

PROCEEDINGS OF THE AUTHORITY

BEFORE BENCH 5

PRESIDED BY HON'BLE MEMBER G.R. REDDY

COMPLAINT NO: CMP/00960/2023

DATED THIS 13th DAY OF NOVEMBER, 2023

COMPLAINANT : Mr.Bhawani Singh Shekhawat
AWHO, Sandeep Vihar, No.1402,
Tower H-26, Kannamangala,
Kadugodi Post
Bangalore : 560 067

(By M/s.VSK & Co., Advocates)

RESPONDENT /
PROMOTER : M/s.Shashwati Realty Pvt Ltd.
No.19/1, 2nd Floor, Doddamane
Building, Vittal Mallya Road
Bangalore : 560 001

(Mr.Arvind Rao, Advocate)

PROJECT NAME &
REGISTRATION NO. : PASHMINA BROOKWOODS
PRM/KA/RERA/1250/304/PR/
171015/000556

J U D G E M E N T

This complaint is filed under Sec-18 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project **PASHMINA BROOKWOODS**, situated at Kammasandra Village, Bidarahalli Hobli, Bengaluru East Taluk, Bangalore, Hoskote, Bangalore Rural District, praying for a direction to Refund the amount paid with Interest.

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

1. As per the details furnished by the Complainant in the memo of calculation, the complainant has entered into an agreement of sale dated 04.08.2021 for purchase of an apartment and paid a sum of Rs.20,82,594/- (Rupees Twenty Lakhs Eighty Two thousand five hundred ninety four only) towards purchase of an apartment in the project known as **PASHMINA BROOKWOODS.**

2. The project completion date as per agreement was 30.06.2022. The Respondent has not completed the project as per the date agreed in the agreement and handed over the apartment to the complainant. Since it is more than 2 years delay from the date of completion, agreed by the Respondent and failed to communicate the probable date of completion to the complainant. Hence, the complainant has filed the above complaint before the Authority praying for following reliefs:

Refund and Cancellation of Sale Agreement dated 4.8.2021 due to the delay in possession as per agreement

3. From the records produced by the Complainant, as per the agreement, the completion date is agreed as 30.06.2022. The promoter-respondent was required to complete the project and hand over possession of the apartment by 30.06.2022. Since the respondent-promoter has failed to complete the construction and handover the apartment within the due date mentioned in the agreement, the complaint filed by the Complainant which is admissible for relief in accordance with Section 18 of the Act.

3. After registration of the complaint, Notice was sent by the Authority to both complainant and respondent to appear before the Authority. Complainant has appeared before the Authority and submitted before the Authority that the Respondent is avoiding the complainant's request of possession and continuously demanding for pending payment that is due only on possession date and delayed the construction work. Since, there was considerable delay in completion of the construction and there is no communication from the Respondent intimating the Complainant the probable date of completion, the complainant preferred to cancel the agreement entered into with the Respondent and requested for refund of the amount paid with interest. The advocate appearing for the Respondent entered appearance before the Authority by filing memo of appearance and did not file any vakalath or statement of objections.

4. The Complainants filed MOC for refund with interest along with supporting documents such as sale agreement, payment receipts etc., and served the same on the respondent. The Respondent has neither filed any MOC nor disputed the MOC filed by the Complainant. Based on the documents and information furnished by the Complainant in their memo of calculation for refund with interest, it is apparent that the promoter has received the amount and failed to refund the money with interest. Since the respondent-promoter has failed to refund the money to the complainants, this complaint is admissible for relief in accordance with Section 18 of the Act.



5. As per Section 18 of RERA Act, in case the allottee wishes to withdraw from the project the promoter is liable 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. Therefore, as per Section 18 of the Act, the promoter is liable to refund the amount received along with interest.

6. From the averments made in the complaint and the documents produced by the Complainant, it is evident that the complainant has paid the advance sale consideration amount and is entitled to get refund of their amount paid along with interest as per the memo of calculation submitted by the Complainant.

7. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Memo of Calculation for Refund submitted by the Complainants as on 09.09.2023

Principle amount (A) Rs.	Interest (B) As on 09.09.2023 Rs.	Refund from Promoter (C) Rs.	Total Balance Amount (A+B) Rs.
20,82,594	4,06,465		24,89,059

And accordingly the Authority passes the following:



ORDER

1. In exercise of the powers conferred under Section 31 read with section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint Bearing No. CMP/00960/2023 is hereby allowed.

2. Respondent is directed to refund a sum of **Rs. 24,89,059/- (Rupees Twenty Four Lakhs Eightynine Thousand Fiftynine only)** towards refund with interest to the complainant within 60 days from the date of this order as per the calculation of the Complainants, calculated from 01/05/2017 till 09.09.2023. The interest due from 10.09.2023 up to the date of final payment will be calculated likewise and paid to the complainant. The complainant is at liberty to initiate action for recovery in accordance with law, if the respondent fails to pay the amount as per the order of this Authority.


(G.R. REDDY)
MEMBER
FIFTH ADDITIONAL BENCH
K-RERA