

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/200924/0006653

DATED THIS 2ND DAY OF JUNE, 2023

COMPLAINANT.....

PHANI KUMAR SOMAYAJULU,
D005, Hilife Pearlshell Apartments,
Balagere Village, Varthur,
Bengaluru - 560087.

(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.

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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. B2F605 in the project of respondent wherein the complainant entered into an agreement for sale on 24/06/2019 for the total sale consideration of Rs.36,00,000/- (Rupees Thirty Six Lakh Only) and paid Rs.37,63,963/- (Rupees Thirty Seven Lakh Sixty Three Thousand Nine Hundred and Sixty Three only) to the respondent. The respondent was supposed to handover the flat in favour of the complainant on or before 31/01/2020. 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 zone to be maintained from the edges of Lakes and Rajakaluves, are

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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 24/06/2019.
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.
10. **On the above averments, the following points would arise for my consideration:-**

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

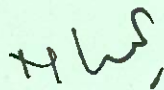
11. **My findings on the above points is as under:-**

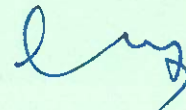
1. In the Affirmative.
2. As per final order for the following

REASON

12. **My finding on point No. 1:-** Contention of complainant is that, so far he has paid a sum of Rs.37,64,963/- (Rupees Thirty Seven Lakh Sixty Four Thousand Nine Hundred and Sixty Three Only) to the respondent out of total sale consideration of Rs.36,00,000/- (Rupees Thirty Six Lakh Only). The respondent was supposed to handover the possession of the apartment in favour of complainant on or before 31/01/2020 as per the terms of agreement of sale dated 24/06/2019.
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 he is paying the EMI towards the said flat since March 2020. 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 him from the respondent.







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16. From the materials available on record, it is apparent that the respondent had entered into an agreement of sale dated 24/06/2019 in respect of flat No. B2F605 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 21/05/2023 claiming the interest on delay period for Rs.12,01,191/- (Rupees Twelve Lakh One Thousand One Hundred and Ninety One Only) from 31/01/2020 to 21/05/2023. 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. B2F605 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	3,764,963	31-01-2020
3	TOTAL DELAYED INTEREST AS ON 21/05/2023	1,201,191	

INTEREST CALCULATION

S. NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 3,764,963						
1	31-01-2020	29-02-2020	29	8.2	10.2 as on 10-01-2020	30,511
2	29-02-2020	29-03-2020	29	8.15	10.15 as on 10-02-2020	30,362
3	29-03-2020	29-04-2020	31	8.05	10.05 as on 10-03-2020	32,136

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S. NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
4	29-04-2020	29-05-2020	30	7.7	9.7 as on 10-04-2020	30,016
5	29-05-2020	29-06-2020	31	7.55	9.55 as on 10-05-2020	30,537
6	29-06-2020	29-07-2020	30	7.3	9.3 as on 10-06-2020	28,778
7	29-07-2020	29-08-2020	31	7.3	9.3 as on 10-07-2020	29,738
8	29-08-2020	29-09-2020	31	7.3	9.3 as on 10-08-2020	29,738
9	29-09-2020	29-10-2020	30	7.3	9.3 as on 10-09-2020	28,778
10	29-10-2020	29-11-2020	31	7.3	9.3 as on 10-10-2020	29,738
11	29-11-2020	29-12-2020	30	7.3	9.3 as on 10-11-2020	28,778
12	29-12-2020	29-01-2021	31	7.3	9.3 as on 10-12-2020	29,738
13	29-01-2021	28-02-2021	30	7.3	9.3 as on 10-01-2021	28,778
14	28-02-2021	28-03-2021	28	7.3	9.3 as on 10-02-2021	26,860
15	28-03-2021	28-04-2021	31	7.3	9.3 as on 10-03-2021	29,738
16	28-04-2021	28-05-2021	30	7.3	9.3 as on 10-04-2021	28,778
17	28-05-2021	28-06-2021	31	7.3	9.3 as on 15-05-2021	29,738
18	28-06-2021	28-07-2021	30	7.3	9.3 as on 15-06-2021	28,778
19	28-07-2021	28-08-2021	31	7.3	9.3 as on 15-07-2021	29,738
20	28-08-2021	28-09-2021	31	7.3	9.3 as on 15-08-2021	29,738
21	28-09-2021	28-10-2021	30	7.3	9.3 as on 15-09-2021	28,778
22	28-10-2021	28-11-2021	31	7.3	9.3 as on 15-10-2021	29,738
23	28-11-2021	28-12-2021	30	7.3	9.3 as on 15-11-2021	28,778
24	28-12-2021	28-01-2022	31	7.3	9.3 as on 15-12-2021	29,738
25	28-01-2022	28-02-2022	31	7.3	9.3 as on 15-01-2022	29,738
26	28-02-2022	28-03-2022	28	7.3	9.3 as on 15-02-2022	26,860
27	28-03-2022	28-04-2022	31	7.3	9.3 as on 15-03-2022	29,738
28	28-04-2022	28-05-2022	30	7.4	9.4 as on 15-04-2022	29,088
29	28-05-2022	28-06-2022	31	7.5	9.5 as on 15-05-2022	30,377
30	28-06-2022	28-07-2022	30	7.7	9.7 as on 15-06-2022	30,016
31	28-07-2022	28-08-2022	31	7.8	9.8 as on 15-07-2022	31,336
32	28-08-2022	28-09-2022	31	8.0	10.0 as on 15-08-2022	31,976
33	28-09-2022	28-10-2022	30	8.0	10.0 as on 15-09-2022	30,944
34	28-10-2022	28-11-2022	31	8.25	10.25 as on 15-10-2022	32,775

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S. NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
35	28-11-2022	28-12-2022	30	8.35	10.35 as on 15-11-2022	32,027
36	28-12-2022	28-01-2023	31	8.6	10.6 as on 15-12-2022	33,894
37	28-01-2023	28-02-2023	31	8.6	10.6 as on 15-01-2023	33,894
38	28-02-2023	28-03-2023	28	8.7	10.7 as on 15-02-2023	30,903
39	28-03-2023	28-04-2023	31	8.7	10.7 as on 15-03-2023	34,214
40	28-04-2023	21-05-2023	23	8.7	10.7 as on 15-04-2023	25,385
					TOTAL DELAYED INTEREST as on 21/05/2023	1,201,191

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, the complaint bearing No. CMP/200924/0006653 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. B2F605 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.12,01,191/- (Rupees Twelve Lakh One Thousand One Hundred and Ninety One Only) towards interest on delay period to the complainant within 60 days

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from the date of this order, calculated SBI MCLR+2% from 31/01/2020 till 21/05/2023. The interest due from 22/05/2023 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