

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/200929/0006704

DATED THIS 2nd DAY OF JUNE, 2023

COMPLAINANT.....

MOHAMMAD EQUEBAL HUSSAIN,
Door No. 1-6/HH/G-2,
Happy Home Supreme,
Maseed Banda, Kondapur,
Hyderabad - 500084.

(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)

*** * * * ***

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 interest on delay period, reimbursement of Pre-EMI's and possession.

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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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. B4K0406 in the project of respondent wherein the complainant entered into an agreement for sale on 20/12/2014 and 25/10/2016 for the total sale consideration of Rs.24,23,185/- (Rupees Twenty Four Lakh Twenty Three Thousand One Hundred and Eighty Five only) and paid Rs.28,39,562/- (Rupees Twenty Eight Lakh Thirty Nine Thousand Five Hundred and Sixty Two only) to the respondent. The respondent was supposed to handover the flat in favour of the complainant on or before 31/03/2017. 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 by the complainant against it as false. It contends that, complainant was bound by the payment schedule set out in the construction agreement and the agreement to sell which were executed between them. The complainant had 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, construction agreement and sale agreement dated 20/12/2014 and 25/10/2016.
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

REASON

12. **My finding on point No. 1:-** Contention of complainant is that, so far he has paid a sum of Rs.28,39,562/- (Rupees Twenty Eight Lakh Thirty Nine Thousand Five Hundred and Sixty Two Only) to the respondent out of total sale consideration of Rs.24,23,185/- (Rupees Twenty Four Lakh Twenty Three Thousand One Hundred and Eighty Five only). The respondent was supposed to handover the possession of the apartment in favour of complainant on or before 31/03/2017 as per the terms of agreement of sale dated 20/12/2014 and 25/10/2016.

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. According to the respondent, the complainant has entered into supplemental agreement for sale and construction with the respondent and availed the 'Live Lite' scheme. As per the said scheme respondent has to pay the EMI on behalf of the complainant till handing over possession of the flat. Accordingly, the responded had paid EMI till date.

15. It is apparent from the statement of accounts produced by the complainant, that she is paying the EMI towards the said flat since March 2020. So, totally till now the complainant has paid the EMI of Rs.5,46,748/- (Rupees Five

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Lakh Forty Six Thousand Seven Hundred and Forty Eight Only) as per the scheme of 'Live Lite'. The respondent was supposed to pay EMI till handing over possession of the flat. Hence, complainant is entitled for the interest on the EMI paid by her from the respondent.

16. From the materials available on record, it is apparent that the respondent had entered into an agreement of sale dated 20/12/2014 and 25/10/2016 in respect of flat No. B4K0406 with the complainant and had received the substantial sale consideration. Having accepted the said amount from the complainant and failing to complete the project and to register the flat certainly entitles the complainant to claim for interest on delay period, registration of the flat and possession.
17. The complainant has furnished memo of calculation as on 16/05/2023 claiming the interest on delay period for Rs.17,37,312/- (Rupees Seventeen Lakh Thirty Seven Thousand Three Hundred and Twelve Only) from 31/03/2017 to 16/05/2023. Inspite of providing sufficient opportunity, the respondent has not furnished his memo of calculation. Due to the conduct of the respondent, the complainant has deprived of owning their own apartment.
18. Having regard to all these aspects, it is just and proper to direct the respondent to complete the pending works, register the sale deed and to handover possession of the flat bearing No. B4K0406 in favour of the complainant. Therefore, it is incumbent upon the respondent to pay interest on delay period which is determined as under:-

PAYMENT DETAILS

| S.NO | TYPE | AMOUNT | DATE |
|------|---|-----------|------------|
| 1 | TOTAL PAYMENT TILL POSSESSION | 2,839,562 | 31-03-2017 |
| 3 | TOTAL DELAYED INTEREST AS ON 16/05/2023 | 1,737,312 | |

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16/05/2023

16/05/2023

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INTEREST CALCULATION

| S. NO | FROM DATE | TO DATE | NO. OF DAYS | MCL R RATE | INTEREST RATE | INTEREST |
|--|------------|------------|-------------|------------|------------------------|----------|
| INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 2,839,562 | | | | | | |
| 1 | 31-03-2017 | 30-04-2017 | 30 | | 9 | 21,004 |
| 2 | 30-04-2017 | 30-05-2017 | 30 | 8.7 | 10.7 as on 15-04-2023 | 24,972 |
| 3 | 30-05-2017 | 30-06-2017 | 31 | 8.15 | 10.15 as on 01-05-2017 | 24,478 |
| 4 | 30-06-2017 | 30-07-2017 | 30 | 8.15 | 10.15 as on 01-06-2017 | 23,688 |
| 5 | 30-07-2017 | 30-08-2017 | 31 | 8.15 | 10.15 as on 01-07-2017 | 24,478 |
| 6 | 30-08-2017 | 30-09-2017 | 31 | 8.15 | 10.15 as on 01-08-2017 | 24,478 |
| 7 | 30-09-2017 | 30-10-2017 | 30 | 8.15 | 10.15 as on 01-09-2017 | 23,688 |
| 8 | 30-10-2017 | 30-11-2017 | 31 | 8.15 | 10.15 as on 01-10-2017 | 24,478 |
| 9 | 30-11-2017 | 30-12-2017 | 30 | 8.1 | 10.1 as on 01-11-2017 | 23,572 |
| 10 | 30-12-2017 | 30-01-2018 | 31 | 8.1 | 10.1 as on 01-12-2017 | 24,357 |
| 11 | 30-01-2018 | 28-02-2018 | 29 | 8.1 | 10.1 as on 01-01-2018 | 22,786 |
| 12 | 28-02-2018 | 28-03-2018 | 28 | 8.1 | 10.1 as on 01-02-2018 | 22,000 |
| 13 | 28-03-2018 | 28-04-2018 | 31 | 8.35 | 10.35 as on 01-03-2018 | 24,960 |
| 14 | 28-04-2018 | 28-05-2018 | 30 | 8.35 | 10.35 as on 01-04-2018 | 24,155 |
| 15 | 28-05-2018 | 28-06-2018 | 31 | 8.35 | 10.35 as on 01-05-2018 | 24,960 |
| 16 | 28-06-2018 | 28-07-2018 | 30 | 8.45 | 10.45 as on 01-06-2018 | 24,389 |
| 17 | 28-07-2018 | 28-08-2018 | 31 | 8.45 | 10.45 as on 01-07-2018 | 25,202 |
| 18 | 28-08-2018 | 28-09-2018 | 31 | 8.45 | 10.45 as on 01-08-2018 | 25,202 |
| 19 | 28-09-2018 | 28-10-2018 | 30 | 8.65 | 10.65 as on 01-09-2018 | 24,855 |
| 20 | 28-10-2018 | 28-11-2018 | 31 | 8.7 | 10.7 as on 01-10-2018 | 25,805 |
| 21 | 28-11-2018 | 28-12-2018 | 30 | 8.7 | 10.7 as on 01-11-2018 | 24,972 |
| 22 | 28-12-2018 | 28-01-2019 | 31 | 8.75 | 10.75 as on 10-12-2018 | 25,925 |
| 23 | 28-01-2019 | 28-02-2019 | 31 | 8.75 | 10.75 as on 10-01-2019 | 25,925 |
| 24 | 28-02-2019 | 28-03-2019 | 28 | 8.75 | 10.75 as on 10-02-2019 | 23,416 |
| 25 | 28-03-2019 | 28-04-2019 | 31 | 8.75 | 10.75 as on 10-03-2019 | 25,925 |
| 26 | 28-04-2019 | 28-05-2019 | 30 | 8.7 | 10.7 as on 10-04-2019 | 24,972 |
| 27 | 28-05-2019 | 28-06-2019 | 31 | 8.65 | 10.65 as on 10-05-2019 | 25,684 |

[Signature]

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| S. NO | FROM DATE | TO DATE | NO. OF DAYS | MCLR RATE | INTEREST RATE | INTEREST |
|-------|------------|------------|-------------|-----------|------------------------|----------|
| 28 | 28-06-2019 | 28-07-2019 | 30 | 8.65 | 10.65 as on 10-06-2019 | 24,855 |
| 29 | 28-07-2019 | 28-08-2019 | 31 | 8.6 | 10.6 as on 10-07-2019 | 25,563 |
| 30 | 28-08-2019 | 28-09-2019 | 31 | 8.45 | 10.45 as on 10-08-2019 | 25,202 |
| 31 | 28-09-2019 | 28-10-2019 | 30 | 8.35 | 10.35 as on 10-09-2019 | 24,155 |
| 32 | 28-10-2019 | 28-11-2019 | 31 | 8.25 | 10.25 as on 10-10-2019 | 24,719 |
| 33 | 28-11-2019 | 28-12-2019 | 30 | 8.2 | 10.2 as on 10-11-2019 | 23,805 |
| 34 | 28-12-2019 | 28-01-2020 | 31 | 8.2 | 10.2 as on 10-12-2019 | 24,599 |
| 35 | 28-01-2020 | 28-02-2020 | 31 | 8.2 | 10.2 as on 10-01-2020 | 24,599 |
| 36 | 28-02-2020 | 28-03-2020 | 29 | 8.15 | 10.15 as on 10-02-2020 | 22,899 |
| 37 | 28-03-2020 | 28-04-2020 | 31 | 8.05 | 10.05 as on 10-03-2020 | 24,237 |
| 38 | 28-04-2020 | 28-05-2020 | 30 | 7.7 | 9.7 as on 10-04-2020 | 22,638 |
| 39 | 28-05-2020 | 28-06-2020 | 31 | 7.55 | 9.55 as on 10-05-2020 | 23,031 |
| 40 | 28-06-2020 | 28-07-2020 | 30 | 7.3 | 9.3 as on 10-06-2020 | 21,705 |
| 41 | 28-07-2020 | 28-08-2020 | 31 | 7.3 | 9.3 as on 10-07-2020 | 22,428 |
| 42 | 28-08-2020 | 28-09-2020 | 31 | 7.3 | 9.3 as on 10-08-2020 | 22,428 |
| 43 | 28-09-2020 | 28-10-2020 | 30 | 7.3 | 9.3 as on 10-09-2020 | 21,705 |
| 44 | 28-10-2020 | 28-11-2020 | 31 | 7.3 | 9.3 as on 10-10-2020 | 22,428 |
| 45 | 28-11-2020 | 28-12-2020 | 30 | 7.3 | 9.3 as on 10-11-2020 | 21,705 |
| 46 | 28-12-2020 | 28-01-2021 | 31 | 7.3 | 9.3 as on 10-12-2020 | 22,428 |
| 47 | 28-01-2021 | 28-02-2021 | 31 | 7.3 | 9.3 as on 10-01-2021 | 22,428 |
| 48 | 28-02-2021 | 28-03-2021 | 28 | 7.3 | 9.3 as on 10-02-2021 | 20,258 |
| 49 | 28-03-2021 | 28-04-2021 | 31 | 7.3 | 9.3 as on 10-03-2021 | 22,428 |
| 50 | 28-04-2021 | 28-05-2021 | 30 | 7.3 | 9.3 as on 10-04-2021 | 21,705 |
| 51 | 28-05-2021 | 28-06-2021 | 31 | 7.3 | 9.3 as on 15-05-2021 | 22,428 |
| 52 | 28-06-2021 | 28-07-2021 | 30 | 7.3 | 9.3 as on 15-06-2021 | 21,705 |
| 53 | 28-07-2021 | 28-08-2021 | 31 | 7.3 | 9.3 as on 15-07-2021 | 22,428 |
| 54 | 28-08-2021 | 28-09-2021 | 31 | 7.3 | 9.3 as on 15-08-2021 | 22,428 |
| 55 | 28-09-2021 | 28-10-2021 | 30 | 7.3 | 9.3 as on 15-09-2021 | 21,705 |
| 56 | 28-10-2021 | 28-11-2021 | 31 | 7.3 | 9.3 as on 15-10-2021 | 22,428 |

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18/11/21

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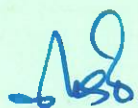
| S. NO | FROM DATE | TO DATE | NO. OF DAYS | MCL R RATE | INTEREST RATE | INTEREST |
|-------|------------|------------|-------------|------------|--|------------------|
| 57 | 28-11-2021 | 28-12-2021 | 30 | 7.3 | 9.3 as on 15-11-2021 | 21,705 |
| 58 | 28-12-2021 | 28-01-2022 | 31 | 7.3 | 9.3 as on 15-12-2021 | 22,428 |
| 59 | 28-01-2022 | 28-02-2022 | 31 | 7.3 | 9.3 as on 15-01-2022 | 22,428 |
| 60 | 28-02-2022 | 28-03-2022 | 28 | 7.3 | 9.3 as on 15-02-2022 | 20,258 |
| 61 | 28-03-2022 | 28-04-2022 | 31 | 7.3 | 9.3 as on 15-03-2022 | 22,428 |
| 62 | 28-04-2022 | 28-05-2022 | 30 | 7.4 | 9.4 as on 15-04-2022 | 21,938 |
| 63 | 28-05-2022 | 28-06-2022 | 31 | 7.5 | 9.5 as on 15-05-2022 | 22,910 |
| 64 | 28-06-2022 | 28-07-2022 | 30 | 7.7 | 9.7 as on 15-06-2022 | 22,638 |
| 65 | 28-07-2022 | 28-08-2022 | 31 | 7.8 | 9.8 as on 15-07-2022 | 23,634 |
| 66 | 28-08-2022 | 28-09-2022 | 31 | 8.0 | 10.0 as on 15-08-2022 | 24,116 |
| 67 | 28-09-2022 | 28-10-2022 | 30 | 8.0 | 10.0 as on 15-09-2022 | 23,338 |
| 68 | 28-10-2022 | 28-11-2022 | 31 | 8.25 | 10.25 as on 15-10-2022 | 24,719 |
| 69 | 28-11-2022 | 28-12-2022 | 30 | 8.35 | 10.35 as on 15-11-2022 | 24,155 |
| 70 | 28-12-2022 | 28-01-2023 | 31 | 8.6 | 10.6 as on 15-12-2022 | 25,563 |
| 71 | 28-01-2023 | 28-02-2023 | 31 | 8.6 | 10.6 as on 15-01-2023 | 25,563 |
| 72 | 28-02-2023 | 28-03-2023 | 28 | 8.7 | 10.7 as on 15-02-2023 | 23,307 |
| 73 | 28-03-2023 | 28-04-2023 | 31 | 8.7 | 10.7 as on 15-03-2023 | 25,805 |
| 74 | 28-04-2023 | 16-05-2023 | 18 | 8.7 | 10.7 as on 15-04-2023 | 14,983 |
| | | | | | TOTAL DELAYED INTEREST as on 16/05/2023 | 1,737,312 |


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

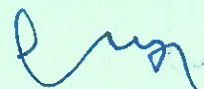
20. **Our findings on point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, we proceed to pass the following order.

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016,







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the complaint bearing No. CMP/200929/0006704 is hereby allowed

- (i) Respondent is directed to execute the sale deed on receipt of balance sale consideration if any and to handover the possession of the flat bearing No. B4K0406 in the project "Pashmina Brookwoods" in favour of the complainant within 60 days from the date of this order.
- (ii) The respondent is directed to pay the amount of Rs.17,37,312/- (Rupees Seventeen Lakh Thirty Seven Thousand Three Hundred and Twelve Only) towards interest on delay period to the complainant within 60 days from the date of this order, calculated at 9% from 31/03/2017 to 30/04/2017 and at SBI MCLR+2% from 01/05/2017 till 16/05/2023. The interest due from 17/05/2023 up to the date of handing over possession will be calculated likewise and paid to the complainant within 60 days from the date of this order.
- (iii) The complainant is at liberty to initiate action in accordance with law if the respondent fails to comply with this 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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