

**IN THE KARNATAKA REAL ESTATE APPELATE TRIBUNAL,  
BENGALURU**

**DATED THIS THE 27<sup>th</sup> DAY OF SEPTEMBER 2021**

**PRESENT**

**HON'BLE JUSTICE B SREENIVASE GOWDA, CHAIRMAN**

**AND**

**HON'BLE K P DINESH, JUDICIAL MEMBER**

**AND**

**HON'BLE P S SOMASHEKAR, ADMINISTRATIVE MEMBER**

**APPEAL (K-REAT) NO. 251/2020**

**BETWEEN**

Pashmina Brookwoods Allottees/  
Owners Welfare Association (Regd),  
an association registered under the  
Karnataka Societies Registration  
Act, 1960 and represented by its  
President Col NA Mudakatte & Member  
Prashaanth TR, having been authorised  
vide its Resolution dated 15 Aug 2019.  
#204, Kumar Ashraya, 194/1, 9<sup>th</sup> Cross,  
2<sup>nd</sup> Block, Off RV Road, Jayanagar East,  
Bangalore – 560 011.

**..... APPELLANT**

(By Sri Rajkumar, Advocate)

**AND**

1. M/s Shashwati Realty Pvt Ltd,  
M/s Pashmina Builders & Developers Pvt Ltd  
No.19/1, 2<sup>nd</sup> floor, Doddamane Building,  
Vittal Mallya Road,  
Bengaluru – 560 001.

2. The Adjudicating Officer  
Real Estate Regulatory Authority Karnataka  
Silver Jubilee Block, Unity Building,  
CSI Compound, 3<sup>rd</sup> Cross, Mission Road  
Bangalore-560 027.

**.....RESPONDENTS**

(M/s Anup S Shah Law Firm, Advocates for R1)

(R2- RERA served, unrepresented)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal to set aside the impugned order dated 11<sup>th</sup> March 2020 passed in Complaint No.CMP/190830/0004075 by respondent No.2-Adjudicating Officer.

This Appeal, coming on for pronouncement of Judgment, this day, the Hon'ble Administrative Member, delivered the following:

### **J U D G M E N T**

This appeal is filed under Sec 44 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 33 of Karnataka Real Estate (Regulation and Development) Rules, 2017 (herein after referred in short as ("**The Act and The Rules**") against the impugned order dated 11<sup>th</sup> March, 2020 passed by the learned Adjudicating Officer, RERA in Complaint No. CMP/190830/0004075, dismissing the complaint filed by the appellant-Association as not maintainable.

#### **Facts of the case in brief:**

2. The 1<sup>st</sup> Respondent M/s Shashwati Realty Pvt Ltd, M/s Pashmina Builders & Developers Pvt Ltd is a company incorporated under provisions of the Companies Act, 1956 with its registered office at Mumbai, and Regional office at 19/1, 2<sup>nd</sup> floor, Doddamane building, Mallya Road, Bangalore. The company is engaged in the business of Real Estate Development and Infrastructure Industry.

3. The 1<sup>st</sup> Respondent formulated a scheme for construction of residential apartment complex under a project in the name and style "PASHMINA BROOKWOODS" on property consisting of lands in Survey No.24, 23/1, 22/1, 22/2 & 22/3 totally measuring 10 acres 8 guntas situated in Kammasandra Village, Bidarahalli Hobli, Bangalore East Taluk, Bangalore urban District. The project is registered with the 2<sup>nd</sup> Respondent Real Estate Regulatory Authority Karnataka hereinafter referred to as Authority vide registration No PRM/KA/RERA/1250/304/PR171015/000556.

4. The members of the appellant-association namely, Pashmina Brookwoods Apartment Owners Welfare Association had booked apartments in the "PASHMINA BROOKWOODS" developed by the 1<sup>st</sup> Respondent. Pursuant to booking of the flats in the above projects, members of the association executed two agreements, one for the sale and the other for the construction with respect to undivided right and interest in the apartments having an area of 300 sq. ft – 600 sq. ft on different dates between 2013 and 2015.

5. As per the terms of the Construction Agreement, the 1<sup>st</sup> Respondent had undertaken to give possession by 31<sup>st</sup> August, 2016 with a grace period of six months and the final date for handing over possession was 28<sup>th</sup> February, 2017. In the mean time Respondent no.1 floated the scheme called "Live Lite" wherein the

Respondent no.1 agreed to pay Pre-EMIs till the date of intimation of possession of flats. Some of the buyers are stated to have signed supplementary agreements for the said scheme. The 1<sup>st</sup> Respondent, however, could not complete the project on time as stipulated in the agreements.

6. As the project was incomplete and the possession has not been given to the allottees on the stipulated date by the respondent no.1, Appellant-Association along with one of its members- Prashaanth T.R, had filed a complaint before the Adjudicating Officer, RERA, in Complaint No.CMP/190830/0004075 on behalf of all the members of the Association. In the complaint, out of the total 132 members of the association, prayer was made for award of delay compensation for different periods in respect of 119 members and for refund of the amount by exiting from the project was made on behalf of 13 members of the Association, urging various grounds.

7. The details of payments made by the members of the association under the agreements towards total sale consideration, has been furnished to RERA along with the complaint and the said list contains the details of all 132 members, pertaining to date of sale agreements, date of completion of the project as per the agreements, and total amount paid against the flat of each member area of the units, members who intend to exit from the project and members

who wish to continue in the project and seek delay compensation etc.,

8. The 1<sup>st</sup> respondent-Promoter appeared through their counsel before the learned Adjudicating officer and filed detailed statement of objections, inter-alia, contending that the Complainants have filed the instant Complaint seeking the relief of (i) Delay Compensation (ii) Exit & Refund (iii) Compensation for mental harassment and agony and legal expenses. (iv) Provision of amenities and (v) Project fast-tracking. It was contended that the complainants are seeking multiple reliefs in a single complaint which are contradictory to each other. On the one hand they seek for delay compensation in respect of some of the members and refund in respect other members who intended to exit from the project and for expedition of project fast-tracking.

9. It was submitted before the learned Adjudicating officer the complainants have suppressed and misrepresented various facts in the complaint. As such, the entire complaint is hit by the principle of '*suppressio veri suggestion falsi*'. Thus, the complainant association have not approached the Authority with clean hands and they have filed this complainant to make unlawful gain against the promoter-respondent. On the above submissions, the 1<sup>st</sup> respondent sought for dismissal of the complaint.

10. The learned Adjudicating Officer, after hearing both sides and perusing the documents furnished by the complainant and statement of objections filed by the 1<sup>st</sup> respondent, dismissed the complaint as 'not maintainable' holding that members of the association are having different cause of action and each of the members can file their independent complaint.

11. The Appellant-Association being aggrieved by the impugned order dated 11<sup>th</sup> March 2020 of the learned Adjudicating Officer, RERA, has preferred this appeal on the following grounds:

- that the impugned order is passed on misplaced notion of "no common cause of action" in the complaint;
- that the complaint indeed deals with a common and similar cause and grievances of all the complainants that they all have paid money to the promoter/respondents and have neither got the possession of the flats nor any compensation as per Section 18 despite delay of more than 3 years.
- that the Adjudicating Officer, RERA through previously had admitted the same nature of the complaint and adequately deliberated upon and decided in favour of the complainant Association pleading on identical grounds in complaint No.CMP/181224/0001794 pertaining to the same parties, has now chosen to dismiss the present complaint having same set

of facts and circumstances, as not maintainable, which is not sustainable in law.

- that the learned Adjudicating Officer while dismissing the present case, stated that the difficulty in calculating the amount of compensation for each of the members due to different dates of agreements and completion, amount paid and the Pre-EMIs paid etc.,
- that the learned Adjudicating officer failed to notice that the facts of the case in the previous complaint and the present complaint are one and the same;
- that no adequate reasons are assigned by the learned Adjudicating Officer, for dismissing the complaint and denying the allottees of their legitimate claim and therefore it deserves to be set aside.

12. On these grounds, the appellant prayed for allowing the appeal and setting aside the impugned order.

13. Heard Sri Rajkumar, Advocate who appeared for the appellant- Association and Sri Veeresh Budihal who appeared for the 1<sup>st</sup> Respondent/promoter. There is no representation for 2<sup>nd</sup> Respondent-RERA despite due service of notice on them.

14. After hearing the learned counsel appearing for the parties, perusal of the appeal memo, the documents produced along with the

appeal and the impugned order, the following points arise for our consideration:

**Point No. 1: Whether the impugned order dated 11<sup>th</sup> March 2020 passed by the learned Adjudicating officer calls for interference?**

**Point No.2: What order?**

Our answer to the above are as under:

**Point No. 1: In the Negative.**

**Point No. 2: As per the final order**

### **REASONS**

**Point No. (1):-**

15. This appeal is filed by the Pashmina Brookwoods Apartment Owners Welfare Association registered under the Karnataka Societies Registration Act, 1960 and represented by its President Col. N AS Mudakatte and Member Prashaanth T.R, against Respondent no.1 M/s Shashwati Realty Pvt Ltd., M/s Pashmina Builder & Developers Pvt Ltd., aggrieved by the order dated 11.03.2020 passed by 2<sup>nd</sup> Respondent dismissing the complaint on the ground that it is not maintainable. The complaint is filed for



seeking the relief of delay compensation and for refund of the amount.

16. The appellant is an Association of the allottees of the flats constructed in the project "PASHMINA BROOKWOODS". The members of the Association had booked apartments in the said project. As per the terms of the agreements promoter-1<sup>st</sup> Respondent ought to have developed the project and delivered possession of the apartments by 31<sup>st</sup> August, 2016, with the 6 months grace period by 28<sup>th</sup> February 2017. As the promoter failed to abide by the terms of the construction agreement, the Association filed a complaint before learned Adjudicating Officer on behalf of the 132 members of the said project. Among them 13 persons sought for exit option and refund of their money with interest and compensation and remaining 119 members have sought for delay compensation. The list which is enclosed along with appeal memo contains the names of the allottees, apartment numbers, date of sale agreements, completion date as per sale agreement, delayed period, total amount paid by each member, and flat area etc.

17. The learned counsel for the appellant, in the course of arguments vehemently contended that, since the developer failed to complete the project and hand over possession of the flats in favour of allottees in accordance with the terms of the agreements for sale

on or before 28<sup>th</sup> February 2017, along with all the amenities, the allottees of the association are entitled for delay compensation and return of amount paid by the allottees, as per section 18 of the Act.

18. It is contended that the learned Adjudicating Officer in an earlier case CMP/181224/0001794 had decided the matter in favour of the complainant having similar facts and circumstances. The same Authority (learned Adjudicating Officer) has now taken a different view and dismissed the present complaint as not maintainable. The appellant vehemently argued that on this ground alone the impugned order in the present case is liable be set aside.

19. It is further contended that due to delay in completion of the project and in delivery of possession of the apartments, the members of the appellant/ Apartment Owners Welfare Association are entitled for delay compensation and return of amount as per the Act. Therefore, the appellant prayed for allowing the appeal and setting aside the impugned order.

20. The learned counsel for the 1<sup>st</sup> Respondent vehemently argued on the maintainability of the appeal on the ground that complainant association cannot seek the relief on the basis of commonality, as each allottee has a separate cause of action in the present appeal. When the members of the association have different cause of action, it is not correct on the part of the association to claim

the relief by filing a single complaint before the authority for different cause of action.

21. In support of his contention relied on a judgment of the Hon'ble Supreme Court in the case of **Vikrant Singh Malik & Ors Vs. Super Tech Limited & Ors., reported in 2020 SCC Online SC 702** wherein at para 26 it is held that; referring to the Section 12(1)(c) of the Consumer Protection Act 1986 in the Judgment passed by National Consumer Disputes Redressal commission (NCDRC) in their order dated 19, February 2016, wherein permission to the complainants to club the complaint was declined.

22. The complaint before NCDRC was instituted by 26 flat buyers, who had booked flats in a residential project of the 1<sup>st</sup> Respondent at Greater Noida U.P. Several reliefs were sought in the complaint including refund of money for various reasons and delayed possession, penalty etc.

23. The pleadings in support of the application was mainly on the basis of commonality of interest between flat buyers on the basis of their grievances against promoters, which formed the subject matter of the complaint.

24. The NCDRC came to a conclusion that the application was not maintainable under Section 12(1)(C) of the Act, on several grounds. NCDRC held that there was nothing common between the

complainants in terms of the date of agreement, cost and size of the flats, and the compensation claimed. While dismissing the complaint, liberty was granted to each of the complainant to file individual complaints before the consumer forum having jurisdiction to entertain the complaint.

25. The view taken by the National Consumer Disputes Redressal commission (NCDRC), was questioned before the Hon'ble Supreme Court and contended that the decision taken by them was contrary to a later decision which has been rendered by the full bench in case of ***Ambrish Kumar Shukla Vs Ferrous Infrastructure Pvt Ltd. Reported in 2016 SSC online NCDRC 1117***. In this matter, it is clarified that applicability of Section 12(1)(c) of the consumer protection Act read with order I Rule 8 of the code of Civil Procedure required the sameness of the interest.

26. The Bench took a view that, so long as the grievance of the consumers is common and identical relief is claimed for the complainants, the cost, size, area of the flat/plot and the date of booking/allotment/purchase would be wholly immaterial.

27. Further a decision rendered by a two judge Bench in ***Anjum Hussain Vs. Intellicity Business Bank Pvt Ltd reported in (2019) 6 SSC 519*** wherein it is held that the impugned judgment in the said appeal is contrary to the principles enunciated in Ambrish

Kumar Shukla and does not lay down the correct position of law. Here the decision spell out the procedural requirements of the Section 12(1)(c), and where there are numerous consumers having the same interest. The decision further clarifies the procedural requirement where in application Under Section 12(1)(c) can be filed along with the permission of the District forum and this Act applies to a situation where there are numerous consumers" having the same interest". The inference from the reasoning reveals that the meaning of the word 'same' is different from 'similar'.

28. Further Hon'ble Supreme Court observed in the said appeal that the complaint contained an averment that its scope was not restricted to the complainants and applicant do not evince any intent to present the complaint of the consumers who share the same interest. Here the complaint relates to the grievance of twenty six complainants, which do not profess to possess a representative character. Therefore, flat purchasers with different apartment buyer agreements, different dates of execution of the agreements, and different prices and areas of flats may yet have a commonality of interest.

29. The tests that has to be applied is of the sameness of interest, and their interests in securing the redressal of common grievances against the developer may coincide.

30. In view of the above observations and reasons discussed in the appeal Hon'ble Supreme Court held and concluded that, application filed by the appellants was not maintainable as per the concerned Section of the Act. Hon'ble Supreme Court remanded the matter to NCDRC for fresh disposal of the case as NCDRC has dismissed the complaint in toto.

31. Hon'ble Supreme Court remanded the matter to NCDRC for fresh disposal of the case as NCDRC while rejecting the application of the appellants under Section 12(1)(c) of the consumers protection Act has dismissed the main complaint itself.

It is relevant to note here that there is no parallel provision to Section 12(1)(c) of the consumers protection Act in the RERA statute. However principles can very well be made applicable in the context of commonality of interest amongst complainants. Admittedly, president of the appellant association along with one of its members filed the complaint for and on behalf of other members of their association having distinct reliefs such as claim of compensation and option to exit from the project. It is pertinent to note that there is no commonality in respect of dimensions of the flat, sale consideration, date of sale agreement and date of completion and hand over possession of the flat. In view of the above variable factors in the present complaint under the appeal it can be safely said that the

principles laid down by the Hon'ble Apex Court can very well apply to the appeal on hand.

32. In the course of argument, learned counsel for 1<sup>st</sup> respondent, contends that, the appellant-complainant cannot be considered as "person aggrieved".

33. Section 31 says about the aggrieved person who may file a complaint. Whereas Section 2(zg) says 'person' includes 1<sup>st</sup> an individual, 2<sup>nd</sup> A Hindu Undivided family, 3<sup>rd</sup> a Company, 4<sup>th</sup> A firm under the Indian partnership Act 1932, 5<sup>th</sup> A competent Authority, 6<sup>th</sup> An Association of persons or a body of individuals whether incorporated or not, 7<sup>th</sup> a Co-operative society registered under any law, 8<sup>th</sup> any such other entity as the appropriate government, may by notification, specify in this behalf. Here it is pertinent to refer to the definition of a "person" in Section 2(zg) (VI) which is reproduced below.

"An association of persons or a body of individuals whether incorporated or not;"

34. Of course definition of word "person" includes any individual as well as association. Rule 29 deals with filing of a complaint and manner of holding an inquiry by Regulatory Authority, wherein it is said that allottee who want to file complaint to the

Adjudicating Officer has to file it in the form 'N' by tendering fee of Rs.1,000/- in each complaint.

35. In the present case on hand 132 members/allottees have filed a single complaint seeking delay compensation and 13 members out of 132 allottees seeking refund of amount. Since each allottee is having a separate & distinct cause of action, it is not correct on the part of the association to claim the above said relief by filing a single complaint for different cause of action. Based on the above facts the present complaint filed by the complainant association on behalf of its members for different cause of action is not maintainable. The members who are aggrieved by the act of a promoter having different cause of action, each of the members can file their independent complaint. So the relief sought by the association in the present complaint on behalf of its members is not maintainable.

36. The learned Adjudicating Officer in the impugned order observing that the complaint has been filed on behalf of the 132 members of the project. Among them 13 persons have sought for exit option and 119 members have sought for delay compensation. Therefore, the present complaint is based upon different cause of action of each allottee, which has to be addressed independently. In view of this, a single complaint cannot be filed for the different cause of action. Further the learned Adjudicating Officer in the impugned



order has observed that when the developer has failed to complete the project within the time as mentioned in the agreement of construction, then allottee will get an opportunity either for claiming delay compensation or to exit from the project seeking return of the amount along with interest and compensation as per Section 18 of the Act.

37. At this stage, it is apt to refer to relevant provisions of the Bye laws of the Appellant-Association.

“Clause (10) **Powers and Duties of the Associations:**

“ (a).....

(e) The Association shall represent the collective interest of the Community in PBHS (Pashmina Brookwoods Housing Society) with various external agencies.

(f) The Association shall commence/defend any legal proceedings only in so far as it is related to or connected with and affects majority of Members and the affairs of the PBHS & its Residents”.

38. The judgments cited by the promoter in the case of VIKRANT SINGH MALIK AND OTHERS VS. SUPRETECH LIMITED AND OTHERS -2020 SCC ONLINE SC 702-squarely applies to the facts of the case. Therefore members by joining together cannot maintain a single complaint when there is no commonality of cause of action. It

is no doubt true that members can maintain a single complaint only if the cause of action is common and the relief sought is common to all the members with same interest and not otherwise.

39. In view of the above discussion we are of the considered view that the complaint under appeal is not maintainable and the impugned order passed by the learned Adjudicating Officer does not call for interference. Accordingly, the point is answered in the affirmative.

40. Before parting with the case we would like to state that as per Section 44(5) of the RERA Act, the appeal shall be disposed of within 60 days from the date of receipt of appeal. This appeal was received in the Tribunal on 24.06.2020. Thereafter to secure the appearance and submission of the documents sufficient long time was taken. And also there was lockdown due to COVID -19 pandemic and for all mentioned reasons the appeal could not be disposed of within the time prescribed under section 44(5) of the Act.

**Point No. 2:-** In view of our findings on point No.1, we proceed to pass the following:

### **ORDER**

- i) The appeal filed by the appellant association is hereby dismissed as the complaint filed under the appeal in the present form is not maintainable.

- ii) The impugned order dated 11.3.2020 passed by the learned Adjudicating Officer in CMP/190830/0004075 is hereby affirmed.
- iii) In the event of any member of the association filing a separate complaint by paying separate court fee before Adjudicating Officer against the promoter, the Adjudicating Officer is hereby directed to consider and dispose of the same in accordance with law.
- iv) The Registrar of the Tribunal is directed to comply with section 44(4) of the Real estate (Regulation and Development) Act, 2016 and return the records, if received from RERA.

No order as to costs.

**Sd/-**  
**HON'BLE CHAIRMAN**

**Sd/-**  
**HON'BLE JUDICIAL MEMBER**

**Sd/-**  
**HON'BLE ADMINISTRATIVE MEMBER**