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### **REPORT ON TITLE**

#### **REPORT IN THE MATTER OF TITLE AND MARKETABILITY IN RESPECT OF THE AMALGAMATED PROPERTY BEARING SURVEY NOS.142/1 AND 142/2 OF VILLAGE OF ARPORA, BARDEZ, GOA**

At the instance of Falcon Retreat Pvt.Ltd., a Company duly incorporated and registered under the Companies Act, 1956, having its regd.office at 142, Ghorbhat, Arpora, Goa, 403516 ("the Owner") we scrutinized the documents placed in our hands for our scrutiny, conducted search and we have to report and authenticate as under:-

#### **DESCRIPTION OF THE PROPERTY SUBJECT MATTER OF SCRUTINY:-**

All that immovable property known as 'HIR NAIQUE BIR NAIQUE AGOOR' also known as 'TALI' and described in the Land Registration office of Bardez at Mapusa under No.3207

at folio 249 overleaf of Book B-29 (old) however not found enrolled in the Taluka Revenue office of Bardez at Mapusa and surveyed under new survey operations under survey nos. 142/1 and 142/2 of the village of Arpora, Bardez, Goa admeasuring 27800 sq.mts, ("the Property")

The Property is bounded as follows:-

EAST - By survey no.144/6, 143/10, 141/1 & 141/2

WEST - By river

NORTH -By survey no.144/1 & 144/6

SOUTH -By survey no.132/1

#### **DOCUMENTS SCRUTINIZED:**

1. Certificate of Description bearing No.3207
2. Certificate of Inscription bearing No.35075
3. Inscription of Hypothecated dated 25/5/1956
4. Noting to the Inscription of Hypothecated dated 7/6/1956
5. Deed of Sale dated 10/2/1984
6. Certificate dated 16/6/1986 issued by the Land Registration office at Mapusa

7. Nil Encumbrance Certificate dated 16/6/1986
8. Record of Rights/Form I & XIV dated 5/6/1986
9. Survey plan
10. Deed of Sale dated 16/10/1995
11. Mortgage Agreement dated 8/2/1999
12. Deed of Hypothecated dated 8/2/1999
13. Land Conversion Sanad dated 4/10/1995
14. Construction license
15. NOC for issue of occupancy dated 12/9/2001
16. Occupancy Certificate dated 15/11/2001
17. Receipt dated 27/7/2018 in respect of Handing over of possession of the Property

**SEARCH CONDUCTED IN THE FOLLOWING OFFICES:-**

1. Land Survey Department
2. Department of Archives
3. Office of the Sub-Registrar of Bardez at Mapusa
4. Office of the Mamlatdar of Bardez at Mapusa
5. Office of the Collector of North Goa District Panaji
6. Office of the Deputy Collector and SDO Mapusa

7. Office of the Talathi of the Village of Arpora, Goa
8. Office of the Village Panchayat of Arpora,Goa
9. Office of the Range Forest officer and Conservator of Forests, Junta House Panaji
10. Town & Country Planning Department
11. Revenue Department to rule out acquisition of property
12. Office of the Superintendent of Civil Judge Senior Division and Junior Division Mapusa to rule out any pending litigation
15. Office of the Superintendent of the District Court And Addl. District Courts, Panaji/Mapusa to rule out any pending litigation and/or appeal.
16. Registrar of the Bombay High Court, Panaji Bench, Goa to rule out any pending litigation
- 17.Registrar of the Supreme Court of India to rule out any pending litigation
- 18.MCA website

### **TRACING OF THE TITLE :**

The documents scrutinized and the search conducted by us reveal the following:-

1. That the Property as per the certificate of inscription originally belonged to Jose Alexandre Ludovico de Albuquerque and accordingly his name is found inscribed in the Certificate of Inscription under No.35075 of Book G-39 in the Land Registration office of Bardez at Mapusa.

That the Property is found described under No.3207 at Folio 249 overleaf of Book B-29 (old)

2. A perusal of the Certificate of Description bearing No. 3207 reveals that the corresponding Inscription number is 35075 of Book G-39, however, on 25/5/1956 under No.12368 there is an inscription of provisional hypothecation of the Property in favour of the Public Prosecutor, to guarantee the payment of the amount of Rs.10,000/- arising from the fine imposed upon its owner, Mr. Jose Alexandre Ludovico de

Albuquerque in a criminal case which the Public Prosecutor filed against the said Jose Alexandre Ludovico de Albuquerque

That by order dated 30/5/1956 as there was no appeal preferred against the order of imposing a fine, the provisional inscription to secure the payment of the fine of Rs.10,000/- imposed by the Court came to be converted into a final inscription.

That the documents scrutinized further reveal that as against the inscription of hypothecation effected on 25/5/1956 provisionally, and confirmed by order dated 30/5/1956 for want of appeal, and upon payment of the fine by Irene Leonilda de Albuquerque on 6/6/1956, an endorsement is subsequently made on 7/6/1956, confirming that the fine had already been paid and it therefore follows that the Property stood released from the provisional hypothecation made under no. 12368 on 25/5/1956 and therefore the Inscription of mortgage No.12368 automatically ceased to exist and have any effect.

3. By virtue of a Deed of sale dated 10/2/1984 the said Jose Alexandre Ludovico de Albuquerque and his wife Ruth Perpetua Francisca de Santana Souza Albuquerque sold the Property to Arminio Inacio Braganza and the said deed of sale is found registered under No.238 at pages 317 to 332 Book I Vol. No.206 dated 9.4.1985 in the office of the Sub-Registrar of Bardez at Mapusa

Pursuant to the purchase of the Property the said Arminio Inacio Braganza, secured a Nil Encumbrance certificate dated 16/6/1986 from the office of the Sub-Registrar of Bardez at Mapusa bearing No.113 of 1986, wherein it was certified that the Property was free from any registered encumbrance from 1/11/1965 till 19/6/1986

4. The Conservatorio of the Registration office of the Judicial Division of Bardez vide certificate dated 16/6/1986 also confirmed that the Property bearing description no. 3207 is found inscribed in favour of Jose Alexandre Ludovico de Albuquerque from Anjuna, under No. 35075 of Book G-39.

The name of Arminio Inacio Braganza, pursuant to the purchase of the Property came to be mutated in his name under mutation Entry no. 7731. There are no names in the Tenants Column or Other Rights Column.

5. The documents further reveal that Arminio Inacio Braganza and his wife Jovita Braganza, by virtue of a Deed of Sale dated 16/10/1995 sold the Property to the Owner and the said Deed of sale is found registered under No.983 Book No.I, vol. No. 389 dated 21/6/1996 in the office of the Sub-Registrar of Bardez at Mapusa.

Pursuant to the purchase of the Property, the Owner completed the process of mutation and accordingly the name of Arminio Inacio Braganza, found recorded in the Occupants Column under mutation entry No. 7731 came to be deleted and the name of the Owner came to be incorporated therein under mutation entry No.1126 which entry continues to feature as on date, a fact revealed by a search in the Taluka Revenue Office of Bardez at Mapusa.



The Owner having acquired right, title and interest in the Property thereafter converted the Property to non- agricultural under Sec. 32(1) of the Land Revenue Code, 1968 by obtaining a Land Conversion Sanad dated 4/10/95 to the extent of 20865 sq.mts. and more specifically found identified in the plan/sketch annexed to the Land Conversion Sanad.

6. The Property which otherwise was originally a single property, at the time of promulgation of survey records, came to be divided into two holdings and allotted survey nos.142/1 and 142/2 of the village of Arpora, Bardez, Goa, however, the same came to be amalgamated once again by the Town & Country Planning Department on 10/1/1995 pursuant to which the Owner, secured approval for carrying out construction of a hotel complex from the Town & Country Planning Department on 9.5.1996 on the basis of which the Village Panchayat of Arpora- Nagoa, was pleased to issue construction license on 26/6/1995 and as part of the hotel complex more specifically Apartment Building nos.A-1 to A-6, and Cottage nos. C-1 to C-9, and Block B-4 consisting of a generator, restaurant and gate house were completed, in respect of which the Village

Panchayat was pleased to grant part occupancy vide certificate dated 5/1/2001. However, all structures on the Property, other than the gate house have since been demolished completely by the Owner and the Property is now a bare plot of land.

7. The Owner had secured a loan from The Economic Development Corporation of Goa, Daman & Diu, (hereinafter referred to as 'THE EDC') of Rs.5,00,00,000/- (Rupees five crores only) and accordingly the Property came to be mortgaged with EDC which was the Lead Institution by virtue of an Agreement dated 8/2/1999 and the said mortgage was an equitable mortgage created by deposit of title deed.

Upon the repayment of the entire amount due and payable against the said loan, the mortgage and the attachment came to be released and the title documents along with the Property came to be handed over to the Owner, the receipt of which has been duly acknowledged by the Owner vide Receipt dated 27/7/2018

8. A perusal of the Deed of sale dated 16/10/1995 reveals that at pages 79 to 89 a reference has been made that the inscription of hypothecation no. 12368 effected on 25/5/1956 has been cancelled as per order dated 22/3/1995 passed by the Judicial Magistrate First class, Mapusa, in case no. Livro Porta No.12 Geral no.92 Apenco AD No.423/1955, however, all efforts made by us by conducting a search in the Registry of the Court of JMFC at Mapusa, as well as in the Archives, for the purpose of tracing the order claimed to have been passed on 22/3/1995 by the Court of the JMFC at Mapusa, have not yielded any result as no records in respect of the said order or the proceedings No.423/1955 are traceable.

The search in the office of the Sub-Registrar of Bardez at Mapusa, however has confirmed that there is no encumbrance found registered in the office of the Sub-Registrar of Bardez at Mapusa, affecting the Property.

Notwithstanding the fact that there is an element of ambiguity in the matter of endorsement of hypothecation in the Certificate of Inscription, we are of the opinion that the

said endorsement of hypothecation does not affect the title and marketability of the Property for the following reasons :-

- a) The endorsement bearing no. 12368 of hypothecation came to be effected as and by way of a provisional inscription on 25/5/1956 to secure the payment of a sum of Rs.10,000/- being a fine imposed on a case filed by the public prosecutor against the said Jose Alexandre Ludovico de Albuquerque.
- b) That by order dated 30/5/1956 the order of imposing fine attained finality for want of appeal.
- c) That Irene Leonilda de Albuquerque paid the fine levied by the Hon'ble Court on 6/6/1956
- d) That an endorsement has been made on 7/6/1956 to the effect that the fine has already been paid,

The only reason for the endorsement of inscription of mortgage under no. 12368 being to secure the payment of the fine levied by the Hon'ble Court and as the said fine has been paid on 6/6/1956 it clearly stands established that the inscription of mortgage would be of no effect and therefore Jose Alexandre Ludovico de Albuquerque and his wife

possessed lawful title to the Property at the time of execution of the deed of sale dated 16/10/1995.

9. LK Trust, a Public Trust ("LKT"), that claimed to have arrived at an Agreement with the EDC, the erstwhile Lead lender of the Owner, filed Suit no. 37/2014/A of 2014 in The Court of the Senior Civil Judge, "A" at Mapusa, Goa, against EDC, the Owner and others ("The Suit"). The Suit thereafter came to be transferred to the Commercial Court (District Judge I ) North Goa at Panaji, and thereafter once again transferred to the Commercial Court (District Judge II North Goa at Mapusa) and registered under No.34/2017. LKT alleged, in the Suit that it was entitled to purchase and acquire the Property from EDC, pursuant to the then enforcement of the security interest, held by EDC and another, over the Property. The security interest over the Property has since been released and the debt due and payable has been fully paid and discharged by the Owner as aforesaid. Further, in the Order dated 10th May, 2011, passed in SLP no. 10334-10335 of 2008 filed by LKT against EDC and Ors., the Hon'ble Supreme Court has held, inter alia,

in relation to LKT's claim that the right of redemption of a mortgagor is only extinguished upon the execution of the conveyance and transfer of the mortgagor's interest by a registered instrument. The Hon'ble Supreme Court further recorded in paragraph no. 26 of its order that the transaction between LKT and EDC never concluded in the aforesaid terms and therefore no concluded contract existed between LKT and EDC. The Suit was filed after the Supreme Court Order allowing EDC to permit redemption of the security interest. The Suit has since been dismissed by Order dated 24th September 2019.

10. Taking into consideration the revelations made in the documents scrutinized and the searches conducted by us, and the facts and circumstances referred to above we have to report that :-

- 1) the title of the Owner to the property surveyed under survey nos. 142/1 and 142/2 of the village of Arpora, Bardez, Goa is authentic, clear and marketable and free from any encumbrances and

- 2) the Owner is in legal and physical possession of the Property;
- 3) the Owner Is solely entitled to deal with and develop the Property;
- 4) there will be no impediment for entering into a lawful contract with the Owner in respect of any development of the Property.

Dated: 03/10/2019

  
(B.D.NAZARETH)