Registration Act, will not apply to such a document and it will not be required to be mandatorily registered.
20. While deliberating on the nature of the Development Agreement dated 01/02/2020, the learned Advocate submitted that: -
 - i. The Development Agreement dated 01/02/2020 does not transfer any title from the Owners, either to the Developer, or to any other.
 - ii. A plain reading of the Agreement dated 01/02/2020 shall reveal that Clauses (a), (d) and (e), of Section 17(1) of the Registration Act are wholly inapplicable to it.
 - iii. Clause 45 of the Agreement dated 01/02/2020 is clear and unambiguous that possession of the said Property would



remain vested in the Owners. The Developer was only granted a license to enter into the said Property, for the purpose of construction therein. A 'License' under Section 52 of the Indian Easements Act, 1882 is a permission granted by one person to another to do something on immovable property that, without such permission, would be unlawful and would not amount to an easement or interest in the property.

- iv. Thus, on consideration of Clause 45 of the Agreement dated 01/02/2020, since possession of the said Property is not transferred, nor is there any acknowledgement of payment of whole or part of the consideration, the Agreement dated 01/02/2020 does not fall with the scope and/or amplitude of Clauses (b) and (c), of Section 17(1) of the Registration Act, and do not require registration under these provisions either.
- v. Per contra, the Agreement dated 01/02/2020 is squarely covered by Section 17(2)(v) of the Registration Act. While it does not itself create or affect any right, title or interest in the said Property worth Rs. 100 or more, and it only creates a right to obtain another document in the future, which would create, affect and/or transfer right, title and/or interest in the said Property, either in favour of the Developer, and/or in favour of prospective/eventual purchasers of the built up units in the proposed project, i.e., assurance of proportionate undivided share of right, title and/or interest in the said Property corresponding to the individual units of which the said Project shall be comprised, (as borne out of various clauses, including but not limited to Clauses 7, 16 & 34). The Explanation to Section 17(2) of the Registration Act provides that a document purporting or operating to effect a contract for sale of



immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

- vi. For all of these reasons, the Agreement dated 01/02/2020 cannot absolutely, by even the wildest stretch of imagination, be held to require mandatory registration under Section 17 of the Registration Act.
- vii. The Reliance is placed on the Judgment of the Hon. Bombay High Court *Annappa Maruti Zalke v. Ramu Balappa Bogarnal* (2025 DGLS (Bom) 748) where the Hon. Court held thus:

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

- viii. In *Manisha w/o Balkrushna Kode v. Madanlal s/o Uttamchan Desarda and Others* (2023 DGLS (Bom) 3401) where the Hon'ble Bombay High Court held thus:

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

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

21. The learned Advocate has submitted that the law that emerges from *Annappa Maruti Zalke and Manisha w/o Balkrushna Kode*, supra, squarely apply to the facts of the present case. Therefore,

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the said Development Agreement is not mandatorily required to be registered.

22. While deliberating on the Interpretation of contracts, the learned Advocate submitted as under: -

- i. If the terms of the contract are clear and unambiguous, the Authority has to give effect to the plain and ordinary meaning of those terms. The duty of the Authority is not to delve into the supposed intention of the parties, but to give effect to the words used in the contract according to their plain, ordinary, and grammatical meaning. Other clauses must be read harmoniously and cannot contradict an express declaration.
- ii. In *Adani Power (Mundra) Limited v. Gujarat Electricity Regulatory Commission and Others* ((2019) 19 SCC 9) the Hon'ble Supreme Court of India observed thus:

"24. It could thus be seen that it is more than well settled that the clauses in the agreement ought to be given the plain, literal and grammatical meaning of the expression used in the same. No doubt, that the courts will also try to gather as to what intention the parties wanted to give them. As has been held by Ranjan Gogoi, J. (as His Lordship then was) the principle of business efficacy could be invoked only if by a plain literal interpretation of the term in the agreement or the contract, it is not possible to achieve the result or the consequence intended by the parties acting as prudent businessmen. This test requires that a term can only be implied, if it is necessary to give business efficacy to the contract, to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. If the contract makes business sense without the term, the

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courts will not imply the same. It is amply clear that courts can imply a clause only if it is found that the plain and literal meaning given to the expression used in the terms is not in a position to make out the intention of the parties. Reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by and between the parties thereto. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. It must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract. As held in the case of Nabha Power Ltd., for invoking the business efficacy test and carving out an implied condition, not expressly found in the language of the contract, the following five conditions will have to be satisfied: (SCC p. 540, para 49)

- (1) Reasonable and equitable;*
- (2) Necessary to give business efficacy to the contract;*
- (3) It goes without saying i.e. the Officious Bystander Test;*
- (4) Capable of clear expression; and*
- (5) Must not contradict any express term of the contract."*

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23. The learned Advocate has submitted that thus, where a clear clause stipulates that possession shall remain with the Owners, and no other interest is shown to be created in the said Property in favour of the Developer, by Agreement dated 01/02/2020 itself, which only reserves a right to the Developer to have the title to the said Property conveyed at the future date, no such intention can be read into Agreement dated 01/02/2020. Indeed, to now read such a clause and/or intent into it would contradict, what the parties have expressly and unambiguously expressed and stated in Agreement dated 01/02/2020 by way of clause 45.
24. The learned Advocate submitted that in the light of the above, the Agreement dated 01/02/2020 is not required to be registered, and the project, 'Edcon Crown Konkan Suites' must be registered, without requiring the parties to mandatorily register the Agreement dated 01/02/2020.
25. Per contra, the learned advocate for the respondent/Authority has submitted that by the order dated 13.05.2025, the Authority had given two months to the Promoter Applicant to submit a copy of the Agreement dated 01.02.2020 duly registered with jurisdictional Sub Registrar and also to rectify the other deficiencies to facilitate the disposal of its pending application for registration of the project 'Edcon Crown Konkan Suites' under Section 3 of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") read with the Goa Real Estate (Regulation and Development) Rules, 2017 ("Goa RERA Rules"). The same was predicated upon the fundamental ground that the Appellant's claim of being considered a Promoter was based exclusively upon an unregistered Development Agreement dated 01.02.2020, which, being compulsorily registrable under the Registration Act, 1908, had not



been registered in accordance with statutory mandate. As such, this unregistered document cannot form the basis for the Appellant herein to seek registration as a Promoter of the project under consideration.

26. The learned Advocate submitted that the decision under challenge is a reasoned and legally sound order firmly anchored to the statutory provisions and authoritative judicial precedent, and thus call for no interference from this Hon'ble Tribunal. The land forming the subject matter of the proposed project "Edcon Crown Konkan Suites" is admittedly not owned by the appellant. The registered title remains vested in Joaquim Vicente Leitao and Maria Esperanca Leitao, the landowners. The Appellant predicates its claim to be recognized as a "promoter" within the meaning of Section 2(zk) of the RERA Act solely upon the Joint Development Agreement dated 01.02.2020.
27. The learned Advocate has submitted that upon careful examination of the specific provisions of the said development agreement dated 01.02.2020 reveals that, it ventures far beyond the realm of a mere executory promise to execute a future conveyance. The following clauses operate in praesenti to create immediate proprietary interests in favour of the Appellant:
- a. Clauses 2, 4, 5.1 and 6.2** 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.



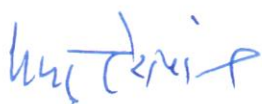
b. Clause 16 expressly states that the Developer's 50% share "shall belong to the Developer" with full rights to construct, market and sell those units, while landowners are bound to act as confirming parties.

c. Clause 36 secures the Developer's 50% entitlement even upon augmentation of FAR/FSI, demonstrating a vested proprietary interest rather than mere contractual expectation.

d. Clauses 22 and 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.

e. Clause 52 apportions tax liabilities to each Party's respective share, treating the Developer's allocation as actual transfer of property interest.

28. The learned advocate submitted that the aforementioned clauses, when read harmoniously and in their totality, demonstrate that the said development agreement creates immediate vested rights rather than mere contractual obligations to execute a document in the future to have rights in the said property conveyed to the Appellant. These provisions mirror the exact type of arrangements that the Hon'ble Bombay High Court in *Suhas Damodar Sathe v. State of Maharashtra* (2025 SCC Online Bom 576) found to be compulsorily registrable, where the developer was granted rights to construct, sell, and appropriate proceeds from the property
29. The learned Advocate submitted that Section 17(1)(b) of the Registration Act, 1908 mandatorily requires registration of all 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 in immovable property" of the value of one hundred rupees and upwards. Section 17(2)(v) of the Registration Act carves out a limited exception for instruments which "merely create a right to obtain another document" that will, when executed, effect the actual transfer or assignment of the right, title, or interest in the immovable property. Section 49 of the Registration Act provides that documents of the description referred to in Section 17(1), other than wills, "shall not affect any immovable property" and "shall not be received as evidence of any transaction affecting such property" unless they have been registered in accordance with the Act, save for limited collateral purposes as specified in the proviso. Section 2(zk) of the RERA Act defines "promoter" to include, inter alia, any person who has entered into an arrangement or agreement with the owner of land for the development of such land into a real estate project. Rule 3(2)(d) of the Goa RERA Rules, 2017 obligates that when the applicant who is seeking registration as a Promoter or a Real Estate Project under the RERA Act, is himself not the owner of the land, he has to produce "the executed development agreement between the applicant and the owner of the land."

30. The learned advocate submitted that the order dated 13.05.2025, contains an exhaustive analysis of the DA's substantive clauses, which confirms that the agreement does indeed creates immediate vested rights in the immovable property sought to be developed. The Authority correctly identified that:

a. Clause 4 operates to vest "the total super built-up area in the Developer (50%), Owners (40%), and Confirming Party



(10%) "on 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."

c. Clause 52 creates tax liability obligations for each party "in respect of the premises allotted to them," which, as the Authority correctly noted, "itself indicates creation/ transfer of interest/rights in the subject property."

d. The Authority's reliance on *Suhas Damodar Sathe Vs. State of Maharashtra* (Supra) is legally sound and directly applicable. The Court, in the said case held that where a development agreement grants the developer "extensive authority-indeed, a right to occupy the property for construction, to build new structures, and to negotiate their sale" such agreement "vests in the developer an enforceable interest in the land", requiring registration.

31. The learned Advocate submitted that the present development agreement fundamentally differs from the pure executory agreements to sell considered in *Annappa Maruti Zalke (supra)* and *Manisha Kode (supra)*, as relied upon by the Appellant. Unlike those agreements which merely created rights to obtain future documents, the development agreement operates in praesenti to transfer proprietary interests, development rights, and beneficial ownership onto the Appellant. The Appellant thus cannot claim refuge under the exception contained in Section 17(2)(v) since the said development agreement does not "merely create a right to



obtain another document" but actually operates to transfer and vest proprietary interests in the Developer immediately upon execution.

32. As discussed and authoritatively laid by the Hon'ble Patna High Court in *Brahmanath Singh V. Chandrakali Kuer*, A.F.A.D. 1024 of 1958,- the expressions "create, declare, assign, limit or extinguish" in Section 17(1)(b) "imply definite change of legal relation to a property by an expression of will embodied in the document." The development agreement manifestly effects such definitive change in legal relations
33. The learned Advocate submitted that the Authority's application of Section 49 of the Registration Act to the present matter is legally sound. As correctly noted in the order dated 13.05.2025, once an instrument falls within the scope of mandatory registration, requirements of Section 17(1)(b) and Section 49 of the Registration Act renders it legally ineffective "to affect any immovable property" and bars its reception "as evidence of any transaction affecting such property" except for limited collateral purposes.
34. The learned Advocate submitted that appellant's anticipated reliance on the proviso to Section 49, which permits limited evidentiary use in suits for specific performance, is misplaced. The proviso has no application to regulatory proceedings under the RERA Act, which are governed by distinct statutory objectives of transparency, legality and consumer protection. The appellant does not seek to rely upon the development agreement for any collateral purpose; rather, it constitutes the foundational basis for its claim to status as a Promoter under Section 2(zk) of the RERA Act. In such circumstances, Section 49 operates as a complete bar,

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rendering the unregistered development agreement a legal nullity for establishing promoter's rights.

35. As held by the Hon'ble Supreme Court in *Sushil Kumar Agarwal v. Meenakshi Sadhu*, (2019) 2 SCC 241, an unregistered agreement cannot be the foundation for claiming any right, title, or interest in immovable property where registration is mandatory under the law.
36. The Appellant's contention that the development agreement falls within the exception under Section 17(2)(v) demonstrates a fundamental misunderstanding of both the nature of the agreement and the scope of the exception. Section 17(2)(v) applies only to instruments that "merely create a right to obtain another document" without themselves creating any present interest.
37. The learned Advocate submitted that as comprehensively discussed, and recorded in the Order dated 13.05.2025, the development agreement does not merely create a right to obtain future documents but actually operates to transfer present proprietary interests. The vesting of 50% super built-up area with proportionate land share, coupled with immediate rights of sale, development, and profit appropriation, constitutes present transfer of property rights. Thus, it has been rightly concluded at paragraph 32 of the order dated 13.05.2025 that the development agreement "unambiguously authorizes the Promoter/Applicant to retain for themselves the balance 50% super built-up area and that Clause 4 of the said agreement further vests the share of super built-up area along with the undivided share of the land in the respective parties.

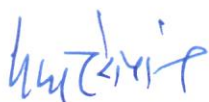


38. This Respondent has correctly applied the principle laid down by the Hon'ble Supreme Court in *Sushil Kumar Agarwal* (Supra) that "in order to determine the exact nature of the agreement signed between the parties, the intent of the parties has to be construed by reading the agreement as a whole" and ascertain whether it creates present interests or merely executory rights.
39. The appellant's reliance on *Annappa Maruti Zalke v. Ramu Balappa Bogarnal* (2025 DGLS (Bom) 748) and *Manisha Kode v. Madanlal* (2023 DGLS (Bom) 3401) is fundamentally misplaced. These decisions concerned pure executory agreements to sell which, by their very nature, create no present interest in immovable property but merely constitute personal covenants to execute future conveyances. The learned Advocate submitted that, the present development agreement, unlike the agreements in those cases, creates immediate vested rights rather than mere executory obligations.
40. The learned Advocate further submitted that the Authority has correctly applied the principle from *Suhas Damodar Sathe* (supra) that where a development agreement confers "extensive authority- indeed, a right-to occupy the property for construction, to build new structures, and to negotiate their sale, it vests in the developer an enforceable interest in the land requiring mandatory registration. The Authority has rightly recorded in paragraph 35 of the Order dated 13.05.2025 that the development agreement creates a "bundle of valuable rights" including (i) revision of plans and bearing expenses alone; (ii) variations and alterations in plans/layout; (iii) selection/ revision of specifications; (iv) formation of society; and (v) project naming rights. The Authority has astutely noted in paragraph 39 of the Order that the Appellant



"represented itself as Promoter Developer and also as landowner despite the ownership of the land being in the name of owners," demonstrating that "the parties to the said agreement had intended to create/transfer interest/rights in the subject property.

41. The learned Advocate has submitted that the Order dated 13.05.2025 is thus a reasoned and legally sound, having properly and completely analyzed the terms of the development agreement dated 01.02.2020. The Order dated 13.05.2025 correctly concluded that the agreement "creates substantial rights" in favour of the Developer and is therefore "compulsorily registrable under the provisions of the Registration Act."
42. The learned Advocate submitted that in the absence of registration, Section 49 of the Registration Act renders the development agreement legally ineffective for the purpose of establishing promoter's rights under the RERA Act. Thus, the refusal to register the project was therefore not only legally correct but essential to uphold the statutory framework and protect the interests of prospective allottees. The decision advances the fundamental objectives of the RERA Act, being, transparency, legal conformity, and consumer protection, while ensuring that developers do not circumvent mandatory registration requirements through creative labelling of statutory instruments.
43. With these submissions, the learned Advocate for the respondent/Authority prayed that this Hon'ble Tribunal may be pleased to dismiss the present appeal filed by the appellant with costs.
44. Having heard the learned advocates for the parties at length and on examination of the pleadings, material on record, the following



points arise for our consideration and determination, and we have recorded our findings thereupon for the reasons to follow as under:

Sr. Nos.	Points	Findings
1.	Whether the said development agreement dated 01.02.2020 falls within the purview of Section 17 (1) (b) of the Registration Act, 1907?	In the Affirmative
2.	Does the impugned order warrant interference in this appeal?	In the negative
3.	What Order?	As per the final Order

REASONS

Point No. 1 and 2

45. It is not in dispute that the appellant, land owners of the project land, have executed the development agreement dated 01.02.2020. It is not in dispute that the said development agreement is not registered document. The parties to the said development agreement are the appellant/promoter, land owners of the project land and M/s. Carmo Lobo Developers as the confirming party. By the said development agreement, it is agreed that the appellant/promoter to develop the project land as per plans approved and conditions imposed by the concerned statutory authorities, of which 40% of the built-up area to be constructed is to be allotted to the land owners, 50% of the built-up area to the appellant and 10% of the built-up area is to be allotted to the confirming party. The contractual obligations of the parties to the

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development agreement are governed by the terms of the said development agreement.

46. The moot question that falls for our consideration is whether the said development agreement falls under the purview of Section 17 (1) (b) of the Registration Act. The said provision deals with documents for which registration is mandatory. Section 17 (1)(b) stipulates that other non-testamentary instruments which purport or operate, 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 requires to be registered mandatorily.
47. It is the contention of the appellant that Clause 45 of the development agreement expressly states that the possession of the said property would remain vested in the land owners. Further, the appellant/promoter is granted the license to enter into the said property for the purpose of construction therein. Section 17 (2) of the Registration Act sets out various circumstances in which Clauses (b) and (c) of Section 17(1), shall not apply and Section 17 (2)(v) exempts from the requirement of mandatory registration a document that does not itself create or affect any right, title or interest in immovable property worth hundred rupees or more and only creates a right to obtain another document in the future. If document does not affect any transfer, either of title and/or possession, and/or of both, nothing in those two sections requires them to be mandatorily registered. Further, if an indenture is executed which does not transfer title and/or possession and only creates the right to have documents which effects such transfer in the future, Section 17 (1) (a) and Section 17 (1) (b) of the



Registration Act, will not apply to such documents and will not be required to be mandatorily registered.

48. It is also the contention of the appellant that looking at the nature of the terms of said development agreement, the said development agreement, by virtue of Clause 45 of the agreement which stipulates that the said property would remain vested with the land owners, promoter was only granted license to enter into the said property for the purposes of construction therein, the said document is not required to be registered. The license under Section 52 of the Indian Easements Act, 1882 is a permission granted by one person to another to do something on immovable property that, without such permission, would be unlawful and would not amount to an easement or interest in the property. Therefore, on consideration of Clause 45 of the development agreement, since possession of the said property is not transferred, nor is there any acknowledgment of payment of whole or part of the consideration, the said development agreement does not fall within the scope and/or amplitude of Clauses (b) and (c), of Section 17(1) of the Registration Act and therefore does not require registration under these provisions.
49. It is the contention of the appellant that, on the contrary, the said development agreement is squarely covered by Section 17 (2)(v) of the Registration Act, while it does not itself create or affect any right, title or interest in the said property worth rupees hundred or more and it only creates a right to obtain another document in the future, which would create, affect and/or transfer right, title and/or interest in the said property either in the favour of the promoter and/or in the favour of prospective/eventual purchasers of the built up units in the said project i.e., assurance of proportionate



undivided share of right, title and/or interest in the said property corresponding to the individual units of which the said Project shall be comprised. The explanation to Section 17(2) of the Registration Act provides that a document purporting or operating to effect a contract for sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money. For these reasons, the said development agreement does not require mandatory Registration under Section 17 of the Registration Act.

50. In order to examine whether the said development agreement purports or operates to create, assign whether in present or in future any right, title or interest, whether vested or contingent, in the immovable property it would require examination of the relevant Clauses of the development agreement. Clause 2 of the development agreement is reproduced below.

"2. IN PURSUANCE of the aforesaid agreement the OWNERS shall permit the DEVELOPERS to develop and put up construction of proposed building in the SAID PROPERTY as its own risk as per the approved plans and as per the terms and condition imposed by the concerned authorities and in consideration thereof the DEVELOPERS on behalf of the OWNERS shall pay to the CONFIRMING PARTY a sum of Rs. 08,67,28/- (Rupees Eight Lakh Sixty Seven Thousand Two Hundred and Eight only) which was incurred by the CONFIRMING PARTY towards the development fees and infrastructure tax as stated above and additionally construct and allot 1-% of the total super built-up area proposed to be

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constructed in the SAID PROPERTY and in further consideration construct and allot 40% of the total super built-up area to the OWNERS in the SAID PROPERTY at the exclusive cost of the DEVELOPERS herein and retain for themselves the balance 50% super built-up area in the SAID PROPERTY, on the following terms and conditions herein. The building to be constructed in the SAID PROPERTY shall be known as SAID PROJECT for the sake of brevity.

51. By the said Clause the land owners have assigned the development rights in favour of the appellant to develop and put up the construction of proposed building in the said property at its own risk. In further granted rights to the appellant to construct and allot 40% of total super built-up area to the land owners and retain with the appellant the balance 50% super built-up area in the said property.
52. Clause 4 of the agreement also stipulates that the appellant shall retain 50% of built-up area with proportionate undivided share in land having exclusive right to deal with and alienate his share in such units, inclusive but not limited to receiving money from the prospective purchasers. Further, in terms of FAR utilized in the said project shall be vested 40% with the land owners, 50% with the developers and 10% with the confirming party.
53. The Clause 16 of the said development agreement is reproduced below.

"16. The DEVELOPERS shall be entitled to construct the balance 50% of the total super built up area in the SAID PROPERTY for itself in the form of shops/flats, at their own cost and expense which shall belong to the DEVELOPERS as their own cost and expense which shall belong to the

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

54. As per the said clause 16, the developer shall be entitled to construct the balance 50% of the total super built-up area in the said property for itself in the form of shops/flats, at their own cost and expense which shall belong to the developer. Further, the developer shall be free to retain the same exclusively for itself or sell the same to any third-party purchaser along with proportionate undivided share of land in the said property corresponding to super built-up area of such shops/flats. Further, the developer may enter into agreement/s for sale of their super built-up area in the form of shops/flats/offices along with the proportionate undivided share of land in the said property to any third party, accept and retain the monies for itself towards the sale therein as their share at their own risk.



55. Clause 34 of the said development agreement is reproduced below.

"34. Upon handing over possession along with the Occupancy Certificate and permanent Electricity connection for the OWNER'S PREMISES and CONFIRMING PARTY'S PREMISES, the OWNERS immediately shall either convey the proportionate undivided share in the SAID PROPERTY in favour of premises purchasers/holders/DEVELOPERS corresponding to their super built up area, in such manner, as may be determined by the DEVELOPERS or convey the SAID PROPERTY as a whole in favour of the Society/Entity as and when formed, as the DEVELOPERS may decide. Provided always that all cost, charges, expenses etc. including stamp duty and registration charges or any other expenses in connection with preparation, execution and registration of deed of conveyance/sale deed shall be borne and by such prospective purchasers of the premises or society/entity. Any costs incurred for providing temporary supplies of electricity / water etc. to the OWNERS PREMISES CONFIRMING PARTY'S PREMISES shall be borne by the OWNERS and CONFIRMING PARTY respectively."

56. As per the said Clause 34, upon handing over possession along with the occupancy certificate land owners immediately shall either convey the proportionate undivided share in the said property in favour of premises purchasers/holders/developers corresponding to their super built-up area. However, no clause in the agreement envisages that the appellant promoter will enter into agreement for sale to prospective purchasers only after the occupation certificate is obtained by the promoter for the building including the share of the promoter.



57. Clause 52 of the said development agreement is reproduced below
"52. All parties hereto shall bear their respective costs towards the premises allotted to them hereunder such as income tax, capital gains tax, if any, and any tax/cess towards income received under this Agreement."
58. By the said clause 52, it stipulates that the tax liability and obligation of each party in respect of premises allotted to them.
59. The Hon'ble Supreme Court in the case of *Sushil Kumar Agarwal Vs. Meenakshi Sadhu & Ors* Civil Appeal No. 1129 of 2012 decided on 09.10.2018. In para 16 of the said judgment, it is held as under:
"16. The expression "development agreement" has not been defined statutorily. In a sense, it is a catch-nomenclature which is used to describe a wide range of agreements which an owner of a property may enter into for development of immovable property. As real estate transactions have grown in complexity, the nature of these agreements have become increasingly intricate. Broadly speaking, (without intending to be exhaustive), development agreements may be of various kinds:
(i) An agreement may envisage that the owner of the immovable property engages someone to carry out the work of construction on the property for monetary consideration. This is a pure construction contract;
(ii) An agreement by which the owner or a person holding other rights in an immovable property grants rights to a third party to carry on development for a monetary consideration payable by the developer to the other. In such a situation, the owner or right holder may in effect create an interest in

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the property in favour of the developer for a monetary consideration;

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

(iv). A development agreement may be entered into in a situation where the immovable property is occupied by tenants or other right holders. In some cases, the property may be encroached upon. The developer may take on the entire responsibility to settle with the occupants and to thereafter carry out construction; and

(v) An owner may negotiate with a developer to develop a plot of land which is occupied by slum dwellers and which has been declared as a slum. Alternately, there may be old and dilapidated buildings which are occupied by a number of occupants or tenants. The developer may undertake to rehabilitate the occupants or, as the case may be, the slum dwellers and thereafter share the saleable constructed area with the owner.

When a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreements, the developer may have acquired a valuable right either in the property or in

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the constructed area. The terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights."

60. The Hon'ble Supreme Court in above judgment while explaining the expression "development agreement" has observed that the agreement whether the owner of the land grants rights to another person to carry out development, and in consideration the developer has to hand over part of the constructed area to the owner, and developer is entitled to deal with balance of constructed area, the developer in the process has acquired some valuable rights and interests either in the property or in the constructed area. The Hon'ble Supreme Court has held that in a pure construction contract, the contractor has no interest in either land or the construction which is carried out. However, in various other categories of development agreement the developer may have acquired valuable rights and interests either in the property or in the constructed area. Therefore, the terms of the agreement are crucial in determining whether any interest has been created in the land or constructed areas in respect of the land in favour the developer and if so the nature and extent of rights.
61. In the instance case, the said development agreement in our view has granted/assigned development rights in favour of the appellant developer, whereby the developer is entitled to occupy the said land, shall construct the building on the said land and shall retain share of 50% of the super built-up area. Further, appellant developer is granted right to sell those units out of the super built-up area coming to the share of the developer. Further, clause 16 of the development agreement specifically mentions that the



developer may sell the super built-up from its share to any third-party purchasers along with proportionate undivided share of the land corresponding to the super built-up area of such shops/flats. Clause 34 also stipulates that land owners after the promoter obtains occupation certificate shall either convey the proportionate undivided share in the said property in favour of premises purchasers/holders/developers corresponding to their super built-up area in such manner as may be determined by the developers or convey the said property as a whole in favour of the society/entity as and when formed.

62. Therefore, in our view the said clauses in the development agreement clearly assigned rights and interest in favour of the developer to occupy the project land, construct the building, and sell the flats/shops out of its 50% share to prospective purchaser and also to convey the proportionate undivided share in the said property in favor of the prospective purchasers. Therefore, in our view the contention of the appellant/developer that the said of agreement does not create any interest or rights in respect of said land in favor of the development is not tenable.

63. The Hon'ble Supreme Court in the case of *Sushil Kumar Agarwal Vs. Meenakshi Sadhu & Ors* (Supra) in para 17 has held as under.

"17. In a construction contract, the contractor has no interest in either the land or the construction carried out on the land. But, in other species of development agreements, the developer may have acquired a valuable right either in the property or the constructed area. There are various incidents of ownership of in respect of an immovable property. Primarily, ownership imports the right of exclusive possession and the enjoyment of the thing owned. The

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owner in possession of the thing has the right to exclude all other from its possession and enjoyment. The right to ownership of a property carries with it the right to its enjoyment, right to its access and to other beneficial enjoyments incidental to it. (B Gangadhar v B G Rajaalingam, (1995) 5 SCC 238 at para 6). Ownership denotes the relationship between a person and an object forming the subject matter of the ownership. It consists of a complex of rights, all of which are rights in rem, being good against the of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right to consume, destroy or alienate it. (Swadesh Ranjan Sing Haradeb Banerjee, (1991) 4 SCC 572). An essential incident of ownership of land is the right exploit the development potential to construct and to deal with the constructed area. In situations, under a development agreement, an owner may part with such rights to a developer, in it essence is a parting of some of the incidents of ownership of the immovable property. There could be situations where pursuant to the grant of such rights, the developer has incurred a substantial investment, altered the state of the property and even created third party rights in the property or the construction carried out to be carried out. There could be situations where it is the developer who by his efforts has rendered a property developable by taking steps in law. In development agreements of this nature, where an interest is created in the land or in the development in favour of the develop may be difficult to hold that the agreement is not capable of being

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specifically performed, for example, the developer may have evicted or settled with occupants, got land which was agricultural converted into non-agricultural use, carried out a partial development of the property and pursuant to the rights conferred under the agreement, created third party rights in favour of flat purchasers in proposed building. In such a situation, if for no fault of the developer, the owner seeks to resile from the agreement and terminates the development agreement, it may be difficult to hold that the developer is not entitled to enforce his rights. This of course is dependent on the terms of the agreement in each case. There cannot be a uniform formula for determining whether an agreement granting development rights can be specifically enforced and it would depend on the nature agreement in each case and the rights created under it.”

64. The Hon'ble Supreme Court in the said judgment has observed that in a construction contract, the contractor has no interest in either the land or the construction carried out on the land. However, in the development agreement, the developer may have acquired a valuable right either in the property or in the constructed area. Essentially, the incident of ownership applies to right to exploit the development potential to construct and to deal with the constructed area. In some situations, under the development agreement the owner may part with such rights to the development this in essence is parting some of the incident of ownership of the immovable property. There could be situation where, pursuant to the grant of such rights the developer has incurred substantial investment, altered the stake of property and

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created third-party rights in the property or construction carried out.

65. In the present case, the said development agreement is not in nature of the construction contract. This is the case where the land owners parted with valuable rights in constructed area in favour of the developer and developer has been given rights to create third-party rights by selling the flats/shops coming to the share of the developer. The contention of the appellant that the landowners have given the appellant a license to enter into the property for construction purpose vide clause 45 and that the appellant has not acquired any interests in the said property are not tenable.
66. The Hon'ble Bombay High Court in Writ Petition No. 8030/2017 in the case of *Suhas Damodar Sathe Vs. The State of Maharashtra and Another (supra)* has noted that in development agreement, where the owner handed over rights of construction and sale to the developer, the agreement ceases to be a simple license for construction.
67. The Hon'ble Bombay High Court in para 22 of the said judgment has held as under.

"22. This legal position finds lucid enunciation in the Division Bench judgment of this Court in Chheda Housing Development Corporation v. Bibijan Shaikh Farid (2007) 3 Mah.L.J 402. While dealing with a comparable scenario, the Division Bench observed that in such development agreements, once the owner has received consideration and handed over all rights of construction and sale to the developer, the agreement ceases to be a simple license for construction. Instead, it vests in the developer an enforceable interest in the land, rendering the owner duty-

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bound to complete the ultimate conveyance to the purchasers or their society. The Court aptly noted that such rights are not ordinarily revocable at the sole discretion of the owner and are specifically enforceable in equity. This legal analysis, mutatis mutandis, supports the proposition that when a developer is vested with the authority to not only build but also to market and sell the resultant structures, the transaction partakes the character of a conveyance for stamp duty purposes.

68. By the said judgment the Hon'ble High Court has held the development agreement vested in the developer an enforceable interest in the land, rendering the owner duty-bound to complete the ultimate conveyance to the purchaser or their society. In the instance case, the Clause 34 of the development agreement stipulates that upon completion of the project and obtaining the occupation certificate the land owners shall convey the proportionate undivided share and the said property in favour of premises purchasers/holders/developers corresponding to their super built-up area. In our view the said development agreement creates enforceable interests in the land in favour of the developer.
69. The Hon'ble Bombay High Court in para 23 and 30 of the said judgment has also observed as under

"23. It is, therefore, abundantly clear that a development agreement is not to be conflated with a mere contract for services. By means of the legislative amendments brought into effect through Article 5(g-a) of Schedule I, as well as the sweeping scope of Section 2(g), such agreements, in so far as they convey a beneficial and valuable interest in the subject immovable property, stand squarely equated with

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"conveyance" instruments. The underlying rationale is that the developer's right to carry out construction and to sell the resultant premises amounts to an immediate transfer of certain rights in land, be it the development rights or attendant possessory interests. Thus, while the original owner may retain title in name, a portion of the estate or interest passes to the developer in a legally cognizable manner, thereby attracting conveyance-level stamp duty. The legislative policy plainly aims to plug loopholes and ensure that no conveyance of a significant right in immovable property is able to evade appropriate revenue.

30. *In the present matter, whilst the document is labeled a "Development Agreement," a closer examination reveals that the developer has been granted an extensive authority—indeed, a right—to occupy the property for construction, to build new structures, and to negotiate their sale. By these very terms, the developer is clothed with a proprietary stake in the project land, one that extends well beyond the ordinary scope of a mere building contract. The jurisprudence of this Court, notably in earlier decisions, has recognized that a contract conferring upon the developer a right to deal with or alienate newly constructed units is effectively transferring a property interest, though described in the language of "development rights."*

70. The Hon'ble Bombay High Court by the said judgment has held that the developer's rights to carry out construction and to sell the premises coming to its share amounts to an immediate transfer of certain rights in land, be it the development right or attendant possessory interests. Thus, while the original owner may retain title

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in the name, a portion of the estate or interest passes to the developer in a legally cognizable manner. Further, in the present case, the developer has been granted an extensive authority or right to occupy the property for construction, build new structures and to negotiate the sale. By these very terms, the developer is clothed with the proprietary stake in the project land one that extends well beyond the ordinary scope and mere building contract. The contract conferring upon developer right to deal with alienating newly constructed units is effectively transferring a property interest through described in the language of "development rights".

71. In view of the above discussion, we are of the considered view that the said development agreement has clearly by various clauses as discussed above has granted right to occupy the property for construction, build new construction, retain the share of 50% build-up area with proportionate undivided share in the land including exclusive right to deal with and alienate its share in the constructed units, and sell the flats/shops coming to the share of the developer thereby effectively transferring the property interest in favour of the developer. As contended by the appellant, although Clause 45 of the agreement stipulates that the possession of the property will vest with the land owners and the developer is granted merely license to enter into the said property for the purpose of construction of the said property does not make developer merely building contractor. The said development agreement thus creates immediate vested rights in favour of appellant developer rather than mere contractual agreement to execute document in future to have rights in the said property. The said development agreement has created certain rights and

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interests in favour of the developer, which makes it mandatory to be registered under Section 17 (1) (b) of the Registration Act, 1908.

72. We are of the considered view that development agreement does not merely create a right to obtain future documents as contended by the appellant but actually operates to transfer present proprietary interests in favour of the appellant. The vesting of 50% super built-up area with proportionate undivided share in land, coupled with exclusive rights to deal with or alienate or the flats to the share of the appellant developer, development, and profit appropriation, constitutes present transfer of property rights and interest, which are enforceable.
73. The Authority has therefore rightly held that, by the said development agreement, substantial rights and interests have been created in favour of the developer and therefore require the said development agreement to be mandatorily registered as per Section 17 (1) (b) of the Registration Act, 1908 and the Goa RERA circular dated 04/10/2022. We do not find any merits in the appeal. We do not see any illegality or perversity in the impugned order either. Therefore, we do not deem it appropriate to interfere in the impugned order. Accordingly, we answer the point no. 1 in the affirmative and point no.2 in the negative.
74. It is pertinent that we should not lose sight of the RERA Legislation which is enacted solely with objects of protecting the interests of the allottees and bring transparency and accountability in the real estate sector. By way of registration of the development agreement, it would put the prospective allottees to notice in transparent manner before they take a considered decision to buy a flat in the project. For this reason, also we are of the view that



the development agreement should be registered in all fairness to the prospective allottees.

75. Accordingly, we pass the following order.

ORDER

1. The appeal No. AT07/00582/2025 is dismissed.
2. Accordingly, the appeal stands disposed of.
3. In view of the disposal of the appeal, nothing survives for consideration in M.A. No. 727 of 25 (stay), accordingly, the same stands disposed of.
4. Parties to bear their own costs.
5. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of the RERA Act, 2016.

(SHRIKANT M. DESHPANDE)

(S.S.SHINDE, J.)

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