



GOA REAL ESTATE REGULATORY AUTHORITY

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FN: 3/RERA/New Proj.(1287)/2023/ 1083

Date: 09/08/2024

Sub: In the matter of Registration of the Real Estate Project "Raj Central"

ORDER

(Dated 09.08.2024)

Raj Housing Development Pvt. Ltd. (hereinafter referred to as 'the Applicant'), had applied for registration of the project '**RAJ CENTRAL**' 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 dated 14/12/2023.

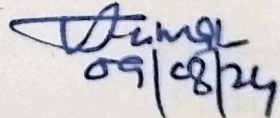
2. During the scrutiny of documents, it was observed that there were several deficiencies in the application inter-alia relating to Affidavit in Form II, non - submission of Sanad for the entire of the Project area, Agent and Contractor details etc. Besides, the Joint Development Agreement and Agreement for Development and sale had not been registered. Inquiry emails were sent, initially on 22.12.2023 and several times thereafter requesting the Applicant for doing the needful.
3. The Applicant in response, apart from providing certain information, further submitted that the project is being constructed on two plots; Plot surveyed under S. No. 180/1-A, having a land area of 1100 sq. meters, which consists of 430 sq.

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meters area of an existing structure (residential house), and Plot surveyed under S. No. 180/2, having a land area of 1675 sq. meters, which consists of 450 sqmtrs area of an existing structure (residential house) and further cited order No. 16/11/90-RD dated March 7, 2007 to say that while issuing sanad of the respective plots, the area of the existing structure, i.e. 430 sq. meters in survey No. 180/1-A and 450 sq. meters in survey no. 180/2, has been excluded being exempted and sanad is issued only in respect of the balance area of 670 sq. meters for Survey No. 180/1A and balance area of 1225.00 sq. meters for survey no. 180/2. It was also submitted that since the co-owners of the property are presently not in India and therefore their presence cannot be secured for registration of documents and further requested that the matter may be considered based upon the promoter's undertaking stating that in due course the documents would be registered before the sub registrar. However, the Applicant was granted a time of 06 weeks to submit the registered documents which have not been submitted so far.

4. And Whereas it was observed that the said Government Order dated March 7, 2007 is applicable only when the total area of the survey holdings does not exceed 1000 square meters and that the existing structures as shown on survey Map covers at least 25% of the area of the plot. Further, this will not apply to those survey holdings which are not shown in Settlement Zone in the existing Regional/ outline Development Plan but has its classification changed into Settlement Zone from its earlier classification in the existing Regional / Outline Development Plan. As area of both S. No. 180/1-A and S. No. 180/2 apparently exceed 1000 sq. meters, the availability of the exemption was required to be explained in terms of the said circular dated March 7, 2007.

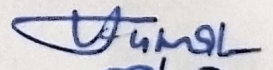
5. And whereas Goa RERA vide its Circular No. 3/RERA/Off. Matters/2019/718 dated 04.10.2022 observed that Section 4 of The Real Estate (Regulation & Development) Act 2016 read with Rule 3(2)(d) of the Goa Real Estate


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(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 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.

6. And whereas, a notice dated 12/06/2024 was accordingly issued to the applicant seeking clarification on these aspects for taking a view as to registration of the project "Raj Central".

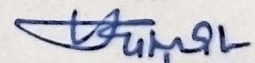
7. And Whereas the Applicant during the course of hearing filed a reply dated 24/06/2024 reiterating his earlier submissions as to grant of Sanad excluding the area of existing structure and further stated that the Sanad has been granted by the additional Collector, South Goa as per the Order No. 16/11/90-RD dated 7/3/2007 and further circulars issued by the Revenue department and that Additional Collector is the final authority to grant or reject NA Sanad and both the properties bearing Survey No. 180/1-A and 180/2 are converted to Non-agricultural use vide NA Sanad issued by the Additional Collector, South Goa. As regards the Joint Development Agreement dated 17/4/2021 and Agreement for Development and Sale dated 10/09/2022, it was submitted that both agreements were executed and registered before Notary prior to issuance of the circular dated 4/10/2022 and all the projects prior to the said circular were


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registered upon execution of the Development Agreement registered before Notary. Further, the Circular dated 4/10/2022 does not speak about any retrospective application. It was also informed that the Applicant has already got the Power of Attorney of the all the Co-owners of both the properties duly executed before the sub registrar by paying full Stamp Duty and Copies of said Power of attorney was also submitted.

8. And Whereas the Applicant further filed an additional reply on 01/07/2024 stating that the applicant has got Power of Attorney executed in favour of the applicant by the Owners of the property admeasuring an area of 1100 sq. mts., being surveyed under survey no. 180/1-A of village and Taluka Ponda, executed and registered before Sub Registrar Ponda on 18/10/ 2022 and also Power of Attorney executed in favour of the applicant by the Owners of the property admeasuring 1675 sq.mts surveyed under New Survey No. 180/2 of village and Taluka Ponda executed and registered before Sub Registrar Ponda. Further, the said two Powerof attorney which are duly executed in favour of the developer are giving powers to the Applicant to deal with the development of the said two properties by way of constructions, wherein Owners have reserved rights with them with respect to the premises to be allotted to the Owners. Attention was also invited to some of the clauses in the said Power of attorney which read as under:

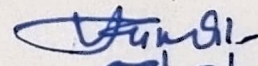
"i. To agree to sell, to sell and to deal with in any manner with prospective purchasers of the Premises viz. Apartments/Shops/Offices delineated in GREEN on plans annexed to this Power of Attorney, in the said building to be constructed on the said Plot more particularly described in **SCHEDULE-II** written hereunder and for which purpose to sign, make, admit, execute and present for registration before any Sub-Registrar any Agreement/s, documents, deed/s including Sale deed, Mortgage Deed for Housing/Commercial loan with respect to Premises delineated in GREEN on


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plans annexed to this Power of Attorney, Partitions deed/s, Transfer Deed, Exchange Deed, Rectification deeds, Ratification Deed, Deed of Assignment of Rights, Deed of Transfer, Gift Deed, Partition, Exchange Deed and to admit execution of such documents and to issue valid receipt of acknowledging the receipt of all or any payment received including consideration received for the sale of premises viz.. Apartments/Shops/Offices delineated in GREEN on plans annexed to this Power of Attorney, in the said building to be constructed on the said plot **SAVE AND EXCEPT** the premises reserved for the Executants delineated in RED in the plans annexed to this Power of Attorney and more particularly described in **SCHEDULE-III** written hereunder.

ii. To represent us before the concerned Sub-Registrar and to present, execute and admit execution of any agreement/s and/or deed/s including sale, mortgage of the premises delineated in GREEN on plans annexed to this Power of Attorney by prospective purchasers, partition, gift, transfer, exchange, rectification, ratification etc. It her executed by us or our Attorney on our behalf for sale of Apartments, shops, offices and/or any premises delineated in GREEN on plans annexed to this Power of Attorney in the said building to be constructed on the said plot more particularly described in **SCHEDULE-II** written hereunder **SAVE AND EXCEPT** the premises reserved for the Executants delineated in RED in the plans annexed to this Power of Attorney and more particularly described in **SCHEDULE-III** written hereunder.”

9. The applicant further reiterated that they are presently not in a position to get the said Development Agreement and Joint development Agreement registered before the Sub Registrar as some of the Co-owners are presently not in India, and under such circumstances, their presence before the sub registrar cannot be secured for registration of Documents and also further submitted that in any

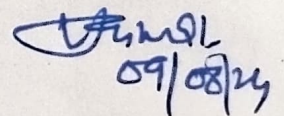

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case.the Applicant shall get both the documents i.e. Joint Development Agreement and Agreement for Development and Sale duly registered before the Sub Registrar by paying all the required Stamp Duty and Registration fees.for which it required some time to get all the stake holders presence at one time andthe applicant is ready and willing to give undertaking in this regard.

10.The contention of the Applicant that the specific power attorneys executed in favour of the developer in respect of the two properties constituting the project land, empower it to deal with the development of the said properties by way of construction etc. as sought to be stressed by citing some clauses of the said power of attorneys as above, does not hold much water. In this regard, the perusal of recitals contained in the initial part of the said power of attorneys needs to be referred to which reads as follows:-

“AND WHEREAS the executants are required to do several acts for purpose of development of said plot, which the executants are unable to attend on day to day basis, and therefore the executants are desirous of appointing a fit and proper person to facilitate obtaining of licences, permissions, NOC, approvals, etc. from concerned authority for the entire construction as well as to facilitate sale of premises delineated in GREEN on plans and annexed to this power of attorney to third party purchases and to facilitate availing housing loan or finance by third party purchases, save and accept, signing of the plans, revised plans in support of the proposed building which act then the executants shall do personally.

AND WHEREAS for the aforesaid purpose we, the **EXECUTANTS** herein are desirous of appointing Shri.....AND/OR.... to act on behalf of the as our attorney for all of us or anyone or more of us singly, by all of them or any one of them.”(emphasis supplied)


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11. Evidently, the Specific Power of Attorney executed by the land owners in favour of the POA holder as it ordinarily should be; is intended for appointing the specific person/ persons to act on behalf of the EXECUTANTS as their attorney only and mention of various matters in its clauses i.e. permissions and to follow up various matters with various government department and public offices including public offices of public bodies like Panchayats, Municipality, Planning and Development Authority, Town and Country Planning Department, RERA Authorities, Collectorate and other offices as also enter into and execute all or any Agreement, Deed, Declarations, Affidavits or any other documents etc; would not change the nature of capacity held by the POA holder which is essentially to act on behalf of the EXECUTANTS as their attorney.

12. On the other hand, 'Joint Development Agreement' dated 17/4/2021 and 'Agreement for Development and Sale' dated 10/09/2022 entered into between the owners of the two properties constituting the project land and the developer herein; is a contractual document between the parties thereto, setting out the details of terms and conditions in respect of transfer of development rights and title of subject property as well as the exercise of rights and liabilities of the respective parties. It is evident that the powers given in the Power of Attorney and terms and conditions stated in both the Agreements (i.e. Agreements for Development and Sale and Joint Development Agreement) are different and executed for different purpose. Therefore, the contention of the Applicant regarding having duly executed and registered Power of Attorney in his favour upon payment of requisite stamp duty; is hardly of any consequence and would have no bearing upon the requirements specified vide Goa RERA Circular dated 4/10/2022.

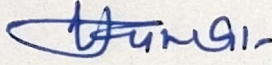
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13. It is relevant to add here that this authority taking note of the definition of the term 'Promoter' as available under Section 2(zk) of the Act, has repeatedly held that under the joint development agreement route, wherein the landowner contributes land for construction of real estate project and the promoter who invests money and carries out construction of the real estate project, both shall be deemed to be the promoters and shall be jointly liable for the functions and responsibilities specified under the Act. Further, Goa RERA vide its Circular No. 3/RERA/Ofc. 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. The requirement of registration of these documents besides being in compliance of Section 17 of the Indian Registration Act, 1908; is also vital to the cause of protection of allottees as the Joint Development Agreement is basis of the joint liability of both the promoters and thus the requirements needs to be complied with before the application made by the Promoter for registration of the Project is granted. The Applicant is well aware of these aspects in as much as he is even willing to give an undertaking that it would get both the documents i.e. Joint Development Agreement and Agreement for Development and Sale duly registered before the Sub Registrar by paying all the required Stamp Duty and Registration fees.

14. In view of what has been discussed herein above, the Authority is constrained not to accept the plea of to the Applicant that the matter may be considered based upon the promoter's undertaking stating that in due course the documents

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would be registered before the sub registrar and further grants a period of 04 weeks upon the receipt of the order by the Applicant to complete the process for registration of the said 'Joint Development Agreement' dated 17/4/2021 and 'Agreement for Development and Sale' dated 10/09/2022 before the jurisdictional Sub Registrar and submit the copies of thereof to the Authority for further consideration of the matter. With regard to the exclusion of built up area for grant of Sanad, it is observed that the documents submitted by the Applicant qua the grant of Sanad though issued by the Additional Collector Goa, neither refer to the said circular dated 07.03.2007 nor provide the details of exemption granted. It is accordingly felt expedient to seek a clarification on the issue as discussed herein above, from the office of the Collector, South Goa for which Secretary to the Authority would make necessary reference to Collector, South Goa within 6 a week. The case is fixed for further hearing on 25.09.2024 at 3:00 p.m.


09/08/24
Virendra Kumar, IAS (Retd.)
Member, Goa RERA

To,

Sandip N Nigalve

C/o Raj Housing Development Pvt Ltd

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