



## GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

101, 1<sup>st</sup> Floor, 'SPACES' Building, Plot No. 40, EDC Patto Plaza, Panaji 403 001 GOA

www.rera.goa.gov.in

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

F. No:3/RERA/Complaint(55)/2019/91

Date: 11/02/2021

**Shrinivas Kamat,**  
Laxmi Adarshnagar,  
Airport Road Chicalim,  
South Goa, 403711.

.....

**Complainant**

V/s

**Kalash Real Estate Developers,**  
12, Dr. Mukund Building,  
F.L. Gomes Road.  
Vasco-da-Gama, Goa, 403802.

.....

**Respondent**

### ORDER

**Dated: 11/02/2021**

This order disposes of the complaint filed by Shri. Shrinivas Kamat against Kalash Real Estate Developers for the project "Manual Vincent Arcade" at Vasco Da Gama, Goa under the Real Estate (Regulation and Development) Act, 2016.

In the complaint, the complainant has submitted that he signed the agreement with the respondent on 08-11-2010 wherein it is mentioned that the project will be completed within 24 months from signing the same but the project has not been completed by Developer. The relief sought in the complaint is to direct the developer to complete the project.

Notice was issued to both the parties. The records show that the project "Manual Vincent Arcade" by the respondent was rejected by Goa RERA on 31/01/2019 for non-compliance with respect to submission of documents. Thereafter, a Notice dated 10/09/2019 was issued to the respondent to remain present before the interim Authority on 13/09/2019 to determine the complaint but the respondent failed to remain present. However, the interim Authority on the said date of hearing i.e 13/09/2019 passed an order directing the respondent to re-apply for registration before 30<sup>th</sup> September 2019 and the respondent was accordingly intimated through

Notice dated 23/09/2019. The records further show that this Authority received a reply dated 01/10/2019 wherein the respondent mentioned that he had received the above notice of the Authority, however he needs more time to re-apply for registration of the projects as he has not obtained Renewal of Construction License from Mormugao Municipal Council.

In between the dates of hearing, either the complainant or the respondent remained absent. However, on 02/02/2021 both the complainant and the respondent remained present. On the said date, the complainant filed an application dated 02/02/2021, stating therein that he wishes to withdraw his complaint against the respondent as the respondent has “commenced construction activity at the site since the last four months and has assured possession of the purchased units within a period of 10 months” (emphasis supplied).

Firstly, permission is hereby given to the complainant to withdraw his complaint, however, the withdrawal of the instant complaint does not absolve the respondent of his liability and duty to get his project registered and pay the penalty under Goa RERA Act for its non-registration especially when the project was an ongoing project at the time of filing of complaint and the respondent had not received the completion certificate but still went on marketing, and offering for sale the real estate project and the project till date is not registered under RERA Act.

The Project Registration Details given by the respondent mention that the Status of the Project is ‘ongoing’; total area of land is 1426 sq.mtr.; total covered area is 530.85 sq.mtr. ;total open area is 895.15 sq.mtr. and hence the Project comes within the registration clause of RERA as is clear from Section 3 of the RERA Act, which is reproduced herein, for ready reference:-

“3. (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:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:



Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

In the instant case the project is not exempted for registration under the aforesaid provision of law and till date the respondent has not got his said project registered though the construction is going on. There is no denial by the respondent to the statement given by the complainant in his withdrawal application dated 02/02/2021 to the effect that,

“ The Developer has commenced construction activity at the site since last four months and has assured possession of the purchased units within a period of 10 months”

Thus, without obtaining Registration under RERA Act, the respondent did the marketing, offering for sale etc. the units in the said project which was an ongoing project at the relevant time without Completion Certificate and thereafter continued the construction activity and “has assured possession of the purchased units within a period of 10 months” to the allottees, and has therefore violated the provisions of Section 3 of RERA Act, inviting penalty under Section 59 of the Act, which is reproduced herein below:-

“59. (1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent of the estimated cost of the real estate project as determined by the Authority.

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project, or with both.”

The project, as per the details given by the respondent in Project Registration Details started on 15/07/2010 and the respondent has not received the completion certificate and the construction is going on and marketing, offering for sale has been done without getting it registered, as stated above.

As per Section 59(1) of the Act, the respondent is liable to a penalty which may extend upto ten percent of the estimated cost of the real estate project as determined by the Authority. As per the Chartered Accountant’s Certificate dated 23/03/2018 uploaded by the respondent on the website of the Authority, the estimated cost of the Project is Rs. 7,95,81,885/- and the ten percent of the aforesaid estimated cost of the Project comes to Rs. 79,58,188.5 which is rounded to Rs. 79,58,000/- (i.e seventy nine lakhs, fifty eight thousand only).

However, lenient view is taken in this case as the respondent took first step of applying for registration with the Authority but could not get the registration due to non-compliance of its directions to submit necessary documents.

Hence, 5% of the estimated cost of project as penalty will subserve the purpose of justice and the same comes to Rs. 39,79,094.25/- which is rounded to Rs. 39,79,000/- only (i.e. Rs. Thirty nine lakhs, seventy nine thousand only).



Hence, the respondent is directed to pay the penalty of Rs. 39,79,000/- (Thirty nine lakhs seventy nine thousand only) within a period of two months, failing which further action under RERA Act will be taken by the Authority. The respondent is also directed to obtain the Registration of the said Project within the aforesaid period.

*Vijaya D. Pol*  
**(Vijaya D. Pol)**  
**Member, Goa RERA**

To,

1. Kalash Real Estate Developers, 12, Dr. Mukund Building, F.L. Gomes Road, Vasco-da-Gama, Goa, 403802.
2. Shrinivas Kamat, Laxmi Adarshnagar, Airport Road Chicalim, South Goa, 403711.