



GOA REAL ESTATE REGULATORY AUTHORITY

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F.No: 3/RERA/New Proj.(1333)/2024/1566

Date: 22/11/2024

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

ORDER

(Dated 22.11.2024)

This order shall dispose off the application made by M/s Vibhav Real Estate (hereinafter referred to as 'the Applicant'), 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.

2. Consequent upon receipt of the said application submitted through online portal on 20/03/2024, the matter was examined and 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 Project contractor details and also Project Agent details. Accordingly, several inquiry emails were sent requesting promoter to provide requisite details/explanation.. Further with regards to the requirement of registration of joint venture agreement before the Sub Registrar, the Promoter submitted an Affidavit stating that agreement of joint venture cannot be registered as informed by the office of Sub Registrar on personal visit since it is mutual agreement between both owners and is not a joint development. 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.

3. A notice was accordingly issued to the applicant drawing his attention to the contents of Goa RERA Circular dated 04/10/2022 which mandates all real estate promoters/ builders and land owners 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 and seeking



clarification inter-alia on these aspect for taking a view as to registration of the project 'Antruz Avenue'.

4. 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 title of such owner, on the land proposed to be developed; are required to be furnished alongwith 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) Madanant Constructions (Goa) Private Limited and the promoters of the proposed development i) Vibhav Real Estate, and (ii) Madanant 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) Madanant 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 Real Estate, and (ii) Madanant 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.

5. 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 where these are separate entities, only 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 required to be registered under Section 17 of the Indian Registration Act, 1908.

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.”

6. In view of the submission made by the Applicant /Promoter as noted herein above, it was held that the provisions of the said Goa RERA Circular dated 04-10-2022 were 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 thereby are jointly liable for functions and responsibility specified under this Act or the rules and regulations made there under. Further, there is no transfer of immovable property between the land owner and the promoter as in the present case.
7. It was further noted that though 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 also came to the notice that M/S Vibhav real estate and Madanant Constructions (Goa) Pvt. Ltd. had purchased the subject land vide sale deed dated 28-03-2013 and had paid a part of the total



price consideration through various cheques and the remaining larger part of total price consideration was proposed to be paid in kind by constructing and delivering built up space (Which constitute a substantial part of the proposed project) 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 such details were made available either along with the application made for registration of the project in question or during the proceeding. Applicants were accordingly directed to add the names of the two Vendors as mentioned in the sale deed under 'Promoter(Landowner) Details' and also furnish an affidavit in Form II on behalf of these Promoters (Landowner) besides addition of name of 'Madanant Constructions (Goa) Pvt. Ltd.' under Promoter details as well as "Promoter (Landowner /investor) Details; within a week of the receipt of the order dated 09/08/2024.

8. As neither the due compliance of the order dated 09/08/2024 was made by the Applicant nor any representation was received from him with regards to the compliance of the order dated 09/08/2024 despite lapse of more than a month; notice dated 26/09/2024 was issued to the applicant giving an opportunity for compliance of the orders or for providing further information /representation in terms of the observation made in Para 11 of the order on or before 10/10/2024. An opportunity of personal hearing was also granted on 10/10/2024 with the stipulation that in case the compliance is not made or any



representation is not received with regards to compliance of order dated 09.08.2024; the application for registration of project 'Antruz Avenue' shall be rejected without any further opportunity being granted. Thereafter, the matter was proceeded with on several dates and was finally heard on 11/11/2024 before the Authority when a reply affidavit to the notice dated 26/09/2024 was filed on behalf of the Applicant and the matter was also argued on the same day by the learned counsel for the Applicant.

9. In reply to the notice dated 26.09.2024, it has been stated by the Applicant that the project land at Plot No.4, New Survey No.192/1-C, Ponda, Goa was purchased from the Vendors for a total consideration of Rs. 12,00,00,000/- (Rupees Twelve Crore only) vide Deed of Sale dated 28/03/2013 registered at Serial No.664/2013, after paying the requisite stamp duty and registration fee and pursuant thereto; the name of owner of land as "Vibhav Real Estate" and "Madanant Construction (Goa) Private Limited" was also updated in Form I & XIV. A copy each of Deed of Sale dated 28/03/2013 & Form I & XIV was also placed on record by the Applicant.

10. It was further submitted that it would be evident from clauses 1, 2, 3, 4, and 5 of the deed of sale dated 28/03/2013 executed by Vendors in favour of the Promoter/Applicant herein that 'Vibhav Real Estate' and 'Madanant Construction (Goa) Private Limited' have become the sole and the absolute owners of the said Property and there is absolutely



no restriction in the said Deed of Sale with respect to the rights of Vibhav Real Estate and Madanant Construction (Goa) Private Limited with respect to the ownership and rights in the said Property. It was further averred that the present sale and purchase of the said Property qualifies as sale in terms of section 54 of the Transfer of Property Act, 1882 which deals with the "Sale" of immovable property in India and defines sale as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised, by way of registered instrument. In the present case, the said Deed of Sale has been registered with the appropriate sub-registrar and there has also been physical delivery of property.

11 The Applicant also submitted an affidavit on record stating that "We Vibhav Real Estate along with Madanant Construction Private Limited shall jointly and severally be liable and responsible towards the sale of all units in the project 'Antruz Avenue' situated at S. No. 192/1-C at Ponda, Goa" and further prayed that its application for registration of project "Antruz Avenue" be processed further to issue them RERA registration certificate at the earliest.

14. Ld. Counsel for the Promoter/Applicant during the arguments also drew attention to the excerpts from various clauses of Deed of Sale dated 28/03/2013 as well as the provisions of section 54 of the Transfer of Property Act, 1882 which are extracted hereunder:-



“1. For a total price consideration of Rs. 12,00,00,000 (Rupees Twelve crores Only) partly paid by the Purchasers to the Vendors and partly agreed to be paid in kind by the Purchasers to the Vendors as demonstrated hereafter, the Vendors do hereby convey and transfer by way of absolute sale and free of all encumbrances, unto the Purchasers, all that piece and parcel of land identified as Plot 4 of the entire property described in Schedule-I hereto, which Plot 4 is fully described in Schedule-II hereto and hereinafter, the Purchasers shall be jointly and in equal shares, hold, have, possess and enjoy the subject plot described in Schedule-II hereto, as the absolute owners thereof along with all the rights, interest.....”

“2. The above mentioned total price consideration of Rs. 12,00,00,000/- (Rupees Twelve Crores Only) has been partly paid and partly shall be paid or delivered by the Purchasers to the Vendors as per the option exercised by the Vendors, in the following:-

- i.
 - ii.
 - iii.
 - “
 - “
 - “
 - x.
 - xi.
 - xii.
- (Details of payment made in cheque and also part consideration to be paid in kind)*

“3. The Vendors do hereby acknowledge to have received from the Purchasers the entire price consideration of the sale hereby executed, and in the manner stated hereinabove.”

“4. It is hereby specifically clarified that by virtue of the present Deed of Sale, the First Purchaser has become the co-owner of the subject plot described in Schedule-II hereto to the extent of the ideal and undivided half share in the subject plot and the Second Purchaser has become the other co-owner of the subject plot described in Schedule-II hereto to the extent of remaining half ideal and undivided share in the subject plot”.

“5. The Vendors covenant with the Purchasers as under:-

(x) That the Vendors shall not have any charge, lien, etc, over the subject plot described in Schedule -II hereto, in the event of any dispute between the Vendors and the Purchasers, including the dispute regarding the premises agreed to be constructed for the Vendors or otherwise.

Further, Section 54 of the Transfer of Property Act, 1882 reads as under:

54. “Sale” defined.—

“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.....”

It was further argued by Ld. Counsel for the Applicant that admittedly Promoters had purchased the subject land vide sale deed dated 28-03-2013 and had paid a part of the total price consideration through various cheques and the remaining larger part of the consideration was proposed to be paid in kind by constructing and delivering built up space (which constitute a substantial part of the proposed project) on ownership basis to the Vendors as per the arrangement noted in the said sale deed. It was further argued that though a separate agreement was to be executed between the Vendors and the Purchasers in this regard and also no such details were made available either along with the application made for registration of the project in question or during the proceeding; the present case, however, cannot be treated as an instance of Joint Development between the Promoter and Vendors/ land owners of the deed of sale dated 28.03.2013 as Clause 1 to 5 of the said Deed executed by Vendors in favour of the Promoter/Applicant herein make it evident that ‘Vibhav Real Estate’ and ‘Madanant Construction (Goa) Private Limited’ have become the sole and the absolute owners of the said Property and there is absolutely no restriction in the said Deed of Sale with respect to the rights of Vibhav Real Estate and Madanant Construction (Goa) Private



Limited as to their ownership and rights in the said Property. It was also stressed that there has been clear transfer of ownership in exchange for a price part-paid and part-promised, by way of registered instrument as clause 1 & 2 of the Deed of Sale stipulate that out of total consideration, part was paid in cheque and the remaining part was agreed to be paid in kind by the Purchasers to the Vendors in the manner noted in clause 2 of the said Deed which Vendors vide clause 3 of the said Deed have acknowledged to have received from the Purchasers. Further, Vendors vide clause 1 have unequivocally conveyed and transferred the Project land by way of absolute sale to both the Purchasers as co-owners. The same aspect has further been amplified vide clause 4 of the said Deed. Further clause 5 of the said deed clearly states Vendors shall not have any charge, lien, etc, over the subject plot described in Schedule -II hereto, in the event of any dispute between the Vendors and the Purchasers, including the dispute regarding the premises agreed to be constructed for the Vendors or otherwise.

It was thus submitted that in view of the above, there is no need to add the name of the two Vendors of the Deed of Sale dated 28.03.2013 under 'Promoter (land owner/Investor details) and also to furnish affidavit in Form II by the said Vendors as the present case is not that of Joint development of the proposed project between the Promoters and Vendors of the Deed of Sale dated 28.03.2013. It was thus prayed to process the case for registration taking co-owners of




the Project land i.e M/s Vibhav Real Estate & Madanant Construction (Goa) Private Limited as promoter of the Project.

In view of what has been noted herein above, it is clear that the present case does not fall in the category of Joint Development between the Promoter i.e. M/s Vibhav Real Estate & Madanant Construction (Goa) Private Limited and the Vendors of the Deed of Sale dated 28.03.2013. The case has already been examined by technical section and was recommended for registration.

In view of the above discussion as well as the report and recommendation of technical section, it is decided to accord registration to the project '**Antruz Avenue**' subject to the condition that the promoters i.e. M/s Vibhav Real Estate & Madanant Construction (Goa) Private Limited shall be liable for all the functions and responsibilities specified under the Real Estate (Regulation and Development) Act, 2016 or the rules and regulations has made thereunder in respect of the entire property including the part of the project property promised to be paid as part consideration to the Vendors in the sale deed dated 28.03.2013 and also subject to addition of name of 'Madanant Construction (Goa) Pvt. Ltd., under Promoter details as well as "Promoter (Land Owner/ Investor) Details'. Technical section is further directed to ensure that all the requisite documents are properly uploaded by the promoters at RERA Website and thereafter issue registration of the said project



upon receipt of details of corrections and payment of prescribed charges.


22/11/24
Virendra Kumar, IAS(Retd.)
Member, Goa RERA

To,
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