

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 FULL BENCH

PRESENT:

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

SMT. NEELMANI N RAJU, HON'BLE MEMBER

SHRI. GURIJALA RAVINDRANADHA REDDY, HON'BLE MEMBER

COMPLAINT NO.: CMP/211008/0008422

DATED THIS 26TH DAY OF APRIL, 2023

COMPLAINANT.....

DIONNE D SOUZA,
A-12, La-Paloma, 1JB Colony,
Sunderlane, Oriem,
Malad (West), Mumbai - 400064.

(In person)

V/S

RESPONDENT.....

SHASHWATI REALTY PVT. LTD.,
No. 19/1, 2nd Floor,
Doddamane Building,
Vittalimallya Road,
Bengaluru - 560001.

(Rep. By. Sri. Arvind Rao, Advocate)

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1. This complaint is filed under section 31 of the RERA Act against the project "Pashmina Brookwoods" developed by "Shaswati Realty Pvt. Ltd.," on Khataha no. 48,49,50 & 51 (Old SY. No. 22,23/1 & 24), Kammasandra village, Bidarahalli Hobli, Bengaluru East Taluk, Bengaluru for the relief of refund with interest.

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2. This project has been registered under RERA bearing Registration No. PRM/KA/RERA/1250/304/PR/171015/000556 valid till 30/09/2021. The Authority gave Covid extension for 9 months i.e., valid till 30/06/2022.

Brief facts of the complaint are as under:-

3. The complainant had booked a flat bearing No. B311304 in the project of respondent wherein the complainant entered into an agreement for sale on 18/01/2014 for the total sale consideration of Rs.21,83,073/- (Rupees Twenty One Lakh Eighty Three Thousand Seventy Three only) and paid Rs.17,25,578/- (Rupees Seventeen Lakh Twenty Five Thousand Five Hundred and Seventy Eight only) to the respondent. The respondent was supposed to handover the flat in favour of the complainant on or before 30/03/2017 but he has failed to handover flat as agreed in the agreement of sale dated 18/01/2014. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel but not contested the matter by filing statement of objections, producing documents etc., on its behalf.
5. In support of his claim, the complainant has produced in all 5 documents such as copy of allotment letter, payment schedule, payment receipts, demand note and sale agreement dated 18/01/2014.
6. Hearings were conducted on 19/08/2022, 12/09/2022, 30/09/2022, 21/10/2022, 28/10/2022, 18/11/2022, 07/02/2023 and 23/03/2023.
7. Heard arguments of both sides.
8. **On the above averments, the following points would arise for my consideration:-**

1. Whether the complainant is entitled for the relief claimed?
2. What order?

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9. **My findings on the above points is as under:-**

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

REASONS

10. **My finding on point No. 1:-** From the materials available on records, it is apparent that in spite of entering into an sale agreement to handover the possession of an apartment, the builder has not completed the project as per agreement and has delayed the project. Hence, the builder has failed to abide by the terms of the sale agreement dated 18/01/2014. There seems to be no possibility of completing the project or handing over possession in near future.
11. In the judgement reported in Civil Appeal No. 3581-3590 of 2020 at para No. 23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,

"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 case of Himanshu Giri came under the latter category. The RERA Act thus

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*definitely provides a remedy to an allottee who wishes to withdraw
from the Project or claim return on his investment."*

12. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only as the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.
13. From the averments of the complaint and the copy of agreement between the parties, the complainant has already paid substantial sale consideration. Having accepted the said amount and failure to keep up promise to handover possession of apartment certainly entitles the complainant herein for refund with interest.
14. Despite of several opportunities were given, the respondent has not filed his memo of calculation. A thorough verification of documentary evidence submitted by the complainant reveals that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as submitted vide his memo of calculation dated 16/03/2023 in view of the non-co-operation of the respondent.
15. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:-

Interest Calculation Till 30/04/2017 (Before RERA)

S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	03-03-2013	100,000	1519	30-04-2017	37,454
2	10-01-2014	219,446	1206	30-04-2017	65,256
3	06-08-2014	70,361	998	30-04-2017	17,314
4	17-04-2015	161,960	744	30-04-2017	29,711
5		551,767		TOTAL INTEREST (11)	149,735

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Interest Calculation From 01/05/2017 (After RERA)

S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	551,767	2145	16-03-2023	8.15	10.15 as on 01-05-2017	329,121
2	16-07-2017	163,446	2069	16-03-2023	8.15	10.15 as on 01-07-2017	94,038
3	21-08-2017	166,050	2033	16-03-2023	8.15	10.15 as on 01-08-2017	93,874
4	16-10-2017	166,050	1977	16-03-2023	8.15	10.15 as on 01-10-2017	91,289
5	15-11-2017	166,050	1947	16-03-2023	8.1	10.1 as on 01-11-2017	89,460
6	10-10-2018	166,050	1618	16-03-2023	8.7	10.7 as on 01-10-2018	78,760
7	11-02-2019	186,807	1494	16-03-2023	8.75	10.75 as on 10-02-2019	82,197
8	27-08-2019	159,358	1297	16-03-2023	8.45	10.45 as on 10-08-2019	59,174
9	TOTAL AMOUNT	1,725,578				TOTAL INTEREST (I2)	917,913

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 16-03-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,725,578	1,067,648	0	2,793,226

16. Considering all these facts, this Authority concludes that the complainant is entitled for the relief claimed.
17. Accordingly, the point raised above is answered in the Affirmative.
18. **My finding on point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we 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/211008/0008422 is hereby allowed

1. The respondent is directed to pay the amount of Rs.27,93,226/- (Rupees Twenty Seven Lakhs Ninety Three Thousand Two Hundred and Twenty Six Only)

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towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 03/03/2013 till 30/04/2017 and at SBI MCLR+2% from 01/05/2017 till 16/03/2023.

2. The interest due from 17/03/2023 up to the date of final payment shall be calculated likewise and paid to the complainant.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.

No order as to costs.

(G.R. REDDY)

Member
K-RERA

(NEELMANI N RAJU)

Member
K-RERA

(H.C. KISHORE CHANDRA)

Chairman
K-RERA