



GOA REAL ESTATE REGULATORY AUTHORITY

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Case No. 3/RERA/Complaint (356)/2023 /700

Date: 21 /05/2024

1. Ashok R Mundkur

2. Disha A Mundkur

201, Sea Castle,
7 Bungalows Road,
Versova, Mumbai-400061

..... Complainant(S)

V/s

1. Palaccio Property Developers Private limited ,

Gera Imperium 1, 612,
6th Floor, Next to Kamat Tower,
Behind Panjim Bus Stand,
Patta Plaza, Panaji Goa-403001.

..... Respondent No. 1

2. Laljee Patel

L. Patel Builders & Contractors,
A sole Proprietorship,
C-1, Sapna Regency,
3rd Floor, above Baron Men's
Panaji Goa-403001.

..... Respondent No. 2

ORDER

(Date: 21/05/2024)

Shri Ashok Rao Mundkur and Miss Disha Ashok Mundkur, 201, Sea Castle, 7 Bungalows Road, Versova, Mumbai-400061 (Complainants) has filed a complaint Dated 25.05.2023 before the Goa Real Estate Regulatory Authority (Goa RERA) received on 09.06.2023, registered as complaint No. 356 of 2023 (Complaint) against M/s Palaccio

Property Developers Private Limited, having addressed at Gera Imperium, 1, 612, 6th Floor, Patto Plaza, Panaji, Goa-403001 (**Respondent No. 1**) and **Shri Laljee Patel** (L. Patel Building and Contractors): C-1, Sapna Regency, 3rd Floor, Panaji, Goa-403001, (**Respondent No. 2**).

2. The Complainants have stated that they and Smt. Rita Ashok Mundkur executed an Agreement for Construction and Sale dated 23.05.2012 duly registered with the office of Sub- Registrar of Tiswadi Taluka, Panaji on 23.05.2012 (**Agreement**). The Complainants agreed to purchase Flat No. 303-B admeasuring 1952 sq. ft (181.38 sq. mtrs), located on the 3rd floor in Regalo, wing No. B, Riverside (**Flat**), in the Project known as "**Glen Wood Gardens**" bearing Goa RERA registration No. PRGO05180197 under survey Nos. 182/1(Part), 181/2, 3, 5 (part), 182/7, 180/(1) part, 180/2 part and 183/9 of village Goa Velha, taluka Tiswadi admeasuring 42,465 sq. mtrs.
3. The Complainants have also stated that the Respondent No. 2 is the Co-Promoter of the said project, who has right, title and interest under the Agreement dated 08.03.2006 executed between the Respondent No. 1 and Respondent No. 2. The Complainants has brought the said flat for a total sale consideration of Rs. 33,60,000/- (**Rupees Thirty three lakhs, sixty thousand only**). The Respondents allotted a stilt parking slot for the said

flat vide their letter dated 29.11.2013. The complainant also stated that as per the said Agreement the date of possession is 22.05.2014.

4. The Complainants further stated that the Respondent No. 2 was the landowner and in lieu of the development of the project by the Respondent No. 1, the Respondent No. 2 was granted a few flats in the project to directly sell to the prospective buyers. The payments in respect of the said Flat were to be made to the Respondent No. 2 and the receipt for the same were issued by the Respondent No. 2. The Complainants have paid to the Respondent No. 2 a total of Rs. 18,81,600/- (**Rupees Eighteen lakhs, eighty one thousand and six hundred only**) in 05 installments as per pre-determined progress from 23.05.2012 to 16.03.2014 respectively.
5. The Complainants further stated that there after the project progress came to halt after 3rd slab, hence, further installment of payments stopped. The Complainants made several visits to the site, met the Respondents between the year 2014 to 2018, but they failed to explain reasons for delay of completion of the project. The Complainants were offered alternate flat 302 in A wing due to delay in B and C wings Regalo once in 2016 and again offered Flat No. 204 in D wing, and again offered Flat No. 303-D in 2019 but none of them given possession on the pretext of either it was sold to other customers or demanding additional payments.



6. The Complainants further stated that again in a meeting held by the Respondents on 03.02.2020 issued a letter dated 07.02.2020 to the Complainants assuring that the possession of the said flat would be handed over by 31.12.2020, and no further payment was to be made by the Complainants, till handover of possession. The Complainants were constrained to accept the offer as per letter dated 07.02.2020, but even that is not honoured till date, and hence, the said offer became Null and Void as the Respondents breached the said promise.
7. The Complainants have alleged that the Respondents suppressed information to the Authority under **Section 4** of the Real Estate (Regulation and Development) Act, 2016 (**Act**) such as, Respondent No. 2 as Co-Promoters of the project and liable for penalty upto 5% of the project cost; Respondents are guilty of unfair trade practices as per **Section 7** of the said Act due to suppression of information regarding Co-promoters, No. of flats sold, prior to Registration; demanding payments without commensurate progress. Respondent has unilaterally amended the sanctioned plans of the said project without consent of the Complainants.
8. The Complainants further alleged that the said Agreement for Construction and Sale dated 23.05.2012 is unfair, such as, demanding payment of maintenance charges for 10 years in advance (Clause 17); buyers to pay additional payments to maintenance Agency (Clause No.

25 to 28); additional charges, subscriptions from allottees in the guise of management, supervision (clause no. 30); seeking to extract Management fee in perpetuity (clause no. 31); seeking 5% of total consideration if the complainants choose to sell the said flat (clause no. 33).

9. The Complainants also stated violation under **Section 12** of the said Act which provides for compensation by promoter to a person who “Sustains any loss or damage due to incorrect statement included in an advertisement or project prospectus” and also provides for refund of entire investment with interest, if a buyer wishes to withdraw from project on being affected by the advertisement/ Agreement. Complainants also alleged that Respondents unilaterally amended the sanctioned plans of the said project and flat, which is contrary to the **Section 14** of the said Act. As a result, the area of the flat as agreed for 181.38 sq. mtrs. has been reduced to 137.47 sq. mtrs.
10. The Complainants have been made to wait for more than 09 years for the possession of the said flat with no sign of receiving Occupancy Certificate (OC). The Complainants have sought direction to the Respondents to pay interest on Rs. 18,81,600/- (Rupees Eighteen lakhs, eighty one thousand and six hundred only) from 23.05.2014 upto date of handing over of possession of the said flat with OC; handover the Possession of the Flat No. 303 admeasuring 1952 sq. ft. built up area (181.38 sq. mtrs.) in 3rd Floor or

alternatively, if any shortage in built up area, the Respondents be directed to calculate the amounts already paid and further payable as per the actual final area.

11. The Complainants also pleaded to direct to handover possession of stilt parking area B-2 as per parking allotment letter dated 29.11.2013; to direct to form society as per **Section 11** of the said Act; stop construction in violation of original sanctioned plan; direct to stay on the sale of units constructed beyond the original sanctioned plan; direct to stay on the sale of units constructed beyond the original plan; levy penalty for violation of the Section 4,12, 14 and 18 of the said Act; Levy a penalty for unfair trade practices under section 7 of the Act; pay cost of Rs. 2,00,000/- (Two lakhs only) incurred towards filing of this complaint. The Complainants also sought Interim Reliefs of not to create third party rights on the said flat; direct a freeze on the bank account of the project, stop further construction violating sanctioned plan and stop sale of all the unsold units in the said project.

12. The Complainants have been represented by Advocate Ms. Marushka De Monte Furtado, Ms. Sanaya Monteiro and Advocate Shri Nilesh Gala. The Respondent No. 1 has been represented by Advocate Shri Sarvesh Kamat and Respondent No. 2 has been represented by Advocate Shri Ketan Morajkar.



13. The Respondent No. 1 has filed preliminary objections dated 30.01.2024. He stated that he is only a confirming party being the developer of the project in the Agreement for construction and sale dated 23.05.2012. He is neither the seller nor recipient of any consideration, hence seeking interest for delayed possession, compensation are misconceived. The Agreement is unenforceable under the said Act, this Authority lacks jurisdiction to try and entertain the complaint as the developer of the project is not the seller under the Agreement nor is directly responsible to the complainant.
14. The Respondent No.2 has filed reply dated 13.02.2024. He stated that he did not have any obligation against the Complainants in terms of Clause 4 of the Agreement for Construction and Sale dated 23.05.2012, where all the rights of Assignor (The Respondent No. 2) with respect to said flat stand fully assigned to the Assignee (The Complainants) and the Builder shall be bound to complete construction. He is neither the promoter nor has been registered before the Goa RERA as the promoter of the project.
15. The Respondent No. 2 also stated that he was made only a formal party as “Seller” to get consideration in terms of Agreement of Assignment dated 08.03.2006 where in the Respondent No. 1 was under obligation for construction at their own cost vide Agreement dated 30.06.2010, Respondent No. 1 allotted the suit flat to Respondent No. 2 and he being a formal party entered into said Agreement dated 23.05.2012 with Complainants and he was only obliged to accept the consideration amount.

He denied that he is the co- promoter of the said project who has right, title and interest as the said project under the Agreement dated 08.03.2006 executed between Respondent No. 1 and Respondent No.2.

16. The Respondent No. 2 has been further stated he neither met the Complainants, nor impressed them about the Real Estate Project, no assurance given with respect to delivery of possession of the flat within 24 months from the date of execution of the said Agreement, Respondent No. 2 did not have any obligation with regards to completion of the project; he admitted the Agreement for Construction and Sale dated 23.05.2012 entered between the Complainants alongwith allotment of stilt parking vide letter dated 29.11.2013 on their request, even though, it was not part of original Agreement.

17. The Respondent No. 2 has been further stated that he is neither the Builder nor the Promoter and had only right to the project as per Agreement for Assignment dated 08.03.2006; he was the land owner and in lieu of the development of the project by the Respondent No. 1, the Respondent No. 2 was granted a few flats in the project to directly sell to prospective buyers, receive payments, issued receipts from time to time; that the construction and completion was solely the responsibility of the Respondent No.1.

18. The Respondent No. 2 also stated that vide said Agreement dated 23.05.2012, the Complainants along with Respondent No.1 and 2 entered into an Agreement to Purchase flat No. 303 located on 3rd floor of B wing

which was allotted to him. He stated that soon after completion of 3rd slab of the project, a complaint was filed on 20.12.2013 and 21.01.2014 before the Coastal Zonal Management Authority (CZMA) due to which “ Stop Work Order” was issued on 09.04.2014, that after said order, no payment was demanded from the Complainants and the payment of Rs. 14,78,400/- **(Rupees fourteen lakhs, seventy eight thousand and four hundred only)** is still due with the Complainants.

19. The Respondent No. 2 also contended that Respondent No. 1 has promised to complete the project by 31.12.2020. He did not have any obligation with respect to completion of project and vide Agreement for Construction and Sale dated 23.05.2012, it is the Respondent who had confirmed all the clauses of the said Agreement, except the payment clause as Respondent No. 1 is not connected with the same. The Respondent No. 1 in a malafide manner attempted to wash off all the liability under the said Act.
20. The Respondent No. 1 has filed a detailed reply dated 29.02.2024, stated that main grievance of the Complainant is non-delivery of possession of the agreed premises, that he is awaiting completion certificate and occupancy certificate, and the same has been informed to the Complainant. The Respondent No. 1 has now obtained Completion Certificate on 18.02.2023 from Planning Authority and Occupancy Certificate from the Village Panchayat on 08.02.2024. The building and Complainants premises structure is ready and only the finishing and interior works are pending.

21. The Respondent No. 1 is required to construct the flat in lieu of transfer of property of ownership rights held by Respondent No. 2. He stated that he participated in the Tripartite Agreement entered between Respondent No. 2 and Complainants, and he has no role to play. He stated that construction had come to an halt in the year 2014 itself with stay issued by the Goa Coastal Zone Management Authority (GCZMA), followed by proceedings held before the Hon'ble National Green Tribunal (NGT) which was decided vide order dated 08.09.2021.
22. The Respondent No. 1 contended that the stoppage of work and delay was again not attributable to him, as the paper work and title was the responsibility of Respondent No. 2 alone, and hence, he has no role to play for delay which was due to GCZMA and NGT Orders as it was a force majeure. He denied the meeting held with the Complainant in the year 2012, and his first interaction was held only in the month of February 2020 during joint meeting held to discuss delay in handing over possession.
23. The Respondent No. 1 also contended that after letter dated 07.02.2020 indicating completion of the project, full payment has not been made by the complainant even today in order to finish interior work, and the same is on hold for receipt of pending payments in terms of Agreement. The role of the Respondent No. 1 is limited, that he is only a confirming party to the Agreement. The delay for completion has happened due to GCZMA, NGT orders, which is the responsibility of the Respondent No. 2. The premises

are ready with occupancy certificate but dues from the Complainant is still pending for payment.

- 24.** The Respondent No. 1 further contended that whether the Complainant entitled to claim delay when he himself has agreed for extension in the month of February 2020, and the answer to this question is a definite no, as there is clear novation of contract on the basis of Complainants own admission. He admitted delay, but attributed it to the Respondent No. 2 and the interest Security for delay is the liability of the person receiving the consideration over the Agreement. As he has not received consideration from the Complainant, and as such, he is not responsible for payment interest or compensation.
- 25.** The Respondent No. 1 further denied allegations made in the Complaint of unfair trade practice, misrepresentation etc., without understanding embedded clauses in the tripartite Agreement dated 23.05.2012. He also denied allegation of change of development plan and change of area without any basis that he has not carried out any modification to the plan of the building nor has modified area that is allotted to the Complainant under the Agreement. The Construction of the said premises which is ready for occupation is totally in accordance with the sanction plan without any modification.
- 26.** The Complainants have filed Affidavit-In- Rejoinder dated 12.04.2024. They stated that the Complainant No. 1 along with his late wife and

daughter purchased the Flat No. 303-B admeasuring 1952 sq.ft. built up area (181.38 sq. mtrs.), located on the 3rd floor, ' Regalo' wing NO-B, Riverside alongwith a stilt parking slot vide registered Agreement for Sale dated 23.05.2012 and stilt parking letter dated 29.11.2013. As per the said Agreement, the possession of the said flat was to be within 24 months of execution, excluding a grace period of 06 months i.e. on or before 22.05.2024.

27. The Complainants have also stated that Respondent No. 1 is the Developer and Respondent No. 2 is the Landowner. As per the said Agreement, Respondent No. 2 was entitled to sell flat directly to purchaser and receive payment against such sale. Respondent No. 1 and Respondent No. 2 has an area Share Agreement, and the Respondent No. 1 and 2 are promoters of the said project as per **Section 2(zk)** of the said Act. Hence, Respondents are jointly and severally liable under the Act. The Hon'ble Bombay High Court in its Judgment dated 16.02.2024, passed in Second Appeal No. (St) 21842 of 2023 in the matter of **Wadhwa Group Housing Private Ltd. V/s Vijay Chokshi and Anr.** has held that even a promoter who has not received any consideration from an allottee is liable for interest under Section 18 of the said Act. A copy of the same has been annexed as **Exhibit-A.**

28. The Complainants also stated that both Respondent No.1 and 2 have violated Section 4 of the said Act, by suppressing details pertaining to rights of Respondent No. 2 in the said project i.e. Co- promoter under the project,

and hence, liable for penalty under Section 60 of the said Act. As the project has received occupancy certificate on 08.02.2024, and the Respondent is ready to hand over the possession, Complainants are willing to take possession of the said flat along with interest for delayed possession as agreed under the Agreement for Sale. Hence, the Complainants are ready and willing to take possession of the said flat, against set-off of interest for delayed possession against balance outstanding dues.

29. The Complainants also stated that the Hon'ble Bombay High Court in its Judgment dated 22.03.2024 in Second Appeal No. 180 of 2024 in the matter between **Park Xpress JV V/s Sagar H. Sahoo** has held that the scope of Section 18 is very wide and an allottee can file a complaint even after receipt of Occupancy Certificate annexed as **Exhibit-B**. The Complainant demanded interest for delayed possession as the project has received part occupancy certificate, Respondents failed to notify completion as per clause No. 8 of the said Agreement; interior and finishing work is still pending. He stated that it is a settled position of law the Supreme Court has observed in the case of **DLF home Developers Ltd. V/s Capital Green Flat Buyers Association** that delay in approval of building plan is normal incident of a construction project.

30. The Complainants further stated that in the matter of **New Tech Promoters V/s State of UP**, the Hon'ble Supreme Court has held that the promoter cannot absolve himself from the statutory interest under Section 18 by

contending that there is delay on the part of various regulatory or approving authorities in issuing various permissions. The allottee is not concerned with delay of the promoter in getting approvals on time. The Respondents failed to notify GCZMA and Hon'ble NGT orders to the Complainants; further the flat was not ready for delivery on 07.02.2020 and not raised any demand.

31. Arguments heard from all 03 parties on 19.04.2024 and 10.05.2024 respectively. Shri Nilesh Gala, Ld. Advocate from Mumbai appeared on video mode. Shri Sarvesh Kamath, Ld. Advocate represented the Respondent No. 1 and Shri K. Morajkar, Ld. Advocate represented on behalf of the Respondent No. 2.
32. Shri Nilesh Gala , Ld. Advocate to the Complainants reiterated contentions raised in the Affidavit-In- Rejoinder dated 12.04.2024; pleaded for handing over possession with all amenities immediately along with interest from 2014 onwards until handing over possession of the said flat, with compensation and impose penalty for violation under Section 4 of the said Act.
33. Shri Sarvesh Kamat Ld. Advocate to the Respondent No. 1 reiterated stand already submitted in the reply dated 30.01.2024 and reply dated 29.02.2024. He also submitted an additional reply dated 10.05.2024 and stated that the **“Glenwood Gardens Flat Owners Association”** is in the process of formation of society as the allottees wants to have one single association. He stated that construction of Complainants unit is being completed in terms of

the Agreement and the unit will be ready for possession with occupancy certificate immediately on payment of all pre- possession charges to the Respondent No. 1, as agreed by the Complainant himself in February 2020.

34. Shri K. Morajkar, I.d. Advocate to the Respondent No. 2 reiterated the same stand as disclosed in the reply dated 13.02.2024, that the Respondent No. 2 is neither the promoter nor registered with the Goa RERA as promoter of the project. The Respondent No. 2 was made only a formal party as a “Seller” to get consideration in terms of Agreement assigned dated 08.03.2006, where in the Respondent No. 1 was under the obligation for construction at their own cost as per Agreement dated 30.06.2010, that the Respondent No. 2 was only obliged to accept the consideration amount.

35. The contention of the Complainants that Respondent No.1 and No. 2 are liable for payment of interest since 23.05.2014 for not yet handing over possession of the said flat to the Complainants are concerned, that the Complainants and Respondent No. 1 and 2 have entered into an Tripartite Agreement for Construction and Sale dated 23.05.2012. Respondent No. 1 is the Developer of the Project. Respondent No. 2 is the land owner and Complainants are allottees. Both Respondent No. 1 and 2 have entered into an Agreement of Assignment dated 08.03.2006, and another Agreement on the same date with Shri Kamal Jadwani. Accordingly, both Builder and Assignor by mutual consent agreed and identified the 12.5% constructed



premises out of the construction undertaken by the builder on the said property to which the Assignor (Respondent No. 2) is entitled.

- 36.** As a result of above Agreement, the Respondent No. 2 received the said Flat and sold it to the Complainants bearing No. 303(B), admeasuring 1952 sq. ft. of built up area (181.38 sq. mtrs.) in “Regalo” wing No. B, Riverside, in the Glen wood Gardens for a sum of Rs. 33,60,000/- (Rupees Thirty three lakhs, sixty thousand only). So far, the Complainants have paid Rs. 18,81,600/- (Rupees Eighteen lakhs, Eighty one thousand and six hundred only) as on 16.03.2014. Thereafter, the Complainants stopped payment due to no further progress of the project after 3rd slab laid.
- 37.** The Complainants have made attempts to contact the Respondent No. 1 and 2 between 2016 to 2019 and continued upto February 2020. Few correspondences exchanged between the Complainants and the Respondents No. 1 and 2 but no where, the reason for stopping construction of the project disclosed. Finally on 03.02.2020, a meeting was held by Shri Vinay Bhasin, Director/ Respondent No. 1 along with Shri Laljee Patel, Respondent No. 2.
- 38.** The out come of the said meeting was conveyed to the Complainants on 07.02.2020, which inter-alia consisting Complainants will retain the said flat, expected to be completed by 31.12.2020; Respondent No.1 is only a confirming party, there will be no financial dealing except pre-possession charges. It is the responsibility of Shri Laljee Patel, land owner/ Respondent No. 2; Respondent No. 1 will not ask for further payment until receipt of

occupancy certificate and also agreed by Respondent No. 2. It was received by the Complainants on 20.12.2020 and he remarked on it that it is valid if possession is given before 31.12.2020 as per assurance given above.

39. In continuation of the above, both Respondent No. 1 and the Complainants exchange various correspondences between the period of March, 2020 to December, 2022. The delay in handing over possession beyond 31.12.2020 is attributed to COVID-19 impact and further it is not yet completed and handed over to the Complainant.

40. The proviso to **Section 18(1)** of the Real Estate (Regulation and Development) Act, 2016 empowers the allottee to seek interest for every month of delay till the handing over of the possession. The Principle has been up held by the Hon'ble Supreme Court in its Judgment dated 11.12.2021 passed in Civil Appeal Nos. 67456749 of 2021 between **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.** The Hon'ble Supreme Court has upheld the ration laid down in the case **Imperia Structures Ltd. V/s Anil Patni**, holding that the allottees has the absolute and unqualified right to seek interest for delayed possession under the said proviso to the Section 18 of the Act.

41. In the light of above, the Complainants are entitled for interest since 16.03.2014 onwards and until handing over possession of the said flat on the advance amount paid whereas the contention of the Respondent No.1 regarding act of novation is rejected.

42. The contention of the Complainants that both Respondent No. 1 and 2 are jointly and severally liable for any violation under the Act is concerned, it may be stated that even though both Respondents are bound by the Agreement of Assignment dated 08.03.2006 and Agreement dated 30.06.2010 for allotment of area to the Respondent No. 2, is beyond the scope of the Act. Both Agreements are entered between themselves and the authority has no jurisdiction to decide the said matter. Both parties have to settle their disputes as per provisions under the said Agreements but not before the Authority.
43. Further , the **Explanation under Section 2(zk)** of the Real Estate (Regulation and Development) Act, 2016 laid down that where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are two different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder.
44. The above principle has been upheld by the Hon'ble Bombay High Court in its Judgment dated 16.02.2024 passed in Second Appeal No (St) 21842 of 2023 in the matter of **Wadhwa Group Housing Private Ltd. V/s Vijay Chokso & Anr.** Has held that even a promoter who has not received any consideration from an allottee is liable for interest under Section 18 of the said Act.

45. Further, Hon'ble Bombay High Court in its judgment dated 22.03.2024 in Second Appeal No. of 180 of 2024 in the matter between **Park Xpress JV V/s Sagar H. Sahoo** has held that the scope of Section 18 is very wide and an allottee can file a complaint before the RERA under Section 18 even after receipt of Occupancy Certificate. Therefore, the contention of the Complainants that both Respondents No. 1 and 2 are jointly and severally responsible are valid and contention of Respondents that they are merely confirming party or conforming party to the Agreement dated 23.05.2012 is rejected.
46. As regards to allegation leveled by the Complainants for filing false information before the Authority; suppressing information pertaining to Respondent No. 2 as Co-promoter to the Project under **Section 4** of the said Act are concerned that, by virtue of Tripartite Agreement dated 23.05.2012, Respondent No. 2 shall be treated as Co-promoter under **Section 2(zk)** proviso "**Explanation**".
47. As regards to allegation that the Respondents are guilty of unfair trade practices and malpractices as per Section 7 of the Act is concerned, such as, false details furnished with respect to promoters of the project, number of flats sold prior to registration; demanding payment without commensurate progress; suspicion of unilateral amendment of sanction plan and Agreement dated 23.05.2012, it may be stated that the said project was an ongoing project at the time of registration, it is possible many information

could not be furnished by the promoters when the new Act was introduced. Further, it may be stated that the Complainants are seeking relief under the same Agreement; however, if any such clause incorporated by the promoter in the said Agreement violates the Model Form of Agreement under the Act, Complainants can always seek remedy as per the Act. Therefore, Complainants plea to strike down Clauses(17), Clauses (25 to 28), Clause (29), Clause(30), Clause(31) and Clause (33) of the said Agreement is not within the jurisdiction of this Authority and the same has to be settled as per relevant Clauses under dispute settlement of the said Agreement.

48. As regards to violation under Section 12 and Section 14 of the said Act are concerned with respect to sustaining any loss or damage by the allottees due to incorrect statement or advertisement, and amendment of sanctioned plans are concerned, Complainants may always seek remedies and it has been rightly done in the complaint by them.
49. As regards to the formation of Society as per **Section 11** of the said Act is concerned, the Respondent No. 1 has already put in motion formation of such Society in consultation with the allottees as disclosed in his additional reply dated 10.05.2024. As regards to the issue of permanent injunction on the project in violation of original sanctioned plans of 2012 under Section 14 of the said Act is concerned, the matter pertains to Planning Authority.
50. As regards to the plea of the Complainants with respect to order a stay on the sale of units constructed beyond sanctioned plan, Complainants failed to

adduce adequate evidence, and again the matter pertains to the Planning Authority and Municipal Authority. As regards to issue direction to pay to the Complainants an amount of cost of Rs. 2,00,000/- (Two lakhs only) is concerned is not tenable.

51. The Respondent No. 1 after registration of the on going project with the Authority has to face two spells of Covid-19 impact which significantly affected the real estate sector. In addition to the above, the Respondents had to face litigation under GCZMA and Hon'ble NGT, further, the Respondent No. 1 seeking extension of the project from time to time. In the light of above, I am not inclined to impose penalty on the Respondents.

52. Therefore, considering the above facts and circumstances of the case, the following speaking order is pronounced for compliance:

(i) The Respondent No. 1 and Respondent No. 2 are hereby directed to hand over possession of the Flat No. 303-B admeasuring 1952 sq. ft. of the built up area (181.38 sq. mtrs.) located on the 3rd floor, in Regalo, Wing No. B, Riverside in the project "Glenwood Gardens" alongwith stilt parking area B-2 to the Complainants within 02 months from the date of this order with all amenities and occupancy certificate.

(ii) The Respondent No. 1 and Respondent No. 2 are also hereby directed to pay to the Complainants simple interest calculated at the rate of 10% per annum on the advance amount to the tune of Rs. 18, 81,600/- (Rupees Eighteen lakhs, eighty one thousand and six hundred only) from

16.03.2014 within the said period of 02 months or until handing over possession of the said flat.

(iii) The Respondent No. 1 and Respondent No.2 are also hereby directed that the balance payment pending from the Complainants to the tune of Rs. 14,78,400/- (Rupees Fourteen lakhs, seventy eight thousand, four hundred only) towards the said flat shall be deducted and adjusted towards full cost of the said flat. The remaining interest amount if any may be adjusted towards pre-possession charges in favour of the Respondent No.1.

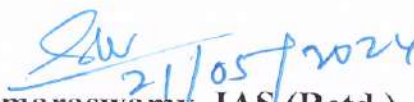
(iv) The Respondent No. 1 and Respondent No. 2 are also hereby directed that in the event of said Flat No. 303-B with the said specification is not available or unable to deliver the said flat admeasuring 181.38 Sq. mtrs. as stated in the Schedule V of the said Agreement alongwith the amenities as per original sanctioned plans of 2012, provide alternate flat with calculating amounts already paid and further payable or returnable as per the actual final area within the said period of 02 months.

(v) The Respondent No. 1 and Respondent No. 2 are also hereby directed to form society as expeditiously as possible within the said period.

53. Failure to comply the above order within the said period will entail further enforcement action by the Authority as per provisions and Act and Rules thereof.



54. Compensation has to be determined by the L.d. Adjudicator under Section 71 of the Real Estate (Regulation and Development) Act, 2016.


21/05/2024
S. Kumaraswamy, IAS (Retd.)
Chairperson, Goa RERA