

11.1.15 **Loans for construction of the Said Complex:** The Vendor shall be entitled to take loans and/or financial assistance for the purpose of implementation and execution of the Said Project. For obtaining such loans and/or financial assistance from Banks/Financial Institutions/Housing Finance Companies or corporate bodies, the Vendor shall be entitled to create charge and/or mortgage in respect of the Said Premises/Said Complex in their favour. However, on or before the execution of the Deed of Conveyance in respect of the Said Flat And Appurtenances, a release/no objection/ clearance shall be obtained by the Vendors from the concerned Banks/Financial Institutions/Housing Finance Companies or corporate bodies, if any, regarding transfer of the Said Flat And Appurtenances.

11.1.16 **Indemnity:** The Buyer shall keep the Vendor indemnified of from and against all actions, proceedings, damages, claims, demands, costs, charges, expenses and proceedings made against or suffered by the Vendor and/or the Association (upon formation) relating to the Said Premises/Said Complex/Said Block or any part thereof or to any person due to any negligence or any act, deed, thing or omission made, done or occasioned by the Buyer or the servants/agents/licensees/invitees/visitors of the Buyer and/or any breach or non-observance by the Buyer of the Buyer's covenants and/or any of the terms herein contained.

11.2 **Vendor's Covenants:** The Vendor covenants with the Buyer and admits and accepts that:

11.2.1 **No Creation of Encumbrance:** During the subsistence of this Agreement, subject to Clause 11.1.15, above, the Vendor shall not create any charge, mortgage, lien and/or shall not sell, transfer, convey and/or enter into any agreement with any person other than the Buyer in respect of the Said Flat And Appurtenances, subject to the Buyer fulfilling all terms, conditions and obligations of this Agreement.

11.2.2 **Documentation for Loan:** The Vendor shall provide to the Buyer all available documents so that the Buyer may get loan from banks and financial institutions, if required by the Buyer.

12. **Termination and its Effect**

12.1 **Non-payment by Buyer:** In the event the Buyer (1) delays and/or fails to make timely payment of any part or portion of the Total Price in the manner described in Part II of the Schedule below or the Extras or any other charges payable under this Agreement (Financial Default) or (2) fails to perform the obligations required to be performed by the Buyer under this Agreement (Contractual Default), then and in such event, the Vendor shall, at its sole discretion, have the absolute right to cancel this Agreement and refund the amount received from the Buyer in either of the manners mentioned below. However, without prejudice to such right of the Vendor to cancel this Agreement for Financial Default, the Vendor may condone the delay, conditional upon the Buyer paying interest @ 12% (twelve percent) per annum for the period of delay (computed from the date the payments became due till the date of payment) on all amounts due and outstanding. However, such right of condonation is exclusively vested in the Vendor and the Vendor shall have absolute liberty to cancel or not to cancel this Agreement and the Buyer shall not be entitled to claim condonation as a matter of right. If the Vendor decides to cancel this Agreement, then and in such event, the Vendor shall refund to the Buyer, at the Buyer's option, in either of the following manner:

12.1.1 **Refund Within 45 days of Date Of Cancellation:** The Vendor may refund to the Buyer within 45 (forty five) days from the date of such cancellation by the Vendor (Date Of Cancellation), the balance of all payments received from the Buyer till the Date Of Cancellation (without any interest) after deducting 10% (ten percent) of the Total Price and also deducting all accrued interest @ 12% (twelve percent) per annum for the period of delay till the Date Of Cancellation; or

12.1.2 **Refund on Resale:** The Vendor may sell the Said Flat And Appurtenances to a new buyer (New Buyer), at the risk and cost of the Buyer, at the then prevailing price (New Total Price), which may be higher or lower than the Total Price:

(a) **Sale at Price Higher than Total Price:** In the event the New Total Price is higher than the Total Price, then the Vendor shall refund to the Buyer the balance of the amount received from the Buyer after deduction of (1) 10% (ten percent) of the Total Price (2) accrued

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interest @ 12% (twelve percent) per annum for the period of delay till the Date Of Cancellation and (3) cost, if any, incurred for such sale to the New Buyer provided however if there is any surplus after the aforesaid deductions, the entirety of such surplus shall be refunded by the Vendor to the Buyer.

(b) **Sale at Price Lower than Total Price:** In the event the New Total Price is lower than the Total Price, then the Vendor shall refund to the Buyer the balance of the amount received from the Buyer after deduction of (1) 10% (ten percent) of the Total Price (2) accrued interest @ 12% (twelve percent) per annum for the period of delay till the Date Of Cancellation and (3) the difference between the Total Price and New Total Price and (4) cost, if any, incurred for such sale to the New Buyer.

12.2 **Cancellation by Buyer:** In case the Buyer cancels this Agreement on any ground whatsoever (except breach of Vendor's Covenants), the Vendor shall refund to the Buyer, at the Vendor's option, in either of the manners mentioned in Clauses 12.1.1 or 12.1.2 (a) and (b) above.

12.3 **Breach by Vendor:** Without prejudice to the provisions of Clause 9.5 above, in the event the Vendor fails and/or neglects to deliver possession of the Said Flat And Appurtenances within the Completion Date [which may include the Extended Period or the period required beyond the Extended Period due to Circumstances Of Force Majeure (defined in Clause 16.1 below) and at the option of the Buyer, be cancelled/terminated, upon which the Vendor shall refund to the Buyer all payments received till that date, with interest calculated @ 12% (twelve percent) per annum. If however the Buyer does not exercise the option to cancel/terminate within 3 (three) months of expiry of the Extended Period or the period required beyond the Extended Period due to Circumstances Of Force Majeure (defined in Clause 16.1 below) and other circumstances mentioned in Clause 9.5 above], this Agreement shall, at the option of the Buyer, then it shall be deemed that the Buyer has voluntarily opted not to cancel/terminate the Agreement recorded herein but to continue with transaction and in such event no interest or compensation shall be payable by the Vendor for any delay caused.

12.4 **Effect:** Upon cancellation of this Agreement due to any of the circumstances mentioned in Clauses 12.1, 12.2 and 12.3 above, the Buyer shall not be entitled to claim any right, title, interest or charge (either equitable or otherwise) over and in respect of the Said Flat And Appurtenances and/or the Said Block and/or the Said Complex and/or the Said Premises or any part or portion thereof, in any manner whatsoever. The effect of such termination shall be binding and conclusive on the Parties.

13. Taxes

13.1 **Obligation Regarding Taxes:** In the event of the Vendor being made liable for payment of any tax [excepting Income Tax], fee, duty, levy, surcharge, cess, imposition or any other liability or any enhancement thereof under any state or law for the time being in force or introduced/imposed in future (such as Service Tax, Works Contract Tax, Value Added Tax Sales Tax, Goods and Service Tax or any other tax, fee and imposition levied by the State Government, Central Government or any other authority or body), (whether payable to the concerned authority by the Vendor or the Buyer) or if the Vendor is advised by their consultant that the Vendor is liable or shall be made liable for payment of any such tax, fee, duty, levy or other liability on account of this Agreement and/or the transfer to be made pursuant to this Agreement and/or in relation to the transaction proposed hereunder and/or on account of the Vendor having agreed to perform the obligations under this Agreement or having entered into this Agreement, then and in that event, the Buyer shall be exclusively liable to pay all such tax, fee, duty, levy, surcharge, cess, imposition or other liability without raising any objection thereto and hereby indemnifies and agrees to keep the Vendor indemnified against all actions, suits, proceedings, costs, charges and expenses in respect thereof. The Vendor shall not be liable for the same or any portion thereof under any circumstances whatsoever and it is expressly agreed that the same shall be the liability of the Buyer and the Vendor shall be entitled to collect/recover the same from the Buyer. The taxes, fees, duties, levies, surcharge, cess, imposition or other liabilities so imposed or estimated by the consultant of the Vendor shall be paid by the Buyer at or before the Date Of Possession.

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14. Defects

14.1 Decision of Architect Final: If any work in the Said Flat And Appurtenances is claimed to be defective by the Buyer within a period of 12 (twelve) months from the Date Of Possession Notice, the matter shall be referred to the Architect and the decision of the Architect shall be final and binding on the Parties. If directed by the Architect, the Vendor shall, at its own costs, remove the defects. This will however not entitle the Buyer to refuse to take possession of the Said Flat and if the Buyer does so, the provisions regarding deemed possession as contained in Clause 9.6.2 above shall apply and all consequences mentioned therein shall follow. In the context of this Clause, defects shall mean defect in construction only and not defect in bought-out items such as electrical fittings, sanitary fittings, hardware fittings etc.

14.2 Use of Natural Materials: Natural materials like marble, granite, wood, sandstone etc. contain grains with inherent structural differences as a result whereof colour and marking caused by their material mineral complex composition, cracks, inherent impurities etc. are likely to occur. While the Vendor shall take every care to ensure construction and completion of the Said Flat as per Specifications mentioned herein, the Vendor shall not be responsible for cracks, discolouring or deterioration in the quality of such natural materials.

15. Association and Rules

15.1 Rules of Use: The Said Flat And Appurtenances shall be owned by the Buyer subject to such rules and regulations as may be made applicable by the Association (upon formation) from time to time.

15.2 Restrictions: The Buyer agrees that the Buyer shall use the Said Flat And Appurtenances subject to all restrictions as may be imposed by the Vendor or the Association (upon formation).

15.3 Handover: From the date of handing over of maintenance and management of the Said Complex to the Facility Manager/Association (upon formation):

15.3.1 The Vendor shall not have any responsibility whatsoever regarding the Common Portions/Said Block/Said Premises/Said Complex.

15.3.2 The Vendor shall not have any responsibility whatsoever regarding any maintenance, security, safety or operations including relating to fire fighting equipment and fire safety measures, lift operations, generator operations, electrical equipment, installations, meters and connection, etc and/or for any statutory compliances, permissions and licenses regarding Common Portions / Said Block/Said Premises/Said Complex and/or any equipment installed and/or required to be installed therein. The same shall be the exclusive responsibility of the Buyer and/or the Association (upon formation) who shall also ensure continuous compliance with all statutory rules, regulations and norms including in particular relating to fire fighting and safety, lift and generator operations, etc. and obtaining and/or renewing all necessary permissions and licenses.

15.3.3 The flat owners including the Buyer and/or the Association (upon formation) shall take steps and get transferred all necessary permissions and licenses in their names including lift license, generator license, fire licence, etc. and the Vendors shall sign necessary papers upon being requested in writing.

15.3.4 In case of any default or negligence and/or in the event of any accident taking place subsequent to the date of handing over of maintenance, the Vendor and/or its directors, employees or agents shall not have any liability, obligation or responsibility whatsoever under any circumstance.

16. Force Majeure

16.1 **Circumstances Of Force Majeure:** The Vendor shall not be held responsible for any consequences or liabilities under this Agreement if the Vendor is prevented in meeting the obligations under this Agreement by reason of contingencies caused by neither of the Parties and unforeseen occurrences such as (1) acts of God (2) acts of nature (3) acts of war (4) fire (5) insurrection (6) terrorist action (7) civil unrest and wars (8) riots (9) non availability or reduced

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availability of building materials (10) general strikes and strike by material suppliers, transporters, contractors, workers and employees (11) delay on account of receiving statutory permissions (12) delay in the grant of electricity, water, sewerage and drainage connection or any other permission or sanction by the Government or any statutory authority (13) any notice, order of injunction, litigation, attachments, etc. and (14) any rule or notification of the Government or any other public authority or any act of Government such as change in legislation or enactment of new law, restrictive Governmental laws or regulations including acquisitions and requisitions (collectively **Circumstances Of Force Majeure**).

16.2 No Default: The Vendor shall not be deemed to have defaulted in the performance of the Vendor's contractual obligations whilst the performance thereof is prevented by Circumstances Of Force Majeure and the time limits laid down in this Agreement for the performance of obligations shall be extended accordingly upon occurrence of any event constituting Circumstances Of Force Majeure.

17. Miscellaneous

17.1 Indian Law: This Agreement shall be subject to Indian Laws.

17.2 One Transaction: This Agreement relates to the transaction recorded and contemplated herein and no other transaction.

17.3 Confidentiality and Non-Disclosure: The Parties shall keep confidential all non-public information and/or documents concerning the transaction recorded herein, unless compelled to disclose such information and/or documents by judicial or administrative process.

17.4 Partial Invalidity: If any provision of this Agreement or the application thereof to any circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other circumstances shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. When any provision is so held to be invalid, illegal or unenforceable, the Parties hereto undertake to use their best efforts to reach a mutually acceptable alternative to give effect to such provision in a manner that is not invalid, illegal or unenforceable. In the event any of the terms and conditions of this Agreement are set-aside or declared unreasonable by any Court of Law or if the Parties take the plea of frustration of contract, the entire Agreement shall not be void and shall continue to subsist to the extent of the remaining terms and conditions and bind the Parties.

17.5 No Claim of Un-Enforceability: This Agreement is being entered into by the Parties out of free will and without any duress or coercion. Hence, none of the Parties shall have the right to claim un-enforceability of this Agreement.

17.6 Right of Possession: The right of possession of the Buyer in respect of the Said Flat And Appurtenances shall arise only upon the Buyer fulfilling all obligations as are contained in this Agreement.

17.7 Nomination by Buyer with Consent: The Buyer admits and accepts that before the execution and registration of conveyance deed of the Said Flat And Appurtenances, the Buyer will be entitled to nominate, assign and/or transfer the Buyer's right, title, interest and obligations under this Agreement **subject to the covenant by the nominee that the nominee will strictly adhere to the terms of this Agreement and subject also to the following conditions:**

(a) **Buyer to Make Due Payments:** The Buyer shall make payment of all dues, including any interest for delay, to the Vendor in terms of this Agreement, up to the time of nomination.

(b) **Lock-in Period:** The Buyer cannot nominate in favour of any third party before the expiry of a period of 12 (twelve) months from the date of this Agreement.

(c) **Prior Written Permission and Tripartite Agreement:** In respect of any nomination, the Buyer shall obtain prior permission of the Vendor and the Buyer and the nominee shall be bound to enter into a tripartite agreement with the Vendor and the Buyer.

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(d) **Nomination Fees:** The Buyer shall pay a sum calculated @ Rs. 35/- (Rupees thirty five) per square feet of built-up area as and by way of nomination fees to the Vendor. It is clarified that inclusion of a new joint Buyer or change of a joint Buyer shall be treated as a nomination. However Nomination Fees shall not be payable in case of nomination in favour of parents, spouse, brother, sister or children of the Buyer. Any additional income tax liability that may become payable by the Vendor due to nomination by the Buyer because of higher market valuation as per the Registration Authorities on the date of nomination, shall be compensated by the Buyer paying to the Vendor agreed compensation equivalent to the income tax payable on such difference at the highest applicable tax rate at the prevailing time. Such amount shall be payable by the Buyer on or before the nomination.

The Buyer admits and accepts that the Buyer shall not nominate or assign the rights under this Agreement save in the manner indicated above.

17.8 **Transfer after Conveyance:** After the execution and registration of the Deed of Conveyance, the Buyer may transfer and alienate the Said Flat And Appurtenances provided that the same shall not be in any manner be inconsistent with this Agreement and/or the Deed of Conveyance to be executed pursuant hereto and the covenants contained herein and/or the Deed of Conveyance shall run with the land and/or transfer. The person(s) to whom the Buyer may transfer/alienate the Said Flat And Appurtenances shall be bound by the same terms, conditions, agreements, covenants, stipulations, obligations, undertakings and obligations as applicable to the Buyer by law and/or by virtue of this Agreement and/or the Deed of Conveyance.

17.9 **Entire Agreement:** This Agreement constitutes the entire understanding between the Parties and supersedes the terms and conditions whatever agreed between the Parties prior to execution of this Agreement but does not supersede any document contemporaneously entered into between the Parties. It is specifically understood that the brochures, compact discs, advertising and marketing material published by the Vendor from time to time in respect of the Said Complex are just advertisement material and contain various features such as furniture lay-out, vegetation and plantation shown around the Said Complex, colour scheme, vehicles etc. to increase the aesthetic view only and are not part of the development. These features/amenities are not agreed to be developed or provided by the Vendor.

17.10 **Counterparts:** This Agreement is being executed simultaneously in counterparts and each copy shall be deemed to be an original and all copies shall together constitute one instrument and agreement between the Parties. One copy each shall be retained by the Buyer and the Vendor, respectively.

17.11 **Amendments/Modifications:** No amendment or modification of this Agreement or any part hereof shall be valid and effective unless it is by an instrument in writing executed by all the Parties.

17.12 **Reservation of Rights:** No forbearance, indulgence, relaxation or inaction by any Party at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of such Party to require performance of that provision.

17.13 **Waiver:** Any term or condition of this Agreement may be waived at any time by the Party who is entitled to the benefit thereof. Such waiver must be in writing and must be executed by the Party or an authorized agent of the Party. A waiver on one occasion will not be deemed to be a waiver on a future occasion. Omission or delay on the part of either Party to require due and punctual performance of any obligation by the other Party shall not constitute a waiver of such obligation and it shall not in any manner constitute a continuing waiver and/or as a waiver of other breaches of the same or other obligations hereunder or as a waiver of any right or remedy that the Party may otherwise have in law or in equity.

17.14 **No Agency:** The Parties are entering into this Agreement on principal-to-principal basis and nothing contained herein shall make the Parties agents of each other.

17.15 **No Privity of Contract:** The Buyer shall have no connection whatsoever with the other flat

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owners and there shall be no privity of contract or any agreement or arrangement as amongst the Buyer and the other flat owners (either express or implied) and the Buyer shall be responsible to the Vendor for fulfillment of the Buyer's obligations under this Agreement irrespective of non-compliance by any other flat owner.

17.16 Non-Resident Indian Buyers: If the Buyer is a resident outside India, then it shall be the Buyer's sole obligation and liability to comply with the provisions of all applicable laws including Foreign Exchange Management Act, 1999 (FEMA) and all other necessary requirements, rules, regulations, guidelines, etc. of the government or any other authority from time to time, including those pertaining to remittance of payment for acquisition of immovable properties in India. The Buyer shall also furnish the required declarations/documents to Vendor. Refunds, if any, shall however be made in Indian Rupees by Vendor to the Non-Resident Indians (NRI) and foreign citizens of Indian origin.

18. Notice

18.1 Mode of Service: Notices under this Agreement shall be served by email or by messenger or by registered post/speed post with acknowledgment due at the above mentioned addresses of the Parties, unless the addresses are changed by prior intimation in writing. Such service shall be deemed to have been effected (1) on the date of delivery, if sent by email/messenger and (2) on the 4th day of handing over of the cover to the postal authorities, if sent by registered post/speed post, irrespective of refusal to accept service by the Parties.

19. Alternative Dispute Resolution

19.1 Referral and Conduct: All disputes or differences in relation to or arising out of or touching this Agreement or the validity, interpretation, construction, performance, breach or enforceability of this Agreement (collectively **Disputes**) shall be referred to the sole arbitrator of such person as be nominated by the Legal Advisors (**Arbitration Tribunal**) and finally resolved by arbitration in terms of the Arbitration and Conciliation Act, 1996 with modifications made from time to time (Arbitration Act). In this regard, the Parties irrevocably agree that (1) although the Legal Advisors have acted on behalf of the Vendor in this transaction, the Parties have full confidence in the impartiality of the Legal Advisors and have willingly accepted that the Legal Advisors shall be the nominating agency of the Arbitration Tribunal (2) the place of arbitration shall be Kolkata only (3) the language of arbitration shall be English (4) the Arbitration Tribunal shall be entitled to give interim awards/directions regarding the Disputes (5) the Parties have expressly authorized the Arbitration Tribunal to adopt informal procedure and avoid all formal rules relating to procedure, disclosure, admission of documents, adducing of evidence etc. and (6) the directions and interim/final award of the Arbitration Tribunal shall be binding on the Parties.

19.2 No Legal Proceeding without Recourse to Arbitration: The Parties shall not commence legal proceedings or have any receiver appointed over the Said Flat And Appurtenances and/or the Said Block/Said Complex/Said Premises without first referring the matter to arbitration and till the Arbitration Tribunal has given its direction/award.

20. Jurisdiction

20.1 District Judge and High Court: In connection with the aforesaid arbitration proceeding, only the District Judge, South 24 Parganas District and the High Court at Calcutta shall have jurisdiction to entertain and try all actions and proceedings.

21. Rules of Interpretation

21.1 Number and Gender: Words denoting the singular number include, where the context permits and requires, the plural number and vice-versa. Words denoting any gender include the other genders.

21.2 Headings: The headings in this Agreement are inserted for convenience only and shall be ignored in construing the provisions of this Agreement.

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