

**PROCEEDINGS OF THE AUTHORITY**

**BEFORE BENCH-5**

**PRESIDED BY HON'BLE MEMBER G.R. REDDY**

**COMPLAINT NO.CMP/001062/2023**

**Dated 19<sup>th</sup> FEBRUARY, 2024**

COMPLAINANT : Mr.M.Thangamani  
22/6, Sowrastira Elementary School  
Lane, East Veli Street  
Madurai : 625001, Tamil Nadu

(Party in Person)

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

(By M/s.Dua Associates, Advocates)

PROJECT NAME & : PASHMINA BROOKWOODS  
REGISTRATION NO. PRM/KA/RERA/1251/304/PR/  
171015/000556

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

This complaint is filed under Sec-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project **PASHMINA BROOKWOODS** praying for a direction to pay delay period interest and for other reliefs:

**BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-**

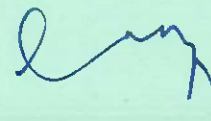
1. The complainant has entered into an agreement of sale on 14.10.2014 for purchase of an apartment in the project known as



**PASHMINA BROOKWOODS**, developed by the Respondent. The project completion date as per agreement was 31.08.2016. The complainant has paid an amount of Rs. 1,79,707/- (Rupees One Lakhs Seventy Nine thousand seven hundred seven only) to the respondent till the date of complaint. Since there was delay of more than nine years in handing over the apartment, the complainant has filed the above complaint before the Authority praying for a direction to the respondent to pay delay period compensation.

2. On a perusal of the sale agreement, it is seen that the completion date is agreed as 31.08.2016. The promoter-respondent was required to complete the project and hand over possession of the apartment by 31.08.2016. In cases where the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee as per the agreement entered into between the parties, the Complainant has the right under the Act to file the complaint before the Authority, accordingly filed the above complaint and the same is admissible for relief in accordance with Section 18 of the Act.

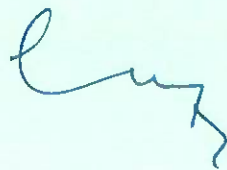
3. After registration of the complaint, the Authority issued notice to both Complainant and the Respondent to appear before the Authority. In pursuance of the notice, the respondent on 18.01.2024 has appeared before the Authority through its counsel and filed vakalath and prayed for time to file statement of objection. The complainant also appeared before the Authority on 18.07.2023 and filed various documents in support of its contention and served the same on the respondent. Copy of the acknowledgement for having served on the respondent was



produced by the complainant before the Authority. The complainant has also filed an application dated 18.01.2024 amending his prayer claiming the following reliefs and the same was served on the respondent:

- a) To pay delay period interest
- b) To direct the Respondent to complete the construction and handover the apartment as per agreement.

4. On 18.01.2024, the Complainant has filed MOC together with supporting documents and served the same on the respondent. Since respondent has not filed statement of objections, final opportunity was given to the respondent to file statement of objections and granted time to the Respondent to file statement of objections till 31.01.2024 and thereafter the matter will be posted for orders. Respondent filed statement of objections on 31.01.2024 along with copies of NGT order, Supreme Court of India judgment and order of Karnataka State Pollution Control Board in support of its contention. The complainant has also submitted copy of the sale agreement, construction agreement, tripartite agreement, receipts for having paid the amount, email communications and bank statement in support of their contentions in claiming delay period interest. In the complaint, the complainant has submitted that the project is delayed by more than eight years and hence the complainant has approached this Hon'ble Authority for a direction to the respondent to complete the construction of the apartment in all respects and handover the same to the complainant along with payment of delay period interest.



6. On the above averments, the following points would arise for my considerations:-

- a) Whether the Complainant is entitled for the relief claimed?
- b) What order?

7. Findings on the above points are as under:

- a) In the Affirmative
- b) As per final order

**FINDINGS:**

8. The complainant filed MOC for delay period interest together with supporting documents and the same was served on the respondent. The Complainant in support of his contention has produced various documents mentioned above and prayed for awarding delay period interest and handing over the possession at the earliest. The respondent has also submitted various documents as mentioned above in support of its contention.

9. The Respondent in its statement of objection contended that the project has not been completed within stipulated time due to force majeure events such as scarcity of raw materials, non availability of skilled labours, obstructions in dumping solid waste at Mandur dump yard or such reasons beyond the control of the respondent. The Respondent further submits that the impact of the ruling of the NGT, New Delhi and also the order passed by the Hon'ble Supreme Court of India also caused for the delay in completion of the project. Further, the Respondent has not brought to the notice of K-RERA as well as the allottees / customers the highlight of the NGT order as well as the order

passed by the Hon'ble Supreme Court of India. No document is produced by the Respondent stating that they have informed the order passed by NGT and Hon'ble Supreme Court of India to the allottees explaining the delay in completion of the project. In addition COVID-19 pandemic and the lockdown have also contributed significantly for the delay and completion of the project. The respondent has sought to explain the delay by referring to above issues which are nothing but routine requirements of compliances and construction related issues which are required to be handled by the Promoter of any project who has undertaken to develop the real estate project. None of the reason submitted by the Respondent has any force and legal validity to justify the delay in completion of the project and provide any exception from the application of Section-18 of the Act. Therefore, as per Section 18 of the Act, the promoter is liable pay the delay period interest.

10. One of the contentions raised by the respondent for delay in completing the project is on account of Covid-19. The completion date agreed between the complainant and respondent is August 2016 and Covid-19 started during the year 2020 and there is no relevance for the respondent to attribute Covid-19 as the reason for delay in completion of the project. Further, the respondent also claimed grace period of 6 months after the completion date. The project should have completed by June, 2017 after taking into account the grace period of 6 months. Admittedly, the construction of the apartment is not completed even as on this date i.e., December 2023. Therefore, the exemption sought by the Respondent on account of Covid-19 for calculation of delay period interest for 9 months and grace period of 6 months as per



agreement is not tenable and the same is not agreed by the Authority. The fact remain that the amounts paid by the Complainants remained with the respondent and there is a cost associated with it to the complaint which is recognised by the Act.

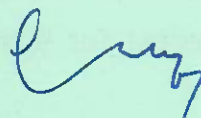
11. On a perusal of the memo of calculation for delay period interest and other documents submitted by the complainant before the Authority, it is evident that the complainant has paid the amount of sale consideration and the Respondent has acknowledged the receipt of the same. Admittedly there is a delay in handing over the apartment as per the agreement. The Complainant has served MOC for delay period interest along with supporting documents on the Respondent. The Respondent has not filed any MOC and the objections raised on MOC is not considered by the Authority for the reasons mentioned above. Hence the complainant is entitled for delay period interest u/s 18 of the Act.

12. Accordingly, the **point (a)** raised above is answered in the affirmative.

13. **Findings on Point No.b** : In view of the above observations, I conclude that, this complaint deserves to be allowed and accordingly, I proceed to pass 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 CMP/001062/2023 is hereby allowed.



2. Respondent-Promoter is directed to pay interest on delay period at the rate of SBI MCLR + 2 from 31.08.2016 till the date of handing over possession along with occupancy certificate. The promoter shall pay the interest for the delay period as arrived at by the Complainant amounting to Rs.1,27,767 (Rupees One lakhs twenty seven thousand seven hundred sixty seven only) within 60 days from the date of this order. The Promoter-Respondent is also liable to pay delay period interest every month for the subsequent period of delay and up to the date of completion and handing over of the apartment as per the agreement of sale. 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 orders of this Authority.

3. Respondent-Promoter is directed to execute the Sale Deed in favour of the complainant after receiving the balance sale consideration, if any, payable by the complainant as per the agreement and handover possession to the complainant with all amenities as per agreement along with occupancy certificate at the earliest.

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