

PROCEEDINGS OF THE AUTHORITY

BEFORE BENCH-5

PRESIDED BY HON'BLE MEMBER G.R. REDDY

COMPLAINT NO.CMP/00343/2023

Dated 19th FEBRUARY, 2024

COMPLAINANTS : 1. Mr.M.Jeyakumar
2. Ms.Suganya J

Both are residing at
Siroyashine Apartment
Block A, 705, #21, KHB Colony Main
Road, Manorayanapalya, RT Nagar
Bangalore : 560 032

(Party in Person)

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

(By M/s.Dua Associates, Advocates)

PROJECT NAME &
REGISTRATION NO. : PASHMINA BROOKWOODS
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 complainants have entered into an agreement of sale on 19.12.2013 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 complainants have paid an amount of Rs.13,85,231/- (Rupees Thirteen lakhs eighty five thousand two hundred thirty one only) to the respondent till the date of complaint. Since there was delay of more than nine years in handing over the apartment, the complainants have 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 Complainants have 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 Complainants and the Respondent to appear before the Authority. In pursuance of the notice, the respondent on 18.07.2023 has appeared before the Authority through its

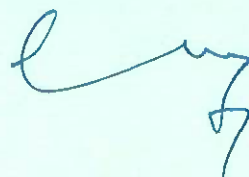


counsel and filed memo of appearance and has undertaken to file Vakalath and statement of objection in the next date of hearing and prayed for time. The complainants also appeared before the Authority on 18.07.2023 and filed various documents in support of its contention and directed to serve the same on the respondent before the next date of hearing and the hearing was adjourned to 14.09.2023. The complainants have filed an application dated 07.08.2023 amending their 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 14.09.2023, the Complainants have filed MOC together with supporting documents and served the same on the respondents. Since respondent has not filed statement of objections, final opportunity was given to the respondent to file statement of objections and the hearing was adjourned to 09.11.2023 and due to administrative reasons, the hearing was postponed to 18.01.2024.

5. On 18.01.2024 the Respondent appeared and filed only vakalath and prayed for time to file statement of objections. Time was granted 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 NGT order, Supreme Court of India judgment and order of Karnataka State Pollution Control Board in support of its contention. The complainants have 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 complainants have submitted that the project is delayed by more than nine years and hence the complainants have 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 complainants along with payment of delay period interest.

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

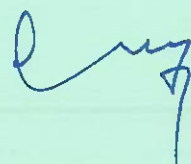
- a) Whether the Complainants are entitled for the relief claimed?
- b) What order?

7. Findings on the above points are as under:

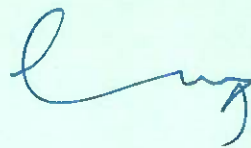
- a) In the Affirmative
- b) As per final order

FINDINGS:

8. The complainants filed MOC for delay period interest together with supporting documents and the same was served on the respondent. The Complainants in support of its 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.

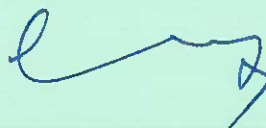


9. The Respondent in its statement of objection contended that the project has not been completed within stipulated time due to force majeure events such as scarcity of raw materials, non availability of skilled labours, obstructions in dumping solid waste at Mandur dump yard or such reasons beyond the 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 the 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 complainants before the Authority, it is evident that the complainants have paid the substantial amount of sale consideration amount 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 Complainants have 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 complainants are entitled for delay period interest u/s 18 of the Act.

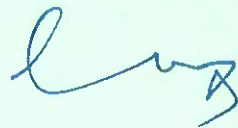
12. Accordingly, the **point (a)** raised above is answered in the affirmative.

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/00343/2023 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 Complainants amounting to Rs.9,31,048/- (Rupees Nine lakhs thirty one thousand forty eight 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 Complainants are 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 complainants after receiving the balance sale consideration, if any, payable by the complainants as per the agreement and handover possession to the complainants with all amenities as per agreement along with occupancy certificate at the earliest.


(G.R. REDDY)

MEMBER

FIFTH ADDITIONAL BENCH

K-RERA

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