



GOA REAL ESTATE REGULATORY AUTHORITY
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F.No:3/RERA/Complaint (493)/2025/ 326

Date: 27/02/2026

Mr. Sanjiv Narayan Desai,

Age:52.

R/o Flat No. FO3/4, Building 10/A, Models Legacy,

Taleigao, Goa, 403002.

.....Complainant

Versus

1. Ashvem Spa and Resorts Private Limited,

Represented by its Director,

Mr. Verner Velho,

Age: 55 years

H.No. 183/2, Sonar Bhat,

Verem, Bardez, Goa, 403109.

2. Adwalpalkar Constructions & Resorts Pvt. Ltd.,

Represented by its Director,

Shri Mahesh R. Adwalpalkar,

Age: 69 years

Having office at Adwalpalkar Avenue,

St. Inez, Panaji, Goa-403001.

.....Respondents

Ld. Advocate Shri Parag S. Rao for the complainant.

Ld. Advocate Shri N. P. Kamat along with Ld. Adv. Ms Smita Gawas
for respondent no. 1.

Ld. Advocate Shri M.S. Joshi along with Ld. Advocate Shri Hirbarao
Rane Sardessai for respondent no. 2.

ORDER

(Delivered on this 27th day of the month of February, 2026)

This is a complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016.

2. Briefly stated, the case of the complainant is as follows:-

The complainant has entered into an agreement for sale dated 31.03.2015 with the respondent no. 1 and as per the said agreement, the respondent no. 1 had undertaken to build, construct and deliver residential premises admeasuring 143 sq. mts. of total built up area near Taleigao Church in the property known as 'Tolloi' and paid entire consideration of sum of ₹50,05,000/- and also paid stamp duty, registration and processing fee. The respondent no. 1 as per clause 3 of the agreement for sale had to deliver the said premises by 31.03.2018 and despite taking entire consideration, there was no progress in terms of construction in the said property.

3. The director of respondent no.1, Mr. Verner Velho made an offer in the year 2018 vide e-mail dated 31.07.2018 whereby he offered to pay 10% interest from 01.04.2018 till the date of handing over possession and also agreed to allot additional 15 sq. mts. than what was agreed in the agreement for sale. The respondent no. 1 after

meeting for several times disclosed about entering into an Agreement for development dated 20.04.2015 with respondent no. 2 however, even after several requests, the respondent no. 1 has not handed over the possession of the built up area as promised by the respondent in its email dated 31.07.2018.

4. The respondent no. 1 vide its letter dated 07.03.2022 addressed to complainant allotted flat no. C-601 on the sixth floor admeasuring 160 sq.mts, in Block 'C' of 'Adwalpalkar Stellar' however, even after the allotment letter, the possession of the said premises is not handed over to the complainant, although civil construction of the said building is complete and the possession of the said premises on the ground floor is already handed over to the respective purchasers. The complainant once again vide e-mail dated 24.07.2024 pointed out that the complainant has not been handed over possession of the said premises despite investing in the project since 2015 as per agreement for sale dated 31.03.2015. The complainant has invested his hard-earned money and therefore is desirous of taking possession of the said premises. Hence, the complaint.

5. The complainant prayed for the following reliefs:-

- a) This Hon'ble Authority be pleased to direct the respondents to handover the possession of the said premises.
- b) This Hon'ble Authority be pleased to direct the respondent to execute and register a Deed of Sale in favour of the complainant immediately after possession of the said premises.
- c) This Hon'ble Authority be pleased to direct the respondent to pay an interest at the rate of 18% per annum on the amount of ₹. 50,05,000/- (Rupees fifty lakhs five thousand only) from 01.04.2018 till the date of actual possession is delivered to the complainant.
- d) Such other and further orders as may be deemed fit and proper in the fact and circumstances of the case be passed.

6. The respondent no. 1 filed a reply inter-alia contending that respondent is a land owner and is sole and exclusive owner of the property where the residential complex was constructed. The complainant vide agreement for sale dated 31.03.2015 desired to purchase a built up premises admeasuring 143 sq. mts for consideration of ₹50,05,000/-. The respondent no. 1 agreed with respondent no. 2 for joint development of the said property vide Agreement dated 20.04.2015. The respondent no. 2 was bound to construct and develop the residential premises within 36 months of

obtaining requisite approvals and licenses failing which, legally obligated to liquidated damages of ₹50,000/- per day to respondent no. 1. The respondent no. 2 for unjustifiable reasons delayed the construction, which caused a severe financial burden to respondent no.1. The respondent no.2, being a developer is covered within the definition of the terms 'Promoter' and therefore, liable for the functions and responsibilities specified under the Act.

7. The respondent no. 2 also filed a reply inter-alia contending that an agreement for sale dated 31.03.2015 was entered between the complainant and respondent no. 1 and as per the said agreement, the respondent no. 1 agreed to construct and sell to the complainant residential premises admeasuring 143 sq. mts., for consideration of ₹. 50,05,000/-. The respondent no. 2 thereafter entered into a Joint development agreement dated 22.02.2018 with respondent no. 1 wherein the respondent no. 2 was assigned the task of construction of the building as per which the respondent no. 1 was entitled to 50% of the FAR and the balance 50% was of respondent no. 1. The Agreement dated 30.03.2015 entered with the complainant and respondent no. 1 is not binding on respondent no. 2 as respondent no.

2 was unaware of the fact that the agreement for sale was signed between the complainant and respondent no. 1.

8. The respondent no. 2 registered the said project before the Authority. The respondent no. 2 and respondent no 1 entered into an Addendum agreement wherein built-up areas of respondent no. 2 and respondent no. 1 were identified and demarcated on the building plans whilst factoring in the additional FARs available to both the parties. The said premises in respect of which agreement for sale was executed by and between the complainant and the respondent no. 1, is located in block 'B' and respondent no. 1 has not mentioned about the said agreement. The respondent no. 2 in terms of the Addendum agreement completed a part construction and also obtained part occupancy certificate to shops in Block B and few other units in Block A and B and thereafter, vide possession letter dated 30.08.2021 handed over possession of shop no. 7 to 11 on the ground floor in Block 'B' and other units to respondent no. 1. The respondent no. 2 have not committed any violation of RERA Act and is not liable for claims made by complainant as the development is carried as per the procedures and laws applicable in Goa.

9. Arguments heard. The complainant filed Written Synopsis. The respondent no. 1 filed notes of written arguments. Synopsis of chronology of dates and events as well as written arguments has been filed by respondent no. 2.

10. The points which come for my determination along with the findings and reasons thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the respondent no.1 or both the respondents are liable to handover possession of residential premises, as stated above, to the complainant?	Both the respondents.
2.	Whether the respondent no. 1 or both the respondents are liable to register a sale deed of the said residential premises, as stated above, in favour of the complainant?	Both the respondents.
3.	Whether the respondents are liable to	In the affirmative.

	pay interest on the consideration amount for every month of delay in handing over possession of the said premises to the complainant from date of delivery of possession, i.e March 2018, till possession is delivered?	
4.	Whether respondents are liable to pay costs and penalty for violation of the provisions of RERA Act?	In the affirmative
5.	What relief? What order?	As per final order

REASONS

Point No. 1 and 2

11. The Hon'ble Supreme Court in the case of *M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and Others, 2021 SCC Online SC1044* has clarified that 'if the promoter fails to give possession of the apartments, plot or building within the time stipulated under the terms of the agreement, then allottee's right under the Act to seek refund/claim/interest for delay is unconditional and

absolute, regardless of unforeseen events or stay orders of the Court/Tribunal'. The relevant abstract is reproduced below for ready reference:

“25. The unqualified right of the Allottee to seek refund referred to under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the Allottee, if the Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement, regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the Allottee/ home buyer, the Promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act *with the proviso that if the Allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*”

12. The functions and duties of the promoter have been elucidated in Section 11 of the Act. Section 11(4)(a) refers to responsibilities and obligations to the home buyers till the conveyances are executed. Section 11(4)(b) refers to obtaining completion or occupancy

certificate from the relevant competent authority by the promoter and Section 11(4)(f) refers to duty of the promoter to execute a conveyance deed. The promoter is duty bound to complete the project in all respects in accordance with the terms of the agreement for sale, deliver possession to the allottees, failing which he is liable to pay delayed interest, at such rate as may be prescribed in the behalf in the manner provided under the Act.

13. Having regard to the above judgment of the Hon'ble Apex Court and the relevant provisions of the RERA Act, it is apposite to advert to the case of the parties. Admittedly, the complainant and the respondent no. 1 had entered into an agreement for sale dated 31.03.2015 and in view of Article 2(c) of the agreement, the said consideration includes the undivided share of the land proportionate to the super-built up area of the said residential premises and as per clause 3(a) of the agreement, the respondent no. 1 was under a contract to complete construction and handover possession of the residential premises within 30 months and had agreed to deliver possession on or before March 2018 as the total consideration of ₹.50,05,000/- was paid to the respondent no. 1, as early as in the year 2015.

14. There is also no dispute that respondent no. 2 had entered into Joint development agreements and Addendum agreement with respondent no. 1 for construction of the building in the subject property, in which 50% of the built-up area was to be allotted to respondent no. 1 and the remaining to respondent no. 2. The Allotment Letter dated 07.03.2022 by the respondent no. 1 to the complainant refers to allotment of Flat No. C-601, on the 6th Floor, admeasuring 160 sq. mtrs., in Block C, at “Adwalpalkar Stellar” in Taleigao, Goa for a total consideration of ₹. 50,00,000/- which includes basement parking. The email dated 31.07.2018 between the complainant and Respondent No. 1 also refers to above subject matter, whereby the Respondent No. 1 had waived any claim for additional area referred in allotment letter dated 07.03.2022.

15. Ld. Advocate Shri Parag S. Rao for the complainant has submitted that the complainant has paid entire consideration to the respondent no. 1 for purchase of residential premises and an Agreement for sale dated 31.03.2015 has been entered into between the parties, according to which the respondent no. 1 was under an obligation to deliver the said premises by March 2018. The Agreement to Sale has been executed solely between the complainant

and Respondent No. 1, and therefore, the complainant's rights, obligations, and entitlements arise exclusively from the said agreement. The Respondent No. 1 has entered into an agreement with respondent No.2 and same is purely an internal arrangement between them and complainant cannot be made to suffer for disputes or complications arising therefrom and therefore, the complainant is entitled for the relief prayed in the complaint.

16. Ld. Advocate Shri N. P. Kamat for respondent no. 1 has submitted that the respondent no. 1 and respondent no. 2 had entered into an Agreement for development and that respondent no. 2 for unjustifiable reasons delayed the construction, which caused severe financial burden to respondent no. 1 and therefore, respondent no. 2 is equally liable for inaction in delivering the possession to the complainant, in terms of the judgment delivered by the Hon'ble High Court of Bombay in the case of *Wadhwa Group Housing Private Ltd. vs. Vijay Choksi and Ors. MANU/MH/1177/2024*. He further submitted that the core issue involved in the present proceedings is whether the respondent no.1 falls within the definition of an 'allottee' or a 'promoter', which is pending before the Authority in Complaint no. 3/RERA/COMPLAINT(509)/2025 and the present case is

dependent on the outcome of the said case filed by respondent no.1 against respondent no.2.

17. Ld. Advocate Shri M. S. Joshi for respondent no. 2 has submitted that the respondent no. 2 had entered into Joint development agreements with respondent no. 1 for construction of the building in the subject property, in which 50% of the built-up area, was to be allotted to respondent no. 1 and the remaining to respondent no. 2. The respondent no. 2 has completed the project as per the agreement and allotted the premises to the respondent no. 1 in Block 'B' after obtaining the occupancy certificate. The respondent no.2 has no privity of contract nor received any consideration amount from the complainant and has suppressed the Agreements for sale entered into with the Complainant and therefore, is not at all responsible for the delay nor liable for the claims made by the complainant and in support thereof, he relied upon the case of '*Cyril Harold Moraes vs. Conoor Builder, 2020 SCC Online Mah. RERA 55.*

18. The Hon'ble Bombay High Court in a case *Wadhwa Group Housing Private Ltd.* supra has observed as under:

"The Appellant's contention about absence of privity of contract between it and the complainant is totally

misplaced. Definition of the term 'promoter' under section 2(zk) of the RERA would indicate that even persons/entities with whom a flat purchaser does not enter into contract are also covered by definition of the term 'promoter'. Therefore, it is not necessary that there has to be an agreement between every Promoter and the flat purchaser. As observed above, it is a matter of indoor management between the Promoters and the flat purchaser who is not supposed to know the intricacies of the arrangements made between several promoters amongst themselves. When a claim is raised in respect of a real estate project by a flat purchaser, all promoters become jointly liable qua that flat purchasers, irrespective of whether there is privity of contract with each of the promoter or not. This is the scheme of RERA and mere absence of privity of contract with a particular promoter does not relieve such promoter in respect of the liabilities under RERA.

It is also held that under Section 18(1)(b) of RERA Act the Promoter (landowner) along with the other Promoter

(developer) is liable to refund the amount along with the interest irrespective of who received the amount from the flat owner.

19. Admittedly, the complainant who is seeking reliefs have paid the entire consideration to the respondent no. 1, who had promised to deliver the possession to the complainant with no extra cost as stated in the Agreement for sale dated 31.03.2015, the allotment letter dated 07.03.2022 and an e-mail produced on record. The respondent no. 2, who is the developer, had entered into the Development agreements dated 20.04.2025, Joint Development Agreement dated 22.02.2018 and Addendum agreement dated 01.01.2021 with respondent no.1. The respondent no. 2, who is the 'promoter/developer' in the present case cannot claim that the respondent no. 1 is solely responsible for the reliefs prayed in the complaint or/that it is in no way concerned about the delivery of the flat to the complainant, on the specious plea that there is no privity of contract nor received any consideration amount from the complainant.

20. The Hon'ble High Court of Bombay in the above case of *Wadhwa Group Housing Private Ltd.* supra has clearly held that the account in which monies are received by the promoters is irrelevant

for the purpose of determining joint liability of the promoters under Section 18 of the Act. The term 'Promoter' under Section 2 (zk) of RERA would indicate that even persons/entities with whom a flat purchaser does not enter into contract are also covered by the definition 'Promoter'. It is not necessary that there has to be an agreement between every Promoter and the flat purchaser. It is a matter of indoor management between the Promoters and the flat purchaser is not supposed to know the intricacies of the arrangements made between several promoters amongst themselves and that when a claim is raised in respect of a real estate project by a flat purchaser, all promoters become jointly liable qua that flat purchasers, irrespective of whether there is privity of contract with each of the promoter or not or as to who received the amount from the flat owner. It is therefore both the respondent no. 1, being landowner as well as the respondent no. 2 being developer are jointly liable to ensure transfer of title of the said premises in favour of the complainant and also pay delayed interest in terms of Section 18 of the RERA Act.

21. The respondents were bound to give possession of the said premises and the garage with delayed interest to the complainant, duly completed in all respects on or before March, 2018 but till date,

neither the possession is given nor registered the sale deed in respect of the said premises. It is thus evident that both the respondents have failed in their obligations, responsibility and functions under the provisions of the Act in handing over the possession as well as registering the sale in terms of the said agreement and the allotment letter. It is thus the objections as articulated by the respondents for delay in delivering the possession to the complainant, and execution of the sale deed, will not come to the rescue of the respondents, from legal liabilities and corresponding legal rights accrued to the complainant under the RERA Act. The submissions of Ld. Adv Shri N. P. Kamat as stated above, as well as the submissions of Ld. Adv. Shri. M. S. Joshi and reliance placed on *Cyril Harold Moraes, supra* cannot sustain in view of clear pronouncement by the Hon'ble High Court of Bombay in the above case of *Wadhwa Group Housing Private Ltd. supra*, as observed above. Hence, points no. 1 & 2 are answered accordingly.

Point No. 3, 4 and 5

22. Under Section 18 of the RERA Act, if the promoter fails to complete or is unable to give possession of an apartment, plot or

building, (a) *in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;* or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act. *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest of every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

23. Rule 18 of The Goa Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosures on websites) Rules, 2017:-

“18. Rate of interest payable by the promoter and the allottee-The rate of interest payable by the promoter and the allottee shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent, provided that in case the State Bank of India

Marginal Cost of Lending Rate is not in use, it would be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

24. Presently, the State Bank of India highest Marginal Cost of Lending Rate plus two percent i.e. (8.80 plus 2%) is 10.80% per annum.

25. Discernibly, the respondents have failed in their obligations, responsibility and functions under the provisions of the Act in handing over the possession after obtaining necessary occupancy certificate as well as registering the sale in terms of the agreement to sale, inspite of several opportunities and filing of the complaint, on vague grounds as reflected in the defence raised by the respondents as it is well settled that RERA does not demarcate or restrict liabilities of different promoters in different areas. It is therefore once the respondents have failed to adhere to their contractual and statutory obligations under Section 18, read with 11(4)(a)(b) and (f) and Section 17 of the RERA Act, both the respondents cannot escape the liability of payment of penalty and costs, as well as payment of interest @ 10.80% per annum, for every month of delay, from March

2018 till effectual possession of the premises to the complainant is delivered. Hence, the above points are answered accordingly.

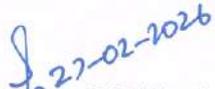
26. Having said so, I pass the following

ORDER

- i. The respondents are directed to handover possession of the residential premises being the Flat No. C-601, admeasuring 160 sq. mts. located on 6th Floor, in Block 'C' of "ADWALPALKAR STELLAR", Taleigao, Goa, to the complainant, in terms of Agreement for sale dated 31.03.2015 and Allotment letter dated 07.03.2022, within sixty days of passing of the order.
- ii. The respondents are also directed to register the Sale Deed of the said Residential premises, being the Flat No. C-601, admeasuring 160 sq. mts. located on 6th Floor, in Block 'C' of "ADWALPALKAR STELLAR", Taleigao, Goa in favour of the complainant, within sixty days of passing of the order.
- iii. The respondents are directed to pay interest @ 10.80% on amount of ₹50,05,000/- (Rupees fifty lakh five thousand only) for every month of delay in handing over the possession to the complainant from the date of delivery of possession i.e. March

2018, till valid possession of the said premises is delivered to the complainant.

- iv. The respondents are also directed to pay ₹2,00,000/- (Rupees Two Lakhs only) as penalty under Section 61 of the Act for violation of Section 18 read with 11(4)(a)(b) and (f) and Section 17 of the RERA Act. The amount shall be deposited into the bank account of the Authority within sixty days of the order, failing which necessary proceedings will be initiated against the respondent.
- v. The respondents shall pay a sum of ₹1,00,000/- (Rupees One Lakh only) as costs to the complainant.
- vi. The respondents are directed to file compliance report of this order in the form of an affidavit within sixty days of this order, failing which further legal action will be initiated by the Authority under the RERA Act for execution of the order.


(Vincent D'Silva)
Member, Goa RERA

Panaji, Goa.
Date: 27.02.2026