



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No: 3/RERA/New Proj.(1333)/2024/1084

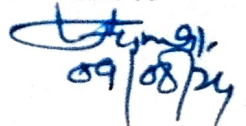
Date: 09/08/2024

**Sub: In the matter of Registration of the Real Estate Project
"Antruz Avenue"**

ORDER
(Dated 09.08.2024)

Vibhav Real Estate (hereinafter referred to as 'the Applicant'), had applied for registration of the project 'Antruz Avenue' under Section 3 of the Real Estate (Regulation and Development) Act, 2016 read with the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates on interest and Disclosures on website) Rules 2017 vide an application submitted through online portal on 20/03/2024.

2. During the scrutiny of documents, it was observed that there were several deficiencies/discrepancies in the application inter-alia relating to format of Draft Agreement for sale, Joint Venture Agreement not registered before the Sub-registrar, Affidavit in form II on behalf of both the promoters i.e, M/s Vibhav Real estate and Madanant Constructions (Goa) Pvt. Ltd in view of the Joint Venture Agreement and also requisite additions/corrections in promoter details besides


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Project contractor details and also Project Agent details. Accordingly, an inquiry email was sent on 02/04/2024 requesting promoter to provide requisite details/explanation.

3. And whereas a reply was received from the applicant on 15/04/2024, the applicant while uploaded certain documents/information i.e. Affidavit in FORM II on behalf of both the promoters, Draft Agreement for Sale, Agent and contractor Details andwith regards to the query regarding the registration of Agreement for Joint Venture before Sub Registrar, further informed thatthe applicant visited the Sub Registrar office at Ponda Goa for inquiry about registration of the joint venture Agreement. However, office of the Sub Registrar informed that such agreements cannot be registered under Sub Registrar as it is a Mutual Agreement between both the owners and therefore the applicant requested the Authority to consider the same notarized agreement which was already submitted.

4. And whereas, another inquiry email was raised on 26/04/2024, and the applicant was asked to submit an Affidavit stating that Agreement of Joint Venture is not to be registered in Sub-registrar office as informed by Sub-registrar office. Accordinglythe applicant further submittedan Affidavit stating that agreement of joint venture cannot be registered as informed by the office of Sub Registraron personal visit since it is mutual agreement between both owners and is not a joint development.


Signature
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5. And whereas and in view of above, the matter was put up for consideration of the Authority which observed that the issue is whether joint ventures on mutual agreement basis, require registration before Sub Registrar similar to the case of Joint Development Agreement as prescribed under Circular dated 04-10-2022 issued by this Authority and assigned the matter to undersigned for hearing and to pass appropriate orders.
6. And Whereas, a notice was accordingly issued to the applicant drawing his attention to the contents of Goa RERA Circular dated 04-10-2022 and seeking clarification inter-alia on these aspects for taking view as to registration of the project "Antruz Avenue".
7. And whereas Goa RERA vide its Circular No. 3/RERA/Off. Matters/2019/718 dated 04.10.2022 observed that Section 4 of The Real Estate (Regulation & Development) Act 2016 read with Rule 3(2)(d) of the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on website) Rules 2017, mandates collaboration agreement, development agreement, joint development agreement or any other form of agreement, as the case may be, entered into between the promoters and owners of the land. Further, such documents/transactions are required to be registered under Section 17 of the Indian Registration Act, 1908. Further, all real



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estate promoters/ builders and land owners were directed to furnish registered joint development agreement or collaboration agreement or any other form of agreement, which comes within the purview of Section 17 of the India Registration Act as the case may be, entered into between the promoters and land owners which is duly registered with the jurisdictional Sub Registrar, in which, project is located for registration of the real estate project.

8. And Whereas the Applicant during the course of hearing filed a reply stating that RERA Circular No. 3/RERA/Off. Matters/2019/718 dated 04/10/2022 stipulates that in terms of section 4 of the Real Estate (Regulation and Development) Act 2016 read with Rule 3(2) of the Goa Real Estate Rules, collaboration agreements, development agreements, joint development agreements entered into between the promoters and owners of land, need to be registered and further stated that the said provisions are inapplicable to the present case. It was further submitted that Rule 3(2)(d) of the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 provides that where the promoter is not the owner of the land on which development is proposed, a copy of the collaboration agreement, development agreement, joint development agreement or any other form of agreement, as the case may be, entered into between the promoter and owner of the land, reflecting the consent of such owner and authenticated copies of legal title report reflecting the


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title of such owner, on the land proposed to be developed; are required to be furnished along with the Application under sub-section (1) of section 4 of the Act. Thus the above provisions of the RERA Rules are applicable only in cases where the, "promoter is not the owner of the land on which development is proposed", which means that the owner of the land proposed to be developed is a separate entity and entity developing the proposed land is a separate entity. It was further submitted that in the present case, the owners of the proposed land to be developed and promoters of the land proposed for development are the same party i.e. owners of the land in the present case are, (i) Vibhav Real Estate, and (ii) Madant Constructions (Goa) Private Limited and the promoters of the proposed development i) Vibhav Real Estate, and (ii) Madant Constructions (Goa) Private Limited are the same parties. Hence, considering the above, the Rule 3(2)(d) of the RERA Rules would not be applicable in the present case. Further even otherwise, the joint venture agreement submitted to this authority is an internal agreement between (i) Vibhav Real Estate, and (ii) Madant Constructions (Goa) Private Limited, who are the promoters and developers of the land proposed to be developed. Also the said joint venture agreement does not transfer any immovable right in the said land proposed to be developed and Section 17 of the Registration Act 1908 applies only in cases pertaining to transfer of immovable property. It was further reiterated that since in the present case there is no transfer of immovable property between the (i) Vibhav


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Real Estate, and (ii) Madant Constructions (Goa) Private Limited as both the parties are the owners of the land, hence there is no requirement under the provisions of the Real Estate (Regulation and Development) Act 2016 read with Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 for registration of the said joint venture agreement.

9. During the course of hearing, it was further pointed out that even clause 2 and also clause 3 of the Goa RERA Circular dated 04-10-2022, prescribes that the agreements referred to in the said circular and which are entered into between the promoters and owners of the land, only where these are separate entities, are required to be registered under the Registration Act 1908. The clause 2 and also clause 3 of the Goa RERA Circular dated 04-10-2022 are extracted here below for ready reference:-

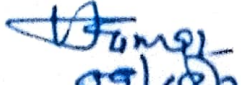
“2. Section 4 of the Real Estate (Regulation and Development) Act 2016 read with Rule 3(2)(d) of the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017, mandates collaboration agreement, development agreement, joint development agreement, or any other form of agreement, as the case may be, entered into between the promoters and owner of the land. Further, such documents/transactions are


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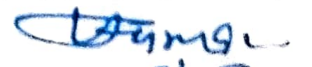
required to be registered under Section 17 of the Indian Registration Act, 1908.

3. In the light of the above, all real estate promoters/ builders and land owners are hereby directed to furnish registered joint development agreement or collaboration agreement or any other form of agreement, which comes within the purview of Section 17 of the India Registration Act as the case may be, entered into between the promoters and land owners which is duly registered with the jurisdictional Sub Registrar, in which, project is located for registration of the real estate project. In the event of non-submission of such document,.....liable to be rejected.”

10. In view of what has been discussed herein above, I am inclined to accept the contention of the applicant that the provisions of the said Goa RERA Circular dated 04-10-2022 are not attracted in the present case as owners of the land proposed to be developed in the present case i.e. (i) M/S Vibhav Real Estate, and (ii) Madanant Constructions (Goa) Pvt. Ltd. are also the promoters of the proposed development and hence there is no requirement under the said circular dated 04-10-2022 for registration of the said joint venture agreement. Further, there is no transfer of immovable property between the land owner and the promoter in the present case. Also both the Promoter are jointly liable for functions and responsibility specified under this Act or the rules and regulations made there under.



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11. It is further noted that Affidavit in Form II has been furnished on behalf of both parties, however, online application contains name of 'M/S Vibhav Real Estate' only under the 'Promoter Details' and also under 'Promoter(Landowner/ investor) Details' and the other name i.e. 'Madanant Constructions (Goa) Pvt. Ltd.' is yet to be added under both categories. During the course of these proceedings, it has further come to the notice that M/S Vibhav real estate and Madanant Constructions (Goa) Pvt. Ltd. had purchased the subject land from 1. Mrs Maria Siblina Augusta Filomena De Souza Aguiar e Dias alias Maria Siblina Aguiar Dias alias Maria Siblina Augusta Filomena D'Souza Aguiar Dias and 2. Dr (Mr) Abel Antonio Ponciano Da Piedade Dias alias Abel Dias vide sale deed dated 28-03-2016 and has paid a part of the total price consideration through various cheques and the remaining larger part of total price consideration is proposed to be paid in kind by constructing and delivering built up space on ownership basis to the vendors as per the arrangement noted in the said sale deed, regarding which a separate agreement was to be executed between the vendors and the purchasers. However, no further details have been made available along with the application made for registration of the project in question. As a substantial part of the proposed project has been promised to be constructed and delivered to either of the vendors on ownership basis as against larger part of the total price consideration, the project is deemed to be developed through joint development route with the vendors of the


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land and as such these vendors of the sale deed dated 28-03-2013 shall be deemed to be the promoters of the project and shall be jointly liable for the functions and responsibilities specified under the Act. Accordingly, the names of the two vendors as mentioned in the sale deed and noted herein above would have to be added under 'Promoter(Landowner) Details' and an affidavit in Form II on behalf of these Promoters (Landowner) is also required to be furnished.

12. The Applicants are required to comply with the directions noted in para. ¹¹ above within a week of receipt of the order. Upon compliance of the same, technical section would process the matter and put up the same to the Authority for consideration of the application for grant of registration of the "Antruz Avenue".


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Virendra Kumar, IAS (Retd.)
Member, Goa RERA

To,
Mr. Vibhav P Parkar
C/o Vibhav Real Estate
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Margao, 403602