

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು  
**Karnataka Real Estate Regulatory Authority Bangalore**  
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,  
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

**BEFORE ADJUDICATING OFFICER, RERA**

**BENGALURU, KARNATAKA**

**Presided by Shri K. Palakshappa**

**Adjudicating Officer**

**DATED 24<sup>th</sup> JANUARY 2020**

<b>Complaint No.</b>	<b>CMP/190929/0004339</b>
<b>Complainant</b>	Aashish Pradeep Goel & Pradeep Goel Flat No.4, 3 <sup>rd</sup> Floor, Aishwarya Apartments, 7 <sup>th</sup> Main, 3 <sup>rd</sup> Block, Jayalakshmipuram Mysore-570012 Rep.by Sri Raj Kumar, Advocate
<b>Opponent</b>	Shashwati Realty Pvt. Ltd., & Pashmina Builders & Developers Pvt.Ltd., 19/1, 2 <sup>nd</sup> Floor, Doddamane Building Vittal Mallya Road, Bengaluru -560001. Rep. by: Sri Sanjay Nair, Advocate

**"JUDGEMENT"**

1. Aashish Pradeep Goel and Pradeep Goel, Complainants have jointly filed complaint bearing complaint No.CMP/190929/0004339 under Section 31 of RERA Act against the project 'Pashmina Brookwoods' developed by "Shashwati Realty Pvt.Ltd.," seeking for the relief of refund of the amount paid to the developer, as the complainants are the consumers in the said project. The brief facts of the complaint is as follows:

*1. A residential apartment project by the name of 'Pashmina Brookwoods' was launched by the respondents in the year 2013. 2. The Complainants had booked an apartment (No.B1A0503) in the said project by paying the required amounts and by executing an agreement to sell dated 29/10/2013 and an agreement to construct date 20/10/2013.*

*Palakshappa*  
24/01/2020

**ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು**  
**Karnataka Real Estate Regulatory Authority Bangalore**  
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,  
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560017

---

3. As per the agreements, the respondents had agreed to construct and deliver the apartment by 31/08/2016. Along with with the grace period of six months the agreed date of completion was 28/02/2017. 4. The project has not been completed and the apartment has not been handed over till date despite a delay of 30 months. 5. The complaint is therefore, raised for: (a) Refund of the entire amount paid without any deductions along with interest as admissible under the extant law. (b) Delay compensation as admissible under the RERA Act 2016 and the Karnataka RERA Rules 2017. (c) Compensation for the mental agony caused by the delay (d) legal and other costs arising out of the delay and failure on the part of the respondents. 6. Further details of the case are given in the complaint copy attached.

Relief sought from RERA: Refund of the entire amount paid with interest.

2. In pursuance of the summons issued by this authority, the complainants have appeared through their Advocate Sri Raj Kumar. The respondent has appeared through his advocate Sri Sanjay Nair. Objections have been filed. I have heard the arguments.

3. The points that arise for consideration is:

Whether the complainants are entitled for refund of the amount?  
if so, what is the order?

4. My answer is affirmatively for the following

**REASONS**

5. The complainants have entered into agreement with the developer on 29/10/2013 in respect of the flat. The developer has agreed to complete the

**ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು**  
**Karnataka Real Estate Regulatory Authority Bangalore**  
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,  
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

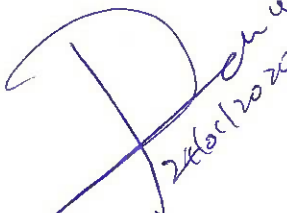
---

developer has agreed to deliver the possession, but he failed to complete the same. The complainant has paid Rs.16,11,154/- to the developer.

6. As per Sec.18 of the RERA Act, it is the responsibility of the developer to complete the project and put the flat in possession of the complainant within due date. If not; the complainant could claim either for delay compensation or for refund, since the developer has failed to comply with the terms of the agreement.
7. The developer has filed detailed objections making his own reasons for the delay. According to him, there is no delay and he has given reasons as para-36:

It is submitted that the flat could not be delivered on the speculated period as mentioned in the construction agreement due to various reasons such as:

- a) Firstly, there was no availability of sand due to strike by sand suppliers and lorry drivers;
- b) Secondly, the Hon'ble High Court of Karnataka had impose restrictions on the working hours of construction by the builders. Subsequently, the pace at which construction work should have proceeded, decelerated further, adding to delay in handing over possession of the apartments;
- c) The formulated plan of construction was delayed and also for other reasons such as non-availability of raw materials, work force and other Force Majeure events, which are beyond the control of the respondent. As per the construction agreement, it is specifically mentioned and agreed upon that the date of delivery of possession with regard to schedule apartment is subject to payment of all dues by complainants and not inclusive of the time taken for issuance of the Occupancy certificate. It is hereby submitted that the date for handing over of possession after getting the

  
24/6/2020

**ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು**

**Karnataka Real Estate Regulatory Authority Bangalore**

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560047

Occupancy certificate and with all the amenities as promised by the respondents was 30/09/2021 as given in the RERA Registration Certificate.

d) While the construction work was under progress, during November 2016, our Country faced demonetization, due to which there was major financial crises. The respondents was also affected financially and faced various issues to continue with the construction work in a smooth manner. As stated supra and coupled with the fact that the respondent's project was a big one, labourers were large in number. Labourers at the construction site were to be paid daily wages for their work. Since the labourers did not possess bank accounts, the respondents could not deposit/transfer the money to their respective accounts.

e) Such being the case, since cash had to be paid to the labourers, there were no sufficient currencies with the banks for nearly 6 months. Due to which, hard cash also could not be withdrawn and paid to the workers at the site. As there were payment issues, many of the workers/labourers returned to their native which again slowed down the progress in construction work. Hence, I state that due to the act of the State and also the various force majeure events as stated supra, the respondents could not carry out the construction work as per the milestone that it had initially set out. Therefore, the respondents cannot be blamed for the acts of the State and force majeure events. The respondents has not caused any wilful delay in carrying out the

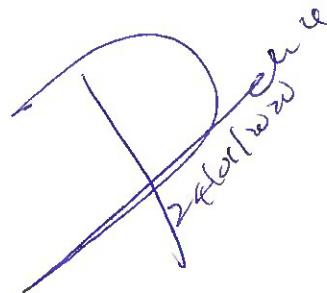
*[Handwritten signature]*  
24/01/2020

**ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು**  
**Karnataka Real Estate Regulatory Authority Bangalore**  
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,  
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

---

construction work and has not defaulted in  
delivering possession on time.

8. I would like to say that these reasons cannot be construed as delay on account of force majeure. Further, the developer has said at the time of the argument that he has given the date to the RERA as 30/09/2021 and therefore, the present complaint filed by the complainant is premature and liable for forfeiture of 10% of the amount. The submission made at the bar on behalf of the developer has no force at all. Sec.4(2)(l)(c) is only for giving a relief to the developer for completion of the project. It will not replace the date mentioned in the agreement of sale. Therefore, the developer cannot take benefit of the same. Further, the question of forfeiture will come only in case the claim made by the complainant is premature. Premature means if the claim made by the complainant is within the time mentioned in the agreement of sale, then the question of forfeiture clause may come into picture. This authority has held in so many cases that date mentioned in agreement of sale shall prevail and in case the developer has failed to complete the project with the said date then he is bound to repay the amount or shall pay delay compensation. Now, it is more than 34 months from the due date even till today the developer has not been to complete the project means he is bound to return the amount.
9. Before passing the final order I would say that as per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 29/09/2019. 60 days be computed from the date of appearance of the parties. In the present case, the parties have appeared on 22/10/2019. After taking the objection statement, argument was heard and posted for judgment. Hence the complaint is being disposed with some delay. With this observation, I proceed to pass the following




ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು  
**Karnataka Real Estate Regulatory Authority Bangalore**  
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,  
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560017

---

**ORDER**

- a. The Complaint filed by the complainant bearing No.CMP/191929/0004339 is hereby allowed.
- b. The developer is hereby directed to repay Rs.16,11,154/-
- a. The developer is hereby directed to pay interest @ 9% p.a. on the respective amount on the respective dates till 30/04/2017 and 2% above the MCLR of SBI commencing from 01/05/2017 till realization of the entire amount.
- b. The complainant is hereby directed to execute cancellation deed after realization of the entire amount.
- c. The developer is hereby directed to pay Rs.5,000/- as cost of the petition.
- d. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 24/01/2020).

  
**K. PALAKSHAPPA**  
Adjudicating Officer