



## GOA REAL ESTATE REGULATORY AUTHORITY

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Tel: 0832-2437655; e-mail: goa-rera@gov.in

F. No. 3/RERA/Complaint(450)/2024/ 825

Date: 29/05/2025

**Prashant Kaul**

S/O SH. S.S KAUL

R/O. C-149, Dashrath Marg,

Hanuman Nagar, Jaipur,

Rajasthan-302021

Through It's A.R./SPA HOLDER

Ms. Gopika Kaul

D/o/ SH. S.S. KAUL

R/O H.No.46, Sector-37, Noida,

Uttarpradesh-201301

.....Complainant

V/s

**1. M/s Ryago Homes Private Ltd**

(Land Owner)

Through its Director:

Mrs. Neelam Nagpal

REGI. Office Address:

61, Viraj Silverene CHS Ltd,

321, Hill Road opp Mehboob Studio,

Bandra (W) Mumbai -400050

**2. M/s Vianaar Infra LLP**

(Promotor/ Developer)

Through its Partner

Mr. Akshay Chaudhary

REGI. Office Address:

E-210/176, Khalap Waddo,

Canca, North Goa, 403510

.....Respondents

### **ORDER**

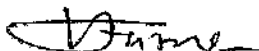
**(Date: 29/05/2026)**

1. This order disposes of the online complaint (File No. 3/RERA/Complaint(450)/2024) filed by Mr. Prashant Kaul (complainant)

*[Signature]*

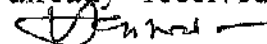
before the Goa Real Estate Regulatory Authority (Goa RERA) against the M/s Ryago Homes Private Ltd and M/s Vianaar Infra LLP(Respondent) under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (herein after referred as the Act of 2016) alleging misrepresentation as to the specification of the Villa including that of garden area by the Promoter of project La Verona, subsequent reduction of carpet area and non adjustment of the excess payment received against the same and also pertaining to garden area, violation of Section 3, 4 & 14 of the Act as well as of Section 13 of the Act, besides delay in completion and handing over of possession of the property, etc.

2. The complainant has further submitted that the Respondents through their representative approached the Complainant in the month of February, 2020, and allured him to buy the subject property with projected gains over a period of time whereby the complainant was made to believe that the area being a tourist place, would generate a very high extent of earnings. Consequently, he vide booking form No. BOO0198/00005/20-21 and Application Form dated 09.03.2020 booked the allotment of the Villa No.11 in the aforesaid project La Verona registered with GoaRERA vide No.PRG008201171 (hereinafter referred as subject property) and further paid an amount of Rs.11 Lakh but the same were not shown as having been received on 09.03.2020 and instead by way of misinterpretation were shown to have been received on 23.09.2020. Thereafter, the Respondent vide Allotment letter dated 23.09.2020 allotted the Villa bearing Unit No.11 to the complainant, in the aforesaid project admeasuring 1845 Sq Ft. for a consideration of Rs. 2,00,30,002.65/- @ Rs. 10,856.37 per Sq.Ft and Garden area admeasuring 985 Sq.Ft for the consideration of Rs. 19,70,000/- @ Rs. 2000/- per Sq. Ft and the total consideration of both area was Rs. 2,20,00,002.65/- without taxes.



3. The respondents later on also issued another copy of booking form dated 13.06.2024 to complainant which was at a considerable variance from the original booking form dated 09.03.2020 whereby the Carpet area was later reduced to 1350 sq.ft. and another misleading term of "super built area" was incorporated. Attention was also drawn to the payment statement, as per which "carpet area of 1845 sq. ft." was sold as against actual carpet area of 1350 sq. ft. Further, the allotment letter dated 23.09.2020 also mentioned Garden Area of 985 sq.ft. at the rate of 2,000/- per sq.ft. which was in addition to the Built up area of 1845 sq.ft. In this regard also, the complainant was allured with a malafide intention in as much as the complainant was apprised that the said garden area would be forming part of the subject property under exclusive ownership of the complainant but the same turned out to be non-sealable as enquired from the co buyers and also Registrar's office who confirmed that the said Garden Area of 985sq.ft. was not allowed to be sold. Thereafter, Complainant kept on raising the issue with Respondents to reconsider excess amount charged under the pretext and in the name of Garden area, and adjust the same against the payment being charged for the subject property, but respondents kept on assuring that they will get it allowed from registrar in sale deed, which was totally false and incorrect representation of respondents. However, believing the representation of the Respondent to be true and genuine, complainant kept on paying as per the payment plan and as and when the Demands were raised by the Respondents without execution of any documents between complainant and respondents.

4. It was also stated that the subject property, was booked with a CONSTRUCTION LINKED PAYMENT PLAN and despite the fact that the pace of Construction was not as per commitments, the Complainant preferred to make payments, as per demands raised, even though the same were not due. It was also submitted that the Respondents had already received INR



2,19,45,000/- (Rupees Two Crore Nineteen Lakh Forty Five Thousand Only), which has above 10%, before registration of Agreement To Sell, violating mandatory provisions of Section 13 of the Act. The complainant also alleged commission of unfair trade practice on the part of the Respondent, as it cheated the Complainant, with an ulterior motive to grab the hard earned funds of the Complainant, by misinforming the real facts and also further cheated the Complainant by receiving almost full amount without execution of agreement to sell. As such the Respondents are adopting UNFAIR TRADE PRACTICES and cheating the innocent buyers.

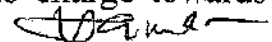
5. The complainant also alleged that the respondent also failed to complete the project within promised time schedule, despite receipt of approximately 95% i.e. Rs. 2,19,45,000/- of total due payment and also that the payment, which was received by respondents towards garden area has neither been adjusted, nor agreed to be Refunded, by Respondents till date and respondents are still showing it towards garden area and pressurizing the Complainant to pay remaining 5% amount otherwise they will cancel the above said booking and forfeit the amount of the complainant, which he had paid towards said Villa. It was further stated by the complainant that raising a Demand without executing Agreement To Sell, is totally unauthorized and threatening to cancel the allotment and that too in a delayed period of the project, is also totally in violation of the norms set under the Act.
6. It was further submitted that the present Complaint is instituted against the unilateral arbitrary, unlawful, dishonest, mala fide and high handed actions of the Respondents wherein they have failed to construct, complete and hand over the possession of allotted "Villa" to the Complainant as per the terms of booking form & allotment letter dated 23.09.2020 within the stipulated time period. Pertinently, in addition the Respondents have committed several other unfair/ restrictive trade practices. Also, the Respondents had floated several large projects where they have defaulted in completing the project in time



thereby causing loss and damages to their investors/purchasers against the spirit of Section 34(f) of the RERA Act. Pertinently, the Respondent had launched the present project stating that they would complete the said Project by December, 2022. However, the respondent later represented that it shall complete the construction of the unit/project on or before extended period 31/07/2023 and since it failed to complete the project and handover the possession in time; there is deficiency in service on the part of the Respondents, by not delivering possession within stipulated time and as a result of which, the Complainant could not re-locate and has to stay back and is also suffering losses in terms of Rentals and Interest on the amount paid.

7. It was further stated that the Respondent has also caused great hardship, mental harassment and huge pecuniary loss to the Complainant by receiving amount towards garden area which is not permissible and salable. In case of delay in handing over the possession, the Respondents have also agreed to compensate the Complainant @ 12%, on the amount deposited up to the date of actual possession. It was further submitted that the Complainant have continuously contacted the Respondents regarding the information about the construction and possession of the aforesaid booked Villa whereas the Respondents and its officials deliberately avoided the queries of the Complainant on one and other pretext and did not make any effort to resolve the complaints/requests made to them. Such act of the Respondent amounts to suppression and concealment of requisite information and facts. It was thus sought to be concluded that the Respondents have indulged in unfair trade practice and there is a deficiency in service on part of the Respondents by misleading the Complainant and thereafter, the Respondents illegally reducing the carpet area from 1845 to 1350 Sq. Feet to the Complainant.

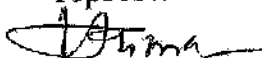
8. In view of the above, the complainant sought relief in terms of direction to the Respondent to charge only towards carpet area 1350 sq.ft. and not to charge towards super built-up area of 1845 sq.ft. and further not to charge towards



garden area 935 sq.ft. and refund the amount charged alongwith the interest at the rate prescribed or to adjust the excess amounts received; besides direction to the Respondents to hand over the Possession, with delay interest @ MCLR+2%, w.e.f. the promised date of possession till the actual possession. It was also prayed to direct the Respondent to pay 5% amount of total project cost to complainant as compensation and revoke the license of the builder/developer for doing unfair trade practice besides compensation equivalent to Losses in terms of Rentals and Interest, alongwith compensation on account of Mental harassment as well as the Litigation Costs.

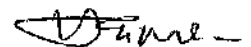
9. Per contra the Respondents by way of preliminary objections, submitted that the present Complaint filed by the Complainant through his Authorized Representative and Special Power of Attorney holder Ms. Gopika Kaul is totally misconceived both in law and fact & does not merit any relief by this Authority. Further, the instant complaint has been filed & verified by the Attorney of the Complainant by making false statements on solemn oath without being conversant with the facts and circumstances pertaining to the transactions made by Prashant Kaul with the Respondents during the period February to March 2020 Particularly when the Special Power of Attorney was given to Gopika Kaul on 03/08/2024. Besides, the said Special Power of Attorney holder never had any interaction/email correspondence with the employees of the Respondents at any point of time and personal knowledge with respect to the issue at hand. It was also stated that the Complainant Mr. Prashant Kaul has ceased to be an allottee in terms of Section 2 (d) of the Real Estate Regulation Act, 2016 after issuance of the Letter dated 03/02/2025 whereby the allotment of the suit Villa No. 11 in the project La Verona has been cancelled and such the Complainant cannot maintain the Complaint under Section 31 of the said Act.

10. Replying on merits, the Respondent stated that there was no false representation made to the Complainant at any point of time by it i.e. either at

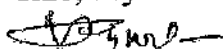


the time of signing of the Application Form dated 09/03/2020 or thereafter. It was further stated that pursuant to similar allegations of misrepresentation made in Legal Notice dated 05/08/2024, the Respondents vide Reply dated 30/08/2024 had clarified and explained the exact nature of transaction that had transpired between Prashant Kaul and the Respondents and the issue was satisfactorily resolved before proceeding further with schedule of payments annexed to the Allotment Letter dated 23/09/2020. It was also stated that the complainant submitted Application Form dated 09/03/2020 which provided the Unit details as Villa No.11 with Unit Area of 1835 sq.ft. and Garden/Terrace area of 930 sq.ft. and at a Basic Selling Price (BSP) of Rs. 2,20,00,000/-. The Respondents also claimed that the Complainant was further explained "*Unit Area*" is the "*super built up area*" which is the built up area of the property along with the proportionate area of the common areas and facilities in the residential project and that 'Garden/Terrace Area' on the other hand is demarcated land adjacent to each villa that is being developed as a garden and which is for the exclusive use of the buyer, and not for the common use of other buyers and also that the garden area is not a common area but the exclusive right to use area of the concerned Villa and that each buyer would have the exclusive right to use the garden and the ownership of all gardens will be with the villa owners in the form of 'undivided interest'.

11. The Respondent further sought to plead that the Reply given by the Respondents on 30/08/2024 to the Legal Notice addressed by Alaya Legal Advocates has not been contested or countered by the Complainant thereby acknowledging the contents of the Reply and admitting the details of transaction which were exclusively within the knowledge of Prashant Kaul and the Respondents. It was thus denied that the carpet area was reduced from 1845 sq.ft. to 1350 sq.ft. as alleged by the Complaint being false and contrary to records and the transactions between Prashant Kaul and the Respondents.



12. It was further stated that there are several email correspondences between Prashant Kaul and Shradha Mathur with respect to the specifications of the suit Villa which were ultimately set at rest by mutual agreement between Prashant Kaul and the Respondents.
13. The Respondents submitted trail of emails made between Shradha Mathur shradha.mathur@vianaar.com & Prashant Kaul kaulme@gmail.com on record and also referred/reproduced the same in its reply. The perusal of the these emails reveals that the Promoter vide its email dated 3<sup>rd</sup> August 2021 at 16.35 while responding to the issue of the changes, informed the complainant that there were some setting out issues considering the site condition and on account of the same, 12 inches were reduced from the staircase and 8 inches from ground floor living room and first floor bedroom respectively and besides these, there were no further changes in the layout. The complainant further vide email dated 03<sup>rd</sup> August 2021 asked the respondent whether the area of the overall plot (including the garden) been reduced and also sought the exact dimensions of the plot and also the sq.ft. area of the villa; which was responded to vide email dated 06<sup>th</sup> August 2021 by the Respondent stating that there are no further changes in the layout or in the villa and plot area was 154 sq.mts., Super Built-up area 1845 sq.ft., Garden area without pool 710 sq.ft. and carpet area is 1350 sq.ft., Complainant further vide email dated 10<sup>th</sup> August 2021 asked the respondent to provide details as per format to which Respondent vide email dated 11<sup>th</sup> August 2021 replied that the dimensions shared are the only dimensions and there are no changes in the overall structure. Also informed that there are no changes in the overall cost of the villa. The Complainant on the same day however also sought explanation to the email dated 03<sup>rd</sup> August wherein it is clearly mentioned that the area has been reduced which was replied vide email dated 16<sup>th</sup> August 2021 and 18<sup>th</sup> August 2021 by the Respondent stating that there is no modification in the villa with regards to size, layout or location and the team was able to manage the site requirements



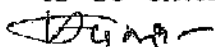
without affecting the villa of the complainant in any manner and that structural changes in the overall site was to comply with the local authorities. The complainant was also given the option either to continue with the allotment of Villa or if he decides not to proceed with the purchase or in case he was unhappy, he would be given full refund.

14. In view of the above referred correspondence the Respondent emphasized that Mr. Prashant Kaul was thus fully appraised about the exact specifications of the Villa after which only Prashant Kaul agreed to continue and thereafter the discussions were held with regard to other aspects including flooring, interiors furniture, etc. In this regard, the respondent while referring to the email correspondence between Prashant Kaul and Shradha Mathur stated that vide email dated 1<sup>st</sup> September 2021 the promoter Respondent invited complainant to a zoom meeting on flooring selection of his villa, and the complainant by email dated 18.09.2021 cleared the type of certain materials and also indicated that one Mr. Suraj from the Respondent side was yet to discuss with him on some points. Attention was also drawn to further interaction between Prashant Kaul and the Respondents showing that the Complainant was also engaged with the interior design services for the suit Villa and also sought clarification regarding total unit cost and maintenance charges. Complainant finally vide its email dated 29<sup>th</sup> April 2022 noted that there was no change in the total unit cost (including taxes) of the subject property i.e. 23,100,000/- and further that maintenance was to be paid for one year, as was agreed to earlier. The Respondent thus stated that there was no issue with respect to Villa specifications and the Complainant continued to make the payments for subject property and thus the Respondents had neither cheated the Complainant nor engaged into any unfair trade practice as claimed by the Complainant.

15. With regards to the allegations of contravention of mandatory provisions of Section 13 of the Act is concerned, the Respondents stated that despite best efforts of the Respondents the Complainant failed to enter into the Agreement

to Sale with respect to subject property. It was pointed out that while issuing the Allotment Letter on 23.09.2020, the Respondents had furnished enclosures Annexure 'A' to Annexure 'G' interalia providing the details of process for Agreement to Sale registration and the complainant vide letter dated 23.09.2020 was also requested to get his ATS (Agreement to Sale) registered within 30 days after receiving the Allotment. It was further stated that on account of unavailability of the Complainant in India, the Agreement to Sale could not be executed by the Complainant and the Complainant cannot now hold the Respondents for violation of the mandatory provisions of Section 13 of the RERA Act. It was also emphasized that even otherwise the customer ledger of the Complainant reveals that the Respondent had received only an amount of Rs.11,00,000/- (Rupees Eleven Lakhs only) as on 23/09/2020 and the next amount which was received by the Respondents from the Complainant was on 25/01/2021 for Rs.12,10,000/- i.e. much after 30 days of receipt of allotment of the property i.e. 24/10/2020 Also the Complainant has failed to demonstrate that the Respondents refused to execute the Agreement to Sale even after having issued Letter dated 23/09/2020. It was therefore denied that the Respondents kept on receiving the amount without execution of Agreement to Sale which was in violation of mandatory provisions of the statutory norms under the Act. With regard to the garden area, it was stated that at no point of time, assurance was given by the Respondents that the garden area will be sold to the Complainant and further that the Prashant Kaul was fully acquainted with the schedule of payments and also made payments as per demands raised since he had no complaints either of the pace of construction or about the specifications of the unit which he had booked.

16. With regard to delay in completion of the project and handing over possession of suit Villa of La Verona project to the complainant, the Respondent denied any delay since the date for handing over the possession was mutually agreed to be extended between Prashant Kaul and the Respondents and that the



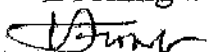
complainant Prashant Kaul was fully aware that the possession of the Villa was to be made in December, 2023 as per Annexure C6 submitted by the complainant. Further the registration of the project was valid from 06.08.2020 till 31.07.2023 and subsequently on 05.10.2023 the Goa RERA was pleased to extend the registration of the project from 01/08/2023 till 31/01/2024 which was communicated to the Complainant Prashant Kaul. However, the project La Verona was completed even before the expiry of the due date and Completion Certificate was issued by the Office of Senior Town planner on 03/10/2023 and the Occupation Certificate was issued by Village Panchayat of Assagao on 03/11/2023 which reveal that the project was completed and fit for occupancy even before the extended date i.e. 31/01/2024. The respondent also denied that the Complainant was threatened to cancel the booking and forfeit the amount and stated that on the contrary the Complainant has failed to come forward to execute the Deed of Sale even after sending the proforma of the Draft Sale Deed. Further, despite being put to Notice about the outstanding dues as on 13/03/2024 by email correspondence dated 13/03/2024, the Complainant failed to honor the payments due. The respondent also denied that they were hand in glove and had conspired with each other to induce the complainant to invest in their project by showing rosy picture and alluring him for good return being false. Also further denied that the Complainant kept on requesting the Respondents to adjust the amount taken on the pretext of selling garden area of approx 985 sq. feet @ 2000/- per sq. feet being false.

17. The Respondent also stated that the present Complaint is filed by the Complainant through Ms. Gopika Kaul who ought to have verified the facts from Prashant Kaul before verifying the pleadings. It was further denied that the Respondents have committed any unfair/restricted trade practices and also denied allegations of as to so called investors and purchases due to delay in completion of several projects. It was further stated that Prashant Kaul who entered into contract with the Respondents by booking the suit Villa was

informed from time to time about the progress of the said Villa and in terms of Chart annexed to the complaint by the Complainant himself.

18. In support of its decision to terminate the allotment of the subject property, the Respondents has submitted that on account of failure on the part of the Complainant to adhere to the terms & conditions governing the Application Form dated 09/03/2020, Notice of Intention to cancel/terminate the Allotment of the said villa was sent to Prashant Kaul on his email ID kaulme@gmail.com and letter was also sent through registered post inter alia informing the Complainant that there have been 3 defaults in payment of installments on account of which there is a breach of *Clause 1 sub clause (f)* on timely payment. The Respondents had invoked *Clause 2* of the Application Form dated 09/03/2020 & expressed intention to terminate the allotment of suit Villa after having been given reminders vide email correspondence dated 28/11/2024, 13/12/2024 & Final Reminder dated 09/01/2025 and the Respondents subsequently on 03/02/2025 were constrained to terminate the allotment of the subject property and the complainant Prashant Kaul was directed to furnish Bank details or alternatively collect the refund cheque within a period of 15 days from receipt of Termination Notice. It was also stated that since the complainant had failed to pay the balance consideration of 5% and has not come forward to take possession of the Villa by executing the Sale Deed despite repeated follow ups since last several months, the Respondents were entitled to cancel the Allotment under Section 11 (5) of the RERA Act, 2016. It was further pleaded that as on date, the Complainant ceases to be the Allottee in terms of Section 2 (d) of the Real Estate Regulation & Development Act, 2016 and is not entitled to maintain the present proceedings under Section 31 of the said Act.

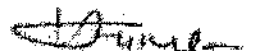
19. The respondent also specifically denied that the Respondents have forged Booking Form which is contrary to the original form and also denied having



given false and frivolous statement of assurances that the above said project is in progress which has led to financial loss, loss of mental equilibrium and mental agony and harassment to the complainant being false. Respondents further stated that there is no deficiency of service nor reduction of the carpet area and thus there is no question of any hardship, mental harassment or pecuniary loss to the Complainant. Also that the Villa is complete & ready for possession for nearly a year and the allotment has also been cancelled after repeated reminders to the Complainant and as such the Complainant has failed to adhere to the terms of contractual obligations for which the Complainant is himself responsible and there is no deficiency of service on part of the Respondents. The Respondents further stated that the terms of contract were crystallized way back in the year, 2020 and further confirmed to Prashant Kaul in his email correspondence dated 11/08/2021. Subsequently Reply was issued to Legal Notice in August, 2024 which has not been countered or contradicted by the Complainant thus is tantamount to admission of true & correct details of the transactions between Prashant Kaul and the Respondents, disentitling any reliefs of possession or compensation as claimed by the Complainant.

20. I have heard the arguments advanced by both sides as well as perused the records of the case. After going through the entire records of the case, the points which arise for my consideration and findings thereon for the reasons to follow are as under:-

Sr. No.	Points for Determination	Findings
A.	(a) Whether the present complaint filed by the complainant through authorized representative and special power of attorney holder Ms. Gopika Kaul was not	In negative



	<p>maintainable being misconceived in law and also in facts?</p> <p>(b) Whether the complainant ceased to be an allottee in terms of section 2(d) of the Act after issuance of letter dated 03.02.25025?</p> <p>(c) Whether the non-execution of an agreement for sale between the Respondent Promoter and the Complainant Allottee as contemplated under section 13 of the Act impacts the rights of the complainant /Allottee available under the Act?</p>	<p>In negative</p>
<p>B.</p>	<p>Whether there was reduction of carpet area and also the change of nature of property rights of garden area from 'exclusive ownership' to 'exclusive right to use' vis-a-vis the information provided vide booking forms, Application form and allotment letter? Whether the complainant is entitled to relief of refund along with interest on account of reduction of carpet area from 1845 sq. feet to 1350 sq. feet?</p>	<p>As per para 23 &amp; 24 of the order</p>
<p>C.</p>	<p>Whether the garden area was part of common area and thus could not have been sold and charged separately and Whether the complainant is entitled to relief of refund along with interest on account of change of nature of property rights of garden area from 'exclusive ownership' to</p>	<p>As per para 24 (xii) of the order</p>

*[Handwritten signature]*

	'exclusive right to use?'	
D.	Whether the Respondent allured and cheated the complainant herein to buy the villa in question (subject property) by misrepresenting the facts with regard to the carpet area, super built up area and garden area?	In negative
E.	Whether the Promoter Respondent failed to complete the project in time and has not been able to give possession of the duly completed subject property booked by the allottee by the date of completion of the project committed by it at the time of seeking registration of the project with Goa RERA?	In affirmative and as per para 26 of the order
F.	Whether Respondent is liable to hand over the Possession of the subject property and execute the conveyance deed in favour of the complainant/ allottee and also to pay interest in terms of section 18(1) of the Act, w.e.f. the date of possession @ MCLR + 2% for every month of delay till the handing over of the possession to the complainant/ allottee?	In affirmative and as per para 26 of the order

G.	<p>Whether termination of the Agreement for Sale and cancellation of the allotment by the Promoter is tenable in the facts and circumstances of the case in the first instance and also whether it is in accordance with Section 11(5) of the Act, particularly in view of the claim of the Complainant that approximate 95% of the total consideration had already been paid by him which exceeded the extent of construction completed on the promised date of completion of the project?</p>	<p>In affirmative</p>
H.	<p>(a) Whether the Respondent has violated Section 3 of the Act by booking or offering the villa in question (subject property) in project 'LA Verona' for sale to the complainant, prior to registration of said project?</p> <p>(b) Whether the Respondent has violated Section 13 of the Act by accepting more than 10% of the cost of the villa in question (subject property) without entering into written Agreement for Sale?</p>	<p>As per para 28 of the order</p>
I.	<p>Whether the Respondent has violated Section 14 of the Act by effecting changes in the layout of the project without the consent or knowledge of the Complainant?</p>	<p>As per para 29 of the order</p>

J.	Whether the respondent has engaged in unfair trade practice including deficiency in service in terms of failure to hand over possession of the subject property on time and whether in the facts and circumstance of the matter, there is a case made out for revocation of the registration granted to the project under Section 7(1) of the act?	As per para 30 of the order
K.	Whether the Complainant is entitled to compensation equivalent to Losses in terms of Rentals and Interest, alongwith Compensation on account of mental harassment ?	As per para 31 of the order
L.	Whether the complainant is entitled for cost and expenses of proceeding?	As per para 32 of the order

### Analysis and findings

#### **Preliminary Objection**

#### **21. Point No. A**

##### **A(a)**

- (i) The Respondent in its submission, has interalia submitted that the present complaint filed by the complainant through authorized representative and special power of attorney holder Ms. Gopika Kaul, was totally misconceived both in law and facts and thereby does not merit any relief. It was submitted that the said attorney of the complainant was not conversant with the facts and circumstances pertaining to the transactions between Prashant Kaul and

the Respondent which occurred during the period from February 2020 to March 2020 and thus the said transactions were in the exclusive knowledge of Mr. Prashant Kaul. Also since the said special power of attorney Ms. Gopika Kaul never had any interaction or e-mail correspondence with the employees of the respondent at any point of time, Ms. Gopika Kaul thereby does not have any personal knowledge of any transactions with respect to booking and allotment of villa No.11. Further, the same is evident from the fact that she failed to place before the authority all the correspondence with respect of the transaction of the suite villa in as much the reply dated 30.08.2024 made by the respondent to the legal notice dated 05.08.2024 issued on behalf of the complainant, was not brought on record by the complainant. It was thus sought to be emphasized that the present complaint filed by the complainant through authorized representative and special power of attorney holder Ms. Gopika Kaul, was totally misconceived both in law and facts and thereby does not merit any relief and needs to be dismissed on this count only.

- (ii) In the above context, it needs to be noted that the respondent had earlier also filed an application under section 35 of the act on the above noted grounds, inter alia seeking relief of permission to cross examine Ms. Gopika Kaul based upon the affidavit and evidence filed by her and also to reject affidavit and evidence filed by Ms Gopika Kaul being totally false. The said application was dismissed vide order dated 13. 11. 2025 observing as follows: "In view of what has been observed herein above, it is apparent that the Respondents have failed to substantiate the basis on which they are seeking for cross examination of the complainant. Accordingly, the application filed by the Respondents seeking cross examination of the complainant stands dismissed."



(iii) To support his contentions, the Respondent has sought to draw support from the judgment of honorable apex court in case titled '**Manisha Mahendra Gala & Ors. Vs. Shalini Bhagwan Gala & Ors.**' reported in (2024) 6 SCC 130. The case law cited by the Respondent in terms of para 28 of the said judgment of Hon'ble Apex Court, is apparently of not much help to the respondent. The relevant extract of the case law referred to above, reads as follows:-

"It was opined that the power of attorney holder or the legal representative should have knowledge about the transaction in question so as to bring on record the truth in relation to the grievance or the offence. However, to resolve the controversy with regard to the powers of the general power of attorney holder to depose on behalf of the person he represents, this Court upon consideration of all previous relevant decisions on the aspect including that of Janki Vashdeo Bhojwani in A.C Narayanan V. State of Maharashtra concluded by upholding the principle of law laid down in Janki Vashdeo Bhojwani and clarified that power of attorney holder can depose and verify on oath before the Court but he must have witnessed the transaction as an agent and must have due knowledge about it. The power of attorney holder who has no knowledge regarding the transaction cannot be examined as a witness."

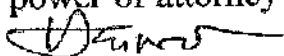
The respondent also referred the similar observations of Hon'ble Apex court made vide its order dtd 17.05.2024 in case titled '**Rajesh Kumar vs. Anand Kumar and others.** It is further observed that somewhat contrary to its above plea, the respondent also filed an application under section 35 of the Act seeking cross examination Ms. Gopika Kaul which as noted here in above, was dismissed vide order dated 13.11.2025.

(iv) However, Hon'ble Supreme Court of India while dealing with similar issues in a later case titled "**M/S Naresh Potteries versus M/S Aarti**

**Industries and Another**", vide para 20 of its order dated 02.01.2025 referred to para 21 of an earlier order of the Apex Court in **TRL Krosaki Refractories Limited (supra)**, the relevant portion thereof, is extracted here below for ready reference.

"What can be treated as an explicit averment, cannot be put in a straitjacket but will have to be gathered from the circumstance and the manner in which it has been averred and conveyed, based on the facts of each case. The manner in which a complaint is drafted may vary from case to case and would also depend on the skills of the person drafting the same which by itself, cannot defeat a substantive right. However, what is necessary to be taken note of is as to whether the contents as available in the pleading would convey the meaning to the effect that the person who has filed the complaint, is stated to be authorised and claims to have knowledge of the same."

- (v) The only argument advanced by the respondent to say that the said special power of attorney of the complainant was not well versed with the facts, and filed false affidavit and evidence, is based upon her inability to place on record a copy of the reply dated 30.08.2024 given by the respondent to the legal notice dated 05. 08. 2024 issued by the complainant and no other such deficiency on the part of the said power of attorney of the complainant, has been alleged by the respondent. It is further noted that the said document dated 30.08.2024 has already been placed on the record by the respondent as an annexure to his reply to the complaint. The perusal of both these documents i.e. the legal notice dated 05.08.2024 issued by the complainant and the reply dated 30.08.2024 submitted by the respondent; clearly reveal that all the issues and the relevant facts stated therein were also otherwise dealt with in the submissions made by the respective parties. It is thus clear that the said failure on the part of the special power of attorney of the complainant could not have resulted in any material



suppression of the facts and thereby impacting the outcome of the proceedings in any manner.

- (vi) Pertinently, Shri Prashant Kaul executed a Special Power of Attorney dated 03/08/2024 in favour of his sister Ms Gopika Kaul to deal with the legal proceedings related to Villa No. 11 in project "La Verona" situated in Estate Survey No. 186/19, Assagao, Goa against the developer. The relevant para of the recitals of the said special power of attorney dated 03/08/2024 reads as follows: -

"WHEREAS the Executant is ordinarily not a resident of India and is often traveling. Since he remains out of the country for most part of the year, as such it will be difficult for him to prosecute the legal proceedings against the Developer. Ms. Gopika Kaul who is the real sister of the Executant is residing in India and is also having personal knowledge about the above said issue. She is competent to deal with the issues involved and initiate and prosecute appropriate legal proceedings against the Developer. The Executant, therefore, appoints Ms. Gopika Kaul as his true and lawful attorney with full power to do and execute the following acts, deeds and things which she has agreed to do: "

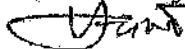
- (vii) Further, Clause 3 of the said SPA specifically authorized Ms. Gopika Kaul to institute and prosecute any proceedings as may be required before Goa Real Estate Regulatory Authority against the Developer or its representatives in respect to the said Villa. In particular, the Attorney Holder was authorized to file Complaints, Petitions, Execution Applications, Appeals, Reviews, Revisions or any proceedings whatsoever nature before the Goa RERA, Goa RERA Appellate Tribunal, etc. against the Developer or its representatives in respect to the said Villa. It is also noted that, all the submissions accompanied with the Affidavit, filed by the said SPA on behalf of the complainant; also

contains a specific para in the Affidavit averring that the deponent is the A.R/SPA holder of complainant in the above mentioned case and well conversant with the facts and circumstances of the case and hence competent to swear this affidavit.

- (viii) In view of what has been observed at para (v) above and particularly when the person who has filed the complaint, was duly authorised and has claimed herself to be well conversant with the facts and circumstances of the case, the plea of the respondent as noted at point A(a) apparently does not hold water and thus needs no further consideration.

**Point A(b)**

- (i) The other preliminary objection raised by the respondent is that the complainant ceased to be an allottee in terms of section 2(d) of the Act after issuance of letter dated 03.02.2025 whereby the allotment of the subject property has been cancelled and hence the instant complaint was not maintainable on this count also. The contention of the Respondent apparently does not hold water as it cannot be denied that the complainant was an allottee till the date of issue of termination letter. Pertinently, the complainant had filed its complaint before the Authority on 04-11-2024 in the capacity of an allottee and the present proceedings after service of notice upon the Respondents, had also commenced prior to the issuance of the notice of intention to cancel /terminate the allotment of the subject property dated 16.01.2025 and subsequent termination of letter of allotment dated 23.09.2020 vide communication dated 03.02.2025. As the notice of intention and termination letter were issued after the present proceedings had commenced, the complainant being aggrieved by the cancellation; could raise this issue vide its replication dated 19.02.2025. In view of above and the complainant having exercised its right u/s 11(5) of the Act by approaching the authority for relief against cancellation of Allotment as above, this contention



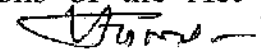
of the Respondent is not only preemptive but also without any basis. Accordingly, Point No. A(b) is also answered in negative.

**Point No. A(c)**

- (i) The Respondent has sought to draw the attention to the fact that this Authority in case of Melissa Rodrigues vs M/s Expat Projects & Development Pvt. Ltd. has held that the rights of the allottees under Section 19 of the Act, flow from registered Agreement for Sale and in the instant case, the complainant had failed to come forward to execute the Written Agreement for Sale despite being informed vide email dated 23.09.2020. In this regard, the Hon'ble Bombay High Court in the case of '*The Bombay Dyeing & Manufacturing Company Limited vs. Ashok Narang and Ors.*' vide its order dated 30.08.2021 has observed as follows:

*"Section 2 (c) defines an agreement for sale" entered into between the promoter and the allottee. It is necessary to note that Section 2 (c) does not say that an agreement has to be in writing entered between the promoter and the allottee. Section 13 provides that no deposit or advance shall be taken by the promoter, without first entering into the agreement for sale. Thus, the learned counsel for the respondent is right that Section 13 has to be read in the context of prohibition against the promoter from accepting the sum in excess of 10% of the cost of the flat as an advance payment or an application fee etc".*

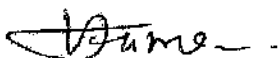
- (ii) Thus, in view of the absence of any such requirement that the agreement for sale has to be in writing, under the definition of 'Agreement for Sale' as available under Section 2(c) of the Act as well as that the requirement of a written agreement under Section 13 of the Act is specified in the context of prohibition against the promoter from accepting the sum in excess of 10% of the cost of the subject property; all the relevant provisions of the Act



including Section 11(5), Section 12 & Section 18 as well as section 19 of the Act of 2016 would be applicable in the facts and circumstances of the case. Even the words "Agreement for Sale" used in Section 19 of the Act in the absence of any additional stipulation as available under Section 13 of the Act, would have to be read in terms of the provision of Section 2(c) of the Act.

(iii) Since no separate agreement for sale between promoter and the allottee has been executed and registered in the present case, the details of the contractual arrangement between the promoter and the allottee in the present case would have to be inferred from the documents and communication executed /exchanged between the parties qua the sale and allotment of the subject property particularly from the application for registration dated 09.03.2020 and the annexures appended thereto as well as the allotment letter dated 23.09.2020, besides the two booking form dated 09.03.2020 & 13.08.2024 which cumulatively do provide the relevant details in this regard. Pertinently, the Respondents themselves vide para 67 of its reply to the complaint have stated that "the terms of contract were crystallized way back in the year 2020 and were further confirmed to Prashant Kaul vide email correspondence dated 11.08.2021. Further, the respondent in its averments made in the reply to the complaint and in the written submission have recognized the complainant as an allottee and has not denied the contractual arrangement between him and the allottee particularly in terms of the application for registration dated 09.03.2020 and the annexures appended thereto as well as the allotment letter dated 23.09.2020. Pertinently, the provisions of these two documents i.e. application for registration and the allotment letter; have also been referred to by the respondent in the Notice of Intention to Cancel/ Terminate the allotment dated 16.01.2025 and the Termination Notice dated 03.02.2025, while justifying the termination of allotment under section 11(5) of the Act.

(iv) Keeping in view what has been discussed herein above, the observation of Hon'ble Bombay High Court as well as the facts that the documents and



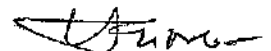
communication executed/made between the parties do provide the details to infer the contractual arrangement made between the parties , it is clear that the rights of the Complainant/Allottee are in no manner impacted on account of non execution and registration of the Agreement for Sale as contemplated under Section 13 of the Act as the said requirement has to be read in the context of the prohibition against the promoter from accepting more than 10% of the cost as advance or application money etc. Thus the Point A(c) is answered in negative and in above terms.

22. **Point No. B & C**

The point for determination listed under the Point B&C essentially relate to what in the facts and circumstances of the case exactly constitutes the subject property and thereby arise from the same set of documents and correspondence and as such needs to be dealt with together.

23. **Point No. B**

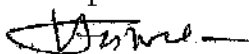
- (i) The case of the complainant is that as per booking form No. BOO0198/00005/20-21 dated 09.03.2020, Application form dated 09.03.2020 and also the allotment letter dated 23.09.2020, the subject property consisted of the carpet area of 1845 sq.ft. which was later reduced vide revised booking form No. BOO0198/00007/19-20 dated 13.06.2024 to 1350 sq.ft. and another misleading term 'super built-up area' was incorporated which was shown to be as 1845 sq.ft. The draft of the sale deed shared in first week of June, 2024 also mentioned the details of subject property in these terms. The complainant has further alleged that despite reduction of the area of subject property, the respondent demanded and received the payments in respect of total area of 1845 sq.ft in clear violation of the booking terms as well as provisions of the act and thus sought the directions to the respondents not to charge for super



built-up area and instead restrict the demand as per the carpet area and refund the excess amount so paid/received.

(ii) Per contra, the respondent has stated that there was no false representation made to the Complainant at any point of time by it i.e. either at the time of signing of the Application Form dated 09.03.2020 or at the time of issuance of Allotment letter dated 23.09.2020 and even thereafter. The respondents has also claimed that Mr. Prashant Kaul was well appraised of the dimensions of the villa and in this regard, the Respondents submitted on record trail of emails exchanged between the respondent and the complainant. The perusal of the these emails reveals that the Promoter vide its email dated 3<sup>rd</sup> August 2021 informed the complainant that there were some setting out issues considering the site condition and on account of the same, 12 inches were reduced from the staircase and 8 inches from ground floor living room and first floor bedroom respectively and besides these, there were no further changes in the layout. The complainant in response, on the same day itself expressed his displeasure on the deviations and specifically asked the respondent whether the area of the overall plot (including the garden) was reduced as well? and also sought the exact dimensions of the plot and also the sq.ft. area of the villa; which was responded to vide email dated 06<sup>th</sup> August 2021 by the Respondent stating that there are no further changes in the layout or in the villa and plot area is 154 sq.mts., Super Built-up area 1845 sq.ft., Garden area without pool 710 sq.ft. and carpet area is 1350 sq.ft. This was followed up by the complainant vide email dated 10<sup>th</sup> August 2021 asking the respondent to provide details as per format to which Respondent vide email dated 11<sup>th</sup> August 2021 replied that the dimensions shared are the only dimensions and there are no changes in the overall structure and also that there are no changes in the overall cost of the villa.

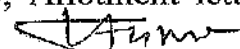
(iii) However, the Complainant on the 11<sup>th</sup> August, 2021 itself also sought further explanation to the email dated 03<sup>rd</sup> August which was replied vide email dated



16<sup>th</sup> August 2021 and 18<sup>th</sup> August 2021 by the Respondent stating that there is no modification in the villa with regards to size, layout or location as the team was able to manage the site requirements without affecting the villa of the complainant in any manner and the complainant was also given the option either to continue with the allotment of Villa or if he decides not to proceed with the purchase or in case he was unhappy, he would be given full refund. The remaining emails referred to by Respondent reveal that thereafter the complainant also held discussions with the promoter on other aspects relating to flooring, interiors & furniture etc. While the complainant has neither controverted nor objected to these email communications in any manner, the respondent has however sought to plead that the above referred trail of emails evidently reveal that the complainant was well apprised of the specifications of the subject property particularly with regard to the carpet area, super built-up area and also of total consideration etc. and upon being satisfied only, he not only proceeded to make further payments as per schedule of payments annexed to the Allotment Letter dated 23/09/2020 but also engaged in discussion regarding flooring interiors and other related aspects relating to the subject property.

(iv) The Respondent further stated that pursuant to similar allegations of misrepresentation made in Legal Notice dated 05/08/2024, the Respondents vide Reply dated 30/08/2024 had clarified and explained the exact nature of transaction that had transpired between Prashant Kaul and the Respondents and the issue was satisfactorily resolved. The Respondent further sought to plead that since the Reply given by the Respondents on 30/08/2024 to the Legal Notice addressed by Alaya Legal Advocates has not been contested or countered by the Complainant thereby acknowledging the contents of the Reply and admitting the details of transaction.

(v) Admittedly, there have been four documents i.e. Booking Form dated 09.03.2020, Application for registration dated 09.03.2020, Allotment letter

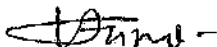


dated 23.09.2020 & Booking Form dated 13.06.2024 issued/ exchanged between the parties qua the Allotment of the subject property to the Allottee. Further, the description of the area of the subject property as described in one document differs with the description as provided in the other documents. While the application for registration of the subject property made on 09.03.2020, mentions the 'unit area 1835 sq.ft.', the booking form No. BOO0198/00005/20-21 dated 09.03.2020 describes the area of the subject property as 1845 sq.ft. 'carpet area' and also the same area as 'Allotted Area'. Further the Allotment letter dated 23.09.2020 provides for the details of the area of the subject property as 'Built-up Area' measuring 1845 sq.ft. The position appears to have further been altered in the revised booking form No. BOO0198/00007/19-20 dated 13.06.2024 describing the area of subject property as 'Super built-up Area' measuring 1845 sq.ft. and 'Carpet Area' as 1350 sq.ft. As noted above, this issue related to exact specification of the subject property was discussed between complainant and respondent in August 2021 when the complainant raised certain apprehensions regarding reduction in the area of stair case, first floor bedroom and ground floor living room. Various points raised by the complainant with the respondent were discussed in sufficient details through a trail of around 10 emails exchanged between the complainant and the respondent during the period between 03.08.2021 to 18.08.2021. It would further be expedient to extract some of the emails herebelow, to provide the idea of nature of discussion and the clarification provided by the respondent to the complainant.

**On 6<sup>th</sup> August 2021 at 17:19**

Shradha Mathur <shradha.mathur@vianaar.com> wrote:

Dear Mr. Kaul, Good Afternoon! While i understand you disenchantment, would request you to please understand that there are certain changes that takes place at site considering the site condition



while setting up. There are no further changes in the layout or in the villa.

Please find the below dimensions for your kind perusal.

Plot Area: 154 sq mtrs

Super Build Up Area: 1845 sq.ft

Garden Area without pool: 710 sq.ft

Carpet Area: 1350 sq.ft

Should you have any further queries, please feel free to connect with me.

**On 11<sup>th</sup> August 2021 at 17:45**

*Shradha Mathur <[shradha.mathur@vianaar.com](mailto:shradha.mathur@vianaar.com)> wrote:*

Dear Mr.Kaul, Good Afternoon! This email is in regards to our telephonic conversation. I would like to apprise that the dimensions shared by me in my last email are the only dimensions and there are no changes in the size of overall structure. Please find the dimensions below for your kind perusal. 3 Also please be informed that there are no changes in the overall cost of the villa. Should you have any further queries, please feel free to connect with me. ***Plot Area: 154 sq mtrs Super Build Up Area: 1845 sq.ft Garden Area without pool: 710 sq.ft Carpet Area: 1350 sq.ft***

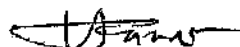
**On 11th August 2021 at 8:47 PM**

*Prashant Kaul Wrote :*

Hi Shradha Pls refer to your mail to me on the 3rd of Aug. You have clearly mentioned that the area has been reduced. So, if the area has been reduced from the original, how can there be no change in the area and it remains the same?

Regards Prashant

**On 18th August, 2021 at 12.43 PM**

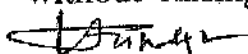


Dear Mr. Kaul,

Good Afternoon!

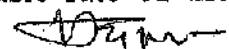
Thank you for your email. As confirmed in my previous emails there are no changes in the size, layout or location of your villa. Please understand that structural changes in the overall site was to imply with the local authorities and it was beyond our control. Kindly advise if you would like to proceed with the Villa, should you decide you would prefer not to or in case if you are unhappy, we will have the full refund processed for you. Should you have any further queries, please feel free to connect with me."

- (vi) In view of the above, the respondent has claimed that the complainant was well appraised and thereby was fully aware of the specification of the subject property in terms of the carpet area, cost of Villa etc. and upon being satisfied with the clarifications furnished in the said emails in August 2021 to the complainant, started making regular payments pertaining to various milestones/stages and as per the schedule of payment annexed to the allotment letter. Further, the details of payment made by the complainant, submitted on record as annexure to the complaint which are not denied by the Respondent; clearly reveals that before conclusion of the said exchange of emails between the complainant and the Respondent, the complainant had paid approximately 10% of the consideration amount to the Respondent (as on 25.01.2021). However, after the said exchange of emails in August 2021 where parties reached consensus as to the specification of villa in terms of carpet area and the cost of the villa; the complainant started making further payments towards the basic sale price of the subject property. It further gets revealed from the record that during the period commencing from 14.10.2021 to 14.06.2023, the complainant made payments atleast on 16 occasions which were not only in respect of structure but also for painting, polishing, etc. without raising any issue as to reduction of carpet area. Pertinently, the



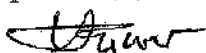
complainant as on 14.06.2023, had paid to the Respondent a sum of Rs. 2,19,45,000/- i.e. apprx. 99% of the total basic selling price. The conduct of the complainant thus supports the contention of the Respondent that the issues raised by complainant had been clarified in detail through emails referred to above and an understanding was reached between the parties as to the specifications of the villa particularly in respect of carpet area and cost of villa etc. However, the complainant after receiving the offer of possession from the respondent vide email dated 29.04.2024, raised the issues pertaining to carpet area and super built-up area again on the basis of the details available in Booking Form dated 09.03.2020 and also objected to entries in the revised booking form dated 19.06.024, apparently issued as per the consensus reached at between complainant and respondent sometime in the first week of August 2021. Notably, the copy of the Booking Form dated 09.03.2020 placed on record by the complainant, had neither been objected to nor controverted in any manner by the respondent.

- (vii) It is also pertinent to note at this stage that though the application form for registration and the booking form were issued/executed on the same date i.e. 09.03.2020 but these two vary not only in terms of format but also in the description of the subject property. While the application form is duly signed by the applicant in ink and the detailed particulars of the subject property are also written in hand therein by the complainant applicant, the booking form on the other hand is a computer generated statement providing details of the allottee as well as the subject property and total consideration, payments received etc. Besides, the said booking form dated 09.03.2020 mentions total allotted area of 1845 sq.ft. and also the same area i.e.1845 sq.ft. as RERA carpet area, as against the Application for registration where the subject property is described as 'Unit Area' 1835 sq.ft. Further, the Booking Form dated 09.03.2020 also provides basic rates of the subject property separately for allotted area as Rs.10856.37/- per sq.feet. and basic rate of the RERA



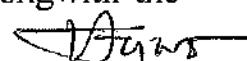
carpet area @ Rs.11,924.12/- per sq.feet. In view of what has been observed above in this para, the Booking Form dated 09.03.2020 would have limited relevance for taking a view with regard to the carpet area and super built-up area.

(viii) To sum up, it is noted that the issues related to reduction in carpet area were enquired into and discussed in detail by the complainant with the respondent by way of nearly 10 emails exchanged between them during the period from 03.08.2021 to 18.02.2021 and a consensus between the complainant & Respondent was reached as to the specifications of villa particularly the size of the carpet area as 1350 sq feet as well as the cost of the subject property. The emails exchanged between the complainant and respondent between 03.08.2021 to 18.08.2021, reveals that the respondent promoter upon queries by the complainant not only clarified the specification of the villa including the size of carpet area and super build-up area to the complainant vide email dated 06.08.2021, 11.08.2021 & 18.08.2021 but also vide email dated 11.08.2021 reiterated in clear terms that there was no change in the overall cost of the villa which was also noted by the complainant vide its email dated 29.04.2022 stating 'Thanks for confirming that there is absolutely no change in the cost (including taxes)'. Further, it was never the case of the complainant that the basic selling price of Rs. 2,20,00,000/- mentioned in the initial Application form made by the complainant himself on 09.03.2020; was modified or revised to the disadvantage of the complainant, in any of the document and correspondences issued from time to time. The complainant as noted herein above, thereafter proceeded further and made substantial payments i.e apprx 88% of the total consideration vide 16 different transactions which spanned over a period of apprx. 20 months i.e. from 14.10.2021 to 14.06.2023. It is further relevant to add that even the relief prayed by the complainant vide para 5(b) of the complaint is about seeking the directions to the respondents



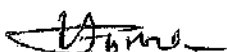
not to charge for super built-up area and instead restrict the demand as per the carpet area and refund the excess amount so paid/received; also supports the contentions of the respondent that the complainant was well apprised about the specifications of the villa and the matters related to carpet area, super build-up area etc. were duly clarified and agreed to by the parties.

- (ix) In above view of the matter, the case of the complainant for refund of excess amount paid/received on account of subsequent reduction of carpet area; apparently does not get supported even in terms of its own submissions particularly when read with the emails exchanged between the complainant and the respondent during the period 3/08/2021 to 18/08/2021 and also the subsequent conduct of the complainant in making further payments of 88% of the basic selling price to the respondent without raising an issue with the respondent or in any other forum.
- (x) As such the contention of the complainant as to the reduction in carpet area and also the prayer for refund of the excess amount so paid /received; does not carry any weight and needs no further consideration, particularly at this belated stage when both parties have proceeded substantially on the basis of the said consensus reached in August 2021. Besides, the promoter respondent while clarifying the size of the carpet area to be 1350 sq.ft. had vide the same email also reiterated that there was no change in the overall cost of the villa which was also noted by the complainant with thanks vide its email dated 29.04.2022 thereby reconfirming agreement on the issue of the size of the villa in terms of carpet area and price thereof.
- (xi) Besides the issues pertaining to carpet area and built-up area, the issue pertaining to the change of nature of ownership of garden area from 'exclusive ownership' to 'exclusive right to use' was also raised which being on a different footing, is being taken up in succeeding paras alongwith the Point 'C'.



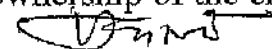
24. Point No. C

- (i) As noted above, there have been four documents issued/ exchanged between the parties qua the Allotment of the subject property. Pertinently, the garden area details as mentioned in these documents also differ from each other. While the booking form dated 09.03.2020 refers to 'Lawn/ Land/ Garden area of 985 square feet' the application for the registration made on the same day i.e on 09.03.2020, mentions the 'Garden/ Terrace Area as 930 square feet. Further, the allotment letter dated 23.09.2020 mentions it as the 'Garden Area 985 square feet' and the booking form dated 13.06.2024 issued subsequently, alters the details by mentioning the said area as 'open area of 985 square feet'.
- (ii) It is relevant to note that the use of the words i.e 'Lawn/ Land/ Garden area' in the booking Form dated 09.03.2020, 'Garden area in Application for registration dated 09.03.2020 and 'Garden Area' in the allotment letter dated 23.09.2020 and further as 'open area' in Booking Form dated 13.06.2024, to describe the garden area as a separate item along with the details of built up area in the description of the subject property when read in the context of sale of the subject property to the allottee; could only imply that these terms/words refer to a distinct piece of land adjoining the main structure of the subject property which being integral part of the subject property, was intended to be transferred to an allottee on ownership basis.
- (iii) Further, none of these four documents referred to above either specifically record that the ownership of the said garden area was not transferrable as part of the property being allotted sold to the purchaser or clarify that the said garden area would be made available to the allottee only in terms of 'exclusive right to use' of the same. It goes without saying that since anything as above was not expressly mentioned in the said documents, the same could not have possibly been inferred by the allottee particularly in the absence of any additional information or clarification and also when the



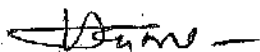
details of garden area in all the four documents, is included in the description of the subject property as a separate item implying it to be integral part of the subject property allotted to the complainant.

- (iv) Also the stand of the Respondent that since the garden area is not part of common area, it was being transferred as exclusive right of the allottee to use the area adjacent to his villa and the ownership of all such garden areas would vest in all allottees/villa owners in the form of 'undivided interest'; is apparently not in consonance with the provisions of section 17 read with the definition of common areas as provided under section 2n of the Act of 2016. A conjunct reading of these provisions reveals that while the common areas as defined under section 2(n) of the Act includes parks also, Section 17 of the Act contemplates transfer of undivided proportionate title in the common areas to the Allottee as also being proposed in the present case except that the term 'common area' by definition would not admit the concept of 'exclusive right to use' of garden area or any other part of the common areas. Pertinently, the Respondent has also not placed any approval of TCP or any other agency authorizing exclusive use of the said garden area by the allottee which could have supported its claim that the garden area is not part of common area in clear terms and also validated its act of granting 'right to exclusive use' of the garden area to the Allottee. In above view of the matter, it appears that the said garden area actually constituted part of the common area and accordingly, it was proposed to be transferred to all the allottees collectively in the form of undivided interest under the provisions of Section 17 of the Act and thus in the first instance, could not have been sold to allottee on individual ownership basis, by the promoter. The other plea of the Promoter Respondent that the Registrar has not permitted the sale of the garden area, also supports this view since Respondent has not provided any details as to why Registrar refused to transfer the said garden area to the allottee despite the Respondent claiming to have clear ownership of the entire



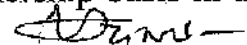
project land. Apparently, the promoter made the promise of transfer of the garden area to the allottee on individual ownership basis without taking into account the restrictions applicable on transferability of the ownership of the land which formed part of the project duly approved under the relevant planning norms.

- (v) From what has been noted herein above, it is apparent that the said Garden Area was initially intended to be sold to the allottee on ownership basis which allegedly could not happen as the Registrar refused to permit the sale of the Garden Area on ownership basis. Though the respondent promoter has argued that it had never promised to the allottee that the garden area would be sold to him on ownership basis and infact had explained to the complainant in the beginning itself that the said Garden Area being adjacent to the subject property was meant for exclusive use of the allottee; the contents of its own subsequent email dated 13.06.2024 contradict the same as the respondent vide said email informed the complainant that "the registrar does not permit us to sell the garden on an ownership basis. In order for you to utilize the garden therefore, we implement the word 'exclusive' to indicate that it belongs to you solely. Hence, you will have an exclusive right to use the garden as well as an undivided share in the project land." Evidently, the respondent in its above referred email, has not stated that the said area was never intended to be sold on individual ownership basis or was meant to be allotted only in terms of 'exclusive right to use' by the allottee but by stating that the use of the word 'exclusive' indicate that the said garden area belongs solely to the allottee; sought to persuade the allottee to believe that the provision of 'exclusive right to use' of the garden area alongwith undivided share in the project land was somewhat equivalent to the transfer of the garden area on 'individual ownership basis' to the allottee as promised earlier. Further, the respondent despite specific queries made by the complainant seeking details of Garden Area during the course of exchange of emails in August 2021,



failed to clarify to the complainant that the individual ownership of the said garden area was not transferrable as part of the property being allotted and sold to the purchaser as well as that the said garden area was available to the allottee only in terms of 'exclusive right to use' the same.

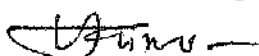
- (vi) In above view of the matter, it can be safely inferred that the said Garden Area was promised to be transferred on individual ownership basis, by the respondent to the purchaser allottee at the time of initial interaction or allotment itself and this was so understood and agreed to by the Complainant as well as the Respondent. As noted herein above, this gets corroborated not only from various terms used to describe the garden area in the four documents issued/exchanged between the parties qua the allotment of Subject Property but also from the manner of description of garden area in these documents As observed at preceding para, the subsequent email of the respondent dated 13.06.2024 informing the allottee that the sale of the garden area was not feasible on account of the same not being allowed by the Registrar; also implies the same. Though the promoter has claimed to have clear title and possession of the project land, it has also conceded that the garden area though being part of project land, could not be transferred to the allottee on ownership basis as registrar refused to permit the same. As noted herein above, the promoter failed to check for the possible restrictions on transfer of the said garden area in the context of the planning norms or even otherwise, prior to making the promise of transfer of garden area to the allottee on ownership basis and thus made an incorrect or false statement/representation to the allottee. As the Respondent has, failed to provide any details/reasons as to why the Registrar at the instance of the promoter who claims clear title of the project land, has refused to transfer the garden area to allottee on ownership basis; the reasons for inability of the promoter to transfer the garden area to the allottee on ownership basis in the



first instance are vague and in any case are entirely attributable to the promoter himself.

(vii) In view of what has been noted herein above, it is evident that the Respondent is not in a position to discharge its commitment to transfer the ownership of garden area on individual basis to allottee as promised initially and on account of the said incorrect and false statement, the allottee would get the subject property without the garden area only. Thus the allottee suffers a loss to the extent of non provision of garden area to the allottee on ownership basis. The situation in the facts and circumstances of the case, could be covered within the four corners of the provisions of Section 12 of the Act which provides for refund of the amount paid alongwith interest at the prescribed rate in case of withdrawal from the project by the Allottee and compensation to the allottee in case of his sustaining any loss or damage by reason of any incorrect or false statement made by the promoter. The perusal of the relief sought by the complainant under prayer clause of the complaint reveals that the complainant is interalia seeking the possession as well as execution and registration of the sale deed of the subject property without the garden area alongwith the refund or adjustment of the amount paid towards the price of the garden areas alongwith applicable interest. It could thus also be considered as a case of withdrawal from the project to the extent of non provision of the Garden area and thus the provisions of section 12 of the act of 2016 would be applicable in the case to that extent for the purposes of refund alongwith interest as prescribed, besides the compensation.

(viii) As the promoter respondent has clearly expressed his inability to transfer the garden area to the allottee on ownership basis whereby the allottee would suffer loss to that extent, a distinct amount out of total consideration amount payable for the subject property (which was inclusive of the cost of making the provision for transfer of individual ownership of garden area) attributable towards the price of the garden area with the interest amount calculated at the



prescribed rate and as per applicable norms; would have to be refunded by the respondent to the complainant as per the provision of section 12 of the Act of 2016 read with the relevant clauses of model form of agreement which provide that in case of any variation in the area of the subject property calculated at the final stage vis-à-vis the originally promised area, the same would be settled by way of additional demand or refund as the case may be. Notably, the clause 1(c) of the undertaking appended to the Application for Registration dated 09.03.2020 also provides similarly for somewhat similar situations.

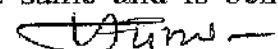
- (ix) Having observed that, the other related aspects for determination of Point 'c' would be as to what would be the exact amount attributable/apportionable towards the price of the garden area, exact amount paid by the complainant to the respondent in respect of the said Garden Area and the details of dates when such payments were made. In this regard, it is noted that only one document namely the booking form dated 09.03.2020 provides the details of the price chargeable for the said Garden Area as follows:

“Lawn/Land/Garden/Balcony Area (SFT): 985.00

Lawn/Land/Garden/Balcony Rate (Rs.): 2,000.00”

Further, the details of the actual payment made by the complainant to the respondent as available at Annexure C6 to the complaint, do not provide any information on this count. However, it goes without saying that the provision of the said Garden Area irrespective of whatever way it was described in various documents or is contemplated by the Respondent; cannot be made without incurring expenses on the land and development component of the same and the said expenditure must have been factored in while deciding the total consideration to be charged for the subject property.

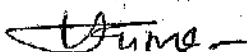
- (x) Pertinently, the booking form dated 09.03.2020 which provides the details of the area of the garden and the price chargeable for the same and is being



relied upon by the complainant in support of his claim; has neither been denied nor its contents have been controverted in any manner by the respondent. This document dated 09.03.2020 though of limited relevance as noted herein above, is the only document which provides pertinent details that too in the context of initial promise and allotment and thus can be safely made a basis to assess the quantum of the relief to be granted to the allottee in this regard. The details available in the said document further reveals that as against the total basic selling price of the subject property i.e. Rs. 2,20,00,000/-, Rs. 19,70,000/- was attributable towards the price of Garden Area which forms apprx. 8.95% of the total basic price. It is also not disputed that the complainant has so far paid a total amount of Rs. 2,19,45,000/- (as on 14.06.2023). Since the total amount attributable towards the cost of Garden amounts to 8.95% of the total basic selling price, the refund amount claimed by the complainant cannot exceed Rs.19,64,077.50/- (8.95% of Rs.2,19,45,000/-) besides the applicable interest thereon. Further, it is settled law that the interest in case of refund of payments, shall be calculated from the respective dates on which the said payments were made by the allottee complainant and received by the promoter. In this regard, it would be expedient to refer to the table below where in details of various payments made by the Complainant towards basic sales price/ consideration of the subject property except the two payments of Rs.17325/- & Rs.11550/- paid towards tax; are extracted from the details of payment filed by the complainant as Annexure C6; the contents of which are also admitted to be correct by the Respondent.

**Table 'A'**

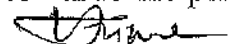
**Details of payments made by the Complainant towards basic sales price of the subject property and the amount constituting 8.95% thereof.**



Sr No	Date of Payment	Total Amount Paid towards the basic selling price	Amount attributable towards the price of the garden area (8.95% of the amount noted in column 3
1	2	3	4
1	09-03-2020	1100000.00	98450.00
2	25-01-2021	1210000.00	108295.00
3	14-10-2021	4573800.00	409355.10
4	14-10-2021	46200.00	4134.90
5	01-01-2022	2286900.00	204677.55
6	01-01-2022	23100.00	2067.45
7	01-02-2022	2286900.00	204677.55
8	01-02-2022	23100.00	2067.45
9	15-02-2022	2286900.00	204677.55
10	15-02-2022	23100.00	2067.45
11	18-04-2022	2286900.00	204677.55
12	18-04-2022	23100.00	2067.45
13	08-07-2022	2269748.00	203142.45
14	09-07-2022	22927.00	2051.97
15	20-01-2023	2286900.00	204677.55
16	20-01-2023	23100.00	2067.45
17	14-06-2023	1143450.00	102338.78
<b>Total</b>		<b>21916125.00</b>	<b>1961493.19</b>

\*Two payments i.e Rs.17325/- made on 29.01.2021 and Rs.11550/- made on 14.06.2023 pertaining to tax payment not included.

- (xi) In this regard, Rules 18 of the Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosure on websites) Rules, 2017 prescribes the rate of interest payable by the promoter shall be the State Bank of India highest Marginal Cost of Lending Rate (MCLR) plus two percent: Since the highest SBI MCLR as applicable on date happens to be 8.8% (revised since 15.05.2026) and as such, the interest on the amount to be refunded would be leviable at the rate of 10.8 %. The table at para 24(x) above reveals that an amount of Rs.19,61,493/- attributable towards the price



of the garden area, was paid by the complainant allottee to the promoter respondent vide 17 transactions made on 10 different dates. Further, the interest amount on refund of payments has to be calculated from the respective dates on which the said payments were made by the allottee complainant and received by the promoter.

- (xii) Accordingly, it will suffice to meet the ends of justice if the respondent is directed to pay the Complainant within four weeks from the date of issue of the order or adjust the same against the balance of total basic cost as due, the total of the 8.95% of the various payments made by the complainant to the respondent as per details noted at column 4 of Table 'A' at para 24(x) above, alongwith the interest @10.8% (MCLR @8.80%+2%) calculated for the respective payments for the period from the date of making of the said payment till the date of refund of the same to the allottee.

Thus Point 'B' and 'C' are answered in terms of Para 22 to 24 above.

25. **Point No. D**

- i. The claim of the complainant that he was allured and cheated by the Respondent to buy the villa in question (subject property) by misrepresenting the facts with regard to the carpet area, super built up area and garden area etc. is primarily based on the details available in the booking form dated 09.03.2020. Admittedly, three more documents i.e, Application form for Registration dated 09.03.2020, Allotment letter dated 23.09.2020 and the Revised booking form dated 13.06.2024 besides the email correspondence and other correspondences; were also issued and exchanged between the parties qua the allotment of the subject property. In this context, the related aspects of the point under determination here i.e, Subsequent reduction of the carpet area of the subject property and also the change of nature of property rights of garden area from "Exclusive

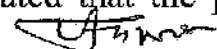
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ownership” to “Exclusive right to use” have already been examined under point ‘**B and C**’ above and the findings have been recorded after taking in account the submission made by the parties and documents placed on record. Besides, the submission made by the complainant reveal that it has already preferred a police complaint against the respondents M/s Raygo Homes Pvt. Ltd alleging committing offences of fraud, cheating and forgery by the respondents. As legal action against the respondents M/s Raygo Homes Pvt. Ltd alleging committing offences of fraud, cheating and forgery by the respondents, has already been initiated in the appropriate forum and the other related aspects have already been looked into under point ‘**B and C**’; the issue requires no further consideration at this stage.

26. **Point No. E & F**

The point for determination listed under the Point E&F in the first instance, involve ascertaining the fact whether there has been any delay in completion of the project and in handing over of the possession of the subject property and if so, determination of the details of actual period of delay in handing over of the possession of the subject property, applicable rate of interest and time of making of payment/payments made by the complainant to the respondent; which are apparently inter related and thereby require consideration of the same set of documents and information and as such are being dealt with together as follows.

- (i) The record reveals that no date of handing over of possession of the subject property has been stipulated in the allotment letter though the applicant allottee while applying for provisional registration of the subject property on 09.03.2020, had in his own hand noted on the body of the Application form itself as ‘completion and handing over of the subject property by December, 2022’. Further the promoter while seeking registration of the project with Goa RERA, had in Form II (Affidavit cum Declaration) stated that the project

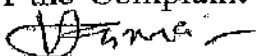


shall be completed in all respects on 31.07.2023. Accordingly, the initial registration period of the project was granted with a validity up to 31.07.2023. Hon'ble Bombay High Court in this regard, at para 119 of its judgment dated 06.12.2017 in case titled **Neelkamal Realtors Suburban Pvt. Ltd. vs The Union Of India And Ors** has observed as follows:

“The promoter would tender an application for registration with the necessary preparations and requirements in law. While the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project.”

Evidently, the undertaking to complete the project by 31.07.2023 was submitted by the Respondent Promoter to Goa RERA after making a fair assessment of the time required for completing the project and on his own volition; it thus goes without saying that the promoter had intended to complete the project and hand over the subject property complete in all respects, to the allottees of the project before 31.07.2023.

- (ii) The Complainant/Allottee in its complaint and other submissions has also fairly adopted 31-07-2023 as the date of completion of the project and handing over of the possession of the subject property to him. Per Contra, the respondent sought to plead that though the date of completion of the Project was stated to be 31-07-2023 at the time of seeking registration of the Project, subsequently Goa RERA was pleased to extended the validity of the registration of the project from 01/08/2023 till 31/01/2024 which was also communicated to the Complainant. Further, the Complainant was fully aware that the possession of the Villa was to be made in December 2023 which is evident from Annexure C6 of the Complaint vide which he was informed about the progress of the said



Villa indicating that the possession would be given by December 2023. It is relevant to observe here that Annexure C-6 which has been placed on record by the complainant primarily to provide the details of the payments made by him though contains an entry indicating handing over of possession in December 2023; in no way can be construed as the consent of the allottee for extension of the date of handing over of the possession.

- (iii) While denying any delay in completion of the Project, the Respondent further stated that though extension granted to the Respondents by Goa RERA was valid till 31.01.2024, the work was completed in October, 2023 and Occupancy was issued in November 2023 and thus the complainant was not entitled for any compensation on this count.
- (iv) It however, needs to be noted that though an extension of the Project was granted till 31.01.2024 by the Authority but the same does not automatically result in change of the date of possession particularly when the said delay in construction of the project was in no way attributable to the allottee. As revealed from the contents of the request for extension of Project made by the promoter in the present case, the primary reason for delay in this case was 'discovery of a large tree at site' which necessitated thorough reassessment and adjustment in construction to preserve the same and thereby led to delay in completion of the project. This reason for delay is obviously entirely attributable to promoter on account of its inability to properly assess the implications of the said tree at the site at the initial stage itself and does indicate lack of proper Project Planning on the part of the Promoter.
- (v) In this regard, **Hon'ble Karnataka Real Estate Appellate Tribunal in case title "Vipin Das Kuttiparambil vs Provident Housing Ltd. and Anr vide para 31&32its order dated 30-01-2026** while holding that extension of RERA registration does not automatically extend the contractual date of possession, observed as follows:



"31. However, we are of the considered view that Extension of RERA Registration of a project does not automatically mean that due date for completion as per the signed Agreement also gets extended. The Agreement for Sale and Construction Agreement are legally enforceable documents under Indian Contract Act, 1872 and the Promoters cannot unilaterally alter the due date for handing over, unless both the parties agreed to change the due date of handing over possession. -----

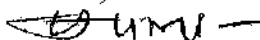
-----fully completed.

Hon'ble Tribunal vide para 32 of its above cited order further observed as follows:

"32. -----

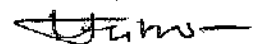
-----While RERA Registration and its Extension allows the Promoter to continue to complete the development works and market/sale the unsold units, but it does not automatically modify date of possession which is a contractual obligation to which Promoters have to adhere to unless there are Force Majeure circumstances. If developers fail to deliver possession on the contractual date, Allottees can approach the RERA for compensation or refund unless the Extension is on account of Force Majeure circumstances. The Promoter therefore, cannot take shelter for the delay beyond 30.9.2022 on account of extension of the validity of RERA registration, as claimed by them".

- (vi) In above view of the matter and also that the allotment of the subject property was done on 23.09.2020 when the promoter had already confirmed 31.07.2023 as date of completion of the project to Goa RERA as well as in the absence of any provision in the Application form or the allotment letter, specifying the date of completion and handing over the subject property to the allottee; the Promoter Respondent was bound to complete and hand over the



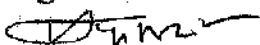
subject property to the allottee on or before 31-07-2023. It would thus be expedient to take 31.07.2023 as the agreed date of completion of the project and handing over of the duly completed subject property to the allottee. Accordingly, all consequences of delay in completion and handing over the subject property to the allottee are to be determined with reference to the said date i.e 31.07.2023.

- (vii) It is matter of record that the completion certificate of the project was issued on 03.10.2023 followed by the grant of Occupancy Certificate on 03.11.2023, more than 03 months after the promised date of completion i.e. 31.07.2023. It is thus evident that the promoter failed to complete the project in time.
- (viii) With regard to the handing over of the possession, the Respondent has claimed to have offered possession of the subject property to the complainant vide email dated 29.04.2024 whereby the complainant was also requested to clear the dues as per demand letter. It was further stated that there has been no delay in handing over possession of the property to the complainant by the respondent as the complainant has failed to pay the balance consideration of 5% and also did not come forward to take possession of the subject property by executing the Sale Deed despite repeated follow ups. It is further noted that the complainant had however, responded to the said email dated 29.04.2024, vide its email dated 05.05.2024 and 06.05.2024 stating that since he would be travelling to India specifically for possession and to ensure that he was able to achieve the purpose, he needs a confirmation from the promoter as to Whether subject property was fully ready for possession including installation of all furniture, fittings including crockery, paintings, electronics, linen, etc., as well as the details of actual date of handing over of the possession and draft copy of sale deed. Besides photographs of each room (bathrooms, bedrooms, living area and kitchen) and the garden were also sought. Further, it was also clarified that if some balance is due at the time of possession, the same would be paid at the time of possession and if need be



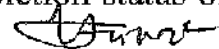
he can carry a draft of said amount with him and tender the same at the time of the handing over of the possession. Thereafter, several emails were exchanged between the complainant and the Respondent over a period of approx. 30 days regarding furnishing of draft of Sale Deed/Agreement to Sell which was finally provided to the complainant on 3<sup>rd</sup> June/6<sup>th</sup> June 2024. The complainant further drew attention of the Respondent to the fact that though the respondent had sent to him a draft copy of the Sale Deed and Agreement to Sell, the perusal of the same revealed that the villa number of the subject property was wrongly mentioned as 4 instead of 11 and the carpet area of the Villa was shown as 1345 sq.ft. instead of 1845 sq.ft. Further, there was no mention of the fact that the Garden area, measuring 985 sq.ft., was also being sold along with the Villa and the complainant therefore vide his e-mail dated 16.06.2024 requested Respondent to provide clarifications on these aspects and also sought a copy of the original Booking Form issued in the year 2020 as the one sent by the respondent vide email now was dated 13<sup>th</sup> June 2024 and was incorrect. It was further alleged that Promoter has charged him for built-up area 1845 sq.ft. @Rs.10,856.37 per square foot, as against the carpet area of 1350 sq.ft. in violation of RERA norms. Also, the Respondent has informed that it cannot sell the garden area since Registrar does not permit so, hence Promoter had charged a total of excess amount of Rs.73,43,903 (Rs.53,73,903.15 for the carpet area + Rs.19,70,00 for the garden area) compared to what could have been charged as due.

- (ix) It is evident from the above that not only the draft of the sale Deed and ATS was provided to the complainant after repeated emails over a month; the photographs showing the extent of completion of villa were also furnished partially and as late as on 13.06.2024 that too after several reminders. It is further relevant to note that the respondent while furnishing the photographs of the villa vide its mail dated 13.06.2024, sought some time to provide more images once the furnishing was complete in all aspects. The issues relating to



reduction of carpet area and change of nature of property rights from 'exclusive ownership' to the 'exclusive use' by the allottee; were also again raised by the complainant. The respondent in response, however, reiterated that the super built up area of the subject property was 1845 sq.ft. and the carpet area was 1350 sq.ft. as per consensus reached between the promoter and the allottee during the emails exchanged in August 2021 and also that since the registrar was not permitting the respondent to sell the garden on an ownership basis, suitable provision is being made so as to ensure that the complainant will have an exclusive right to use the garden as well as an undivided share in the project land.

- (x) The submissions made and record submitted by both parties indicates that after June, 2024 there had not been any further email interaction between the parties on the issues raised by the complainant as above, till 05.08.2024 when a legal notice was issued on behalf of the complainant to the Respondent and a reply to the same was given by Respondents on 30.08.2024. The legal notice dated 05.08.2024 also essentially focused on the reduction in the carpet area from 1845 sq.ft. to 1350 sq.ft. and the refund of the excess amount charged in respect of 495 sq.ft. of the carpet area besides the inability of the promoter to transfer the ownership of garden area and thereby refund of the excess amount charged towards the said garden area and also interest liability of the promoter for delay in completion and handing over the subject property with reference to the project completion date i.e. 31.07.2023. All these issues were replied to in negative by the Respondent while referring to the contents of emails exchanged between the parties in August, 2021 and later in May/June,2024. Notably, the complainant vide the said legal notice also asked the respondent to deliver the vacant and peaceful possession of the Villa along with garden Area with all amenities as agreed at the time of booking and execute the Sale Deed within 30 days from the receipt of the said Legal Notice without raising any further query as to its completion status of

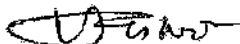


the built-up portion of the subject property. The record further reveals that thereafter the complainant initiated the complaint proceedings and sometimes thereafter, the Respondent initiated the process for cancellation of the allotment of the subject property which culminated vide letter dated 03.02.2025 when the present proceedings had already commenced.

(xi) At this stage, it would be expedient to refer in brief to the discussion held in the course of determination of Point B relating to subsequent reduction in carpet area and refund of the excess amount charged on this count, whereby vide para 23(ix)&(x), it was concluded as follows:

“(ix) In above view of the matter, the case of the complainant for refund of excess amount paid/received on account of subsequent reduction of carpet area; apparently does not get supported even in terms of its own submissions particularly when read with the emails exchanged between the complainant and the respondent during the period 3/08/2021 to 18/08/2021 and also the subsequent conduct of the complainant in making further payments of 88% of the basic selling price to the respondent without raising an issue in the respondent or in any other forum.

(x) As such the contention of the complainant as to the reduction in carpet area and also the prayer for refund of the excess amount so paid /received; does not carry any weight and needs no further consideration, particularly at this belated stage when both parties have proceeded substantially on the basis of the said consensus reached in August 2021. Besides, the promoter respondent while clarifying the size of the carpet area to be 1350 sq.ft. had vide the same email also reiterated that there was no change in the overall cost of the villa which was also noted by the complainant with thanks vide its email dated 29.04.2022 thereby reconfirming agreement on the issue of the size of the villa in terms of carpet area and price thereof.



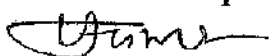
(xii) As far as the issue of 'Garden Area' is concerned, it was noted that the same was on a different footing and was thus separately discussed under Point 'C'. After detailed consideration of the issue and noting that the promoter failed to check for the possible restriction on transfer of the garden area in the context of the planning norms or even otherwise, prior to making the promise of transfer of garden area to the allottee on ownership basis and thus made an incorrect statement/false representation to the allottee; it was observed vide para No.24(viii), as follows:

“(viii)As the promoter respondent has clearly expressed his inability to transfer the garden area to the allottee on individual ownership basis whereby the allottee would suffer loss to that extent, a distinct amount out of total consideration amount payable for the subject property (inclusive of the cost of making the provision for transfer of individual ownership of garden area) attributable towards the price of the garden area with the interest amount calculated at the prescribed rate and as per applicable norms; would have to be refunded by the respondent to the complainant as per the provision of section 12 of the Act of 2016 read with the relevant clauses of model form of agreement which provide that in case of any variation in the area of the subject property calculated at the final stage vis-à-vis the originally promised area, the same would be settled by way of additional demand or refund as the case may be. Notably, the clause 1(c) of the undertaking appended to the Application for Registration dated 09.03.2020 also provides similarly for somewhat similar situations.”

(xiii) It is evident from the above that the issue related to subsequent reduction of carpet area and refund of the excess amount charged on this count was thoroughly discussed and duly clarified to the complainant during the exchange of emails that happened between the parties from 03.08.2021 to 18.08.2021 and a consensus as to the size of the carpet area to be 1350 sq.ft. was reached between the parties. Besides, the promoter respondent while

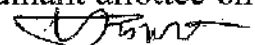
clarifying the size of the carpet area to be 1350 sq.ft. had vide the same email also reiterated that there was no change in the overall cost of the villa which was also noted by the complainant with thanks vide its email dated 29.04.2022 thereby confirming the said agreement/consensus on the issue of the size of the villa in terms of carpet area and price thereof. This is also corroborated by the subsequent conduct of the complainant in making further payments of around 88% of the basic selling price to the respondent during 14.10.2021 to 14.06.2023, without raising an issue with the respondent or in any other forum. The Respondent further reiterated the above points during the emails exchanged in June 2024 and also in reply dated 30.08.2024 to the legal notice of the complainant dated 05.08.2024 which as claimed by the Respondent was neither contested nor countered by the complainant. However, the point of view of both the parties as to the status of garden area particularly after the refusal of the Registrar to permit the transfer of the same on ownership basis, has been diametrically opposed to each other showing no signs of reconciliation. In any case, the Respondent vide its email dated 13.06.2024 had clearly expressed its inability to transfer the garden area to the allottee on ownership basis. Also, the other option offered by the promoter in terms of exclusive right to use the garden area by the allottee alongwith undivided proportionate share in the project land; has not been acceptable to the allottee who in the absence of transfer of the garden area to him on exclusive ownership basis, has been insisting on refund of the amount charged by the promoter on this count. Pertinently, the complainant in the prayer clause of his complaint has also sought the relief of refund of the amount charged for the garden area and has not insisted on transfer of the garden area to him on ownership basis.

- (xiv) In view of what has been observed herein above and particularly when the Complainant had agreed to the size of the carpet area as 1350 sq.ft. as well as the basic sale price of the villa in August, 2021 itself and also proceeded

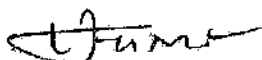


further in terms of the said agreement by making further payments to the extent of 88% of the basic sale price of the villa and besides, the Respondent had also clearly expressed its inability to transfer the garden area to the allottee on ownership basis; the complainant could have either opted to take over possession of the built up portion of the subject property (without garden area) and seek refund of the amount paid towards the price of the garden area by approaching any forum including Goa RERA which he eventually did or the complainant could have exited the project claiming refund of the total amount paid by him to the promoter alongwith interest as applicable thereon. However, the complainant in his complaint besides praying other relief including refund of the amount charged towards price of the garden area, also chose to seek refund of the excess amount allegedly charged despite of reduction in carpet area though he had earlier agreed to the size of the carpet area as 1350 sq.ft. In view of what has been observed above in the instant sub para, seeking of refund of the excess amount alleged to have been charged despite of reduction of carpet area, could not be held as valid reason for not completing the handing over/ taking over of the possession of the property and accordingly, also for grant of interest for delay. Further, the liability of the promoter for delay in handing over of the possession would have to be accordingly restricted to the point of time when the completion of built up part of the subject property could be reasonably assumed to have been achieved and also after factoring in the time required for the complainant to come and take over the physical possession of the completed property. The grant of Completion and Occupancy Certificate of the project on 03.10.2023 & 03.11.2023 respectively, would be other relevant factors to be considered for the purpose.

- (xv) It is relevant to note at this stage that the promoter after the receipt of Occupancy Certificate on 03.11.2023, sent the initial communication for handing over of the physical vacant possession to the complainant allottee on



29.04.2024 followed by providing the images of the property to the complainant on 13.06.2024. Though the respondent vide its email dated 13.06.2024 while sharing the images of the built up property with the complainant, had sought some more time to complete the ongoing furnishing of the subject property and share more images, the complainant thereafter vide its email dated 16.06.2024 while asking for the additional photographs, did not raise any concern as to the completion of built up portion of the subject property. Notably, the complainant vide the legal notice dated 05.08.2024 inter-alia also asked the respondent to deliver the vacant and peaceful possession of the Villa along with garden Area with all amenities as agreed at the time of booking and execute the Sale Deed within 30 days from the receipt of the Legal Notice dated 05.08.2024 without raising any further issue as to the completion status of the built-up portion of the subject property. In view of what has been noted above in the instant para, it would be fair to take 30.09.2024 as the date by which the physical vacant possession of the built up portion of the subject property duly completed in all respects, could have been handed over and taken over between the parties. As the complainant has opted not to withdraw from the project, the liability of the promoter as per the provisions of the proviso to Section 18(1) of the Act commences upon expiry of the date of possession i.e. 31.07.2023 concluded to be agreed date of completion of the project and handing over of the duly completed subject property to the allottee in terms of the observations made at sub para (vi) above. Keeping in view the totality of the circumstances as noted above, it would be just and fair if the period in respect of delay in completion and handing over of the possession of built up portion of the subject property for the purposes of calculating interest liability of the promoter under section 18(1) of the Act, is restricted to the period from 01.08.2023 to 30.09.2024.

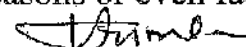


(xvi) As neither the project could be completed by the promoter on or before the agreed date of completion of the project nor the possession of the duly completed subject property was handed over to the Allottee complainant within the agreed timeline; the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 are clearly attracted in the present case.

(xvii) Hon'ble Supreme Court vide para Nos. 25 of its judgment dated November 11,2021, in the case of **M/s Newtech Promoters and Developers Pvt. Ltd vs. State of Uttar Pradesh & Ors, (supra) dated 11<sup>th</sup> November 2021** observed as follows:-

“25. The unqualified right of the Allottee to seek refund referred to under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the Allottee, if the Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the Allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the Allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

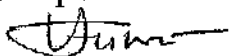
(xviii) In view of above, it is clear that the rights of Allottees under Section 18 of the Act are unconditional and absolute, regardless of unforeseen events including stay orders of the Court/Tribunal, any other reasons or even factors



beyond control of the Promoter. Further, the contentions of the Promoter that the delay was on account of discovery of a large tree at site necessitating reassessment and adjustments of the construction plans, was not found tenable since the contingency arose on account of lack of proper planning which was entire attributable to the promoter. The other contention of the Respondent as to non payment of pending balance payment of 5% as well as the failure of the complainant to come for the execution of the Deed of sale despite repeated follow ups; also do not hold water since the complainant had offered to bring the draft of the balance amount to be paid at the time of possession and also the draft of the sale deed was furnished to the complainant after repeated requests and was further found to be incorrect. Thus the reasons pleaded by the respondent for delay are of no help to the Promoter to negotiate with the rigors of the consequences spelt out under section 18(1) of the Act.

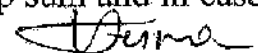
(xix) A perusal of Section 18(1) of the Act reveals that if Promoter fails to complete the project or is unable to deliver possession of the duly completed apartment, plot or building in accordance with the terms of the agreement between the parties and the allottee does not intend to withdraw from the project then, Promoter shall in accordance with the proviso to Section 18(1) of the Act, pay interest for every month of delay till the handing over of the possession, to Allottee at such rate as may be prescribed. Further, such delay in handing over the possession has to be assessed with reference to the date specified for possession of the subject property. Since in the present case, the complainant has opted to continue in the project, the promoter is liable to pay the applicable interest for the delay for the period with effect from the date of possession i.e. 31.07.2023 till the 30.09.2024 as noted at para XIV above.

(xx) For determination of the interest liability of the promoter for the delay in completion and handing over of the possession of the subject property to the



allottee; one needs to ascertain the details of actual period of delay in handing over of the possession, applicable rate of interest and time of making of payment/payments made by the complainant to the respondent. In the instant case, the issue related to the period of delay has already been examined and noted at para XIV. Further, Rules 18 of the Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosure on websites) Rules, 2017 (hereinafter referred to as Goa Rules of 2017) stipulates that the rate of interest payable by the promoter shall be the State Bank of India highest Marginal Cost of Lending Rate (MCLR) plus two percent: Since the highest SBI MCLR as applicable on date happens to be 8.8% (revised since 15.05.2026) and as such, the interest for the period of delay on the amount paid by the complainant would be leviable at the rate of 10.8 %. As the complainant allottee in the present case has opted not to withdraw from the project, the interest liability of the promoter in the present case would commence from 31.07.2023, agreed date of completion and handing over of possession of the subject property/project to the allottee in terms of sub para VI above, and for a period upto 30.09.2024 as noted at para XIV above. Further, a perusal of the table given at para 24(x) reveals that the complainant had paid a total of Rs.2,19,16,125/- as on 14.06.2023 i.e. before the date of possession on 31.07.2023 and no further payment was made after that.

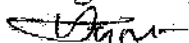
- (xxi) In view of what has been noted herein above, it is evident that the interest amount payable by promoter to Allottee/Complainant would be leviable on the total amount of Rs.2,19,16,125/- paid by the complainant to Respondent before the date of possession in the instant case, at the applicable rate of 10.8% for the period from 31.07.2023 to 30.09.2024. Further, it would be just and fair if the promoter is directed to pay the said amount to the allottee within 30 days of the date of receipt of this order in lump sum and in case of



any delay in making of the said payment by the said due date, along with an interest @ rate of 10.8% on the said amount for the period of delay counted from the due date as above till the making of the said payment.

(xxii) The respondent has claimed that the allottee complainant is yet to pay the balance payment of Rs.14,83,721/- (as on 15.01.2025) which has neither been denied nor controverted by the complainant in any manner except seeking adjustment of the same against the amount of refund and interest liability payable by the promoter to the allottee. Since there is no disagreement as to the balance of payment still due on the part of the complainant allottee (as on 15.01.2025), which has to be paid by the allottee before taking over of the possession, with the applicable interest thereon for the period from 15.01.2025 till the date of making of payment; the complainant is required to make the said payment at the earliest in any case within a period of 10 days of the receipt of this order or specifically claim the adjustment of the said amount against the amount of refund and interest liability payable by the promoter to the complainant allottee in terms of the para 24(xii) & sub para xxi above of the instant order.

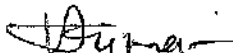
(xxiii) Keeping in view the fact that the occupancy certificate for the project "La Verona" was granted on 03.11.2023, and the complainant has already paid a total amount of Rs.2,19,45,000/- i.e approx. 99% of the basic sale price of the subject property and the balance due with interest thereon to be paid by the allottee appears to be less than the liability of the promoter in terms of the refund and interest as noted herein above; the Promoter is required to handover the possession of the subject property to the complainant within 15 days of the receipt of this order without asking for any additional amount from the allottee and to execute sale deed of the subject property in favour of the complainant in terms of section 17 of the act within 60 days upon clearing of the balance either upon receipt of payment of Rs.14,83,721/- alongwith applicable interest or upon adjusting the same against the refund



amount and interest liability of the promoter as per sub para 24(xii) & sub para xxi above.

27. **Point No. G**

- i. The case of the complainant is that the termination of and cancellation of Allotment despite the complainant having paid more than 95% of the total consideration, delay in completion of the project and without resolving the issues raised by the complainant and above all during the pendency of the present complaint before the Authority; is apparently without any justification and not only amounts to gross violation of the Act but also amounts to contempt of this forum. Per contra, the respondent has stated that since the complainant failed to adhere to the terms & conditions governing the Application Form dated 09.03.2020, Notice of Intention to cancel/terminate the Allotment of the said villa dated 16.01.2025 was sent to complainant inter-alia informing the complainant that there have been 3 defaults in payment of installments conveyed vide email correspondence dated 28.11.2024, 13.12.2024 & Final Reminder dated 09.01.2025 on account of which there is a breach of Clause 1 sub clause (f) of the Application. Accordingly the Respondents in the absence of any positive response, invoked Clause 2 of the Application and expressed intention to terminate the allotment of subject property. Subsequently, the Respondents were constrained to terminate the allotment of subject property vide communication dated 03.02.2025 directing the complainant to furnish bank details within a period of 07 days or alternatively collect the refund check within the period of 15 days. It was further submitted that since the complainant has failed to pay the balance consideration of 5% and did not come forward to take possession of the villa by executing the sale deed despite repeated follow ups, the respondent were also entitled to cancel the allotment in terms of section 11(5) of the Act.



ii. It is evident by the submissions made by the respondent, the Notice of Intention to cancel/terminate the Allotment of the said villa dated 16.01.2025 and the communication dated 03.02.2025 i.e. termination of letter of allotment dated 23.09.2020; have been issued in terms of the clause 1(f) and Clause 2 of the 'UNDERTAKING BY THE APPLICANT AND TERMS & CONDITIONS GOVERNING THE APPLICATION' appended to the said application dated 09.03.2020. A perusal of the said Application Form dated 09.03.2020 along with 'UNDERTAKING' appended to it read with Allotment letter dated 23.09.2020, reveals that the said application dated 09.03.2020 was made for provisional registration of the subject property and was subject to clause 1(d) of the said 'UNDERTAKING' which reads as follows:-

Clause 1(d)

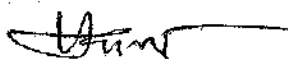
"That the Company at all times reserve its right to reject my/our application and cancel me/our provisional registration without assigning any reason thereof and in such event I shall only be entitled to refund of the advance paid by me."

iii. Further clause 1(f) & clause 2 of the said 'UNDERTAKING' referred to above, reads as follows:-

Clause 1(f)

"I/ we agree that in the event of default in making payment of any installment amounts as demanded by the company, or of any other terms and conditions agreed herein my/our provisional registration shall be treated as cancelled and I/we shall be left with no right, lien or interest herein save and except to claim refund of the actual amount paid by me/us."

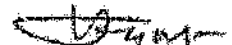
Clause 2



"The timely payment of installments as indicated in the payment plan is the essence of the scheme if any installment is not paid as per the plan the company will charge interest @12%p.a. on the delayed payment for the period of delay. However, if the same remains in arrears for more than two consecutive installments as per the payment Plan, the allotment will automatically stand cancelled without any further intimation and the allottee will have no lien on the unit. In such case, the amount deposited upto 15% of the basic price of the Unit consisting of the earnest money will stand forfeited and the balance amount paid, if any will be refunded without any interest. However, in exceptional and genuine circumstances the company may at its sole discretion, condone the delay in the payment exceeding two installments by charging interest @ 12% p.a. and restore the allotment in case it has not been allotted to someone else. In such a situation, an allotment unit, if available, may be offered in lieu of the same."

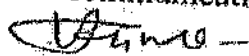
Evidently these clauses in the said 'UNDERTAKING' provide for excessive discretion to the promoter in terms of cancellation of registration/booking and even the allotment of the subject property, that too without giving any notice to the Applicant/Allottee and are thus one sided, intended to have been incorporated to protect the promoter excessively from any future contingencies overlooking the rights and interest of the allottees. Besides, some other clause of the said 'UNDERTAKING' are also of the similar nature.

- iv. Before proceeding further with the matter, it is relevant to note that the various documents regarding sale/purchase of the real estate including the agreements are normally drafted at the end of the promoter and at times with a view to protect its interests, these documents could be so tweaked by the promoter so as to adversely impact the legitimate expectations and rights of the flat purchases. While developers may argue that these documents/



agreements were mutually accepted, the reality is that flat purchasers either may not understand various clauses of such documents/agreements or comprehend its complexity or may not be fully and properly explained/answered by the promoter, as to the implications of specific clauses of such documents where purchaser has some reservations. Thus a consumer of real estate is more often than not, persuaded to accept the document as prepared and to sign on the dotted lines. The courts have recognized this imbalance and taking note of these aspects, have often stepped in with a balanced and equitable interpretation of such documents and related provisions of law; prioritizing the protection of consumer interest over the sanctity of one-sided contractual terms. Keeping in view of inclusion of several one sided clauses in the said 'UNDERTAKING' appended to the Application form dated 09.03.2020, the consideration noted in this para are thus attracted in determination of the point under reference.

- v. As has been noted herein above, the details of the contractual arrangement between the promoter and the allottee in the present case would have to be inferred from the documents and communication executed /exchanged between the parties qua the sale and allotment of the subject property particularly from the application for registration dated 09.03.2020 and the annexures appended thereto as well as the allotment letter dated 23.09.2020; read with the two booking forms dated 09.03.2020 & 13.06.2024 which cumulatively do provide the relevant details in this regard. The Promoter vide para 67 of its reply to the complaint has also admitted that the terms of contract were crystallized way back in the year 2020. Further, the respondent in its averments made in the reply to the complaint and in the written submission have recognized the complainant as an allottee and has not denied the contractual arrangement between him and the allottee. Pertinently, the said Notice of Intention dated 16.01.2025 and the communication dated 03.02.2025 i.e. termination of letter of allotment dated

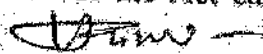


23.09.2020 (of the subject property) have been issued in terms of the clause 1(f) and Clause 2 of the said 'UNDERTAKING' alleging defaults in payment of installments by the allottee and failure of the complainant Allottee to come forward for execution and registration of Agreement for Sale and also the deed of Sale, besides taking over of the possession of the subject property. Additionally, the respondent has also sought to justify the cancellation of the allotment of the subject property in terms of section 11(5) of the Act albeit on the same grounds of default in payments including nonpayment of the balance consideration of 5% and also that the complainant did not come forward to take possession of the villa and execute the sale deed despite repeated follow ups. In view of the above, the provisions of Section 11(5) of the Act become applicable in the present case. Thus the veracity and tenability of the termination of allotment letter dated 23.09.2020 issued in terms of clause 1(f) & clause 2 of the said 'UNDERTAKING' also needs to be examined simultaneously, under the provisions of Section 11(5) of the Act of 2016, in the context of factual matrix of the case as well as various clauses of the said 'UNDERTAKING' and also the provision of Section 11(5) of the Act of 2016.

- vi. It is relevant to note at this stage that the application dated 09.03.2020 was made by the Complainant Allottee seeking provisional registration of a residential unit along with the said 'UNDERTAKING' stipulating certain terms and conditions therein vide clause no.1 to clause no.7 which statedly govern the said application. While the initial recital of clause 1 stipulates that the applicant on account of making the said application does not become entitled to provisional registration or /and final allotment of unit notwithstanding the fact that the company has issued the receipt in acknowledgment of money tendered alongwith the said application, Clause 1(d) entitles the company to reserve its right to reject the said application and cancel the provisional registration without assigning any reason thereof.

*to nu*

Further, Clause 1(f) provides for cancellation of provisional registration even in case of single default in making payment of any installment or of any other terms and conditions of the said undertaking and Clause 2 of the said undertaking provides for charging of interest @12% on the delayed payment and in case the payment default extends to more than 02 consecutive instalments as per payment plan, the allotment of the unit would automatically stand cancelled without any further intimation. It is pertinent to note that these provisions of the said 'UNDERTAKING' governing cancellation of provisional registration or allotment are not only arbitrary and unreasonable but are apparently intended to have been incorporated to excessively protect the promoter overlooking the rights and interest of the allottee. Besides, the said provisions are also not in consonance with various clauses of the model form of agreement appended as 'Annexure A' to Rule 10 of the Goa Rules of 2017. The model Form of agreement specifically provides that only upon committing of 03 defaults in payment of installments by the allottee, the promoter shall have the option to terminate the allotment that too after giving an initial 15 days notice to the allottee to rectify the breach and if the allottee fails to rectify the said breach, the promoter only thereafter becomes entitled to proceed with the termination of the allotment. It is further observed that though the Promoter has been vested with the power to cancel the allotment of the subject property under Section 11(5) of the Act, the proviso to the said sub section stipulates that the Authority when approached by an allottee for relief against the cancellation, however has, to examine the issue not only on the ground that whether such cancellation/termination of allotment is in accordance with the terms of the agreement between the parties, but also if the same is unilateral and without any sufficient cause. It goes without saying that the use of phrase 'unilateral and without any sufficient cause' used in the latter part of the Section 11(5) of the Act carries wider connotation particularly when the preamble of the

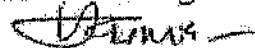


Act itself emphasizes transparency in the sale of real estate sector and 'protection of interest of the consumers in real estate sectors' as its object.

vii. Further, clause 4.2 of the model form of agreement provides the 'default in payments' as the only ground for initiating the process of termination of allotment. Pertinently, clause 1(f) of the said 'UNDERTAKING' also stipulates 'default in making payment' as the primary ground for cancellation of allotment.

viii. Notably, the notice of intention to cancel/terminate the allotment of the subject property dated 16.01.2025 was issued in terms clause 1(f) of the said 'UNDERTAKING' alleging default in payment committed by the complainant allottee, providing the details of three defaults in the body of the said notice itself. The complainant allottee was also apprised to treat the said notice as formal 10 day notice, for cancellation/termination of the allotment of the subject property in case the allottee fails to rectify breach notified vide the said notice dated 16.01.2025. Notably, clause 4.2 of the model form of agreement has been drafted in terms of section 13 of the Act read with the Rule 10 of the Goa Rules, 2017 and provides for the terms of cancellation for the purposes of Section 11(5) of the Act. Further, Clause 1(f) of the said 'UNDERTAKING' also stipulates 'default in making payment' as the primary ground for cancellation of allotment and the issuance of the said notice dated 16.01.2025 substantially complied with the provisions of clause 4.2 of the model form of agreement except that the notice period was reduced to 10 days; the provisions of the proviso to sub section 11(5) of the Act particularly with regard to whether the said termination of allotment is unilateral and without any sufficient cause, would be clearly applicable in the present case.

ix. Evidently, no option to respond or to controvert the breach as alleged; was afforded to the allottee vide the said notice dated 16.01.2025. Further, the subsequent final communication dated 03.02.2025 intimating the allottee of



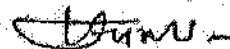
termination of allotment besides the grounds stated in the notice dated 16.01.2025, refers to certain additional grounds i.e. non execution of Agreement for Sale and non-execution and registration of sale deed etc without affording any further opportunity to the noticee either to rectify the breach or to respond or clarify as to the alleged breach. In view of the additional grounds preferred and no further opportunity given to the notice, in the subsequent communication dated 03.02.2025 vide which termination of allotment letter dated 23.09.2020 was conveyed to the allottee, the communication dated 03.02.2025 is apparently becomes unilateral in terms of the proviso to sub section 11(5) of the Act and thus bad in law and cannot sustain.

x. It would further be expedient to examine the veracity of the grounds preferred by the Respondent in the said notice of intention dated 16.01.2025 & communication dated 03.02.2025 i.e termination of letter of allotment, in the factual matrix of the case. With regard to the allegation of delayed and deferred payments, it is noted that the allottee vide para 4 of the Notice of Intention dated 16.01.2025 was apprised that vide email dated 28.11.2024, 13.12.2024 and final reminder sent on 09.01.2025, he was informed about the default payments which was due according to the Annexure 1 appended to the said Notice. The details of the said default payment as noted at para 4 of the notice itself, were as follows: "On Possession-Unit Cost and Other Charges (Unpaid); and Interest/ Late Payment Fees outstanding as on 15.01.2025 (unpaid)" which total is amounting to INR 14,83,721/- with respect to your obligations under the terms of the Allotment letter and the Booking Application Form/Demand Letter."

xi. However, the above plea of the respondent is not well supported by its own submissions and documents submitted by it on record. A perusal of the copies of the said 03 emails dated 28.11.2024, 13.12.2024 & 09.01.2025 reveals that these are standard format emails in the nature of automated



reminders asking the complainant to pay the outstanding payments for the subject property. Neither the content of the said emails discloses the exact amount payable, period of delay or interest levied nor it refers to any attachment / statement enclosed there with. Further, no account details pertaining to these emails have also been furnished by the respondent separately on record. However, the respondent has referred to an email dated 13.03.2024 whereby the complainant was given details of the outstanding dues payable on possession of the subject property amounting to Rs.14,71,805/- besides charges for one year maintenance of the unit area and garden area, house tax charges, society formation charges alongwith 18% GST on all these items. Evidently, the other charges besides the amount of Rs.1471805/- i.e. maintenance charges, house tax amount and society formation charges would be apparently payable at the time of possession which was offered to the allottee on 29.04.2024 only. The respondent has also claimed that the complainant failed to make the payments in terms of Annexure 1 attached to allotment letter and thereby committed default/delay in making of requisite payments. Again, Annexure 1 attached to allotment letter only mentions names of various milestones and the amount payable in respect of those milestones. The information provided in the said annexure 1 in the absence of date of completion of various milestones, demand letters issued, date of payments made and the period of delay etc. along with interest liability levied; render no help so as to examine the veracity of the claim of the Respondent related to default in making payments by the allottee. Further, the stand of the Complainant in this regard is that he had not only made the required payments in time but the payment made by him in fact exceeded the extent of construction completed. This also gets supported from the records of the case. The complainant as on 14.06.2023, had made a total payment of Rs. 2,19,45,000/- to the respondent i.e apprx 99% percent of the total basic sale price of Rs.2,20,00,000/-, against



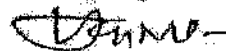
approximately 55% completion of the project, as assessed on the basis of Quarterly Progress Reports as well as the Annual Statement of Accounts for 2022-23.

- xii. It is evident that while the respondent has not been able to support its contentions as to the alleged defaults in payments committed by the complainant in as much as he has not even furnished the requisite details to examine his contention properly, the stand taken by the complainant on the other hand, comparing the extent of payment made i.e.99% of the basic sale price with the extent of construction completed i.e.55% of the project as on 14.06.2023; is well supported from the records and his own submissions. In view of what has been noted herein above, it is clear that the said ground i.e. defaults in making of payments and delayed/deferred payments preferred by the respondent to justify the termination of allotment letter dated 23.09.2020 holds no water and the said communication dated 03.02.2025 i.e. termination of letter of allotment dated 23.09.2020 does not survive the legal scrutiny on this count.
- xiii. Besides above, the respondent has also contended that since the complainant did not pay the 5% balance amount and also did not come forward to take the possession of the subject property and execute sale deed, the action of the respondent in canceling the allotment of the subject property was justified in terms of breach of Clause1 (f) & clause 2 of the said 'UNDERTAKING' and also under the provisions of Section 11(5) of the Act. The said contention of the Respondent as to nonpayment of pending balance amount of 5% as well as the failure of the complainant to come for the execution of the Deed of sale despite repeated follow ups; also does not hold any water. Notably, the complainant as noted herein above, had offered to bring the draft of the balance amount and tender the same at the time of handing over/taking over of the possession of the subject property. Further, the draft of the sale deed was furnished to the complainant on 06.06.2024



much after the grant of occupancy certificate on 03.11.2023 for the project and that too upon repeated requests. The said draft was further found to be incorrect by the complainant as the details of subject property mentioned therein differed from what was promised initially to him, beside the subject property was described as villa No.4 instead of Villa No.11. This was followed by few emails and later issuance of legal notice. As the matter could not be settled interse the parties, the complainant preferred the instant complaint before the Authority. The Respondent also initiated the process for cancellation of the allotment of the subject property when the present proceedings had already commenced. Thus thereafter, handing over/taking over of the subject property as well as execution of Sale deed could not be proceeded with.

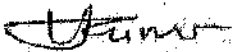
xiv. It is noted that the respondent vide the said communications dated 03.02.2025 had also notified the allottee about another specific breach in terms of its failure to register the agreement for sale within the specified period. In this regard, it is noted that though the respondent has sought to place the responsibility for non execution of the Agreement for Sale upon the complainant, the said contention of the respondent, however, is not at all supported by the facts of the case which reveal that the promoter in terms of the allotment letter dated 23.09.2020 was supposed to share a draft copy of agreement for sale with the complainant within a month of issue of the allotment letter and then fix a date in consultation with the complainant, for execution and registration of Agreement For Sale. It is further noted that the draft of the said Agreement for Sale was shared with the complainant as late as on 06.06.2024 for the first time that too upon repeated requests by the complainant and was further pointed out by the complainant to be incorrect in terms of details of the subject property. Pertinently, the respondent vide its email dated 28-05-2024 had also informed the complainant since the Agreement for Sale could not be executed so far and keeping in view that the



possession of the subject property was now proposed to be handed over to the allottee, the promoter instead intends to execute and register the sale deed. While this could not be faulted with as an option, the complainant in view of what has been noted herein above, cannot be held responsible for non execution of the Agreement for Sale.


xv. In view of the observations made at the sub paras (x) to (xiv) herein, the Respondent has miserably failed to support the grounds preferred by it for initiating and undertaking the cancellation of the allotment letter dated 23.09.2020 and thus the communication dated 03.02.2025 i.e. termination of allotment letter dated 23.09.2020 having been issued without sufficient cause; is not in consonance with the provisions of section 11(5) of the Act and cannot be allowed to sustain. Besides, it has already been noted at sub para (ix) above, the cancellation of allotment was apparently unilateral in terms of the proviso to sub section 11(5) of the Act and thus bad in law.

xvi. Though the complainant has not raised the specific issue, the communication dated 03.02.2025 conveying termination of the Allotment letter dated 23.09.2020; is also assailable on the ground of stated retention of 15% of the total price which prima facie appears to be unreasonable. Though the Respondent has stated that the retention or collection of 15% of the total price is by way of forfeiture of earnest money in terms of clause 1(f) & clause 2 of the said 'UNDERTAKING' appended to the Application Form dated 09.03.2020 as well as on account of the loss suffered by the company due to the breaches of the Agreement committed by the complainant; the Respondent has however neither furnished any details of such losses in the said communication nor opted to provide such details in the pleadings submitted during the course of the proceedings. It is pertinent to add that the Hon'ble National Consumer Disputes Redressal Commission in Revision Petition No.3860 of 2014, while deciding the case of *M/s DLF V/s Bhagwanti Narula* on 06.01.2015 has discussed the cases of Maula Bux,



supra, and Satish Batra, supra, and has clearly laid down that only a reasonable amount can be forfeited as earnest money in the event of default on the part of the purchaser and it is not permissible in law to forfeit any amount beyond a reasonable amount unless it is shown that the person forfeiting the said amount had actually suffered loss to the extent of the amount forfeited by him. Pertinently, the claim of the respondent as to non payment of pending balance payment or delayed payments was also not found well supported in terms of the pleadings of the respondent and also in the facts of the case. Further, the Maharashtra Real Estate Regulatory Authority, Mumbai vide Order No. 35/2022 dated 12.08.2022 has permitted forfeiture of 2% of the sale price in case of default on the part of the respondent. Though no such circular is issued by this Authority, the stated retention of 15% of the total price upon termination of the Allotment in view of the observations made herein above, is prima facie unreasonable and thus vitiates the communication dated 14.11.2023 conveying termination of the Agreement for Sale dated 12.01.2021.

- xvii. It is evident from the above that while the respondent has not been able to support issuance of the Notice of Intention to cancel/terminate the Allotment of the said villa dated 16.01.2025 and the communication dated 03.02.2025 i.e. termination of letter of allotment dated 23.09.2020 in terms of the alleged specific breaches and the cancellation of the said allotment letter was noted to be unilateral and without sufficient cause, it is apparent that the termination of allotment letter by the respondent after initiation of these proceedings was not only hasty but also ill conceived. Per contra, the contention of the Complainant as to the initiation of the process of the termination of allotment letter dated 23.09.2020 despite the delay in completion of the Project due to reasons which, as noted herein, were entirely attributable to the promoter and particularly when the extent of payment made as on 14.06.2023 far exceeded the extent of construction



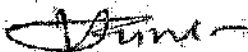
completed and approx. 99% of total basic selling price/consideration had been paid almost 04 months before the completion of the project; cannot be taken to be legally valid or reasonable and for a sufficient cause; does carry weight particularly when these are well supported in the facts of the case. The other contention of the Complainant that despite the issues raised by him particularly relating to the garden area were still pending resolution, Promoter proceeded with termination of contract; is also in consonance with the facts of the case. Further, the Promoter has not claimed taking of any steps to resolve these issues amicably.

xviii. In view of what has been discussed herein above, I hold that the termination of Allotment Letter dated 23.09.2020 conveyed vide communication dated 03.02.2025 can neither be sustained in the facts of the case nor it is in consonance with the provision of Section 11(5) of the Act and accordingly, the communication dated 03.02.2025 terminating the Allotment Letter dated 23.09.2020 issued by the Promoter; is hereby quashed and termination of allotment letter dated 23.09.2020 is revoked restoring the status of the Complainant as allottee with all rights and obligations under the Act.

28. Point No. H

H(a)

- i. The Complainant while alleging violation of Section 3 of the Act has stated that the subject property was offered for sale to the complainant prior to registration of the project 'La Verona' with Goa RERA. Further, a payment of Rs.11 lakhs along with the application for registration was also received by respondent No.2 from complainant on 09.03.2020, much prior to registration of the said project on 06-08-2020. Though the Respondents apart from stating that the application money of Rs.11 lakhs was received on 23.09.2020; has not specifically denied these allegation leveled by the complainant. The submissions made by both parties, however, reveal that



some interactions prior to making of the said Application for Registration did happen between the Promoter and Complainant. The complainant along with the copy of the allotment letter has also inter alia submitted a copy of the receipt issued at the time of booking by the respondent which though dated 23.09.2020, acknowledges receipt of Rs.11 lakhs received vide EFT on 09.03.2020. Additionally, the respondent at para 3 of its reply to the complaint, has admitted receipt of the Application for Registration on 09.03.2020 vide which the sum of Rs.11 lakhs has also been shown to have been remitted to the Respondents. Also, the Respondents at point C of preliminary objections raised in the said reply, further stated that the transactions made by the Prashant kaul with the respondent relate to events which had occurred during February to March 2020. Further, the registration of instant project was granted on 06.08.2020, much after the making of the Application for Registration and payment of Rs.11 lakhs by the Respondents.

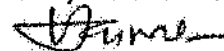
ii. Section 3(1) of the Act clearly prohibits such actions on the part of the Promoter and reads as follows: -

**3. Prior registration of real estate project with Real Estate Regulatory Authority: -**

“(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:”

iii. In view of the above, the conduct of the Promoter amounts to contravention of Section 3 of the Act and attracts penalty under the provisions of Section 59 of the Act which reads as follows: -

**“59. Punishment for non registration under Section 3-(1) If any promoter contravenes the provisions of section 3, he shall be liable to a**

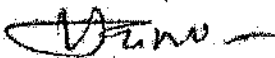


penalty which may extend upto ten percent of the estimated cost of the real estate project as determined by the Authority.”

It is relevant to note that a penalty of Rs.9 Lakh has already been imposed upon the promoter by this Authority in respect of the project in question in the case of Lalit Chaudhary V/s M/s Ryago Homes Private Ltd in the context of almost similar facts and the respondents arrayed in the present case, were also the respondents therein. Since the project has already been registered on 06.08.2020, no further penalty can be imposed upon the promoter on this count in view of the provisions of the section 59 of the Act as noted above.

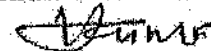
**Point No. H(b)**

- i. Alleging violation of Section 13 of the Act, the complainant has stated that the respondent without executing an agreement for sale with the complainant and registration thereof had already received Rs.2,19,45,000/- i.e. approximately 95% of the total payment due which is clearly much more than 10% of the cost of the subject property and has thus violated the provision of Section 13 of the Act which mandates the promoter not to accept a sum more than 10% of the cost of the subject property without first entering into a written Agreement for Sale with Allottee and getting the same register. In response, the Respondents while admitting receipt of Rs.2,19,45,000/-, has stated that while issuing the allotment letter on 23.09.2020, the Respondents had vide Annexure 'G' attached to the said allotment letter provided the details of process for registration of the Agreement for Sale beside issuing a letter dated 23.09.2020 (available at page 56 of the complaint) whereby the complainant was requested to get ATS (Agreement to Sale) registered within 30 days after receiving the Allotment of the subject property. It was further submitted that inspite of receipt of the allotment letter dated 23.09.2020, the complainant has failed to



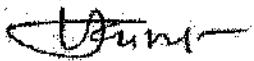
adhere to the schedule and the complainant has also not been able to demonstrate that the Respondents refused to execute the Agreement to Sale.

- ii. The Respondents also pleaded that even otherwise the customer ledger of the Complainant reveals that the Respondent had received only an amount of Rs.11,00,000/- (Rupees Eleven Lakhs only) as on 23.09.2020 and the next amount of Rs.12,10,000/- (Rupees Twelve Lakhs Ten Thousand only) was received by the Respondents from the complainant on 25.01.2021 only which shows that on or before 22.10.2020(after 30 days of issue of allotment letter) i.e. when Agreement to Sale was required to be executed between the complainant and Respondents, only a sum of Rs.11,00,000/- had been received from the complainant which is less than 10% of the basic cost of the Villa which was Rs.2,20,00,000/- (Rupees Two Crores Twenty Lakhs only). The Respondent further submitted that on account of unavailability of the complainant in India, the Agreement for Sale could not be executed by the complainant and as such the complainant cannot now hold the Respondents for violation the mandatory provisions of Section 13 of the RERA Act.
- iii. It is relevant to note that the contents of letter dated 23.09.2020 vide which the complainant was requested to get Agreement for Sale registered within 30 days of receiving the Allotment of the subject property; gets further qualified by the contents of the allotment letter itself issued on the same date which while acknowledging the receipt of application money of Rs.11 lakhs informs the allottee that he will be receiving the draft of agreement for sale and thereafter he would be requested to come for the execution of the same.
- iv. In above view of the matter, the plea of the respondent that the complainant despite being requested to get his agreement for sale registered within 30 days of the receiving of the allotment letter i.e. by 22.10.2020, failed to do so and had also not paid 10% of the cost of the subject property till 22.10.2020; thus holds no water. The fact remains that the respondent



without executing an agreement for sale with the complainant, had on 14.06.2023 already received approximately 95% of the total due payment i.e. Rs.2,19,45,000/- which is much more than 10% of the cost of the subject property. Further, the respondent has failed to disclose if any draft of agreement for sale or Sale Deed was forwarded to the complainant allottee before May/June 2024 as no such details alongwith a copy of the said ATS as well as the copy of the forwarding email etc. were furnished either in its submissions or by way placing relevant documents on record.

- v. Pertinently, a perusal of section 13 evidently reveals that it requires promoter not to accept a sum more than 10% of the cost of the subject property without execution of agreement for sale with the allottee and registration thereof with jurisdictional Sub Registrar. The promoter had the option to defer the receipt of payments exceeding 10% of the cost of the subject property from the complainant and could have issued appropriate notices to the complainant allottee in this regard and or alternatively approach the RERA.
- vi. In view of the above, the conduct of the Promoter amounts to contravention of Section 13 of the Act and attracts penalty under the provisions of Section 61 of the Act.
- vii. It is further noted that this issue has been raised by the complainant after making a payment of Rs.2,19,45,000/- i.e. approx. 95% of the total consideration for the subject property and that too in the complaint filed in November 2024. Further the Project was registered on 06.08.2020 completion certificate for project has already been obtained on 03.10.2023. The occupancy certificate was also granted to the Project on 03.11.2023.
- viii. As the plea of the respondent that the complainant despite being requested to get his agreement for sale registered within 30 days of the receiving of the allotment letter i.e. by 22.10.2020, failed to do so and had also not paid 10% of the cost of the subject property till 22.10.2020 was found untenable and



the respondent had already received approximately 95% of the basic sale price as on 14.06.2023 which is much before the may end/ 1<sup>st</sup> week of June 2024 when the respondent for the first time had forwarded a copy of draft of Agreement for sale/Sale deed to the complainant; a penalty of Rs. 20 lakh for violation of provision of Section 13 of the Act read with Section 61 of the Act of 2016 is imposed upon the Respondent.

Thus Point No. H(a) and H(b) are answered in above terms.

29. **Point No. I**

- i. The complainant has alleged that the updated details of project as were available on 15.11.2023 at RERA website and also the copies of emails filed by the Respondent disclose that the respondents changed the layout of the project without the consent or knowledge of the complainant thus violating the provision of Section 14 of RERA Act, which mandates that no alterations or additions to the sanctioned plan or specifications can be made without the prior written consent of the allottee. The record reveals that in the instant case, the respondent vide email dated 03.08.2021 had informed the complainant that there were some setting out issues considering the site condition and on account of the same, 12 inches were reduced from the staircase and 8 inches from ground floor living room and first floor bedroom respectively. Further, vide email dtd. 06.08.2021, & 16.08.2024 the respondent had also clarified and confirmed to the complainant that there is no modification in the villa with regards to size, layout or location as the team was able to manage the site requirements without affecting the villa of the complainant.
- ii. In this regard, it is observed that in the case of Lalit Chaudhary V/s M/s Ryago Homes Private Ltd wherein the subject property was situated in the same project; the violation of section 14 of the Act was also alleged in somewhat similar circumstances and this authority had observed as follows:



Para 64(ii) "A report in this regard was sought from the Technical Section of the Authority which has also confirmed that revised plan documents were uploaded by the Promoter on 22.09.2023. The scrutiny of the revised plan by technical section reveals that there are minor changes in the total built up area of the project i.e. from earlier 1984.26 sq. mts. to revised 1992.98 sq. mts..... However, the record of the Authority does not reveal the reasons for revising the plan and exact implication thereof and whether the consent of 2/3<sup>rd</sup> of the allottees as stipulated under the provisions of Section 14(2) of the Act was obtained or not. Further, the project file reveals that the application for seeking extension of the project mentions that to preserve a large tree noticed at the site, a thorough reassessment and adjustment in construction were done".

64(iii) These aspects including the obtaining of consent from 2/3<sup>rd</sup> of the allottees need to be ascertained and clarified from the Promoter to reach at a finding as to the violation of Section 14 of the Act by the Promoter. The registry is accordingly directed to issue notice to Promoter in this regard, a copy the same may also be endorsed to the complainant herein."

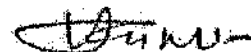
- iii. Pursuant to the above directions, a notice was issued to the respondents herein and the proceedings have already been commenced. In view of what has been noted herein above, it would be expedient to direct the registry to issue notice to the Complainant herein, so as to enable him to join the ongoing proceedings and, a copy of the same may also be endorsed to the Respondent Promoter herein.

The point No. I is disposed off in above terms.

30. Point No. J



- i. The complainant alleging multiple violations of the Act, has prayed for the revocation of the registration of the Project granted to the Promoter under Section 7 of the Act. It was submitted by the complainant that the Promoter received earnest money on the basis of booking form without registration of the project and also induced the buyers to purchase the property on the basis of contents of booking form dated 09.03.2020 showing a bigger carpet area and sale of garden area but later on reduced the carpet area and though the respondent proposed the sale of the Garden area and also received amount towards the same but later stated that the Registrar was not permitting the transfer of garden area on ownership basis. It was also alleged that the Respondent failed to construct, complete and hand over the possession of allotted "Villa" to the Complainant as agreed to and within the stipulated completion time as stated before Goa RERA at the time of seeking registration of the project. Further, the Respondent despite the delay in completion of the project raised demands though the same were not due. Further there is a deficiency in service on part of the Respondents by misleading the Complainant and the same amounts to unfair trade practice. In addition the Complainant also alleged violation of Section 13 and 14 of the Act. The Respondent has denied all these allegations.
- ii. The issues related to change of nature of property rights of garden area from 'exclusive ownership' to 'exclusive right to use' and reduction of carpet area etc. and also whether the garden area was part of common area and thus could not have been sold and charged separately; have already been dealt with in detail under Point B and C. Further, whether the Respondent allured and cheated the complainant herein to buy the villa question (subject property) by misrepresenting the facts with regard to the carpet area, super built up area and garden area have been dealt with in detail under Point D and have been answered in negative.



iii. With regard to the violation of Section 3(1) of the Act, no penalty was found leviable upon the Promoter since a penalty of Rs.9 Lakh has already been imposed upon the promoter by this Authority in respect of the same project in question in the case of Lalit Chaudhary V/s M/s Ryago Homes Private Ltd. The allegation of violation of Section 13 of the Act raised by the Complainant, have been examined in detail under Point No. H(b) and a penalty of Rs. 20 lakhs has been imposed upon the promoter for the lapse. Further, in respect of violation of Section 14 of the Act, the Registry have been directed to issue a notice as noted under the Point No. I. The issue of delay interest and deficiency in service have also been examined herein above.

iv. It needs to be noted that the relief sought is for revocation of the Registration of the project granted to the for committing unfair trade practices. As per the provision of section 7 of the Act, the term 'unfair practice' has been defined as follows:-

"Explanation,-- For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:--

(A)the practice of making any statement, whether in writing or by visible representation which,--

(i)falsely represents that the services are of a particular standard or grade;

(ii)represents that the promoter has approval or affiliation which such promoter does not have;

(iii)makes a false or misleading representation concerning the services;

(B)the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;


(d)the promoter indulges in any fraudulent practices."



- v. In view of what has been noted above in this para and also the details of analysis and reasoning pertaining to the determination of Points listed at para 20 above, no case is made out for initiation of action under section 7 of the Act particularly when the project has already been completed on 03.10.2023 and the occupancy certificate for the project has also been granted on 03.11.2023.

31. **Point No. K**

- i. Section 18 of the Act stipulates that Complainants are entitled to refund including compensation without prejudice to any other remedy available. Section 71 of the Act stipulate specific procedures for adjudication of compensations. Section 72 of the Act further specifies the factors to be taken into account by Adjudicating Officer, while adjudging the quantum of compensations or interest as the case may be under Section 71 which are listed here below:
- 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.
- ii. In the instant case, Complainant has filed single complaint before the Authority seeking refund, interest and compensation etc. Upon determination by the Authority, the instant complaint needs to be further transferred to Adjudicating Officer for determination of compensation as per the provisions under Section 71 of the Real Estate (Regulation and Development) Act, 2016.



32. Point No. L

- i. It is noted that despite complainant having paid 95% of the amount, delayed completion of the project and consequential delay in handing over of the possession of the subject property booked by the allottee despite complainant having paid 95% of the amount as well as the inability of the promoter to transfer the ownership of the Garden area to the allottee, the respondent opposed the complaint trying to defend him unsuccessfully instead of making active efforts to settle the issue. The complainant has admittedly preferred the legal proceedings with regard to the instant complaint. Although, the complainant has not filed any receipt of payment as litigation fee of his counsel, it is evident from the record that the same is being represented by an advocate. Accordingly, the complainant is entitled to a lump-sum costs of litigation including the amount of Rs. 5000/- deposited for filing of the online complaint with Goa RERA. It would therefore be just & fair if the Respondent is directed to pay an amount of Rs. 30,000/- to Complainant on this count.

Directions

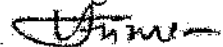
In view of the findings arrived at various points of determination listed at para 20, it will be just to issue the following directions in the matter:

- i. The respondent is directed to refund the Complainant or adjust the same against the balance of total basic cost as due and pay balance if any to the Complainant, the total of the 8.95% of the various payments attributable towards the price of the garden area, made by the complainant to the respondent as per details noted at column 4 of Table 'A' at para 24(x) above, along with the interest @10.8% (MCLR

*[Signature]*

@8.80%+2%) calculated for the respective payments for the period from the date of making of the said payment till the date of refund of the same to the allottee; within thirty days from the date of issue of the order

- ii. The promoter is further directed to pay the allottee within 30 days of the date of receipt of this order interest amount on the total amount of Rs.2,19,16,125/- paid by the complainant to Respondent, at the applicable rate of 10.8% for the period from 31.07.2023 to 30.09.2024 in lump sum and in case of any delay in making of the said payment by the due date, along with an interest @ rate of 10.8% on the amount payable, for the period of delay counted from the due date as above till the making of the payment of the said interest amount.
- iii. The Complainant allottee is directed to pay the balance payment of Rs.14,83,721/- (as due on 15.01.2025) to the Promoter Respondent with the applicable interest @ 10.8% thereon for the period from 15.01.2025 till the date of making of payment; at the earliest and in any case with in a period of 10 days of the receipt of this order or specifically claim the adjustment of the said amount against the amount of refund and interest liability payable by the promoter to the complainant allottee in terms of the para 24(xii) & sub para xxi above of the instant order.
- iv. Respondent Promoter is further directed to handover the possession of the subject property to the complainant within 15 days of the receipt of this order without asking for any additional amount from the allottee and to execute sale deed of the subject property in favour of the complainant in terms of section 17 of the act within 60 days upon clearing of the balance either upon receipt of payment of Rs.14,83,721/- alongwith




applicable interest as above or upon adjusting the same against the refund amount and interest liability of the promoter as per sub para 24(xii) & sub para xxi above.

- v. The communication dated 03.02.2025 terminating the Allotment Letter dated 23.09.2020 issued by the Promoter; is hereby quashed and the termination of Allotment Letter dated 23.09.2020 is revoked restoring the status of the Complainant as allottee with all rights and obligations under the Act with immediate effect.
- vi. The respondent no. 1 is directed to pay Rs. 2000,000/- (Rupees Twenty Lakhs only) penalty under Section 61 of the Act for violation of Section 13 of the Act. The amount shall be deposited with the Authority within 45 days failing which necessary proceeding will be initiated against the respondent No. 1.
- vii. The registry in terms of the observation noted at para 29 (iii), is directed to immediately issue notice to the Complainant herein, so as to enable him to join the ongoing proceedings under section 14 of the Act in the case of Lalit Chaudhary V/s M/s Ryago Homes Private Ltd and a copy of the same may also be endorsed to the Respondent Promoter herein.
- viii. The respondents are directed to pay costs of ₹30,000 (Rupees Thousand only) to the complainant, within 60 days of the order, failing which it will carry interest in terms of law, till effective payment.
- ix. The Respondent as well as the Complainant are directed to file compliance report of the order in the form of an affidavit within 60 days of this order, failing which further legal action will be initiated by the Authority under the RERA Act, for execution of the order.



- x. In the instant case, Complainant has filed single complaint before the Authority seeking refund, interest and compensation etc. Upon determination by the Authority, the instant complaint is further transferred to Adjudicating Officer for determination of compensation as per the provisions under Section 71 of the Real Estate (Regulation and Development) Act, 2016.

 29/05/2016

Virendra Kumar, IAS (Retd.)  
Member, RERA