



GOA REAL ESTATE REGULATORY AUTHORITY

DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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

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No.3/RERA/Complaint (48)/2019/678

Date: 09/11/2021

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

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Complainant

V/s

1.M/s Ashvem Spa & Resort Pvt. Ltd.,
H.No.102, General Bernard 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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Respondent (s)

ORDER

A complaint was received on 08.03.2019 on the webportal of Authority filed by Shri. Anirudh K. Agarwal (complainant herein). As per complaint, an agreement for construction and sale dated 06.05.2015 was entered into between the Complainant and Respondent No.1 and as per this agreement Respondent No.1 agreed to construct and sale to complainant, a commercial premises admeasuring 100 sq. mts. of built up area located on the ground floor facing Taleigao Church to be constructed on the land under survey No.292/1 of village-Taleigao. The entire consideration of Rs. 90,00,000/- (Rupees Ninety lakhs only) was paid in lump sum by the complainant at the time of registration of the said agreement. In pursuance of the said agreement, the respondent No.1 was to complete the construction and handover the possession of the premises by 05.05.2018 (including the reasonable extension period). The Respondent No.1 was also under statutory obligation to register the project under RERA and intimate to allottees which he failed to do. The Respondent No.1 failed to construct and deliver the premises to the complainant within agreed time period and thus committed the breach of the terms of the said Agreement.

2. As per Complainant, Respondent No.1 entered into an Agreement for Development and Construction dated 20.04.2015 with Respondent No.2 read with agreement dated 22.02.2018. These facts were not communicated to complainant by Respondent No.1. Pursuant to this agreement, Respondent No.2 obtained required licences and got the approved plans for the project on the said property only in the year 2017. The said Respondent No.2 also got project registered under RERA. The complainant has stated that the act of Respondent No.1 of non registration of the project in its name and transferring the development rights in favour of Respondent No.2 and concealing those facts from him amounts to cheating on the complainant. In view of abovementioned facts, the complainant has prayed for the following reliefs:

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- a) Action to be taken against the Respondent No.1 in terms of section 3 of Real Estate (Regulation and Development) Act, 2016 (herein after referred as 'Act') for failure to register project in its name,
 - b) Action to be taken against Respondent No.1 in terms of section 15 of the said 'Act' for transferring the development rights to the Respondent No.2 without the consent of the complainant or consent of 2/3rd allottees,
 - c) The Respondent having failed to handover the possession of the premises within the scheduled time, be directed to pay, by way of compensation for breach of contract, a sum equivalent to 25% of the sale consideration of the said premises, within 15 days of the order of this Authority, failing which to pay the same with interest @ 21% p.a. from the date of order till actual payment,
 - d) Further the Respondent be directed to pay interest @ 16% per annum of the sale consideration (Rs.90,00,000/-) from the date of the said agreement till the date of delivery of possession of the said premises, etc.

3. The copy of the complaint was served to both the Respondent with direction to file reply. Both the Respondent have filed replies. In his reply dated 17.08.2019, Respondent No.2 has stated that an Agreement for Development and Construction dated 20.04.2015 was signed between him and Respondent No.1. According to Respondent No.2, the said property was duly converted, plan approval of PDA was taken and construction licence was obtained in respect of the said building. The project is registered under RERA dated 30.05.2018. However, Respondent No.2 stated that he was unaware of the fact that any agreement between complainant and

Respondent No.1 is signed and executed. Respondent No. 2 also stated that as per second agreement dated 22.02.2018 between respondent No.1 and 2, the time period for completing and handing over this project is till April 21 including extended period. Again, Respondent No.2 stated that he is not liable for the claims made by complainant in this regard.

4. Respondent No.1 has filed the reply on 02.03.2021. In reply, the Respondent No.1 has denied the charges. According to Respondent No.1, the Real Estate (Regulation and Development) Act 2016 was not in existence when the complainant and Respondent No.1 entered into the agreement dated 06.05.2015 and thus the present complaint does not fall into the ambit of the Act. The Respondent No.1 also denied that there was failure to register the project as required under the Act. According to him at the time the agreement was executed, the RERA Act was not in existence and therefore neither the agreement nor the proposed development was required to be registered.
5. Respondent No.1 has stated that upon the execution of the agreement with Respondent No.2, the project got registered under RERA by Respondent No.2. The Respondent No.1 has denied that he entered into agreement with Complainant by any misrepresentation or any act of Respondent No.1 amounts to cheating or that the Respondent No.1 is not entitled to entering into the agreement with Respondent No.2. Respondent No.1 has stated that as per agreement dated 22.02.2018 with Respondent No.2 the development of the property had to be done within 36 months after obtaining the approvals of construction licences together with the grace period of 06 months i.e. by 17.04.2020. Since the property was zoned as S2 zone earlier and the revision of zone from S2 to C1 zone was taking some time, the development of property could not be completed within time specified in the original agreement. Upon reclassifying the zone as C1, the entire development had undergone a revision on account of the added benefits of FAR and the dates of completion of the project have also been revised. The Respondent No.1, therefore, submitted that there was no merits in the complaint and the same is required to be dismissed.
6. The case was finally fixed for hearing on 29.09.2021 for arguments on merit. All the parties i.e. Complainant, Respondent No. 1 and Respondent No.2 were present and argued the case. Complainant also submitted written arguments, the copies of which were given to Respondent No.1 and 2.

7. I have heard the arguments of the parties and gone through the facts and proceedings of the case. Complainant has raised the issue of failure of Respondent No.1 to register the project in its own name u/s 3 of the Act. Complainant has also requested for action against Respondent No.1 in terms of Section 15 of the said 'Act' for transferring development rights to the Respondent No.2 without the consent of the complainant or consent of 2/3rd allottees. In this regard, it is stated that Respondent No.1 entered into Agreement for Development and Construction dated 20.04.2015 with Respondent No.2 and as per the said agreement Respondent No.2 was authorized to obtain all necessary approvals and permissions from competent authorities. To quote clause 'J' of agreement dated 20.04.2015 at page 4-
"ACRPL (i.e. Respondent No.2) shall obtain all approvals including construction licence, sanad and all necessary sanctions and permissions from the concerned authorities for commencement and completion of the development on the said property".

From this, it is clear that Respondent No.2 was duly authorized by Respondent No.1 for getting all permissions and there is no illegality involved if Respondent No.2 applied and got the project registered under section 3 of the Act.

8. The said agreement dated 20.04.2015 was entered and executed much before coming of the Real Estate (Regulation and Development) Act, 2016 into force. Hence, consent of 2/3rd allottees u/s 15 of the Act is not required in this case. It is stated that though the said Act was enacted in 2016, Rules in respect of the Act were framed only on 24th November, 2017 and Interim Authority was established after that. Interim Authority by Order No.11/35/2017-DMA dated 23.02.2018 prescribed 23.03.2018 as the last date for filing applications for ongoing Real Estate Projects, Hence, for all practical purposes, the provisions of the Act in respect of ongoing projects were implemented with effect from 23.03.2018. This being ongoing project, the same will be applicable in this case. Now, in this particular case, the Agreement dated 22nd February, 2018 was executed prior to 23.03.2018. Hence, in my opinion, Section 15 will not be attracted in this case. Needless to mention here that these two agreements were made for only development and transfer of rights and liabilities are not involved in this case, though I am not elaborating this point in detail as otherwise also section 15 is not attracted in the case. Hence, in my opinion no action in terms of Section 3 or Section 15 is required in this case.

9. Complainant has requested for compensation for breach of contract, a sum equivalent to 25% of the sale consideration of the said premises within 15 days of the Order of this Authority failing which to pay the same with interest @ 21% per annum from the date of the order till actual payment. In this regard, it is stated that power to determine compensation payable is vested in Adjudication Officer as per Section 71 of the Act. Hence, for the purpose of determination of Compensation, the matter should be referred to Adjudicating Officer appointed under the Act.
10. The next prayer of the complainant as per para 2(d) of this Order is payment of interest @ 16% per annum of the sale consideration i.e. Rs.90,00,000/- (Rupees Ninety lakhs only) from the date of the said Agreement till the date of delivery of possession of the said premises etc. In this regard, Respondent No. 1 has taken a plea that as per Agreement dated 22.02.2018 with Respondent No.2, the development of the property has to be done within 36 months from obtaining the approvals of construction licence together with the grace period of six months. Since the property was zoned as S2 zone earlier and the revision of the Zone from S2 to C1 zone was taking some time, the development of property could not be completed within time specified in the original agreement. Upon reclassifying the zone as C1, the entire development had undergone a revision as on account of added benefit of FAR and the dates of completion of the project have also been revised.
11. I have gone through the prayers of Complainant and reply and arguments of Respondent No.1 regarding payment of interest as per earlier para 10 of this Order. The time framework of completion of project has to be determined as per Agreement between Complainant and Respondent No.1 which was entered and executed on 06.05.2015. Agreement dated 20.04.2015 and dated 22.02.2018 is a development agreement and complainant is not even party to it. These agreements are internal agreement between Respondent No.1 and Respondent No.2 for development of property. Change of zone from zone S2 to C1 is not subject matter of Agreement between Complainant and Respondent No.1. Here, Respondent No.1 enters an agreement with complainant on 06.05.2015 where he agrees to deliver the possession of premises in 30 months with an extension of further 06 months and complainant makes the full payment of Rs.90,00,000/- (rupees Ninety lakhs only) at the time of registration of the said Agreement. In my opinion, no separate agreement of Respondent No.1 with third party (i.e. Respondent No.2) will be binding on Complainant.

12. Refund and Interest payable in respect of delayed projects are governed as per section 18(1) of the Act. For the convenience sake, section 18(1) of the Act is transcribed below;

“18. Return of amount and compensation-(1) 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:

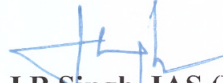
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”.

The case of Complainant will be governed as per proviso of section 18(1)(b) of the Act. As per this proviso, interest will be charged for delayed period. The Complainant has demanded the payment of interest from the date of Agreement. However, as discussed above, he will be entitled for interest only for delayed period. The period of completion and handing over of premises by Respondent No.1 to Complainant expires on 05.05.2018 in terms of Agreement between the parties. For the convenience sake I am determining the date of 01.06.2018 as the date from where interest starts. In my opinion, Respondent No.1 should pay the interest from 01.06.2018 to 31.10.2021 for past period in one installment and further w.e.f. 01.11.2021 till delivery of the possession of premises on monthly basis. The amount of interest from period 01.06.2018 to 31.10.2021 at the rate of 8% in terms of Rules 18 of the Goa Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosure on website) Rules, 2017 comes to Rs.24,60,000/- (Rupees

Twenty four lakhs Sixty thousand only). Monthly interest after 31.10.2021 i.e. November 2021 onwards at this rate will come to Rs. 60,000/- (Rupees Sixty thousand only) which will be payable by Respondent No.1 to Complainant in subsequent month i.e. December 2021 onwards between 1st to 10th of month.

13. In view of above, 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 1st to 10th 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 as discussed in para 9 of this order, the case is referred to Adjudicating Officer in terms of section 71 of the Act.

Order accordingly,


J.B.Singh, IAS (Retd.)
Member, Goa RERA

To,

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

2.M/s Ashvem Spa & Resort Pvt. Ltd.,
H.No.102, General Bernard Guedes Road,
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3. M/s Adwalpalkar Construction & Resort Pvt. Ltd.,
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