

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4

PRESIDED BY SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

Dated 20th DAY OF NOVEMBER 2023

COMPLAINT No: CMP/ 221017/0010111

COMPLAINANTS..

**G. VAIDYANATHAN
MADURIMA AIYAR
VINAYAKA HEIGHTS
BANASWADI OUTER RING ROAD
SERVICE ROAD
NO: 16, BANASWADI
BENGALURU URBAN-560043**

(IN PERSON)

V/s

RESPONDENT....

**M/S SHASHWATI REALTY
PRIVATE LIMITED
NO; 19/1, 2ND FLOOR
DODDAMANE BUILDING
VITTAL MALLYA ROAD
BENGALURU URBAN-560001**

**(REP. BY DUA ASSOCIATES
ADVOCATES)**

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "**PASHMINA BROOKWOODS**" developed by "**M/s SHASHWATI REALTY PRIVATE LIMITED**" for the relief of refund with interest.

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2. This Project is registered in RERA bearing registration no.PRM/KA/RERA/1250/304/PR/171015/000556.
3. The promoter has developed this project in the limits of Khatha No. 48,49,50 & 51(Old Sy.No; 22,23/1 & 24), Kammasandra Village, Bidarahalli Hobli, Bengaluru East Taluk, Hoskote, Bengaluru Rural District.
4. The gist of the complaint is that the complainants have booked a flat bearing no. B2CO701, situated on 7TH floor in the project "PASHMINA BRROKWOODS" and thereafter entered into an agreement of sale and construction agreement both dated 29/4/2015 with the respondent for a total sale consideration of Rs.21,86,238/- (Rs. Twenty one lakhs eighty six thousand two hundred thirty eight only). The complainants have paid an amount of Rs.1,00,000/- on 4/9/2014, Rs.2,19,921/- on 4/5/2016 altogether Rs.3,19,921/-(Rs. Three lakhs nineteen thousand nine hundred twenty one only) as per memo of calculation dated 02/01/2023 to the respondent-builder which has been duly acknowledged by him. The builder was required to hand over the possession of the said flat to the complainants within 31/8/2016 with a grace period of 6 months i.e. by February 2017. It is contended that the respondent had allotted the said flat in favour of the complainants and issued an allotment letter on 1/9/2014. The complainants were intended to borrow loan from their designated banks towards purchase of the said flat. Due to some

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reasons, the loan agreement could not be executed due to lack of clarity on the part of the designated banker. The respondent has caused enormous delay in completion of the project. Having lost confidence with the respondent, the complainant has approached this forum for the relief of direction to the respondent to refund the entire amount paid along with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent did appear before this Authority through its counsel on Vakalat. Subsequently, neither the respondent nor his counsel put forth their grievances before this Authority and have not taken any interest to file statement of objections, producing documents if any on its behalf.
6. On perusal of the sale and construction agreement, it is seen that the completion date is agreed as February 2017. The Promoter-respondent was required to complete the project and hand over possession of the unit no. B2CO701 in the project " PASHMINA BROOKWOODS" to the complainants by February 2017. In cases wherein the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, this complaint is admissible for the relief in accordance with Section 18 of the Act.
7. In support of their claim, the complainants have produced documents such as (1) copy of agreement of sale and construction agreement both dated 29/4/2015 (2) copy of allotment letter dated 1/9/2014 (3) copy of payment intimation dated 1/9/2014 (4) copy

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of payment receipts dated 1/9/2014 and 4/5/2015 (5) memo of calculation

8. On the above averments, the following points would arise for my consideration:-

1. Whether the complainants are entitled for the relief claimed?
2. What order?

9. **Findings on the above points are as under:-**

1. In the Affirmative.
2. As per final order for the following:

FINDINGS

10. Findings on point No.1:- The complainants have approached this forum seeking for the relief of refund of amount paid along with interest. The grounds urged are that the complainant have booked a unit flat no.B2CO701 in the project "PASHMINA BROOKWOODS" of the respondent-promoter. Accordingly, both the parties have entered into an agreement of sale and construction agreement both dated 29/4/2015 for a total sale consideration of Rs.21,86,238/- (Rs. Twenty one lakhs eighty six thousand two hundred thirty eight only). The respondent had promised to hand over the possession of the said flat within 31/8/2016 with a grace period of 6 months i.e by February 2017. However, the respondent has failed to abide by the terms and conditions enumerated in the agreement of sale dated 29/4/2015 and miserably failed to hand over the said unit within the stipulated timeline as agreed.

11. Looking to the averments of agreement, parties herein have entered into an agreement of sale and construction agreement both dated



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29/4/2015. The agreement of sale is key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement of sale and construction agreement dated 29/4/2015, the respondent was supposed to handover the possession of the said flat to the complainants within 31/8/2016 with a grace period of 6 months i.e. by February 2017. But the respondent had not completed and handed over the possession of the said flat to the complainant till date.

12. As per the decision of the judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

"23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)..... The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.

13. Further, in the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No(s) 6745-6749 of 2021(arising

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out of SLP (Civil) No(s) 3711-3715 of 2021 between M/s Newtech Promoters and Developers Private Limited Versus State of UP & others, it is held as under:

"Section-18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund or the amount with interest at such rate as may be prescribed in this behalf"

The said principle is aptly applicable to the present case on hand.

14. 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.

15. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment /plot in accordance with sale agreement.

16. From the averments made in the complaint, it is obvious that the complainants have paid the substantial sale consideration and are entitled to get their amount paid along with interest as per the memo of calculation submitted by the complainants on 2/1/2023. The complainants have claimed an amount of Rs.5,67,571/- (Rs. Five lakhs

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sixty seven thousand five hundred seventy one only) as refund with interest. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

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

Memo Calculation submitted by the complainant as on 02/01/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 02/01/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
3,19,921	2,47,650	0	5,67,571

18. Having regard to all these aspects, this Authority is of the opinion that the complainant is entitled for refund along with interest.

19. Sum and substance of the case is as under:

Date of agreement of sale	29/4/2015
Date of construction agreement	29/4/2015
Sale consideration	21,86,238/- (Rs. Twenty one lakhs eighty six thousand two hundred thirty eight only)
Amount paid	Rs.3,19,921/- (Rs. Three lakhs nineteen thousand nine hundred twenty one only)
Promised date of possession as per agreement of sale	February 2017
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Refund of amount paid along with interest.

ASB

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20. Despite of several notices served upon the respondent, the counsel for the respondent did appear before this Authority and filed Vakalat. Subsequently, they have failed to file statement of objections and furnishing documents in support of their defence and hence not contested the matter. In the absence of any resistance by the respondent and considering the claim of the complainants which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainants. Accordingly, the points raised above is answered in the Affirmative.

21. Findings on point no.2. In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, I proceed to pass the following:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: CMP/221017/0010111 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **5,67,571/-** (Rupees Five lakhs sixty seven thousand five hundred seventy one only) towards refund with interest to the complainants within 60 days from the date of this order calculated at the rate of 9% from 04/09/2014 till 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 till 02/01/2023.
2. The interest due from 03/01/2023 shall be calculated likewise and paid to the complainants till the date of entire realization.



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3. The complainants are at liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.


(H.C. Kishore Chandra)
Chairman
K-RERA

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