

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/201004/0006757

DATED THIS 26TH DAY OF MAY, 2023

COMPLAINANTS.....

1. MADHAVI VISWANATH &

2. K VIVEK,

#953, 65th Cross, 5th Block,
Rajajinagar,
Bengaluru - 560010.

(In person)

V/S

RESPONDENT.....

SHASHWATI REALTY PVT. LTD.,

No. 19/1, 2nd Floor,
Doddamane Building,
Vittalmallya 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 complainants have booked a flat bearing No. B2EO708 in the project of respondent wherein the complainants entered into an agreement for sale on 24/09/2018 for the total sale consideration of Rs.35,16,155/- (Rupees Thirty Five Lakh Sixteen Thousand One Hundred and Fifty Five only) and paid Rs.34,38,466/- (Rupees Thirty Four Lakh Thirty Eight Thousand Four Hundred and Sixty Six only) to the respondent. The respondent was supposed to handover the flat in favour of the complainant on or before 31/10/2019. But, he has failed to handed over the flat and to pay pre-EMI as agreed. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and filed statement of objections as under:-
5. It has denied entire allegations made against it as false. It contends that, complainants were bound by the payment schedule set out in the construction agreement and the agreement to sell which were executed between them. The complainants have not made payments to the respondent as agreed. During the year 2014 to 2016, the project came to standstill, since the Government of Karnataka selected Mandur dumping yard for the dumping the solid waste, which is in close proximity with the project. Further, Hoskote Planning Authority did not renew the modified plan and license of the respondent. The major ground for the delay is that, vide order dated 07/05/2015 the National Green Tribunal, had issued certain directions to the BBMP and other planning authorities including the State of Karnataka, not to sanction any construction projects etc., Further, on 04/05/2016 the National Green Tribunal, constituted a committee and issued certain directions to the planning authorities and also the state in relation the buffer

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zone to be maintained from the edges of Lakes and Rajakaluves, are concerned. Thereafter the NGT order dated 04/05/2016 has been set aside by the Hon'ble Supreme Court of India, vide order dated 05/03/2019 passed in Civil Appeal Nos.5016/2016 and connected appeals. Further, it is contented that RCC work for the said block is complete, presently there are more than 200 workmen at site to ensure that the project is completed and the respondent is certain that the timelines to complete the project by 30/06/2022 as provided by RERA will be adhered to without any further delay and the possession of the apartment shall also be given to the complainant as per the said timelines. As per RERA registration certificate, the time for completion of construction of the project by the respondent was 30/06/2022. Therefore present complaint is premature one.

6. It is pertinent to note that clause 5 of the construction agreement that this was excluding the time taken for securing occupancy certificate and also subject to variations on account of force majeure or acts of god, non-availability of steel, cement, other vital building materials, water and electricity supply, events of demonetization, strikes due to various social and political issues, shortage of raw materials etc., Delay is attributable due to Covid 19 and lock down in India commencing from March 23/25, 2020. Further, the respondents have paid the EMI till date. Hence, prayed to dismiss the complaint with costs.
7. 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 24/09/2018.
8. 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.
9. Heard arguments of both sides.

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10. **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?

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

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

REASONS

12. **My finding on point No. 1:-** The complainants have approached this forum for the relief of refund of amount paid to the respondent towards purchase of said flat with interest on the grounds that the respondent has not completed the project and handed over the possession of their flat as agreed.
13. Same is resisted by the respondent on the grounds that said delay is due to force majeure and acts of god and also due to non-payment of balance amount by the allottees. As per RERA registration certificate they were supposed to complete the project on or before 30/06/2022.
14. 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 24/09/2018. There seems to be no possibility of completing the project or handing over possession in near future.
15. 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 definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."

16. 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.
17. 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.
18. Despite of several opportunities were given, the respondent has not filed his memo of calculation. A thorough verification of documentary evidence submitted by the complainants reveals that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as submitted vide their memo of

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calculation dated 10/02/2023 in view of the non-co-operation of the respondent.

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

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	0	2111	10-02-2023	8.15	10.15 AS ON 01-05-2017	0
2	17-08-2018	167,000	1638	10-02-2023	8.45	10.45 AS ON 01-08-2018	78,316
3	12-12-2018	2,494,100	1521	10-02-2023	8.75	10.75 AS ON 10-12-2018	1,117,271
4	03-04-2019	150,000	1409	10-02-2023	8.75	10.75 AS ON 10-03-2019	62,246
5	01-04-2020	127,431	1016	10-02-2023	7.7	9.7 AS ON 10-04-2020	34,407
6	28-01-2021	97,089	1016	10-02-2023	7.7	9.7 AS ON 10-04-2020	26,214
7	01-04-2021	209,743	680	10-02-2023	7.3	9.3 AS ON 10-03-2021	36,340
8	01-04-2022	215,658	315	10-02-2023	7.3	9.3 AS ON 15-03-2022	17,308
9	01-01-2023	243,700	40	10-02-2023	8.6	10.6 AS ON 15-12-2022	2,830
10	TOTAL AMOUNT	3,704,721				TOTAL INTEREST (I2)	1,374,932

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 10-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
3,704,721	1,374,932	0	5,079,653

20. Considering all these facts, this Authority concludes that the complainant is entitled for the relief claimed.

21. Accordingly, the point raised above is answered in the Affirmative.

22. **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

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ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/201004/0006757 is hereby allowed

1. The respondent is directed to pay the amount of Rs.50,79,653/- (Rupees Fifty Lakh Seventy Nine Thousand Six Hundred and Fifty Three Only) towards refund with interest to the complainants within 60 days from the date of this order, calculated at SBI MCLR+2% from 17/08/2018 till 10/02/2023.
2. The interest due from 11/02/2023 up to the date of final payment shall be calculated likewise and paid to the complainants.
3. The complainants are 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

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