



## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters(115)/2024/ 498

Date: 22/03/2024

**1. Mr. Jitendra Kumar Pawan,**  
S/o Mr. Janardhan Sharma,  
40 Years of age,  
Indian national and his wife,

**2. Ms. Kabita Roy,**  
D/o Mr. Pramod Singh,  
39 years of age,  
Indian national,  
Both residents of ID,  
Amar Apartment,  
Behind Kawasaki showroom,  
Airport Road,  
Near Navy Children School,  
Chicalim, Vasco da Gama,  
South-Goa, 403711.

.....Applicants

*Versus*

**Shree Maa Gayatri Construction Pvt. Ltd.,**  
Through its Director (Promoter) Mr. Ramsagar Prasad,  
Having its Registered Office Address at S.No. 152/2/1A,  
Hinjawadi, Marunji Mulashi Pune,  
Maharashtra-411027.

Or

Survey No. 268/2B, Jail Park,  
Near Yelwande Basti, Hinjewadi,

Pune, 411057,  
Presently residing and having office at Ishta Goa,  
B wing, Ground Floor,  
Alto Dabolim,  
Behind Dabolim Railway Station,  
Dabolim, Vasco –Da-Gama,  
South Goa, State of Goa, 403801.

.....Respondent

**ORDER**

**(Delivered on this 22<sup>nd</sup> day of the month of March, 2024)**

The present proceedings have arisen as a corollary to the complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') filed by the applicants against the respondent bearing complaint no. 3/RERA/Complaint(357)/2023.

2. The above said complaint was disposed of vide Order dated 04.01.2024 by the Hon'ble Goa Real Estate Regulatory Authority. The said Authority passed the following order:-

'The respondent is directed to refund the amount of ₹51,95,000/- (Rupees Fifty One Lakhs Ninety Five Thousand only) to the complainants within two months from the date of this order. Further, the said respondent is directed to pay 10.85% per annum interest (present lending rate of interest by SBI which is 8.85% per annum plus two percent) for every month of delay to the complainants on the aforesaid amount of ₹51,95,000/-paid by him as stated above i.e. from 22.06.2020 on the amount of ₹2,00,000/-; from 05.07.2020 on the amount of ₹3,00,000/-; from 22.07.2020 on

the amount of ₹44,00,000/- from 15.10.2020 on the amount of ₹2,95,000/- till the actual return of the said amount to them.

Under Section 61 of the RERA Act, the respondent is directed to pay a penalty of ₹1,00,000/- (Rupees One Lakhs only) within two months from the date of this order. The said penalty, if realized, be forfeited to the State Government.

The respondent is directed to file compliance report of this order in the form of an affidavit within two months of this order, failing which further legal action will be taken by this Authority under the RERA Act for execution of this order.

The instant complaint is now referred to the Adjudicating Officer to adjudge compensation, if any, as per Section 71 of the said Act.”

3. Briefly stated, the case of the applicants is as follows:-

That applicants have purchased a 3BHK flat by executing the agreement for sale dated 30.06.2020 in the project known as 'ISHTA' at Dabolim Village Mormugao Taluka situated on the fourth floor of building B. The applicant no. 1 is an ex-serviceman and obtained a loan from the Canara Bank to purchase the said flat bearing no. B-509. The respondent had not obtained an occupancy certificate and yet asked the purchasers to start staying in the flats illegally. The applicants after being aware of the discrepancies in the occupancy certificate made multiple attempts to reach to the respondent but he never responded, which caused mental stress and financial and professional loss to the applicants.

4. The applicants along with other purchasers addressed e-mail to the Hon'ble Regulatory Authority seeking redressal of their complaints and vide legal notice dated 28.06.2021 demanded from the respondent that all promises as stated in the agreement for sale be completed. The applicants also addressed a complaint to the Sarpanch alleging various irregularities on the part of the respondent. The respondent pressurized the applicants to complete the balance payment however, they insisted on receiving a copy of the occupancy certificate which was issued dated 27.09.2021 and were completely shocked to read that the entire Block B of the project did not have a single 3BHK flat.

5. The applicants contacted the respondent who started ignoring and thereafter contacted the Canara Bank. The applicants issued a letter dated 08.03.2022 stating that the EMI amount which is being deducted be stopped however, there was no response. The applicants thereafter contacted an advocate and issued a legal notice dated 17.03.2022 to the respondent however, no response was received. The applicants have incurred substantial financial losses due to their investment in the project and had to repeatedly travel to India resulting in the loss of income and also incurring substantial legal expenses. The applicants have invested their entire life savings in the flat only to be deceived by the respondent through misleading representation and advertisement. The applicants are left with

no recourse other than seeking refund of the entire amount paid to the respondent.

Hence, the application for compensation

6. The respondent filed a reply inter-alia contending that he obtained necessary construction license as well as conversion sanad from competent authorities and constructed the building known as 'ISHTA' at Dabolim. The applicants entered into an agreement for sale for the flat on the fourth floor of 'B' wing building for an amount of ₹59,00,000/- plus GST of ₹2,95,000/- and also agreed to pay other charges. The respondent had handed over the approved plan of building 'B' prior to the execution of the agreement for sale which is required to be submitted to the Bank in order to obtain housing loan. The MPDA Vasco also issued a completion certificate and upon completion of the building, the Village Panchayat of Chicalim issued an occupancy certificate dated 27.09.2021.

7. The applicants however after requesting to pay the balance amount started raising unnecessary queries without any reasonable cause. The purchasers of flat were allowed to stay upon following the norms of the RERA and obtaining all the permissions required under the law. Merely because occupancy certificate does not show the 3BHK flat, there is no reason of causing any distress to the applicants as the flat was ready for occupancy and the respondent had issued a notice calling upon the applicants to take over the possession in respect of the said flat. The applicants were aware prior to entering into the agreement that the third room is a

store room and not a bed room as per approved plan. There is no deficiency in service and therefore, application be dismissed.

8. The parties have filed their respective affidavit-in-evidence at exhibit 698/c and exhibit 714/c respectively.

9. Both the parties have filed written arguments at exhibit 726/c and at exhibit 750/c respectively. Oral arguments were also heard.

10. The points springing for the determination and the findings to the same are as follows:-

<b>Sr. No.</b>	<b>Points for determination</b>	<b>Findings</b>
(a)	Whether the applicants are entitled to receive compensation from the respondent in terms of prayer 9 (a) to (g) of the complaint, if so, the quantum thereof?	Partly in the affirmative.
(b)	What relief? what order?	As per final order.

### **REASONS**

#### **Point (a) and (b)**

11. There is no dispute that the applicants and the respondent entered into an Agreement for construction and sale dated 30.06.2020 for purchase of the 3 BHK flat bearing no. 509 admeasuring 105.28 sq. mtrs. on the fourth floor of the building known as 'ISHTA' at Dabolim, Goa. The Hon'ble Regulatory Authority

on the complaint filed by the applicants had directed the respondent to refund the amount of ₹51,95,000/- to the applicants within two months from the date of the order i.e. 04.01.2024 along with other reliefs. Admittedly, the said order has not been complied with by the respondent.

12. Primarily, the dispute raised by the applicants against the respondent is that they were misled to buy a **3BHK** flat in terms of the agreement for sale, when the occupancy certificate and the approved building plan do not demonstrate the **3 BHK** flat in the project, which according to the applicants is based on inaccurate, deceptive and misleading representation made by the promoter on the applicants. It is because of the above reasons, the applicants had filed a complaint seeking for return of the amount, which request was duly granted by the Hon'ble Regulatory Authority.

13. It is therefore apposite to consider the submissions of the Ld. Advocate Shri Anthony Naiker for the applicants with respect the alleged misrepresentation which led the applicants to buy the **3BHK** flat from the respondent. A little peep into Paras 4 and 5, pages 6 and 7 of the agreement for sale read as follows:-

“AND WHEREAS the Purchaser herein has approached the owner/ Developer to sell to him a flat identified as Flat No. 509, **3BHK** having carpet area 105.28 sq. mtrs. (which includes carpet area of flat 79.55 sq. mts. carpet area of enclosed Balcony 25.73 sq. mts) located on the 4<sup>th</sup>

floor, B wing building, of project known as "ISHTA" situated at Dabolim Goa, constructed on the Said Plot and said plot no 1 better described in Schedule V hereunder and delineated in red colour on the plan annexed hereto hereafter referred to as "SAID FLAT".

"AND WHEREAS the Owner/Developer has accepted the offer of the purchaser and has accordingly agreed to sell to him the said Flat No. 509, **3BHK** having carpet area 105.28 sq mts (which includes carpet area of flat 79.55 sq. mts, carpet area of enclosed Balcony 25.73 sq. mts.) located on the 4<sup>th</sup> floor, B wing building for a total consideration of Rs. 59,00,000/- (Rupees Fifty Nine Lakhs only) to be paid by the Purchaser to the Owner/Developer in the manner set out in Schedule VI here-in-below and shall also pay the GST of 5%."

14. Further, clause 2, page 7 of the agreement for sale would indicate as follows:-

"2. The FLAT PURCHASER hereby agrees to purchase from the Owner/developer and the Owner/Developer agrees to sell to the FLAT PURCHASER the said Flat identified as Flat No. 509, **3BHK** having carpet area 105.28 sq. mtrs. (which includes carpet area of flat 79.55 sq, mtrs, carpet area of enclosed Balcony 25.73 sq. mts.) located on the 4<sup>th</sup> floor, B wing building of project known as "ISHTA", as per the floor layout plan hereto annexed hereto which shall be constructed according to the building specifications detailed in Schedule VII hereunder written, in the building to be constructed on the Said plot & Said plot no. 1 for



the price of 59,00,000/- (Rupees Fifty Nine Lakhs only) in the manner set out in Schedule VI here-in-below and shall also pay the GST of 5%.”

15. Further, page 28 of the Agreement for sale under the heading “Schedule V” states as follows:-

“ALL THAT FLAT bearing no. Flat No. 509, **3BHK** having carpet area 105.28 Sq. Mts (Which includes carpet area of flat 79.55 sq. mts., carpet area of enclosed Balcony 25.73 sq. mts.) located on the 4<sup>th</sup> floor, B wing building of project known as “ISHTA” to be constructed on the Said Plot and said plot no. 1 described in schedule III & IV.....”

16. It is therefore manifestly clear that what was agreed by the parties to be conveyed is **3BHK** (three bed rooms, hall and kitchen) on the fourth floor of the building ISHTA as per the agreement for sale dated 30.06.2020, but what was unitarily decided by the respondent to be conveyed as per construction plan and the occupancy certificate is **2BHK** (2 bed room and a store room) which is de hors the agreement for sale between the parties. The completion certificate dated 19.08.2021 of block B does not show any **3BHK** as agreed between the parties so also the occupancy certificate dated 27.09.2021 at serial no 57 which is a flat agreed to be sold to the applicants admeasuring 105.28 sq. mtrs. is with respect to the **2BHK** and not **3BHK**. There is therefore the flat which was agreed to be sold to the applicants having **3BHK** is by way of misleading representation made by the respondent/promoter on the applicants.

17. Apparently, the application for compensation is filed under Section 18(3) of the RERA Act. It reads as follows:-

**“18. Return of amount and compensation.-** (1) If the promoter fails to complete *or is unable to give possession of an apartment, plot or building,—*

(a) ....

(b) ....

(2) ...

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

18. Chapter III of the RERA Act gives details of the functions and duties of the promoter. Section 11 (4)(a) states as follows:-

**“11. Functions and duties of promoter.-**(1)..

(2)..

(3)..

(4) The Promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees *as per the agreement for sale*, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common

areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

From the aforesaid Section 11(4)(a) of the RERA Act, it is clear that the promoter is responsible for all obligations, responsibilities and functions under the provisions of the said Act/Rules/Regulations to the allottees as per the agreement for sale. Thus, the promoter is bound by the terms, recitals and conditions as mentioned in the said agreement for sale.

19. Ld. Advocate Shri Chetan Palekar for the respondent has submitted that there is no deficiency in the services nor there is any misrepresentation and that the building was completed in terms of law and that the applicants were aware that the flat was 2BHK and a store room as they had obtained loan and had knowledge of the approved plan at the time of entering the agreement as they had visited the site and therefore, they cannot raise the grievances in the present petition. Nonetheless, as submitted by the Learned Advocate Shri Anthony Naiker, the approved plan does not form part of agreement for sale nor there is anything on record that the applicants were aware of the approved plan or visited the site before executing agreement for sale. The promoter is bound by the terms, recitals and conditions as

mentioned in the said agreement for sale. One cannot go beyond the agreement for sale which has been duly registered by the parties. Moreover, the agreement for sale clearly indicates that what was agreed by the parties is sale of 3BHK, while the occupancy certificate and the approved building plan demonstrate absence of any 3BHK unit in the said project. The promoter/respondent therefore failed to discharge its obligations in terms of the agreement for sale and hence, acted in violation of Section 18(3) of the RERA Act. Hence, it is proved by the applicants that the respondent is liable to pay appropriate compensation for failing to discharge the obligations in terms of the agreement for sale.

20. The broad factors to be considered while adjudging compensation have been provided under Section 72 which reads as under:-

**“72. Factors to be taken into account by the adjudicating officer.-** While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.”

21. The Hon'ble Apex Court in the case of **"M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and Ors. 2021 SCC, Online SC 1044** has clarified that if the adjudicating officer on enquiry is satisfied that the promoter has failed to comply with the provisions of any of the Sections 12, 14, 18 and 19, he may direct to pay such compensation or interest as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

22. The non delivery of the 3BHK flat to the applicants in terms of the agreement has resulted in a disproportionate gain. There is thus unfair advantage derived by the respondent and disadvantage is incurred by the applicants as rightly submitted by the Ld. Advocate Shri Anthony Naiker as the applicants have not received the advantage of utilizing the flat for the purpose for which they had agreed to purchase it. It is therefore the submissions advanced by Ld. Advocate Shri Palekar for the respondent will not exonerate them from legal liabilities and corresponding legal rights accrued to the applicants under the RERA Act. The respondent has thus committed defaults in their obligations to deliver a 3BHK flat to the applicants in terms of the agreement. The conduct on the part of the respondent clearly indicate that due to such defaults in the discharge of obligations in terms of the agreement, the interest and right of the applicants to hold, enjoy, occupy, possess and utilize the said apartment for gain have been put to serious

jeopardy. The applicants have therefore proved that the respondent has failed to provide the 3BHK flat in terms of the agreement for sale.

23. The applicants have prayed for reliefs in terms of clause 9(a) to (g) of the application filed by them. The moot question is how much compensation, the applicants are entitled to which is fair, reasonable and proper.

24. The Hon'ble Apex Court in **ONGC LTD. v. SAW PIPES LTD. (2003) 5 Supreme Court Cases 705** while dealing with Section 73 and 74 of the Contract Act has held that:

“(1) Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same.

(2) If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act.

(3) Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. *The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of a contract.*

(4) In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is genuine pre-estimate by the parties as the measure of reasonable compensation.”

25. It is well settled in the case of **ONGC**, supra that in matters related to compensation, a reasonable amount of guesswork and speculation of loss is permissible and such jurisdiction is available with the Authority for adjudging compensation as per law. Moreover, in terms of section 73 of the Indian Contract Act, 1872 when a contract has been broken, the party who suffers by such a breach is entitled to receive from the party who has broken the contract a reasonable compensation for any loss or damage caused to him thereby, which naturally arose during the usual course of things from breach or which the parties knew, when they made the contract, to be likely to result from the breach of it.

26. The respondent has failed to deliver a valid and legal possession of 3 BHK flat on the fourth floor of building ISHTA admeasuring 105.28 sq, mtrs in terms of the agreement for sale dated 30.06.2022 and therefore, failure on the part of the respondent to convey the said 3BHK flat as per the agreement would render the respondent to pay to the applicants a reasonable and fair compensation, which would work out to be **₹5,00,000/-** (Rupees Five Lakhs only) for violation of Section 18(3) of the RERA Act.

27. The applicants have prayed in terms of prayer 9 (a) of the application a sum of ₹1,17,110/- towards stamp duty and registration of fee. There is no dispute that the applicants have paid such an amount while entering into the said agreement for

sale. The first page of the agreement for sale clearly indicates that the amount of ₹1,17,110/- (Rupees One Lakh Seventeen Thousand One Hundred and Ten only) has been paid by the applicants and that there is no dispute with respect to the above fact. Once the agreement for sale has been revoked and the applicants have withdrawn from the project, they are entitled for return of the said amount from the respondent.

28. The applicants are also claiming a sum of ₹45,00,000/- towards loss of income for nine months. Ld. Advocate Shri Anthony Naiker has submitted that the applicant no. 1 has furnished employment contracts and salary records to substantiate the process by which he availed unpaid leave during the nine months of his absence on account of the intricacies of purchase of the flat. However, as rightly submitted by Ld. Advocate Chetan Palekar, the applicants have not produced anything on record with respect to their claim of loss of wages on account of unpaid leave for nine months or his presence in Goa for purchase of the flat, more particularly when the applicant no. 2 was the power of attorney of applicant no. 1. The applicants are therefore not entitled for alleged loss of income for nine months or a sum of Rs. 45,00,000/- claimed by them.

29. The applicants are also claiming a sum of Rs. 91,00,000/- towards loss of monetary value of 3BHK flat due to inflation. The applicants have not produced anything on record indicating that they have suffered any monetary loss of 3BHK



flat due to inflation. Ld. Advocate Shri Anthony Naiker was also unable to indicate any evidence or document indicating that there was any loss of monetary value of 3BHK due to inflation. Ld. Advocate Chetan Palekar has produced on record two sale deeds with respect to the same project, one deed of sale dated 14.08.2023 between the respondent and Anuradha Thakur, by which a flat having built up area of 100 sq. mts. on upper ground floor of ISHTA building in B wing was sold for ₹40,00,000/-. The other sale deed dated 17.07.2023 is by the respondent and Rajendra Prasad which is with respect to the flat having carpet area of 105.45 sq. mts in the said project sold for ₹49,90,000/-. The above sale deeds therefore do not indicate that there was any inflation in the sale of flats in Dabolim area in the year 2023 nor the applicants were able to shed light on the aspect of inflation for which they are claiming ₹91,00,000/- due to escalation of price of land and flat in the said locality and therefore, it would not be prudent to grant such a relief to the applicants.

30. The applicant is also claiming a sum of ₹2,28,500/- towards legal fees. The applicants have produced on record a bill by Advocate Shri Anthony Naiker of the said amount. No doubt, the applicants have to incur expenses towards the litigation costs, however, there is no break-up figures of the alleged legal fees paid to the Advocate on record nor any evidence between the parties of the payment of the said fees. The applicants have produced on record a bill from one Advocate

Ravi Anand of ₹20,000/- however there is also nothing on record that such an amount has been paid. Be that as it may, a reasonable amount of ₹1,25,000/- (Rupees One Lakh Twenty Five Thousand only)\_could be safely paid to the applicants towards legal fees.

31. The applicants are also claiming a sum of ₹2,00,00,000/- towards mental agony and harassment caused to the applicants on account of action of the respondent. The applicants have produced some prescriptions from Manipal Hospitals and ECHS Polyclinic, Vasco with respect to applicant no. 2. However, it not known the actual amounts paid due to the said ailment and their relations with the case at hand. No doubt, the applicants have suffered financial losses, inconvenience, mental torture and agony due to the litigation and non delivery of the 3 BHK flat as agreed upon by the parties. There cannot be any dispute that the respondent has committed a breach of obligations in terms of the agreement for sale and have failed to convey a 3BHK flat exposing himself for payment of appropriate compensation for causing financial losses, costs, inconvenience, mental torture and agony towards the present proceedings under Section 71 of the RERA Act amounting to ₹2,00,000/- (Rupees Two Lakhs only).

32. The applicants, are thus entitled a total of ₹9,42,110/- (Rupees Nine Lakhs Forty Two Thousand One Hundred and Ten only) which can be bifurcated as follows (i) ₹5,00,000/- (Rupees Five Lakhs only) for violation of Section 18(3) of

the RERA Act; (ii) ₹1,17,110/- (Rupees One Lakh Seventeen Thousand One Hundred and Ten only) towards stamp duty and registration of fees; (iii) ₹1,25,000/- (Rupees One Lakh Twenty Five Thousand only) towards legal fees and (iv) ₹2,00,000/- (Rupees Two Lakhs only) for causing financial losses, costs, inconvenience, mental torture and agony. The above amount of ₹9,42,110/- (Rupees Nine Lakhs Forty Two Thousand One Hundred and Ten only) awarded to the applicants shall also carry interest as applicable by law.

33. Admittedly, as per Rule 18 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' the rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent. At present, such lending rate of interest is 8.85% per annum. Hence, the respondent are liable to pay interest at the rate of 10.85% p.a. for every month of delay to the applicants by way of compensation on the aforesaid total amount of ₹9,42,110/- (Rupees Nine Lakhs Forty Two Thousand One Hundred and Ten only). Hence, the above points (a) and (b) are answered partly in the affirmative.

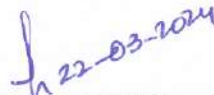
34. In the result, I pass the following:-

### **ORDER**

- a) The respondent is directed to pay to the applicants compensation of ₹5,00,000/- (Rupees Five Lakhs only) for violation of Section 18(3) of the

RERA Act read with Section 71 of the RERA Act, within thirty days of this order.

- b) The respondent is also directed to pay to the applicants an amount of ₹1,17,110/- (Rupees One Lakh Seventeen Thousand One Hundred and Ten only) towards stamp duty and registration of fees for violation of Section 71 of the RERA Act, within thirty days of this order.
- c) The respondent is also directed to pay to the applicants an amount of ₹1,25,000/- (Rupees One Lakh Twenty Five Thousand only) towards legal fees in pursuing the litigation under Section 71 of the RERA Act, within thirty days of this order.
- d) The respondent is directed to pay to the applicants an amount of ₹2,00,000/- (Rupees Two Lakh only) for causing them financial losses, inconvenience, mental torture and agony under Section 71 of the RERA Act, within thirty days of this order.
- e) In default of payment of above amounts of ₹9,42,110/- (Rupees Nine Lakhs Forty Two Thousand One Hundred and Ten only), within thirty days, the respondent shall be further liable to pay to the applicants interest at the rate of 10.85% per annum till the date of realization.

  
(Vincent D'Silva)  
Adjudicating Officer,  
Goa RERA

Panaji, Goa.

Date: 22.03.2024.