

**RAJASTHAN REAL ESTATE REGULATORY AUTHORITY
JAIPUR**

1. COMPLAINT NO. RAJ-RERA-C-N-2024-7720

ANUJ SINGH

22/1, Arvind Marg,
Dehradun, Uttarakhand, 248001
Versus

COMPLAINANT

**KEEMAYA RESORTS AND SPAS
LLP & ORS.**

"Shree Ramam" 58, Shri Gopal
Nagar, Gopalpura Bypass Road,
Jaipur, 302019

RESPONDENT

2. COMPLAINT NO. RAJ-RERA-C-N-2024-7731

**SAPNA SINGH DECEASED
THROUGH HER LEGAL HEIR
ANIL KUMAR SINGH & OTHERS**
184, Senani Vihar, Raebareli
Road, Lucknow, 226029
Versus

COMPLAINANT

**KEEMAYA RESORTS AND SPAS
LLP & ORS.**

RESPONDENT

HON'BLE MEMBER: SUDHIR KUMAR SHARMA

PRESENT

1. Adv. Manan Ambawani and Adv. Atishay Jain on behalf of the complainant
2. CA Himanshu Goyal and Adv. Yashwant Suwalka present on behalf of the respondent

ORDER

16.04.2026

1. The complainant has lodged this complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') with regard to

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the project, "NEW WORLD JAIPUR RESORT", which is not registered with the Authority.

2. These complaints are having similar facts, issues and prayers and thus, are being disposed vide this common order.

3. **COMPLAINT NO. RAJ-RERA-C-N-2024-7720:**

In the year 2017, the Respondents in collaboration with Rosewood Hotel Group, a Hong-Kong based multi-national hotel management group, came up with the said residential-cum-commercial project. The project offered the owners of the villas a unique profit-sharing model wherein the owners would be entitled to get an agreed percentage out of the revenue earned by the Respondents from the commercial operations of the Project. As asserted by the Respondents, the Project is an investment opportunity, with low on investment and high on return, having significant yearly income and lifetime ownership benefits. The Respondents also assured the Complainant that respective buyers would start getting the possession of their villas from 01.04.2023 onwards. Further, to market the Project globally, the Respondents had appointed a global channel partner namely Anarock Property Consultants Pvt. Ltd., a well-known property consultancy firm based in Dubai (UAE), to provide project related services to the NRIs and foreign clients. The Complainant decided to book a Pool Serviced Villa in the said Project. Accordingly, the

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Complainant paid Rs. 50,000/- on 12.12.2022 as an advance booking of villa. Subsequently, an application form was issued by the Respondents and Rental Serviced Pool Villa No. 2028 was provisionally allotted to the Complainant for a total sale consideration of Rs. 78,40,000/- including GST. The Complainant made a payment of Rs. 1,50,000/- to the Respondents vide two different transactions of Rs. 50,000/- on dated 27.12.2022 and Rs. 1,00,000/- on dated 28.12.2022 respectively. Subsequently, the Channel Partner vide its email dated 30.12.2023 acknowledged the booking made by the Complainant and furnished a copy of Project Brochure, application form and proof of payment of amount of Rs. 2,00,000/- to the Complainant. The Respondents through their Channel Partner also offered the Complainant a benefit of 8% annual interest on the payment of 25% and 75% of the amount paid against the purchase of said Unit from the date of aforesaid payment until the possession is handed over to the Complainant. The said offer was made by the Channel Partner vide its email dated 04.01.2023. The Complainant again made a payment of Rs. 1,00,000/- to the Respondents, duly acknowledged by the Respondents vide receipt dated 24.01.2023. Based on the revised payment schedule provided by the Channel Partner, the Complainant diligently made the balance payment for first instalment i.e. 15% of the base selling price amounting to Rs. 8,76,000/- on 31.01.2023.

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Upon receiving the 15% payment of the base selling price, a welcome letter dated 16.02.2023 was issued by the Respondents to the Complainant. Thereafter, the Respondents issued a demand letter dated 16.02.2023 to the Complainant for making the payment of second installment of 10% of the base-selling price. Without any delay, the Complainant made the payment of 10% of the base selling price i.e. Rs. 7,84,000/- to the Respondents on 27.02.2023, duly acknowledged by the Respondents vide receipt dated 28.02.2023. In spite of repeated reminders and requests, neither the Channel Partner nor the Respondents shared the required Agreement with the Complainant. The Respondents further raised a demand of Rs. 5,00,000/- vide demand letter dated 13.02.2024. The Complainant vide its reply dated 18.03.2024 agreed to further pay Rs. 1,50,000/- to show his *bona fide* and receive a copy of the Agreement but, no positive response was given by the Respondents. The Complainant issued a legal notice to the Respondents through their advocate on 31.05.2024, calling upon the Respondents Company to refund the amount of Rs. 19,60,000/- but, the same was ignored. The complainant wishes to withdraw from the project, sought refund of the deposited amount along with interest and the Respondents be directed to pay the fixed assured returns at the rate of 8% on the deposited amounts.

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COMPLAINT NO. RAJ-RERA-C-N-2024-7720:

The present complaint is being filed by the legal heir and husband of the deceased allottee Late Mrs. Sapna Singh, who unfortunately died on 12.12.2023. In the year 2017, the Respondents in collaboration with Rosewood Hotel Group, a Hong-Kong based multi-national hotel management group, came up with the said residential-cum-commercial project. The project offered the owners of the villas a unique profit-sharing model wherein the owners would be entitled to get an agreed percentage out of the revenue earned by the Respondents from the commercial operations of the Project. As asserted by the Respondents, the Project is an investment opportunity, with low on investment and high on return, having significant yearly income and lifetime ownership benefits. The Respondents also assured the Complainant that respective buyers would start getting the possession of their villas from 01.04.2023 onwards. Further, to market the Project globally, the Respondents had appointed a global channel partner namely Anarock Property Consultants Pvt. Ltd., a well-known property consultancy firm based in Dubai (UAE), to provide project related services to the NRIs and foreign clients. The Complainant decided to book a Pool Serviced Villa in the said Project. Accordingly, the Complainant paid Rs. 2,00,000/- on 25.01.2023 as booking amount for the villa. Subsequently, an application form was

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issued by the Respondents vide which a Rental Serviced Pool Villa No. 2041 was provisionally allotted to the Complainant for a total sale consideration of Rs. 78,40,000/- including GST and the same was accepted by the Complainant vide its email dated 02.02.2023 sent to the Complainant. Based on the revised payment schedule provided by the Channel Partner, the Complainant diligently made the balance payment for first instalment i.e. 15% of the base selling price amounting to Rs. 9,76,000/- on 31.01.2023. Subsequently, the Channel Partner vide its email dated 02.02.2023 acknowledged the booking made by the Complainant and furnished a copy of Project Brochure, application form and proof of payment of Rs. 11,76,000/- to the Complainant. The Respondents through their Channel Partner also offered the Complainant a benefit of 8% annual interest on the payment of 25% and 75% of the amount paid against the purchase of said Unit from the date of aforesaid payment until the possession is handed over to the Complainant. Upon receiving the 15% payment of the base selling price, a welcome letter dated 16.02.2023 was issued by the Respondents to the Complainant. Thereafter, the Respondents issued a demand letter dated 16.02.2023 to the Complainant for making the payment of second installment of 10% of the base-selling price. Without any delay, the Complainant made the payment of 10% of the base selling price i.e. Rs. 7,84,000/- to the Respondents on

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27.02.2023, which was duly acknowledged by the Respondents vide receipt dated 28.02.2023. In spite of repeated reminders and requests, neither the Channel Partner nor the Respondents shared the required Agreement with the Complainant. The Complainant decided to cancel the booking of their Unit No. 2041 and requested the Respondents to refund Rs. 19,60,000/-. However, the Respondents denied this request and offered to adjust the amount paid by the Complainant against the Unit purchased by her brother-in-law, Mr. Anuj Singh, the complainant at S.No. 1, and provided their consent regarding the adjustment of said amount vide their email dated 19.10.2023. The Respondents further raised a demand of Rs. 5,00,000/- vide demand letter dated 13.02.2024. Additionally, the demand for cancellation of booking made by the Complainant was never confirmed by the Respondents and the Respondents in their email dated 26.02.2024 duly acknowledged the fact that the Complainant never received the copy of Agreement. In the same email dated 26.02.2024, the Respondents also threatened to forfeit the entire amount of Rs. 39,20,000/- collectively paid by the Complainant and Mr. Anuj Singh. The complainant sent a legal notice dated 31.05.2024 requesting the refund of the amount of Rs. 19,60,000/-. Now, complainant wishes to withdraw from the project, sought refund of the deposited amount along with interest and the Respondents be directed

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to pay the fixed assured returns at the rate of 8% on the deposited amounts.

4. In the preliminary objections to the maintainability of the complaints filed by the Respondents, it was stated that the claims raised in these complaints are factually incorrect, misconceived, and devoid of merits. It was mentioned that the Authority lacks any jurisdiction to adjudicate these matters, and thus, these complaints are liable to be dismissed. The said project is exclusively developed for commercial resort purposes, with no provision for common areas, which is a fundamental characteristic of a real estate project under RERA, as defined by the Section 2(zn) of the RERA Act, 2016. The complainants have been granted ownership rights but, the usage rights have been taken back, for the specific villas, further distinguishing the project from a real estate development. The Respondents do not fall within the definition of a "Promoter" as envisaged under Section 2(zk) of the RERA Act, 2016. The said project in question is a commercial hospitality venture, structured under a Perpetual Lease Aggregation Agreement (PLAA) with buyer, wherein the buyers are not entitled for sale but, are merely entering into a lease-based-revenue-sharing arrangement with the operator of the resort. The Respondents relied upon the Order dated 21.06.2019 issued by the Jaipur Development Authority (JDA) which stipulated that the land was converted for the purpose

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of resort development only, emphasizing the commercial and hospitality nature of the project. The Respondents furnished the JDA Patta approval dated 25.08.2020 which explicitly grants permission for the development of the subject land for resort purposes only. The said project has been developed in strict compliance with the Model Rajasthan Building Regulations, 2020 which govern commercial constructions. The transaction between the parties is in the nature of a commercial investment agreement. The Respondents were required to obtain an Environment Clearance (No Objection Certificate) from the Environment Department, as mandated by the State Order dated 22.06.2017 and the policy decision taken in the 193rd meeting held on 30.06.2017. The Respondent duly obtained the necessary Environmental Clearance from the State Level Environment Impact Assessment Authority, Rajasthan, through its order dated 25.06.2021. It is clear that the project is marketed and structured as an investment opportunity rather than a real estate project involving the sale or allotment of residential units. The complainants, having engaged with the project in the capacity of a business partner, does not fall under the definition of an 'allottee' as per Section 2(d) of the RERA Act, 2016. The complainants were offered a transparent and well-defined profit-sharing model and were provided dual benefits- both as an investment yielding profits and rental income, as

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well as granting them ownership rights only over their respective villas. The Respondents placed reliance on Clause 4(d) and 4(e) of the Application Form, which enumerate the documents required at the time of booking, including the Partnership Deed and Firm Registration Certificate. The complainants entered into the transaction as an investor/channel partner with the intent to earn 90 year returns and the agreement was intended to be executed as Perpetual Lease Aggregation Agreement (PLAA). In the reply at para 22 the Clause 2 of Annexure – A of the Application Form has been cited stating that the complainant waived any right to claim a refund and explicitly acknowledged that in the event of failure to make full payment on time, the Respondents would have the full discretion to forfeit the entire amount invested in the project. Moreover, the Respondents highlighted several provisions of the RERA Act, 2016 such as Section 11 – Duties and Functions of a Promoter, Section 11(4)(e) – Association of Allottees, Section 13 – No Deposit or Advance Without an Agreement for Sale and Section 17 – Transfer of Title and Ownership are inapplicable to the present complaints. Hence, the Respondents prayed for the dismissal of the present complaints, as the same are barred by law, misconceived and devoid of merits.

5. The complainants filed written submissions cum rejoinder to the preliminary objections raised by the

For Defendant



Respondents, stating that the Respondents have clearly violated Sections 3, 11, 13 and 18 of the RERA Act, 2016. The said project falls within the meaning of a "real estate project" as defined under Section 2 (zn) of the RERA Act, 2016. The Authority vide clarification issued in its 20th Meeting held on 05.02.2025 mentioned that such projects are liable to be registered and the said clarification directly applies to the Respondent's said project which is structured on the same model of selling units and leasing them back. The device of a 'Perpetual Lease Aggregation Agreement' cannot be permitted to dilute, disguise or override the true nature of the transaction, which in substance remains the sale of a unit in a real estate project. Initially, the Respondents have marketed the project on the pretext of engagement with world famous Rosewood Group but, later the deal was cancelled. Subsequently, the Respondents claimed its association with the Taj Group. Recently, it came to the knowledge of the complainant that Keemaya Resorts is now reportedly partnering with "Atmosphere Core" and is allegedly preparing to launch a so-called new project "Ozen Villas" which, in reality, is the same project previously titled as the "New World Jaipur Resort". Hence, the complainants prayed for the reliefs mentioned in their original complaints to be allowed.

6. During hearing, the counsel for complainants averred the same facts and pleadings as mentioned in the original

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complaints. It was argued that as per the clarification issued by the RERA Authority in 20th Meeting held on 05.02.2025, it was clarified that such projects are liable to be registered under the Section 3 of the RERA Act, 2016. It was argued that the Respondents failed to execute an Agreement for Sale despite of receiving almost 25% of the entire consideration amount for the units in violation of Section 13 of the RERA Act, 2016. It was argued that the Respondents raised illegal demands from the complainants without properly disclosing the status of progress in construction work of the project. Hence, the complainants prayed for the reliefs mentioned in their original complaints to be allowed.

7. The counsel for respondent averred the same facts and pleadings as mentioned in the replies. It was contended that project was being developed on the model of 'Sale and Lease' and does not qualify as a "Real Estate Project" under the RERA Act, 2016. It was argued that the transactions complainants entered into were purely commercial in nature and were based on a profit-sharing business model. As per the Clause 4(d), Clause 4(e) and Clause 2 of Annexure - A of the Application Form signed by the complainants, they have forfeited all their rights to claim refund of the deposited amounts in case of failure to make full payment. The project cannot be considered as a "Real Estate Project" as there are no common areas and the Respondents are not falling within

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the category of a "Promoter" under the RERA Act, 2016. It was also argued that the Change in Land Use (CLU) issued by the Competent Authority and the Environment Clearances issued by the State Environment Department indicate that the said project is a commercial project. It was argued that there is no actual transfer of ownership, no association of allottees can be formed and the circular of the Authority dated 02.05.2025 cannot be applied retrospectively on the said project, which commenced development in the year 2021. Hence, the Respondents prayed for dismissal of the present complaints.

8. Heard and perused the record.

9. Observations & Conclusion:

Two issues need to be examined i.e. (i) whether this Authority has jurisdiction in the instant complaints, and (ii) if yes, whether the prayers of the complainants are to be allowed?

(i) Jurisdiction of the Authority:

The Respondent by way of preliminary objections has challenged the maintainability of the instant complaints on the ground that the project in question "NEW WORLD JAIPUR RESORT" does not fall within the definition of Real Estate Project as defined in the RERA Act and also not required to be registered. He argued that the project is exclusively developed for commercial resort purpose with no provisions of common

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areas and the resort is not intended for the sale of plots and apartment or building, therefore, it does not fall in the definition of Real Estate Project under Section 2(zn) of the Act. It is further averred by him that the complainant has been granted ownership rights but the usage rights has been taken back, for the specific villa (para No. 6 of the reply). Further the respondent is also not the Promoter as defined under section 2 (zk) of the Act. The project in question is a hospitality venture under the lease agreement with buyers wherein the buyers are not entitle for sale, but rather merely entering into lease based revenue sharing arrangements.

The respondent further argued that the project is marketed and structured as an investment opportunity, complainants were in the capacity of a business partner and does not fall under the definition of an 'allottee' under the RERA Act. The complainants were offered a transparent and well defined profit sharing model.

The Respondent has annexed (i) project brochure (Annexure-6) to present this project as 'marketed and structured as an investment opportunity', complainant as a 'business partner', (ii) sale deed dated 18.11.2023 with the perpetual Lease Aggregation Agreement (PLAA) executed in favour of another buyer 'X' in the same project as Annexure-





10, to substantiate the true nature of the transaction and commercial nature of the project (para 27 of the Reply).

The Authority would like to observe briefly here that the reply and/or preliminary objections, arguments, and the provisions/clauses of sale deed and Perpetual Lease Aggregation Agreement (PLAA) are full of contradictions.

Now, to examine these submissions in detail with specific issue whether the project is an real estate project and whether it is required registration under the RERA Act, definitions of Allottee, Apartment, Building, Promoter and Real Estate Project as given in the Act, are relevant here:-

Section-2 (d): Allottee

"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been **allotted, sold**

Section 2(e): Apartment

"apartment" whether called block, chamber, dwelling unit, or **by any other name**, means a separate andone or more rooms or enclosed spaces, on a plot of land.....intended **commercial** use..... For carrying on **any business**..... Any other type..... purpose

Section 2 (j) : Building

"Building" includes any structure or erection or **part of a structure or erection** which is intended to be used for residential, **commercial** or **for the purpose of any business**, occupation, profession or trade, or for any other related purposes;

Section 2(zk): Promoter means-

(i).....

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(ii) a person who **develops land into a project**, whether or not the person also constructs structures on any of the plots, for the **purpose of selling** to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii)

Section 2(zn): Real Estate project

"Real Estate Project means the **development of a building** or a **building consisting of apartments**, or **converting an existing building or a part thereof into apartments**, or the **development of land into plots or apartment**, ;as the case may be, for the purpose of **selling** all or some of the said apartments or plots or building, as the case may be, and **includes the common areas**, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

Note: Certain words in bold have been highlighted as these are key to determining the exact nature of the project and transaction between the parties in question.

Now, each document submitted by the Respondent promoter is examined further.

(A) Sale Deed (executed with other person, name and details masked by the Respondent)

Preamble in sale deed dated 18.11.2023 executed by Keemaya Resorts and Spas LLP in favour of another person 'X' is as under:-

The **Purchaser** understands and agrees that the Project is of unique nature and the proposal for **Sale** of the Managed Serviced villas under the project (Project is to be defined as Resorts and Hotels) in Keemaya Jaipur, Rajasthan, India. The Keemaya Resorts & Spas LLP is constructing Villas under the project at Village Kiratpura Jaipur situated at NH8 Pre-

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construction, the Villas will be **sold** to prospective Purchaser/ buyers as per the instant **Sale Deed**. The said Villas will **then be clubbed** together to be used for functioning as a Resort, under a Perpetual Lease Aggregation Agreement (**PLAA**) where in the Purchaser of the Villas shall vest their respective Villas to the **Resort Management Company (RMC)** / OWNER and will be **managed** under a Perpetual Lease Aggregation Agreement to be executed between the Purchaser and the LLP/ DEVELOPER/RMC/OWNER. The said understanding is subject to the following conditions set out in the instant Agreement.

Thus, the preamble is clear that transaction was sale. After sale, Villas was to be clubbed for management by the Resort Management Company.

In the sale deed it is provided that:

On page 12

"4.a) Consideration and Conditions: In accordance with the terms and conditions as set out in this agreement the OWNER hereby agrees to **sell** and the purchaser agrees to purchase the said SERVICED VILLA bearing the number 2022....."

On page 24

"17. Acts applicable in Rajasthan: iii) The Purchaser hereby agrees and undertakes to become a member of the **Resort Welfare Association (RWA)** as and when it would be formed by the **OWNER** on behalf of all the villa owners and to complete all the document whatever it may require and fulfill its obligations as may be required under the Act promptly. The fulfillment of the compliances by the Purcher/buyer as agreed above or otherwise under the Act shall be, a pre-condition to be fulfilled before the execution of the Sale Deed for the Serviced Villa in favour of the Purchaser. The **Lease Deed** for the said Serviced Villa **shall be executed only after the Sale Deed** has been registered and the Declaration for the Project has been filled. **Execution of the Deed of Villa by the Purchaser shall be a compulsory pre-condition for becoming a member of the RWA.** The



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Purchaser acknowledges that, it shall not frame any by-laws of the RWA which are inconsistent with any provision in Aggregation Documents. The Aggregation Documents shall prevail in case of any inconsistencies."
(Emphasis supplied)

Thus, it is again clear from the above, lease deed was to be executed after sale deed execution. Further, Resort Welfare Association (RWA) was to be formed.

It is pertinent to mention here that there are several types of property transfers in law, one of which is sale and another is lease. Both types of property transfers have different effects in law. But, here we have a document of 58 pages i.e. sale deed executed with another person 'X' and submitted by the Respondent (name and other details masked by the Respondent) to support his arguments. The first 10 paragraphs (starting from page 8) described sale between the two parties, paragraphs 11,12 & 13 are not available and paragraphs 14 and 15 describe perpetual lease clause.

In other words, we have a document before us which mentions both sale and lease together. However, an important thing is that in this sale deed executed on 14 December 2023, the buyer 'X' is mentioned as the purchaser everywhere. This means that before entering into this agreement, the intention of both parties was to execute a sale deed. It is also important that the stamp duty on this document has been paid under the heading of sale deed, and no lease deed fee has been paid.

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On page 12, clause 3 'purpose and scope' of the agreement is sale of a Villa to the purchaser. In clause 4 of page 13, first two lines are specifically mentioned that owner has agreed to sell and purchaser agrees to purchase the serviced Villa. Thus the intention of both the parties was that they were intended to entering into a sale deed.

Now, we have a classic example of deviation from the general execution of sale deed, where a provision of perpetual lease is added in paragraph 14 within the sale deed. This document has been given a form where both sale deed and lease are mentioned together. The Transfer of Property Act mentions seven types of property transfers, where sale is a separate category and lease is an another category. This hybrid mode of property transfer, where sale is effected and the seller is also getting the property back on lease, from the buyer, is making the transaction more complex. It is clear that the builder (seller) knew that a separate document had to be created for lease i.e. Perpetual Lease Aggregation Agreement (PLAA). That's why sale deed execution date 18.11.2023 was mentioned at page 4 of this document and PLAA execution date is mentioned as 31.12.2023 (effective date). Interestingly this document was registered prior to 31.12.2023, i.e. on 14.12.2023. The lease clause was added to the sale agreement, making it complex and thus, attempting to reduce the buyer's rights.

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It is a fundamental principle of law that until the execution of a valid, complete, and genuine sale deed, the purchaser cannot be considered a lessor, nor can the seller be considered a lessee, because the right, title, and interest in the property are transferred to the purchaser only after sale is executed. If the respondent's statement is accepted that the lease deed was executed along with the sale agreement, then the question arises as to why the respondent-builder had mentioned the date of execution of lease deed as 31.12.2023. The re-execution of the lease in December itself implies that the respondent-builder knew that the earlier document was a sale agreement and he was only executing a sale deed agreement with the buyer of the Villa, not actually getting the lease of the property in his favour.

In such a case, the authority would like to state that the document in question on which the Respondent based his arguments is, in essence, is a sale agreement in terms of its fundamental nature. This document is also registered as a sale agreement under the Registration Act, 1908, and therefore, it cannot be considered a lease deed or lease agreement.

(B) Brochure

In the brochure of Keemaya Resorts and SPAs annexed by the Respondent, it contents details of 'why invest in

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keemaya' and 'what is investment in resort' and also 'benefits to **villa owners**'. This document itself is a proof/ evidence of the legal status of the person who is willing to book the villa in the project of the Respondent as an '**owner**'.

All these documents whether it is brochure of the project or sale deed and PLAA executed in favour of another person 'X', clearly proves that the project was envisaged as Real Estate Project, the Respondent is a Promoter, who sold or booked the Villas for purpose of selling and then taking back management to Resort Management Company through lease,. Every persons who booked the Villa is / was an allottee.

If the definitions of allottees, Apartment, Building, Promoter and Real Estate Project as provided in the Act and given above, are read in the context of reply, brochure, sale deed and PLAA submitted by the Respondent, it clearly, without any doubt, emerges that the complainants are definitely an allottee to whom pool serviced Villa was allotted. The definition of 'Apartment' in the Act clarified that it can be called "by any other name" and for "carrying on any business". Thus, Pool Served Villa covered is very well in the definition of the Apartment and Building. The Respondent is a promoter who has developed land for the purpose of selling, whether with or without structures thereon. The project is a



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real estate project where development of land in the plots/ apartments for the purpose of selling.

The Respondent also raised the issue that there is no common area which is to be shared by the Villa owners. In the sale deed submitted by the Respondent clause 2 (viii) on page 10 is as under:-

“(viii) Common areas shall mean all such parts / are as in the project as specified by the OWNER. More specifically, these shall be all such areas (except areas specifically excluded or otherwise reserved herein as retained in the ownership of the OWNER) as stated hereunder and which the purchaser may use (subject to PLAA) on a shared, non-exclusive basis generally with all other occupants of the project. Such common areas shall also include open spaces till the periphery of the project, corridors, passages, entry lobbies, common toilets or any other area as specified by OWNER can be used by purchaser/ buyer.”

Thus, there is definitely a common area in the project which is to be used by the villa owners or by the persons to whom the villa is given on rent. Thus, the project comprises common areas also as defined in Section 2(n) of the Act.

Now, violation of Section 3 of the Act is to be examined. The size of the project as per admission of the respondent is 62056.10 square meters and exclusively developed for commercial purpose. Total 185 dwelling units with 358 ECU parking was to be developed with a cost of Rs. 89.00 crores as per Environment Clearance given by State Level Environment



Respondent

Impact Assessment Authority, Rajasthan on 25.06.2021. This clearance was annexed by the respondent as Annexure-5 with the reply.

The Section-3 of the Act is as under:-

Sec. 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:.....

The Authority vide its order dated 24.02.2025 has clarified that –

“such Hotel projects where sale deeds have been executed in favour of the purchaser/allottee for a unit and the same has been leased back to the developer, are necessarily required to be registered under RERA Act.”

The Authority vide its order has only clarified requirement of registration of hotel projects where units are sold and leased back. This is a order of clarificatory nature and therefore, the operability of this order from the date of issue is not required. The words mentioned in the order “have been executed” and “has been leased out” makes it very much clear that past cases are also required to be registered.



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The reply by the respondent in the instant complaints was given on 27.02.2025 i.e. after Authority's above order dated 24.02.2025. The Respondent was under obligation to get the project registered.

Thus, in view of above observations, the project of the respondent was required to be registered under the Act. The respondent has violated this statutory provision of Section 3 of the Act, for which penalty is to be imposed upon him under Section 59 of the Act, which may extend up to 10% of the estimated cost of the project.

The respondent in its reply has mentioned in detail why the project was not get registered. Therefore, no fresh notice is required to be issued by the Authority to the respondent for imposing penalty.

(ii) Prayer of the complainants for refund:

In Complaint No. 2024-7720, the respondent-promoter admitted receiving Rs. 19,60,000/- as per details made available by him in Annexure-9 (6 receipts issued during 14.12.2022 to 28.02.2023).

In Complaint No. 2024-7731, the respondent-promoter admitted receiving Rs. 19,60,000/- as per details made available by him in Annexure-9 (3 receipts issued during 25.01.2023 to 27.02.2023).

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The project was liable to be registered under the RERA Act and the Authority has jurisdiction in the instant complaints. The project is still not complete and the complainants want to withdraw from the project. Therefore, their prayer for refund deserve to be allowed.

10. In view of above findings and observations, following directions are issued:-

- i) The respondent is directed to refund the entire amount deposited by the complainants i.e. Rs. 19,60,000/- in compliant No.. 2024-7720 & Rs. 19,60,000/- in compliant No. 2024-7731 along with interest at the prescribed rate i.e. 8.80% SBI Highest MCLR + 2.00% = 10.80% per annum from each date of deposit till the refund is made.
- ii) A penalty of Rs. 50.00 lakhs (Rupees Fifty lakhs only) is imposed under section 59 of the Act upon the respondent for violation of Section 3 of the Act.
- iii) The respondent-promoter is directed to get the project registered with the Authority.

11. Compliance of the order shall be made within 45 days of the uploading of this order on the official webpage of the Authority.

12. No order as to costs.

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13. The order will be uploaded on the webpage of the Authority and also a copy of order will be sent to concerned parties and place a copy of order in the file.

14. These complaints stand disposed of with the abovementioned directions.

15. The cases are now removed from the cause list of the Authority and case files be consigned to records, after due compliance.


(Sudhir Kumar Sharma)
Member

