

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/201014/0006845

DATED THIS 3rd DAY OF JULY, 2023

COMPLAINANTS.....

1. VINAY SANIL &

2. SUPREETHA SANIL,

Vasant Oasis, Veronica – 1004,
Makwana Road, Marol, Andheri (East),
Mumbai - 400059.

(In person)

V/S

RESPONDENT.....

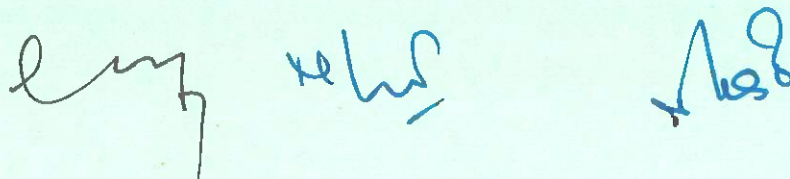
SHASHWATI REALTY PVT. LTD.,

No. 19/1, 2nd Floor,
Doddamane Building,
Vittalmallya Road,
Bengaluru - 560001.

(Rep. By. TATVA Legal Bangalore)

*** * * * ***

1. This complaint is filed under section 31 of the RERA Act against the project "Pashmina Brookwoods" developed by "Shaswati Realty Pvt. Ltd.," on Khata 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. B3H0210 in the project of respondent wherein the complainants entered into an agreement for sale on 18/11/2013 for the total sale consideration of Rs.14,74,671/- (Rupees Fourteen Lakh Seventy Four Thousand Six Hundred and Seventy One only) and paid Rs.17,84,784/- (Rupees Seventeen Lakh Eighty Four Thousand Seven Hundred and Eighty Four only) to the respondent. The respondent was supposed to handover the flat in favour of the complainants on or before 31/08/2016. 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

16/6

rebut,

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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 payment receipts, agreement for construction, agreement for sale, supplementary agreement to sale and construct.
8. In support of defence, the respondent has not produced any documents.
9. 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.
10. Heard arguments of both sides.

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11. **On the above averments, the following points would arise for our consideration:-**

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

12. **Our findings on the above points is as under:-**

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

REASON

13. **Our finding on point No. 1:-** The complainant has 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.
14. 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.
15. 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 18/11/2013. There seems to be no possibility of completing the project or handing over possession in near future.
16. 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. As per the scheme of 'Live Lite', the respondent was supposed to pay EMI till handing over possession of the flat. Hence, complainants are entitled for the interest on the EMI paid by him from the respondent.

17. 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."

18. At this juncture, our attention is drawn towards the decision of the judgement of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction civil appeal No's.6745 – 6749 of 2021 arising out of SLP (civil) No's. 3711-3715 of 2021 between M/s. Newtech Promoters and Developers Private Limited V/s. State of UP & others, it is held as under:

"Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of

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suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf."

19. 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.
20. 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.
21. 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 complainant is entitled for refund with interest as submitted vide his memo of calculation dated 11/02/2023.
22. 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	26-02-2014	1,094,400	1159	30-04-2017	312,758
3		1,194,400		TOTAL INTEREST (11)	350,212

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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	1,194,400	2108	07-02-2023	8.15	10.15 as on 01-05-2017	700,154
2	28-07-2017	33,244	1946	07-02-2023	8.15	10.15 as on 01-10-2017	17,989
3	04-04-2019	184,567	1405	07-02-2023	8.75	10.75 as on 10-03-2019	76,374
4	01-12-2022	372,488	38	07-02-2023	8.6	10.6 as on 15-12-2022	4,110
5	TOTAL AMOUNT	1,784,699				TOTAL INTEREST (I2)	798,627

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 07-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,784,699	1,148,839	0	2,933,538

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

24. **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/201014/0006845 is hereby allowed

1. The respondent is directed to pay the amount of Rs.29,33,538/- (Rupees Twenty Nine Lakh Thirty Three Thousand Five Hundred and Thirty Eight Only) towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 03/03/2013 to 30/04/2017 and at SBI MCLR+2% from 01/05/2017 till 07/02/2023.

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2. The interest due from 08/02/2023 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

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