### 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/200926/0006671

DATED THIS 2nd DAY OF JUNE, 2023

COMPLAINANT.....

UMA DEVI,

Flat E-5/1, Vijay Kiran Apts, 32, Victoria Layout, Bengaluru 560047.

(In person)

V/S

RESPONDENT....

SHASHWATI REALTY PVT. LTD.,

No. 19/1, 2<sup>nd</sup> 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. B2DO414 in the project of respondent wherein the complainant entered into an agreement for sale on 10/12/2013 for the total sale consideration of Rs.21,98,323/- (Rupees Twenty One Lakh Ninety Eight Thousand Three Hundred and Twenty Three only) and paid Rs.25,24,837/- (Rupees Twenty Five Lakh Twenty Four Thousand Eight Hundred and Thirty Seven only) to the respondent. The respondent was supposed to handover the flat in favour of the complainant on or before 12/02/2017. 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 her 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 10/12/2013.
- 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 she has paid a sum of Rs.25,24,837/- (Rupees Twenty Five Lakh Twenty Four Thousand Eight Hundred and Thirty Seven Only) to the respondent out of total sale consideration of Rs.21,98,323/- (Rupees Twenty One Lakh Ninety Eight Thousand Three Hundred and Twenty Three only). The respondent was supposed to handover the possession of the apartment in favour of complainant on or before 12/02/2017 as per the terms of agreement of sale dated 10/12/2013.
- 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 10/12/2013 in respect of flat No. B2D0414 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 12/05/2023 claiming the interest on delay period for Rs.31,15,771/- (Rupees Thirty One Lakh Fifteen Thousand Seven Hundred and Seventy One Only) from 12/02/2017 to 12/05/2023. 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. B2D0414 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	ТҮРЕ	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	2,524,837	12-02-2017
3	TOTAL DELAYED INTEREST as on 12/05/2023	3,115,771	

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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 2,524,837									
1	12-02-2017	12-03-2017	28		9	17,431				
2	12-03-2017	12-04-2017	31		9	19,299				
3	12-03-2017	12-04-2017	31		9	19,299				
4	12-04-2017	12-05-2017	30		9	18,676				
5	12-04-2017	12-05-2017	30		9	18,676				
6	12-05-2017	12-06-2017	31	8.15	10.15 as on 01-05-2017	21,765				
7	12-05-2017	12-06-2017	31	8.15	10.15 as on 01-05-2017	21,765				
8	12-06-2017	12-07-2017	30	8.15	10.15 as on 01-06-2017	21,063				
9	12-06-2017	12-07-2017	30	8.15	10.15 as on 01-06-2017	21,063				
10	12-07-2017	12-08-2017	31	8.15	10.15 as on 01-07-2017	21,765				
11	12-07-2017	12-08-2017	31	8.15	10.15 as on 01-07-2017	21,765				
12	12-08-2017	12-09-2017	31	8.15	10.15 as on 01-08-2017	21,765				
13	12-08-2017	12-09-2017	31	8.15	10.15 as on 01-08-2017	21,765				
14	12-09-2017	12-10-2017	30	8.15	10.15 as on 01-09-2017	21,063				
15	12-09-2017	12-10-2017	30	8.15	10.15 as on 01-09-2017	21,063				
16	12-10-2017	12-11-2017	31	8.15	10.15 as on 01-10-2017	21,765				
17	12-10-2017	12-11-2017	31	8.15	10.15 as on 01-10-2017	21,765				
18	12-11-2017	12-12-2017	30	8.1	10.1 as on 01-11-2017	20,959				
19	12-11-2017	12-12-2017	30	8.1	10.1 as on 01-11-2017	20,959				
20	12-12-2017	12-01-2018	31	8.1	10.1 as on 01-12-2017	21,658				
21	12-12-2017	12-01-2018	31	8.1	10.1 as on 01-12-2017	21,658				
22	12-01-2018	12-02-2018	31	8.1	10.1 as on 01-01-2018	21,658				
23	12-01-2018	12-02-2018	31	8.1	10.1 as on 01-01-2018	21,658				
24	12-02-2018	12-03-2018	28	8.1	10.1 as on 01-02-2018	19,562				
25	12-02-2018	12-03-2018	28	8.1	10.1 as on 01-02-2018	19,562				

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S. NO	FROM DATE	TO DATE	NO. OF DAYS	MCL R RATE	INTEREST RATE	INTEREST		
26	12-03-2018	12-04-2018	31	8.35	10.35 as on 01-03-2018	22,194		
27	12-03-2018	12-04-2018	31	8.35	10.35 as on 01-03-2018	22,194		
28	12-04-2018	12-05-2018	30	8.35	10.35 as on 01-04-2018	21,478		
29	12-04-2018	12-05-2018	30	8.35	10.35 as on 01-04-2018	21,478		
30	12-05-2018	12-06-2018	31	8.35	10.35 as on 01-05-2018	22,194		
31	12-05-2018	12-06-2018	31	8.35	10.35 as on 01-05-2018	22,194		
32	12-06-2018	12-07-2018	30	8.45	10.45 as on 01-06-2018	21,685		
33	12-06-2018	12-07-2018	30	8.45	10.45 as on 01-06-2018	21,685		
34	12-07-2018	12-08-2018	31	8.45	10.45 as on 01-07-2018	22,408		
35	12-07-2018	12-08-2018	31	8.45	10.45 as on 01-07-2018	22,408		
36	12-08-2018	12-09-2018	31	8.45	10.45 as on 01-08-2018	22,408		
37	12-08-2018	12-09-2018	31	8.45	10.45 as on 01-08-2018	22,408		
38	12-09-2018	12-10-2018	30	8.65	10.65 as on 01-09-2018	22,100		
39	12-09-2018	12-10-2018	30	8.65	10.65 as on 01-09-2018	22,100		
40	12-10-2018	12-11-2018	31	8.7	10.7 as on 01-10-2018	22,944		
41	12-10-2018	12-11-2018	31	8.7	10.7 as on 01-10-2018	22,944		
42	12-11-2018	12-12-2018	30	8.7	10.7 as on 01-11-2018	22,204		
43	12-11-2018	12-12-2018	30	8.7	10.7 as on 01-11-2018	22,204		
44	12-12-2018	12-01-2019	31	8.75	10.75 as on 10-12-2018	23,052		
45	12-12-2018	12-01-2019	31	8.75	10.75 as on 10-12-2018	23,052		
46	12-01-2019	12-02-2019	31	8.75	10.75 as on 10-01-2019	23,052		
47	12-01-2019	12-02-2019	31	8.75	10.75 as on 10-01-2019	23,052		
48	12-02-2019	12-03-2019	28	8.75	10.75 as on 10-02-2019	20,821		
49	12-02-2019	12-03-2019	28	8.75	10.75 as on 10-02-2019	20,821		
50	12-03-2019	12-04-2019	31	8.75	10.75 as on 10-03-2019	23,052		
51	12-03-2019	12-04-2019	31	8.75	10.75 as on 10-03-2019	23,052		
52	12-04-2019	12-05-2019	30	8.7	10.7 as on 10-04-2019	22,204		
53	12-04-2019	12-05-2019	30	8.7	10.7 as on 10-04-2019	22,204		

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s. NO	FROM DATE	TO DATE	NO. OF DAYS	MCL R RATE	INTEREST RATE	INTEREST
54	12-05-2019	12-06-2019	31	8.65	10.65 as on 10-05-2019	22,837
55	12-05-2019	12-06-2019	31	8.65	10.65 as on 10-05-2019	22,837
56	12-06-2019	12-07-2019	30	8.65	10.65 as on 10-06-2019	22,100
57	12-06-2019	12-07-2019	30	8.65	10.65 as on 10-06-2019	22,100
58	12-07-2019	12-08-2019	31	8.6	10.6 as on 10-07-2019	22,730
59	12-07-2019	12-08-2019	31	8.6	10.6 as on 10-07-2019	22,730
60	12-08-2019	12-09-2019	31	8.45	10.45 as on 10-08-2019	22,408
61	12-08-2019	12-09-2019	31	8.45	10.45 as on 10-08-2019	22,408
-62	12-09-2019	12-10-2019	30	8.35	10.35 as on 10-09-2019	21,478
63	12-09-2019	12-10-2019	30	8.35	10.35 as on 10-09-2019	21,478
64	12-10-2019	12-11-2019	31	8.25	10.25 as on 10-10-2019	21,979
65	12-10-2019	12-11-2019	31	8.25	10.25 as on 10-10-2019	21,979
66	12-11-2019	12-12-2019	30	8.2	10.2 as on 10-11-2019	21,167
67	12-11-2019	12-12-2019	30	8.2	10.2 as on 10-11-2019	21,167
68	12-12-2019	12-01-2020	31	8.2	10.2 as on 10-12-2019	21,872
69	12-12-2019	12-01-2020	31	8.2	10.2 as on 10-12-2019	21,872
70	12-01-2020	12-02-2020	31	8.2	10.2 as on 10-01-2020	21,872
71	12-01-2020	12-02-2020	31	8.2	10.2 as on 10-01-2020	21,872
72	12-02-2020	12-03-2020	29	8.15	10.15 as on 10-02-2020	20,361
73	12-02-2020	12-03-2020	29	8.15	10.15 as on 10-02-2020	20,361
74	12-03-2020	12-04-2020	31	8.05	10.05 as on 10-03-2020	21,551
75	12-03-2020	12-04-2020	31	8.05	10.05 as on 10-03-2020	21,551
76	12-04-2020	12-05-2020	30	7.7	9.7 as on 10-04-2020	20,129
77	12-04-2020	12-05-2020	30	7.7	9.7 as on 10-04-2020	20,129
78	12-05-2020	12-06-2020	31	7.55	9.55 as on 10-05-2020	20,478
79	12-05-2020	12-06-2020	31	7.55	9.55 as on 10-05-2020	20,478
80	12-06-2020	12-07-2020	30	7.3	9.3 as on 10-06-2020	19,299
81	12-06-2020	12-07-2020	30	7.3	9.3 as on 10-06-2020	19,299



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s. No	FROM DATE	TO DATE	NO. OF DAYS	MCL R RATE	INTEREST RATE	INTEREST
82	12-07-2020	12-08-2020	31	7.3	9.3 as on 10-07-2020	19,942
83	12-07-2020	12-08-2020	31	7.3	9.3 as on 10-07-2020	19,942
84	12-08-2020	12-09-2020	31	7.3	9.3 as on 10-08-2020	19,942
85	12-08-2020	12-09-2020	31	7.3	9.3 as on 10-08-2020	19,942
86	12-09-2020	12-10-2020	30	7.3	9.3 as on 10-09-2020	19,299
87	12-09-2020	12-10-2020	30	7.3	9.3 as on 10-09-2020	19,299
88	12-10-2020	12-11-2020	31	7.3	9.3 as on 10-10-2020	19,942
89	12-10-2020	12-11-2020	31	7.3	9.3 as on 10-10-2020	19,942
90	12-11-2020	12-12-2020	30	7.3	9.3 as on 10-11-2020	19,299
91	12-11-2020	12-12-2020	30	7.3	9.3 as on 10-11-2020	19,299
92	12-12-2020	12-01-2021	31	7.3	9.3 as on 10-12-2020	19,942
93	12-12-2020	12-01-2021	31	7.3	9.3 as on 10-12-2020	19,942
94	12-01-2021	12-02-2021	31	7.3	9.3 as on 10-01-2021	19,942
95	12-01-2021	12-02-2021	31	7.3	9.3 as on 10-01-2021	19,942
96	12-02-2021	12-03-2021	28	7.3	9.3 as on 10-02-2021	18,012
97	12-02-2021	12-03-2021	28	7.3	9.3 as on 10-02-2021	18,012
98	12-03-2021	12-04-2021	31	7.3	9.3 as on 10-03-2021	19,942
99	12-03-2021	12-04-2021	31	7.3	9.3 as on 10-03-2021	19,942
100	12-04-2021	12-05-2021	30	7.3	9.3 as on 10-04-2021	19,299
101	12-04-2021	12-05-2021	30	7.3	9.3 as on 10-04-2021	19,299
102	12-05-2021	12-06-2021	31	7.3	9.3 as on 10-04-2021	19,942
103	12-05-2021	12-06-2021	31	7.3	9.3 as on 10-04-2021	19,942
104	12-06-2021	12-07-2021	30	7.3	9.3 as on 15-05-2021	19,299
105	12-06-2021	12-07-2021	30	7.3	9.3 as on 15-05-2021	19,299
106	12-07-2021	12-08-2021	31	7.3	9.3 as on 15-06-2021	19,942
107	12-07-2021	12-08-2021	31	7.3	9.3 as on 15-06-2021	19,942
108	12-08-2021	12-09-2021	31	7.3	9.3 as on 15-07-2021	19,942
109	12-08-2021	12-09-2021	31	7.3	9.3 as on 15-07-2021	19,942

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s. NO	FROM DATE	то рате	NO. OF DAYS	MCL R RATE	INTEREST RATE	INTEREST
110	12-09-2021	12-10-2021	30	7.3	9.3 as on 15-08-2021	19,299
111	12-09-2021	12-10-2021	30	7.3	9.3 as on 15-08-2021	19,299
112	12-10-2021	12-11-2021	31	7.3	9.3 as on 15-09-2021	19,942
113	12-10-2021	12-11-2021	31	7.3	9.3 as on 15-09-2021	19,942
114	12-11-2021	12-12-2021	30	7.3	9.3 as on 15-10-2021	19,299
115	12-11-2021	12-12-2021	30	7.3	9.3 as on 15-10-2021	19,299
116	12-12-2021	12-01-2022	31	7.3	9.3 as on 15-11-2021	19,942
117	12-12-2021	12-01-2022	31	7.3	9.3 as on 15-11-2021	19,942
118	12-01-2022	12-02-2022	31	7.3	9.3 as on 15-12-2021	19,942
119	12-01-2022	12-02-2022	31	7.3	9.3 as on 15-12-2021	19,942
120	12-02-2022	12-03-2022	28	7.3	9.3 as on 15-01-2022	18,012
121	12-02-2022	12-03-2022	28	7.3	9.3 as on 15-01-2022	18,012
122	12-03-2022	12-04-2022	31	7.3	9.3 as on 15-02-2022	19,942
123	12-03-2022	12-04-2022	31	7.3	9.3 as on 15-02-2022	19,942
124	12-04-2022	12-05-2022	30	7.3	9.3 as on 15-03-2022	19,299
125	12-04-2022	12-05-2022	30	7.3	9.3 as on 15-03-2022	19,299
126	12-05-2022	12-06-2022	31	7.4	9.4 as on 15-04-2022	20,157
127	12-05-2022	12-06-2022	31	7.4	9.4 as on 15-04-2022	20,157
128	12-06-2022	12-07-2022	30	7.5	9.5 as on 15-05-2022	19,714
129	12-06-2022	12-07-2022	30	7.5	9.5 as on 15-05-2022	19,714
130	12-07-2022	12-08-2022	31	7.7	9.7 as on 15-06-2022	20,800
131	12-07-2022	12-08-2022	31	7.7	9.7 as on 15-06-2022	20,800
132	12-08-2022	12-09-2022	31	7.8	9.8 as on 15-07-2022	21,014
133	12-08-2022	12-09-2022	31	7.8	9.8 as on 15-07-2022	21,014
134	12-09-2022	12-10-2022	30	8.0	10.0 as on 15-08-2022	20,752
135	12-09-2022	12-10-2022	30	8.0	10.0 as on 15-08-2022	20,752
136	12-10-2022	12-11-2022	31	8.0	10.0 as on 15-09-2022	21,443
137	12-10-2022	12-11-2022	31	8.0	10.0 as on 15-09-2022	21,443



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s. NO	FROM DATE	TO DATE	NO. OF DAYS	MCL R RATE	INTEREST RATE	INTEREST
138	12-11-2022	12-12-2022	30	8.25	10.25 as on 15-10-2022	21,270
139	12-11-2022	12-12-2022	30	8.25	10.25 as on 15-10-2022	21,270
140	12-12-2022	12-01-2023	31	8.35	10.35 as on 15-11-2022	22,194
141	12-12-2022	12-01-2023	31	8.35	10.35 as on 15-11-2022	22,194
142	12-01-2023	12-02-2023	31	8.6	10.6 as on 15-12-2022	22,730
143	12-01-2023	12-02-2023	31	8.6	10.6 as on 15-12-2022	22,730
144	12-02-2023	12-03-2023	28	8.6	10.6 as on 15-01-2023	20,530
145	12-02-2023	12-03-2023	28	8.6	10.6 as on 15-01-2023	20,530
146	12-03-2023	12-04-2023	31	8.7	10.7 as on 15-02-2023	22,944
147	12-03-2023	12-04-2023	31	8.7	10.7 as on 15-02-2023	22,944
148	12-04-2023	12-05-2023	30	8.7	10.7 as on 15-03-2023	22,204
149	12-04-2023	12-05-2023	30	8.7	10.7 as on 15-03-2023	22,204
			1		TOTAL DELAYED INTEREST as on 12/05/2023	3,115,771

- 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/200926/0006671 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.

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### Karnataka Real Estate Regulatory Authority,

# 1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound, 3rd Cross, Mission Road, Bengaluru-560027

B2D0414 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.31,15,771/- (Rupees Thirty One Lakh Fifteen Thousand Seven Hundred and Seventy One Only) towards interest on delay period to the complainant within 60 days from the date of this order, calculated at 9% from 12/02/2017 to 30/04/2017 and at SBI MCLR+2% from 01/05/2017 till 12/05/2023. The interest due from 13/05/2023 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