

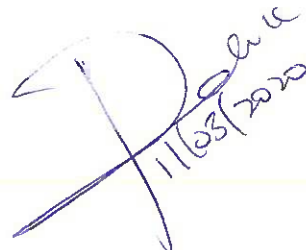
ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು  
**Real Estate Regulatory Authority Bangalore**  
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್,  
ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್‌ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

**BEFORE ADJUDICATING OFFICER, RERA**  
**BENGALURU, KARNATAKA**  
**Presided by Sri K.PALAKSHAPPA**  
**Adjudicating Officer**  
**Date : 11<sup>th</sup> March 2020**

<b>Complaint No.</b>	<b>CMP/190830/0004075</b>
<b>Complainant</b>	Pashmina Brookwoods Apartment Owners Welfare Association, Rep.by its President Col.NA Mudakatte and Member Mr.Prashanth TR, #204, Kumar Ashraya, 194/1, 9 <sup>th</sup> Cross, 2 <sup>nd</sup> Block, Off.RV Road, Jayanagar East, Bengaluru-560011 Rep.by Sri Rajkumar, Advocate
<b>Opponent</b>	Pashmina Brookwoods Shashwati Realty Pvt.Ltd., Pashmina Builders & Developers Pvt. Ltd., 19/1, 2nd Floor, Doddamane Building, Vittal Mallya Road, Bengaluru - 560001

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

1. Pashmina Brookwoods Apartment Owners Welfare Association, being the complainant has filed this complaint bearing no.CMP/190830/0004075 under Section 31 of RERA Act against the project "Pashmina Brookwoods" developed by Shashwati Realty Pvt.Ltd., for the relief delay compensation to some of the members of the Association as well as refund of the amount to some of the members. The facts of the complaint reads as under:

  
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1. A residential project named Pashmina Brookwoods was launched by the Respondents during 2013. 2. The Complainants (List attached) had booked their respective apartments by paying the required amount and signing Agreements to Sell, Agreements to Construct, Supplementary Agreement to Sell and Supplementary Agreement to Construct on different dates between 2013 and 2015. 3. As per the Agreement to Construct the project was to be completed by 31 Aug 2015. With a grace period of six months the Completion Date was 23 Feb 2017. The project has NOT BEEN COMPLETED till date.

Relief sought from RERA : Delay Compensation and Exit from Project

2. In pursuance of the notice issued by the authority, the complainant Association has appeared through his advocate and on behalf of the respondent his counsel Sri Veeresh Budhihal was present.
3. Heard the arguments.
4. The point that arise for my consideration is
  - a) Whether the complainant Association is entitled for the relief as sought in the complaint?
  - b) If so, what is the order?
5. My answer to the above point is negative for the following

**REASONS**

6. This complaint is filed by the complainant describing himself as Pashmina Brookwoods Apartment Owners Welfare Association represented by its President Col. NA Mudakatte and Member Mr.Prashanth TR, seeking for the relief of delay compensation and also for refund of the amount. During the course of arguments, the learned counsel for the complainant has given a memo stating that the respondent has developed the project by name Pashmina Brookwoods by M/s.Shashwati Realty Pvt.Ltd., and M/s Pashimina Builders and Developers Ltd.,

  
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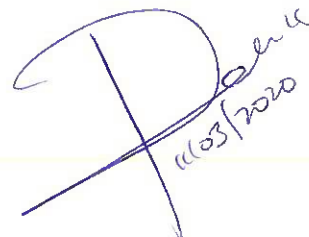
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7. By looking into the written arguments submitted by the learned counsel for the complainant, it reveals that this complaint has been filed on behalf of the 132 + 13 members of the said project. Among them 13 persons have sought for exit option and 132 members are seeking for delay compensation. The learned counsel for the complainant has given the chart by making serial numbers as 1 to 132 members of the Association are seeking delay compensation and 13 members are seeking refund of the amount. On verification of the said list, it reveals that the delay compensation is sought by 132 members for the number of delays and similarly, 13 members are seeking for exit option is also having different number of delay and also different quantum of amount as they have paid. The developer who has filed his objection statement has taken many contentions in his written arguments. He submitted as under:

*Para-14- It is submitted that as per the construction agreements, the apartments in question were agreed to be delivered by 31/08/2016 with a grace period of 6 months i.e., by 28/02/2017, subject to procuring occupancy certificate within the stipulated time. However, due to factors which were not in the control of the respondents the possession has not been delivered to the complainants by the agreed time. The said delay is due to reasons mentioned in clause (c) of the construction agreement which are beyond the control of the respondent. It is further submitted that the complainants have entered into supplemental agreement for sale and supplemental agreement for construction with respondents on various dates as admitted by the complainants at Sl.No.9 of the complaint that they have agreed to entered scheme called 'Live Lite' scheme in the form of supplementary agreement. Under the said scheme, till the date of intimation of possession of the flat, the EMI will be paid by the respondents on behalf of*

  
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the complainants. The complainants have voluntarily agreed and entered into the said scheme, however the above-mentioned complainants have failed to make payment as per schedule which jeopardised the phase-wise construction activities of the respondents.

Par-17: As per said agreement of construction, date of delivery of possession of schedule apartment was mutually agreed to be extended to 30/09/2021. It is pertinent to note however, that as per clause 5 of the said agreement, that the date of handing over of possession of apartment was excluding the time taken for securing occupancy certificate and also was subject to variations on account of Force Majeure or acts of God or non-availability of steel, cement, other vital building materials, water and electricity supply etc. The date of possession was thus 30/09/2021 as per the RERA registration certificate, which was when the residential apartment ought to have been handed over along with the occupancy certificate to the complainants by the respondents.

Para-18- Assuming but not accepting that any compensation is payable to the complainants on account of alleged delay in handing over possession of the apartment in question, then it would be as per the terms of the agreements, which are mutually agreed upon by complainants and respondent, as mentioned in clause 4(i) of the agreement of contraction i.e., at the rate of Rs.10/- per sq.ft per month. Even then, the compensation stipulated therein is subject to the conditions set out in the clause 5(c) of the said agreement, which speaks about the circumstances under which the Builder cannot be held liable for delay in completion of construction of the apartment in question. Further, in terms of the supplemental agreement executed between the parties at clause 'c' stipulates that builder undertakes to pay the EMI on behalf of the complainants till they are intimated about the readiness of the

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possession. Accordingly, the respondent is paying the EMI on behalf of the complainants. Hence the complainant are not permitted double benefits i.e., rebate of payment of EMI and compensation for the period till they are intimated about the possession. If this complaint is allowed, it amounts to penalizing the respondent for paying compensation to each of the complainants though he is paying the EMI on behalf of each complainant. Therefore the complaint is pre-mature and is liable to be dismissed.

Para-24-The prayer sought for by the complainants to the effect that 'Delay compensation, Exit and Refund' is impermissible since the complaint is pre-matured. The project undertaken by respondent/developer is registered under the provisions of the Act and the timeline fixed by the authority is 30/09/2021. Schedule property will be handed over to the complainants as per the fresh timeline granted by the authority. Since the fresh time line is yet to be completed, and since the project is well within the RERA timeline, there is no question of directing respondents to handover possession. Under these circumstances, directing respondents to pay penalty also does not arise.

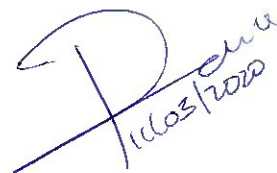
8. By looking into stand taken by the developer, it reveals that he is attacking the case of the complainant on many grounds. Further he states that the delay is not intentional one. According to him the each complainant has entered into supplemental agreement agreeing respectively to abide to a condition that the developer has to pay EMI till possession is delivered. Apart from these and other factors were preventing the developer from completing the project within time. It is his case that the date given to RERA authority should be prevailed against the date given in the agreement of sale. But it is not correct to say because it is already held in so many

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cases as to the date given in the agreement of sale should prevail. When the developer has failed to complete the project within the time as mentioned in the agreement of sale, then allottee will get the opportunities as per Sec.18 of the Act, either by taking delay compensation or exit from the project taking refund of the amount along with interest it is the choice of the allottees. Further as per the stand taken by the developer I have to go through the each agreement along with their respective supplemental agreement to determine the date of agreed completion date and to decide from which period each allottee is entitled either for delay compensation or refund of the amount. It is said by the developer that as he has agreed to give EMI to the bank till the date of possession each of allottee can not claim the relief as a matter of right and the same has to be adjudicated from each of the allottee. Hence, I say that the present complaint is based upon the different cause of action on each of the allottee which has to be addressed independently. In view of the same I would say that a singly complaint cannot be filed for the different cause of action.

9. In this complaint, the president of the association and one of the members of the association jointly filed this complaint on behalf of all its members. As per the list given by the complainant 132 members are seeking the delay compensation whereas 13 persons are seeking for refund of the amount. When there is a fault on the part of the developer to complete the project within due time as mentioned in the agreement of sale, the allottee will get an opportunity either to go for delay compensation or for refund of the amount. When that being the case, whenever an allottee is aggrieved by the act of the developer, he can file a complaint under section 31 of the Act. Sec.31 says that the aggrieved person can file this complaint. Next question is who is the person who can file the

A handwritten signature in blue ink, followed by the date '16/03/2020' written in black ink.

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complaint? As per Sec.2(zg), the person is defined as an individual and Hindu Undivided Family.

10. As per Sec.31 of the Act, any aggrieved person can file a complaint for violation of any contravention of this Act, Rules and Regulations made there under. Further as per Rule 29 in Chapter X deals with filing of complaint wherein also any aggrieved person may file a complaint with the authority for any violation under any Act or Rules or Regulations made there under either before the Adjudicating officer or before the authority depending upon the nature of the relief. I would say that aggrieved person means one who is actually sustaining loss can move the authority for taking appropriate relief. In case the complaint is filed by the Association on behalf of its members, then I would say that relief sought by the complainant should be a common one applying to all members equally. But by looking into the nature of the relief sought by the complainant Association, it reveals that 132 members of the Association are seeking delay compensation for different delayed period and 13 members are seeking for the refund of the amount based upon different cause of action. I would say that delay compensation is to be awarded based upon date given to the respective allottee with respect to the dates of agreement of sale. Accordingly, the chart submitted by the Complainant Association reveals that different members are having different dates of completion in their agreement of sale. It means all the 132 members are not having the common cause of action. Similarly, refund of the amount will have to be ordered based upon their amount paid to the developer and also the date of payment, it is also different from each member. Therefore, I would say that there is no common object or common cause of action to the members of the

*D. Deval*  
*M. K. S. S. S.*

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Complainant Association. I would say that the Association cannot represent the individual depending on their individual cause of action. Of course, definition of a word 'person' includes any individual as well as Association. But it does not mean that Association can represent grievances of an individual which is based upon individual cause of action. In furtherance of the same, I would say that Rule 29, where it is said that allottee who wanted to file the complaint to the Adjudicating officer has to file complaint in the Form No. O' by tendering fee of Rs.1,000/- to each complaint. By looking into section, it reveals that unless there is a violation of the terms of the agreement of sale, allottee cannot file a complaint. Here, there are two groups of allottees, Firstly 132 members-allottees are seeking delay compensation and (ii) 13 members-allottees seeking refund of amount. Each one of the members is having different date of agreement of sale and completion date in their respective agreement of sale. Therefore, cause of action arises each of the allottee is depending on date of completion mentioned in their respective agreement of sale. Therefore, I would say that each allottee is having his own cause of action. When that being the case, it is not correct on the part of the Association to claim the relief by filing a single complaint for different cause of action. I would say that each member has to file his individual complaint depending upon his own cause of action by tendering Rs.1,000/- as fee to the authority. Therefore, the present complaint filed by the complainant Association on behalf of its members have different cause of action is not maintainable. Therefore, I would say that the present complaint is not maintainable and all the members of the Association who are having different cause of action to each of the members can file their independent complaint and as such, the relief sought by the Association on behalf of its members is not maintainable and hence, I answer this issue in the negative.

*Devi*  
*Umesh*



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11. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint is filed on 14/09/2019. After hearing the arguments of the complainant the case was reserved for judgment. With this observation, I proceed to pass the following.

**ORDER**

- a. The Complaint filed by the complainant-association bearing No. CMP/190830/0004075 is hereby dismissed as not maintainable.
- b. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 11/03/2020).

  
(K.PALANISHAPPA)  
Adjudicating Officer

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