



## GOA REAL ESTATE REGULATORY AUTHORITY

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F.No:4/RERA/Adj. Matters (109)/2023/592

Date: 23/04/2024

### BEFORE THE ADJUDICATING OFFICER

#### **The Elements by Shantilal**

#### **Co-operative Housing Society Ltd.,**

Represented herein by its Secretary Mr. D. N. Kale,  
Major in age, C/o Elements by Shantilal,  
Near Joggers Park, Airport Road, Chicalim,  
Mormugao, Goa, 403711.

.....Applicant

#### *Versus*

#### **The Shantilal Real Estate Services,**

C/o 301, 3<sup>rd</sup> floor,  
Anand Trade Centre, Next to MMC Building,  
Vasco, Goa-403802.

.....Respondent

Ld. Advocate Shri Narayan Pai for the applicant.

Ld. Advocate Shri Parag Rao along with Ld. Advocate Ajay Menon for the respondent.

### ORDER

(Delivered on this 23<sup>rd</sup> day of the month of April, 2024)

This is an application filed under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act') by the applicant against the respondent.

2. Briefly stated, the case of the applicant is as follows:-

The applicant is a society registered under the Co-operative Societies Act. The Respondent is a developer/builder of a residential project known as "Elements by Shantilal". It was noticed since the first year after handing over the possession of the flats that there were several issues with the said project, majorly being the problem of leakages and dampness all around the said building. The occupants brought to the notice of the respondent the defects in the common area of the building and also in the flats. There were several communications done to the respondent asking them to act as the problem started to become bad to worse, however, despite the communications, the respondent has not shown any interest towards the major issues which would pose threat to the occupants of the applicant.

3. The respondent provided false assurances that the team of Nina Percept Pvt. Ltd. who are concerned with the waterproofing of the entire building would rectify all the leakage issues as they have provided a ten year warranty period for the work of waterproofing. The applicant had been patient enough to wait so that team of Nina Percepts would rectify the water leakage problem but except in the areas of concern, there have been limited superficial work. There have been constant reminders and personal requests to the respondent to do the needful so that the problem of leakages and dampness should not damage further but the

respondent instead of acting started blame game, which resulted in complete despair among the allottees of the applicant.

4. The applicant consulted Nina Percepts to rectify the water leakage problems presently seen in each and every floor of the building but instead of solutions, Nina Percepts is blaming the respondent. It is the responsibility of the respondent to resolve issues of major concerns and take necessary action against Nina Percepts as they have warranted the services provided for ten years and find a permanent solution to the defects in the building listed out to the respondent. The respondent advised to hire an independent audit agency who are technically qualified to identify the issue of leakages, dampness and provide permanent solution. The applicant appointed M/s Ideal Homes, an independent expert in the field of structural rehabilitation and water proofing who accordingly inspected the common areas of the said building having defects and issues and submitted a report underlying the reasons for poor workmanship, use of sub-standard materials for construction design and waterproofing defect.

5. The applicant brought to the knowledge of respondent the above fact. However, the respondent was not interested. The respondent failed to honour their responsibility and accordingly the applicant issued a legal notice dated 05.05.2023 demanding to rectify the major issues namely occurrence of cracks on walls, floor slabs and beams, leakages and dampness in common areas of the building i.e.

ground floor level common area, gym. and club house, staircase blocks, open to sky terrace area and underground level common areas.

6. The notice was served and the respondent replied asking the applicant to depute responsible officers of the applicant and the representative of M/s Ideal Homes for a joint inspection so that problems could be highlighted. The joint inspection was conducted and the issues of major concerns were pinpointed as per the expert report however, only shallow concerns were shown and verbal assurance to rectify were given by the respondent. The applicant received a letter dated 24.05.2023 from Nina Percepts Private Limited wherein it was confirmed that the respondent has misrepresented to the applicant about the waterproofing problem and has termed problem highlighted as design and structural defects; quality of construction and water ingress in certain areas; occurrence of cracks in the structure and seepages through external walls and leakages and seepages from other sources like external plaster, toilet due to non availability of threshold, etc.

7. It was informed to the applicant that during the course of construction of the said building, Nina Percepts had pointed out all the above issues and solutions to the respondent but the respondent had neglected all the suggestions and due to the negligence on the part of the respondent as stated above, the applicant and the members have been made to suffer by the respondent. The act of the respondent of negligence, structural defect, use of sub-standard material for construction and

shying away from their responsibility in complying statutory obligations under the RERA Act makes it clear that the respondent has failed in performance of their part of their promise and therefore, the applicant is entitled for compensation sought of ₹1,50,00,000/- which shall include costs of repairs and damages for mental torture and harassment.

8. The respondent filed a reply inter-alia contending that the project has been completed for more than four years and the applicant has not taken any steps as regards maintenance as well as carrying out minor repair works which has led to accelerated wear and tear in the common areas, which is sole responsibility of the applicant. The respondent used top notch quality materials and has engaged the services of professionals having wide and vast experience and has also sourced materials from reputed vendors and therefore, the claim that inferior quality material has been used is false. The respondent had used the services of one Arijeet Raiker as regards to the design of the said project considering the peculiar geographical conditions of the State of Goa and has engaged Er. Dinesh Madali as structural engineer for the said project. The respondent has taken care that it delivers a project which would be the talk of the town. The brochure would indicate the layout and the elevation of the building. The respondent was conferred a Certificate of Appreciation Award by the Indian Concrete Institute. The respondent has delivered the best possible product.

9. The partners of the respondent are residents of the said project on the eight floor. There is no leakage in the common area of the said project. There is also no pronounced dampness in any walls, beams or column areas which can qualify as a defect. The respondent hired a reputed water proofing contractor which has carried out waterproofing works. The company is well known all over India. The entire technical aspects were being looked after by the said company. There was nothing wrong with their execution of work. The minor teething issues which usually occur in the first year were rectified by the company. The shrinkage/hairline cracks on the external plaster of the said project ought to have been rectified by the applicant. The respondent used best quality sealants for the joints between the windows and doors which are exposed on the external side of the project. There are also conduits carrying electrical wires which are also exposed to wear and tear. There is no structural defect or poor workmanship in the project.

10. The report of M/s Ideal Homes is baseless as it does not have expertise to comment on the structural aspect of the construction carried out by the applicant. The report is self serving. The negligence of the applicant towards the maintenance of the said project has resulted in disservice and disadvantage to the flat owners owing to poor decision taken by them. The respondent had engaged the best in the business for carrying out waterproofing works in the said project. The

respondent who is the resident of the project with the sole intention of maintaining good relations with the applicant addressed all the genuine concerns being minor issues going beyond their duties and obligations as the builder. The applicant is taking undue advantage with the intention of damaging the goodwill and reputation of the respondent.

11. The issues are not arising from waterproofing/structural defect/poor workmanship/inferior quality material with respect to the construction done with the said project but only on account of wear and tear and occurrence of shrinkage/hairline cracks. The applicant has not taken any steps towards maintenance and repair of the said project in timely manner. The respondent had cooperated and dealt with every genuine issue/grievance of the applicant in a timely manner. The complaint filed by the applicant is wholly misconceived and is a clear blatant attempt to extort large sum of money from the respondent. The applicant has not made out any case, much less to the amount claimed.

12. The applicant as well as the respondent filed affidavit-in-evidence at exhibit 654/c and exhibit 322/c and additional affidavit at exhibit 902/c respectively.

13. The applicant filed an application for production of additional documents at exhibit 686/c, which was granted. The respondent filed an application for

production of technical report of expert Shri Bharat Kamat at exhibit 722/c. The respondent also filed an application for production of technical report of Arijeet Raiker at exhibit 756/c. The applicant filed an application for production of additional documents at exhibit 794/c. The respondent filed an application along with certificates under Section 65-B of Indian Evidence Act at exhibit 976/c. The above applications were objected to, however since they are relevant to case at hand and would help to decide the controversy between the parties, the above applications at exhibit 722/c, 756/c, 794/c and 976/c stand granted.

14. Heard arguments. Both Ld. Advocate Shri Narayan Pai for the applicant and Ld. Advocate Shri Parag Rao for the respondent filed their written submissions at exhibit 716/c, 830/c and 778/c respectively.

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

Sr. No.	Points for determination	Findings
(a)	Whether the applicant is entitled to receive compensation from the respondent in terms of prayer 5 (a), (b), and (c)?	Partly in the affirmative.
(b)	What relief? What order?	As per final order.



## REASONS

### Points (a) and (b)

16. Both the above referred points are taken up together for discussion as they are inter-linked.

17. The applicant has filed the application under section 14(3) of the RERA Act for compensation against the respondent for alleged negligence, structural and design defects, use of sub-standard materials for construction with poor workmanship and deficiency in service. There is no dispute that the applicant is a registered society in which several members have purchased flats so also that the respondent is also occupying the building along with other allottees.

18. Learned Advocate Shri Narayan Pai for the applicant has submitted that the said building is having problem of leakages due to sub-standard materials and products for the construction of the building, which unless rectified in time as per the permanent solution provided by the expert, M/s Ideal Homes the building would result in threat to the occupants. He further submitted that the applicant has highlighted the defects namely (i) Design and structural defects; (ii) Quality of construction and water ingress in certain areas; (iii) Occurrence of Cracks in the structure and seepages through external walls and (iv) Leakages and seepages from other sources like external plaster, toilet due to non availability of threshold, etc.

The respondent has neglected all the suggestions, on account of which, the applicant and their members have been made to suffer by the respondent, which forced the applicant to file the present proceedings.

19. Per contra, Learned Advocate Shri Parag Rao for the respondent has submitted that the alleged grievances raised by the applicant are baseless and to extort a large sum of money from the respondent. The photographs produced by the applicant do not reveal any structural defects and it only points towards lack of proper and timely maintenance on the part of the applicant. The applicant has not placed on record the materials/vendors that ought to have been used by the respondent as the respondent has engaged the top notch and the best quality of materials sourced by it and has engaged the best of contractors in the construction of the said project, which is one amongst the best projects in Vasco, if not in Goa as it has received award and recognition as outlined by the technical reports of the expert Mr. Bharat Kamat and the Principal Architect, Shri Arijeet Raiker and therefore, the application ought to be rejected.

20. In view of above rival claims of the parties and the fact that the application has been apparently moved under section 14(3) of the RERA Act, it is apposite to dwell into the above provision of the RERA Act. Sub-section 3 of Section 14 reads as follows:-

**“14. Adherence to sanctioned plans and project specifications by the promoter.- (1)...**

**(2)..**

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter’s failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.”

21. Clause 7.4 of Model Form of Agreement under 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, states as follows:-

“7.4 If within a period of five years from the date of handing over the Apartment to the Allottee, the Allottee brings to the notice of the Promoter any structural defect in the Apartment or the building in

which the Apartment are situated or any defects on account of workmanship, quality or provision of service, then, wherever possible such defects shall be rectified by the Promoter at his own cost and in case it is not possible to rectify such defects, then the Allottee shall be entitled to receive from the Promoter, compensation for such defect in the manner as provided under the Act. In case the allottees carry out any work within the apartments after taking possession, resulting in cracks and dampness or any other defect within or to the adjoining apartments/s, then in such an event, the promoter shall not be liable to rectify or pay compensation. *But the promoter may offer services to rectify such defects with nominal charges. Hairline cracks and dampness caused due to settlement, humidity, variations in temperature, electrical conduits, etc. cannot be considered as defective work.*"

22. It is therefore apparent that in case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's

failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act, but the promoter shall not be liable for the defects namely hairline cracks and dampness caused due to settlement, humidity, variations in temperature, electrical conduits, etc. as they cannot be considered as defective work. The promoter shall also offer services to rectify the above referred defects with nominal charges.

23. There is no dispute that the application under consideration was moved by the applicant within a period of five years from the date of handing over the apartments to the allottees and the allottees through the society brought to the notice of the promoter/respondent the defects in the building and that such defects shall be rectified by the respondent at their own cost, which has not been carried out till date as it is claimed by the respondent that there are no structural defects in the project and that the applicant has not taken any steps towards maintenance and repairs of the said project in timely manner as part of their duty.

24. It is therefore relevant to analyze whether there were structural defects or defects in the workmanship, quality and provisions of services brought to the notice of the respondent within a period of five years or whether there was neither poor or defective workmanship and applicant has not taken any steps towards maintenance and repairs of the said project in timely manner.

25. The major concern in the present proceedings is the issue of leakages/seepages, dampness in the said project, common areas, cracks on the ceilings and the walls posing a serious threat to the residents. There is no dispute that the project was registered under the RERA Act and that the above application was moved within a period of five years as mandated under the law. It is the case of the applicant that in the first year of the occupancy, the project was observed to have leakages and seepages issues and the said fact was brought to the notice of the respondent. It is not denied that the issue of leakages/seepages were brought to the notice of the respondent by the residents as well as the applicant and despite the notice, the respondent has ignored to rectify the said issues, although the respondent is one of the occupants of the said building and should have rectified the said defects, instead of claiming that the project was completed using top notch and best quality materials and that it is a titan in the real estate industry so also that it is a result of poor maintenance, which fact goes to show that the issues raised by the applicant have a ring of truth in it and have to be addressed by the Authority.

26. It is also an admitted fact that the project is a new project and has completed only four years, however it is not explained by the respondent as to how the project developed the above defects, if it is claimed by the respondent that they had engaged the best contractors in the business and that it is the attempt of the applicant to extort exorbitant sum of money. The applicant is a society registered

which is aimed at maintaining the project and as such it is not understood how the applicant is attempting to extort money from the respondent as it is neither their case that there is misappropriation of funds on the part of the applicant nor it is shown that the respondent are negligent in performing their duties and therefore, it is evident that the respondent has come out with defenses, which are neither apt nor credible in the facts of the case.

27. There is no dispute that the applicant had brought to the notice of the respondent with respect to the defects as referred in the application within a few months from obtaining the occupancy certificate, which could have been easily fixed by the respondent however, the issues of leakages and seepages were not attended to by the respondent from the stage of initial construction of the project on the belief that they enjoy a good reputation and goodwill having completed several projects and that dampness, hairline cracks are not structural defects and cannot be considered as defective work as forcefully argued by Ld. Advocate Parag Rao for the respondent, as the respondent appeared to have ignored the pleas of the applicant to rectify the leakages and seepages which were the root cause of issues.

28. The applicant have produced on record the Legal notice dated 05.05.2023; Ground Floor Common Area Report; Gym Club house Report; Staircase area report; Terrace area report; Upper Ground floor common area report;

Reply by the Developer dated 08.05.2023; Reply by Nina Percepts dated 24.05.2023; Second reply by Developer dated 20.06.2023 and Photographs along with certificates under section 65-B of Indian Evidence Act. The above documents including the photographs clearly depict the seepage of water not only at the top most floors but on each floor of the said project. The said documents including the photographs have not been denied by the respondent nor did the respondent produce counter photographs or any other documents to prove otherwise. The above documents clearly indicate that it is not a case of dampness or hairline cracks caused due to humidity, variations in temperature etc, but a clear case of defective work, which should have been readily attended to by the respondent, instead of taking unnecessary defenses.

29. The justification of the respondent that the above defects were caused due to failure on the part of the applicant to carry out maintenance as well as steps to carry out minor repairs in the said project which has accelerated wear and tear in the common area cannot be considered as the problem of leakages and seepages in the common area of the project had already commenced before the formation of the society as the allottees have complained to the respondent and after the society was formed, the said fact was brought to the notice of the respondent, which they had promised to take care of the said issues as the issue of seepages and leakages are the work of the waterproofing expert appointed by the respondent, as such it



was the responsibility and obligation on the part of the respondent to get the repairs and the rectification of seepages and leakages done on time, which was apparently ignored by the respondent on the grounds mentioned above.

30. The question of the applicant not maintaining the project does not arise as it is the case of the applicant that the respondent had assured that the said issues were communicated to the Nina Percepts Pvt. Ltd. who was assigned to carry out waterproofing issues which was not taken care of by the said agency. There is also no dispute that the respondent vide e-mail dated 03.08.2021 suggested to appoint an independent agency to evaluate the extent of leakages and seepages in the said project and the methodology to deal with the same and the report of the said agency could be shown to Nina Percepts. There is also no dispute that M/s Ideal Homes was appointed by the applicant on the suggestion of the respondent and it was found that the reasons of the defects and other issues were on account of poor workmanship, use of sub-standard materials for construction, design defect and water proofing defect. The report submitted by M/s Ideal Homes at exhibit 352/c is exhaustive. The report of Ideal Homes takes into consideration the areas such as ground floor level, common area; gym and club house; staircase blocks; open to sky terrace area and underground levels common areas with location of seepages, observation, remedy, specification and estimate in all the above areas. The said

report has been repelled by the respondent with the reports of the Engineer/Architect Bharat Kamat and Arijeet Raiker respectively.

31. Undoubtedly, the applicant sent a notice to the respondent along with the said report of M/s Ideal Homes to which the respondent asked the applicant to depute a responsible officer of the applicant and representative of M/s Ideal Homes for a joint inspection at exhibit 10/c as the representative of Nina Percepts Pvt. Ltd., waterproofing expert would be a part of it so that the problem could be highlighted and during the course of inspection and meeting, all the issues of major concerns were pinpointed as per the report to which the respondent had no answer for the defects shown. The respondent has admitted in the e-mail dated 03.08.2021 at exhibit 432/c that they had advised the applicant that they must get an agency who is technically qualified, sound and experience and that they should work as a team and report it to the waterproofing contractor who is bound to rectify all issues. M/s Ideal Homes was appointed due to the concurrence given by the respondent as per the above letter and therefore, the alleged shortcomings enumerated by the respondent have no force in the eyes of law.

32. There is no dispute that the waterproofing expert namely, Nina Percepts Pvt. Ltd. sent a letter dated 24.05.2023 to the applicant at exhibit 96/c wherein it was confirmed that the respondent had misrepresented to the applicant about the waterproofing problem and termed all the problems highlighted as design and

structural defects; quality of construction and water ingress in certain areas; occurrence of cracks in the structure and seepages through external walls and leakages and seepages from other sources like external plaster, toilet due to non-availability of threshold, etc.

33. In the said letter addressed to the applicant, Nina Percepts Pvt. Ltd. had clearly mentioned that they had successfully completed their scope of work as per the work order issued to them by the respondent and handed over the project to the respondent and that on multiple occasions even during the course of work execution, they have repeatedly highlighted inherent problems that have been the cause of concern since the very inception and in fact during the course of work execution, they have strongly recommended the need to appoint a consultant/agency to guide the respondent on the method of checking the water tightness of structures as there were obvious quality related shortcomings in the general construction not related to the waterproofing work scope however, the advice from their end was unheeded.

34. It was also mentioned in the said letter by Nina Percepts that the waterproofing constitute a miniscule component and only one per cent of total value of the project and that the waterproofing protection is done at the structural slab level and there are further works of civil and finishing related such as flooring etc, done over and above the waterproofing layers and when the area comes under

utility, water may percolate through the joints in flooring or through other means such as joints of dissimilar materials etc. and may get accumulated in the voids/porosity in the civil or finishing layers. The joints in flooring are subject to workmanship of a different nature of work and hence, any such defect is outside their scope of work.

35. It was also mentioned in the said letter by Nina Percepts that similar observation on the above premises has been ably captured in the reports of M/s Ideal Homes as well wherein structural issues such as design fault, structural cracks, the use of sub-standard materials/products for construction of the building, seepages through external walls. etc. have been highlighted as the probable cause of leakages. It is also mentioned that the Nina brand has enjoyed over 57 years in the civil industry and has always been associated with best quality materials and processes for water quality and that they regret to say that the respondent are currently facing a dilemma on several civil and structural issue on the said project and have unfortunately misrepresented the same to the general body of residents at large as a waterproofing problem which is false and misleading.

36. It was informed by Nina Percepts Pvt. Ltd. to the applicant that during the course of construction of the said building, Nina had pointed out all the above issues and solution to the respondent and the respondent neglected all the suggestions and due to the negligence on the part of the respondent and use of sub

standard materials for construction in the said project, the applicant was made to suffer. Nina Percepts is the agency employed by the respondent. It has clearly stated that there were qualities related shortcomings in the general construction not related to the waterproofing work scope and that the advice from their end was unheeded. It therefore reveals that the Nina Percepts Pvt. Ltd. employed by the respondent themselves have clearly belied the case propounded by the respondent that it is the maintenance issue and that it is the duty of the applicant to carry out the repairs. The letter of the Nina Percepts Pvt. Ltd. clearly brings out that the case of the applicant of seepages, poor workmanship, design and structural defects leading to cracks in the structure and seepages through external walls is well founded and fully made out by the applicant.

37. The respondent has relied upon the e-mail dated 03.08.2021 at exhibit 432/c addressed to the applicant wherein it is admitted that they had brought on board Nina Percepts Pvt. Ltd., waterproofing experts, one of the India's largest and oldest waterproofing company for giving best service and solution, however they have goofed up at few places, may be human error, negligence or a probability of failure. It is also stated that they have identified few apartments in the year 2020 which had waterproofing issues and immediately started acting on it and they ensured that waterproofing contractors took precautionary measures in each and every apartment and certain procedures were done as a preventive measure to

avoid future inconvenience. The above averments are nothing but admission on the part of the respondent regarding deficiency in work and services resulting in the above mentioned defects.

38. The respondent in order to overcome the case of the applicant has produced on record during the course of proceedings two reports, one a technical report by Mr. Bharat Kamat and another report by Architect Mr. Arijeet Raiker. The said reports were not filed along with the reply or with affidavit-in-evidence but during the concluding part of the proceedings. The report of Shri Bharat Kamat was a result of inspection carried out by him allegedly on 09.12.2023 and 20.12.2023 in the premises of the applicant however, according to the applicant when they checked the CCTV camera footages and recordings which they have produced on record, there were no inspection carried out on 09.12.2023 by them, however on 20.12.2023 only Shri Bharat Kamat was seen taking a stroll in the premises without any device or a book for noting. Even, if it is admitted that such an inspection was carried out by aforesaid person and a report was prepared, it cannot be considered as he has not relied upon any materials on record disputing the report of M/s Ideal Homes relied by the applicant, which was carried out with the help of scientific methodology.

39. Ld. Advocate Shri Parag Rao has assailed the report of M/s Ideal Homes claiming that it was fraudulent and exaggerated and that the methodology

is not in terms of the technology used in determining the structural defects of the project and that it is incompetent and without expertise to have commented on the structural and design aspects of the said project. However, it is well known, so also Prof. D. S. Prakash Rao, Director, at Aurora's Scientific, Technological and Research Academy, Hyderabad in his report/article, which is relied upon by the applicant has clearly opined that the infrared thermography is a powerful tool to investigate structural condition and equally useful for damage assessment. It is a non-destructive and non-invasive method that enables rapid investigations. The images are processed by software to yield thermal images. According to him, the said technology had immense potential in quality control during construction as well as investigation on deteriorated structures without interrupting construction or utility of the structures which is normally used for the assessment of pavements, historical structures, plumbing, sewage lines, cracks and moisture ingress. It is therefore the abovesaid technology used by the applicant through M/s Ideal Homes provided an excellent tool for rapid assessment of structures and therefore, the submission of Ld. Advocate Shri Parag Rao as stated above pales into insignificance.

40. The technical report of Mr. Bharat Kamat as stated above lacks visual evidence of the areas of concern including photographs which would have helped in offsetting the case of the applicant and the documents produced by them

including report of M/s Homes. The report of Bharat Kamat also confirms the case of the applicant that there is present of excessive moisture in the concrete structure in the building, water leakages in the ceiling for which repairs are required, which corroborates the case of the applicant of water ingress and seepage in gym, club house, staircase blocks and open to sky terrace as a result of failure to seal gaps of side windows and staircase block window by sealant. The said report of Mr. Bharat Kamat produced at the fag end is only an attempt to cover up the loopholes in the projects claiming that they are the best in the business, which they failed to prove.

41. The respondent has produced on record the report of Shri Arijeet Raiker also at the fag end of the proceedings, which according to the applicant is vague. The said report was also produced to cover up the structural defects in the project. In any event, the reports of the above two persons in no way assist the respondent nor do away the case of the applicant and the documents produced on record including the report of M/s Ideal Homes and letter of M/s Nina Percepts Pvt. Ltd. where they have clearly outlined that the respondent was responsible for poor workmanship, design and structural defects, occurrence of cracks, leakages and seepages on external plaster, toilet etc. and therefore the above reports cannot be considered for adjudicating the present dispute.

42. The above evidence coupled with the documents produced by the applicant as well as the respondent clearly indicate that the respondent is trying to



mislead and distort the case of the applicant by filing the reports of the engineer/ architect as stated above deviating from the main issue which the respondent has admitted without admitting so on the paper. The structural design and the defects can be seen on all the balconies in the said project without any protection or RCC ceiling/sajja as to prevent the water directly coming into the flats and the walls of the common areas through the balcony as there is no threshold for the water to flush out the said water upon being clogged into the slabs of floor causing further dampness, seepages and leakages in the slab as clearly seen in the report submitted by M/s Ideal Homes and the letter of Nina Percept Pvt. Ltd. which is a major concern of all the allottees of the said project and therefore, the report of M/s Ideal Homes cannot be brushed as sham.

43. There are therefore inherent shortcomings and defects in the construction of the said project. Merely claiming that they have used the best quality materials and engaged the best contractors in the business, so also conferred an award of appreciation by the Indian Concrete Institute and that they are enjoying good reputation and goodwill will not assist the respondent in any way, moreso when the materials on record suggest otherwise. There are over hundred flats in the said project which are fully occupied and due to the issues highlighted by the applicant, which if not rectified, may cause major threat to the applicant including all the allottees and the respondent themselves, on account of negligence, structural and

design defect, use of sub-standard material for construction, poor workmanship and shying away from the responsibility and the obligations on the part of the respondent to rectify the defects by claiming that they are only maintenance issues and therefore, it can be safely said that the applicant has proved the case under Section 14(3) of RERA Act.

44. 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.”

45. 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.

46. The respondent has failed to convey the project to the applicant free from any structural defect or any other defect in the workmanship, quality and other obligations on the part of the promoter. The respondent will therefore not exonerate itself from legal liabilities and corresponding legal rights accrued to the applicant under the RERA Act. The respondent has thus committed defaults in their obligation to rectify the defects as enumerated by the applicant and as seen in the reports of M/s Ideal Homes and M/s Nina Percepts. The conduct on the part of the respondent clearly indicate that due to such defaults in the discharge of obligations in terms of section 14(3) of the RERA Act, the right of the applicant to enjoy the apartments have been put to serious jeopardy. The respondent has thus violated the provisions of Section 14(3) of the RERA Act and therefore, the applicant is entitled to receive appropriate compensation in the manner as provided under the RERA Act.

47. The applicant has prayed for reliefs in terms of prayer 5 (a), (b) and (c) of the application for an amount of ₹1,50,00,000/- ( Rupees One Crore and Fifty Lakhs only) for costs of repairs and as damages for mental torture, harassment etc. The moot question is how much compensation; the applicant is entitled to, which is fair, reasonable and proper.

48. 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.”

49. 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.

50. The applicant has however not specified the break-up of the amount claimed by it towards costs of repair as well as compensation for mental torture, harassment etc. in the application as well as in the affidavit-in-evidence, however the applicant has relied upon the report of M/s Ideal Homes in which the applicant has given the areas where defects have occurred as well as the estimate of costs of repairs with respect of location of seepages, cracks etc namely, on ground floor common area; gym and club house; staircase block; open to sky terrace area and underground level common areas. The applicant has claimed an amount of (i) ₹3,81,376/- for seepages at page 326/c of the report of M/s Ideal Homes including GST. The applicant is also claiming an amount of (ii) ₹5,71,356/- for repairs to club house and gym at page 298/c of the said report. The applicant is also claiming an amount of (iii) ₹43,69,127/- at page 238/c for repairs to all staircase blocks. The applicant is also claiming an amount of (iv) ₹10,68,195/- towards repairs of all terraces at page 196/c of the said report. The applicant is also claiming an amount of (v) ₹3,14,234/- for repairs to underground parking area. The applicant has thus

given estimate summary of the total costs of repairs of the above works amounting to ₹67,04,288/-.

51. The respondent has not denied the cost of repairs of the above defects mentioned in the report of M/s Ideal Homes. They have also not denied in the reply as well as in their original affidavit-in-evidence, however, the applicant has filed an additional affidavit at exhibit 902/c and has claimed that the amount indicated by the Ideal Homes is exorbitant as they are claiming an amount of ₹1,50,00,000/- which is a clear case of arm twisting, pressuring the respondent in giving into the illegitimate and unjust demand and that the respondent on its own without admitting the liability to rectify the defects had obtained a quotation from a Painting and Civil Contractor in respect of all the alleged defects pointed out by the applicant which is around ₹2,13,425/- which exposes the ulterior motive of the applicant, however, the quotation of one A and A Decorators relied by the respondent has not been supported by any affidavit of the contractor nor it nullifies the case of the applicant of the structural defects proved by them including the cracks and poor workmanship.

52. Be that as it may, the above averments go to prove the case of the applicant with respect to the defects in terms of Section 14(3) of the RERA Act. Moreover, if the case of the respondent is to be believed, they could have volunteered to carry out the said works by painting or could have also carried out the above referred

works by themselves, which would have helped the forum to believe that it is only minor defects and not structural defects, which the respondent has failed to prove. Moreover, the documents as well as the report by M/s Ideal Homes and the letter of Nina Percept Pvt. Ltd. are contrary to the case of the respondent.

53. The applicant is claiming an amount of ₹1,50,00,000/- for rectifying the defects for the areas mentioned above in terms of the application filed by them however, the estimate summary and the methodology given by M/s Ideal Homes for rectification of defects are only to the tune of ₹67,04,288/- which is far below the claim of the applicant in terms of the application filed by them. The estimates given by M/s Ideal Homes appear to be on the higher side and does not conform to the claim made by the applicant in their application and therefore, compensation of an amount of ₹25,00,000/- ( Rupees Twenty five lakhs only) for violation of Section 14(3) of RERA Act would be appropriate, fair and reasonable for carrying out the said repairs considering the case of the applicant and the materials placed on record by both the parties.

54. The applicant is also claiming an amount for mental torture and harassment. The applicant has not produced anything on record in connection with the above case, however considering that the applicant were pursuing the matter against the respondent, who claims to be a reputed builder and that the committee

of the applicant had to undergo tension and mental agony, the respondent has exposed themselves for payment of appropriate compensation for causing mental tension towards the litigation, inconvenience and agony in pursuing the present proceedings under Section 71 of the RERA Act amounting to ₹2,00,000/- (Rupees Two Lakhs only).

55. The applicant, is thus entitled a total amount of ₹27,00,000/- (Rupees Twenty-seven Lakhs only) which can be bifurcated as follows (i) ₹25,00,000/- (Rupees Twenty-Five Lakhs only) for violation of Section 14(3) of the RERA Act; (ii) ₹2,00,000/- (Rupees Two Lakhs only) for causing mental tension towards the litigation, inconvenience and agony. The above amount of ₹27,00,000 (Rupees Twenty-Seven Lakhs only) awarded to the applicant shall also carry interest as applicable by law.

56. 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 is liable to pay interest at the rate of 10.85% p.a. for every month of delay to the applicant by way of compensation on the aforesaid total amount of ₹27,00,000/- (Rupees Twenty Seven

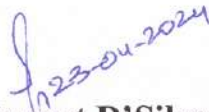


Lakhs only). Hence, the above points (a) and (b) are answered partly in the affirmative.

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

**ORDER**

- a) The respondent is directed to pay to the applicant compensation of ₹25,00,000/- (Rupees Twenty Five Lakhs only) for violation of Section 14(3) of the RERA Act read with Section 71 of the RERA Act, within thirty days of this order.
- b) The respondent is directed to pay to the applicant an amount of ₹2,00,000/- (Rupees Two Lakhs only) for causing mental tension towards the litigation, inconvenience and agony under Section 71 of the RERA Act, within thirty days of this order.
- c) In default of payment of above amounts of ₹27,00,000/- (Rupees Twenty Seven Lakhs only), within thirty days, the respondent shall be further liable to pay to the applicant interest at the rate of 10.85% per annum till the date of realization.

  
(Vincent D'Silva)  
Adjudicating Officer,  
Goa RERA

Panaji, Goa.  
Date: 23.04.2024.