



**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

Case no.4/RERA/Adj. Matters (13)/2021/579

Date: 12/08/2022

**BEFORE THE ADJUDICATING OFFICER**

**Shri. Anirudh K. Agarwal,**  
Anand Bhavan, P.O. Box 107,  
Old Station Road,  
Margao-Goa, 403601.

..... **Applicant/Complainant**

*V/s*

**1.M/s Ashvem Spa & Resort Pvt. Ltd.,**  
H.No.102, General Bernand Guedes Road,  
Opp.Forest Department Office,  
Panaji-Goa, 403001.

**2.M/s Adwalpalkar Construction & Resort Pvt. Ltd.,**  
Adwalpalkar Avenue,  
St.Inez, Panaji-Goa.

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**Respondents**

Ld. Advocate Shri P. Velip for complainant.

Ld. Advocate Shri G. Agni for respondent no.1.

Ld. Advocate Ms. D. Ghatwal for respondent no.2.

**ORDER**

**(Delivered on this the 12<sup>th</sup> day of the month of August of the year 2022)**

The present proceedings have arisen as a corollary to the complaint filed by the applicant/complainant against the respondents bearing complaint no.3/RERA/Complaint (48)/2019.

2. The above said complaint was disposed off in favour of the applicant/complainant vide order dated 09.11.2021 of the Goa Real Estate Regulatory Authority. The said Authority directed as follows:-

“Respondent No.1 is, hereby, directed to pay interest at the rate of 8% on the amount of Rs. 90,00,000/- w.e.f. 01.06.2018 to 31.10.2021 which comes to Rs. 24,60,000/- (Rupees Twenty four lakhs sixty thousand only) as per provision of section 18(1)(b) of the Act. This amount will be payable by Respondent No.1 to Complainant within 30 days after receipt of this Order failing which he will be liable to pay interest on this amount w.e.f. 01.11.2021 till the entire amount of interest is paid/recovered. Again, Respondent No.1 is also directed to pay monthly interest of Rs. 60,000/- per month commencing from November 2021 payable in the month of December between 1<sup>st</sup> to 10<sup>th</sup> of every month till premises is completed and delivered to Complainant. In default of payment of this monthly interest also, Respondent No.1 will be liable to pay to the Complainant interest at the rate of 8% per annum. Further, for the purpose of determination of compensation, the case is referred to Adjudicating Officer in terms of section 71 of the Act.

3. The applicant/complainant has filed his claim for compensation under section 12,14,18 and/or 19 read with Section 71 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as ‘the said Act’) at exhibit 300/c.
4. The case of the applicant/complainant as set out in the said application for compensation is as under:-



A) The respondent no. 1 while entering into the agreement for construction and sale dated 06.05.2015 with the applicant, has with malafide intention concealed the fact of the execution of the Agreement for Development and Construction dated 20.04.2015 executed between the Respondents No. 1 and 2 and thus gained undue advantage.

B) The respondent no. 1 knowing fully well that the said agreement dated 20.04.2015 provides for extension of time for completion of the project and committing to deliver possession of the said premises within the stipulated time would be a misrepresentation, still preferred to make such misrepresentation and induced the applicant to execute the said agreement dated 06.05.2015 and thus gained wrongfully.

C) The respondent no. 1 by failing to deliver the said premises within the stipulated time by 05.05.2018 has thus caused a lot of hardship, inconvenience, mental agony and monetary loss to the applicant.

D) The Respondent No. 1 has failed to provide copy of necessary approvals and plans of the project and communicate the status of the construction of the project and thus caused hardship and harassment to the applicant.

E) Even after filing of the said complaint to the RERA Authority and the order dated 09.11.2021, till date the respondent no. 1 has not conveyed in favour of the applicant, the possession of the said premises and has also not paid the interest granted with the sole intention of causing harassment to the applicant.

F) The Respondent No.1 by obtaining the consideration amount of the said premises at a time had beneficially used the same for his gains at the cost of the applicant and blocked the funds of the applicant preventing its use beneficially since May 2015.

G) The said premises booked by the Applicant were commercial premises sought for letting out, thus if the same had been handed over within the stipulated time, the applicant could have earned the rentals of atleast ₹1000/- per sq. mtr. amounting to ₹1,00,000/- per month, which income the applicant has lost.

H) The respondents 1 and 2 have in violation of Section 14 of the said Act revised the sanctioned plans of the project thereby altering the area of the said premises without any intimation or consent of the applicant.

I) The Respondents by their aforesaid breaches compelled the applicant to approach the Hon'ble Rera Authority subjecting the applicant to additional expenses for filing the said complaint and the present proceedings, legal fees and miscellaneous expenses which the applicant is entitled to recover from the Respondents.

5. In view of the grounds as set out above, the applicant has sought the following compensation from the respondents:-

(i) Compensation for damages caused due to breach of the contractual obligations, hardship, mental agony and inconvenience caused on account of failure to provide approvals taken and plans in respect of the said project and the status of the construction inspite of repeated follow-ups and consequent failure to handover the possession of the said premises within the stipulated time period or even as on the present date.

(ii) Compensation for damages caused by concealing the facts as regards the execution of Agreement for Development and Construction dated 20.04.2015 with respondent No.2 making false representation and committing to handover the possession of said premises by 05.05.2018 and inducing the applicant to make full payment of the consideration at a time knowing fully that when the Agreement for Development and



Construction dated 20.04.2015 between both the respondents itself provided for extension of time, the time for completion provided to the applicant may not be honored.

(iii) Compensation for loss of income that the applicant would have earned by letting out the said premises had the respondent delivered the possession within the stipulated time period.

(iv) Compensation for violation of rights and or duties arising under Section 14 of the Real Estate (Regulation and Development) Act and for failure to obtain consent of the Applicant herein while altering the sanctioned plans.

6. The respondent No. 1 filed reply at exhibit 318/c. It is the case of the respondent No. 1 in the reply that:

(a) The respondent No. 1 has not transferred the development rights but the agreement dated 22.02.2018 is joint development agreement with respondent No.2 and thus there is no violation;

(b) That the complaint is barred by the law of Limitation in terms of The Goa Real Estate (Regulation and Development) Act 2016;

(c) The complaint does not fall within the ambit of The Goa Real Estate (Regulation and Development) Act 2016 as the said agreement dated 06.05.2015 was executed before the RERA Act came into force;

(d) The agreement dated 06.05.2015 contains an arbitration clause and thus the complaint before RERA is not maintainable;

(e) After the Order of the Authority dated 09.11.2021, it had offered the possession of the said premises by providing sketch plan to the applicant/complainant;



(f) The applicant is not entitled to any of the reliefs as claimed in the application for compensation.

7. The respondent No. 2 has chosen not to file any reply but has adopted the reply filed by the respondent no.1. The applicant/complainant filed rejoinder to the reply filed by the respondent no. 1 at exhibit 348/c.
8. Heard arguments. Ld. Advocate Shri P. Velip argued for the applicant/complainant and filed written arguments at exhibit 382/c. Ld Advocate Shri G. Agni argued for respondent No.1 and filed written arguments on behalf of respondent no.1 at exhibit 404/c. No arguments were advanced by Ld. Advocate Ms. D. Ghatwal for the respondent no. 2.
9. The point for determination and my finding to the same is as under:-

<b>Point for determination</b>	<b>Finding</b>
<i>Whether the applicant/complainant is entitled to be paid compensation by the respondent no. 1?</i>	<i>In the affirmative as per Order.</i>

### **REASONS**

10. I shall first deal with the objections raised by the respondent no. 1 which have been adopted by respondent no. 2. It has been submitted that the said agreement dated 06.05.2015 being executed prior to the coming into force of the RERA and therefore the said Act is not applicable to the present case. This submission has been negated by the Hon'ble Apex Court in the case of Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & ORS. etc. in Civil Appeal No(s). 6745-6749 of 2021, wherein the Supreme Court has categorically held that the RERA Act is applicable even to the ongoing projects and the contractual terms even if



executed prior to RERA coming into force of the RERA Act cannot have overriding effect on the provisions of the said Act. Therefore, the submissions of the Ld. Advocate for respondent no.1 that the said complaint is barred by law of limitation in terms of the RERA Act and that the complaint does not fall within the ambit if RERA is not tenable.

11. The next submission of Ld. Advocate for the respondent no. 1 is that the present application is hit by the arbitration clause contained in the said agreement between the parties. Section 89 postulates that the provisions of the RERA Act have effect, notwithstanding anything inconsistent therewith contained in any other law for time being in force. Therefore, this submission has no substance and accordingly stands discarded.
12. The next submission of Ld. Advocate for the respondent no. 1 is that the possession of the premises booked was offered to be given during the present proceedings. The records of present proceedings nowhere shows that such offer was made or any sketch or plan was given by the respondent no. 1 to the applicant. Therefore, this contention also cannot be sustained.
13. Reverting to the compensation sought by the applicant under point (i) of para 5 hereinabove, it can be noticed that under the said agreement dated 06.05.2015 possession of the said premises was required to be given latest by 05.05.2018. The Agreement for Development and Construction between respondents 1 and 2 was executed on 20.04.2015 which is much prior to the said agreement dated 06.05.2015. In the said agreement of Development and Construction dated 20.04.2015 the time limit for completion was extended ending on 20.08.2018 which is beyond the date of possession agreed to be given to the applicant/complainant by the respondent no. 1 in the agreement dated 06.05.2015.



14. It is thus evident that respondent no. 1 while making representation and giving undertaking to the applicant to deliver the possession of the said premises by 05.05.2018 was very much aware that the compliance thereof may not be possible in the light of the development agreement executed earlier between the respondents no. 1 and 2 which provided extension of time limit beyond the date given to applicant/complainant.
15. Thus, the respondent no. 1 first and foremost concealed the information about the signing of the agreement of development and construction between respondents dated 20.04.2015. The respondent no.1 was also fully aware that such concealment would amount to misrepresentation and induced the applicant to invest in the project and to make the entire payment at one time which is a violation of Section 12 of the said Act. The respondent no. 1 has thereby deprived the applicant from beneficially using his own monies and thus gained wrongfully which is a ground for grant of compensation under Section 72 of the said Act. The applicant/complainant has claimed compensation on this ground at 8% per annum which the applicant would have got by keeping the said amount in the bank.
16. Taking into consideration the fact that the applicant has already been granted 8% interest vide the Order dated 09.11.2021 passed by the Authority, it would be appropriate that compensation on this ground could be quantified in the amount of ₹1,00,000/- (Rupees One Lakh only).
17. Coming to the compensation sought by the applicant under point (ii) of para 5 hereinabove for violation under Section 11 and depriving the rights of the applicant under Section 19(1) and (2) of the said Act for failure to handover possession of the said premises within the time period of the





said agreement including the non furnishing of the approvals and plans, status on the stages of construction and consequent failure to deliver the possession has caused immense hardship mental agony which has been further aggravated by non delivery of possession till date and subjecting the applicant to file further litigation and also not paying the interest granted by the RERA Authority, the applicant has quantified his claim for compensation at ₹10,00,000/- (Rupees Ten Lakhs only).

18. Taking into consideration, the compensation which I propose to consider and grant on the grounds hereinafter, the claim for compensation for hardship, mental agony and inconvenience caused to the applicant could be quantified at ₹ 2,00,000/- (Rupees Two Lakhs only) on this count.
19. As regards, compensation sought at point (iii) of para 5 hereinabove, for violation done by the respondent, it can be seen that respondents by their own statement have claimed that the approved plans have been changed subsequently due to change in the zoning of the subject property. It is the contention of the respondents that the date of completion of the project has also been revised as per the addendum agreement dated 01.01.2021. No such addendum agreement dated 01.01.2021 has been produced on record to show between whom the said agreement has been executed or that applicant has consented to the same. Such alteration/ revision of the plans has not been with the due consent of the applicant, being an allottee as is required by Section 14(2) of the said Act. Perusal of the sanctioned plans shows that there is no premises available of the description which was offered to be provided to the applicant.
20. It has been submitted by L.d. Advocate for the applicant that while discussing the possibilities of amicable settlement of the dispute, it was revealed by respondent no.1 that in the light of the revised plans, the area

of the premises booked has increased on account of the added benefit of FAR on account of change of zone as a result of which the applicant would have to pay additionally for the increased area.

21. The Ld. Advocate for applicant has submitted that applicant has no requirement of any additional area and is also not in a position to invest any further if called upon to pay any such additional amount which will be an additional burden and financial loss to the applicant. There is considerable merit in this submission.
22. This unwarranted situation is attributable solely due to violation of respondent no. 1 under Section 14(2) of the said Act. The applicant cannot be made to pay additionally for the increased area of the said premises on account of the subsequent alteration in the sanctioned plans obtained without the consent of the applicant. The applicant shall therefore be entitled to be compensated by way of set off against additional amount if any, required to be paid by the applicant to the respondents for any additional area of the said premises.
23. Coming to the last point (iv) of para 5 hereinabove, the applicant has sought compensation for loss of income on account of the failure of the respondent no. 1 to deliver the possession of the said premises booked by the applicant. Admittedly, the said premises booked were commercial premises. Ld Advocate for the applicant has submitted that the premises were booked as investment and to use the same for renting out. The respondent no. 1 having failed to deliver the possession within the stipulated period has resulted into the failure to perform the obligation arising under Section 11 as well as 17 of the said Act thereby depriving the rights of the applicant under Section 19(3) of the said Act. The applicant has sought minimal rental of ₹ 1000/- per sq.mtr. amounting to

₹ 1,00,000/- per month. The applicant has relied upon rental agreement of nearby premises within Taleigao Village where the project is located. The applicant has also relied upon a lease deed of commercial premises at St. Inez which is close to Taleigao.

24. Taking into consideration that the applicant has lost income on account of failure on the part of the respondent no.1 to handover the premises as agreed to and considering the fact that the applicant has already been granted a set off towards payment of any additional area of the said premises to be handed over by the respondent no.1 to the applicant, I am of the considered opinion that the applicant would be entitled to compensation towards loss of rental income at ₹300/- per sq. mt. amounting to ₹30,000 per month for the said premises effective from June, 2018 till date amounting to ₹ 15,12,000/- (Rupees Fifteen Lakhs Twelve Thousand only) to be paid by the respondent no.1 to the applicant.
25. Before parting with this Order, it is necessary to mention that the claim for compensation was filed by the applicant on 03.03.2022. The respondent no. 1 filed reply which was adopted by respondent no. 2 on 07.04.2022. The applicant filed rejoinder on 10.05.2022. On 27.05.2022 the applicant filed written arguments. The respondent no. 1 filed written arguments on 16.06.2022. Oral arguments were heard on 18.07.2022. The matter has been disposed by Order dated 12.08.2022.

In the result, I pass the following:-

### **ORDER**

- a) The application for compensation filed by the applicant against the respondents is partly allowed.



b) The respondent no. 1 shall pay compensation to the applicant for violation under Section 12 read with Section 72 of the said agreement for concealing facts and inducing the applicant to enter into the said agreement and inducing the applicant to make lump sum payment by such concealment amounting to ₹1,00,000/- (Rupees One Lakh only).

c) The respondent no.1 shall pay compensation under Section 18(3) and 19 read with Section 72 for failure to perform obligation of the respondent/promoter under Section 11 of the said Act and consequent violation of the rights of the applicant/allottee under Section 19(1) and (2) of the said Act, thereby causing harassment, mental agony and inconvenience by not delivering the possession of the premises booked which is quantified in the amount of ₹2,00,000/- (Rupees Two Lakhs only).

d) The respondent no. 1 shall also pay compensation to the applicant under Section 18(3) read with Section 72 for violation under Section 14 of the said Act and consequent change of approved plans pursuant to which the applicant is entitled to a set-off towards payment of any additional amount to the respondent no. 1 for the said premises.

e) The respondent no. 1 is liable to pay compensation to the applicant for loss of income claimed under Section 18(3) read with Section 71 and 72 of the said Act pursuant to failure to deliver possession as is required under Section 19(3) of the said Act and depriving the applicant of his rights which is calculated at ₹300/- per sq. mt. with effect from June, 2018 till date amounting to ₹ 15,12,000/- (Rupees Fifteen Lakhs Twelve Thousand only).


f) The compensation with respect to paras b) and c) hereinabove shall be paid within one month from the date of this Order failing which the

respondent no. 1 shall be liable to pay the same with interest @ 8% per annum till effective payment.

g) The compensation ordered under para e) hereinabove shall be paid by respondent no. 1 to applicant within one month from today. The respondent no. 1 shall be further liable to pay same monthly compensation of ₹30,000/- per month from 13.08.2022 till the date of handing over the said premises.

h) The respondent no. 1 shall also pay costs of ₹20,000/- (Rupees Twenty Thousand only) to the applicant.

Order accordingly,

  
12/08/2022  
**(Ashley L.C. Noronha)**  
**Adjudicating Officer,**  
**Goa RERA**