

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/181224/0001794

Date: 14th MAY 2019

Complainant : COL NA MUDAKATTE (for Pashmina Brookwoods Allottees/Owners Welfare Association)
C/O Advocate Raj Kumar, First Floor,
MS Bldg, Opp Shell Petrol Pump,
Seegehalli, Whitefield,
Bengaluru- 560011.

AND

Opponent : PASHMINA BROOKWOODS
M/S Shashwati Realty Pvt Ltd
No.19/1, 2nd floor, Doddamane Building,
Vittal Mallya Road,
Bengaluru - 560001.

J U D G E M E N T

1. Mr. COL NA MUDAKATTE has filed this complaint under Section 31 of RERA Act against the project "PASHMINA BROOKWOODS" developed by M/S Shashwati Realty Pvt Ltd, bearing Complaint no. CMP/181224/0001794. The facts of the complaint is as follows:

"FACTS OF THE COMPLAINT 5. This complaint is made under the provisions of Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the Act) and Rule 29 of the Karnataka Real Estate Regulation and Development Rules, 2017. The Project PASHMINA BROOKWOODS by PASHMINA DEVELOPERS hereinafter referred to as the Project was launched during 2013 by M/S Pashmina Group with M/S Shashwati Realty. The complainants as per the list

attached at Appendix A, had booked their respective apartments in the said Project on various dates between the years 2013 and 2015. 9. As part of the booking process the Promoters/Builders asked each buyer to execute two separate agreements i.e. an Agreement to sell and an Agreement to Construct. The payments on account of the booking amount and other related costs were made with the applications/agreements, as demanded. The Promoter/Vendor/Builder also asked the Purchasers to subscribe to finance schemes named Live Lite/CLP whereby the Purchasers were asked to sign home loan agreements with the Finance Company (s) decided by the Promoter/Vendor/Builder on the terms absolutely weighing in the favour of the Promoter/Vendor/Builder. One of the conditions was that the finance company would pay the loan amount (up to 80% of the cost) to the Promoter/Vendor/Builder without any further reference to or the consent of the loanee i.e. the Purchaser or any linkage to the construction stage. As a result of this the Promoter/Vendor/Builder took the entire loan amount within one year even-though only very minimal work had been completed. This was effected through asking the unsuspecting Purchasers to sign two highly inequitable agreements given below. As per Clause 5 (a) of the Agreement to Construct mentioned hereinabove, the Project was to be completed by 31 Aug 2016. Even after taking into account the six months grace period allowed in the Agreement the effective Completion date was 28 Feb 2017. However, unfortunately, The Promoter/Vendor/Builder has NOT PAID anything to the Complainants till date i.e. even after more than 21 months of delay. This is adding insult to injury wherein the Complainants have not only been deprived of their due right to delivery of possession in time but also they are being deprived of their bonafide right of agreed penal payment on account of delay.

Relief Sought from RERA: 1RELIEF SOUGHT FROM RERA

2. In pursuance of the notice issued by the authority, the parties have appeared on 25/1/2019. The complainant was present in person and the developer was represented through his advocate. 21/2/2019 Sri.Rajkumar Advocate filed Vakalath on behalf of complainants because one Sri. N.A.Mudakatte is representing the Pashmina Brook Woods Owners Welfare Association. The developer also has filed his objections. Finally, I have heard the arguments on both sides.
3. The relief sought by the complainants is for delay compensation. The parties have entered into agreement in the month of February 2014. The original date of completion was August 2016 with 6 months grace period, means it comes to February 2017. The developer has given the completion date to RERA as 31/7/2019.
4. The developer has filed his objection stating that, as per the clause 8 of the live lite agreement the developer is not liable to pay the delay compensation unless the unit is sold. But I would like to say that there is no force in the argument because from the induction of the RERA Act. If there is a delay in the project the authority shall award to compensation from the due date as mentioned in the Agreement subject Section 72 of the Act. It is not the allegation of the complainants that the developer has deviated the fund. At the same time it is the case of the developer that, he is not liable to pay the delay compensation on the ground that legally acceptable cost. The stand taken by the developer as per clause 8 of the live lite agreement is against to Section 18 of the RERA Act. It is well settled principled is that whenever the developer fails to give the possession in accordance with law, then the complainant is entitled for delay compensation on the amount paid by him. In this case the complainant has paid the amount but still he has not received the goods means he is entitled for delay compensation.
5. Therefore, the developer shall pay the delay compensation to each of the complainant at the rate of 9% per annum commencing from the February 2017 and also at the rate of 10.75% per annum commencing from the May 2017 till the possession is delivered.

Therefore, the complaint filed on behalf of the members of the welfare association has to be allowed.

6. Hence, I precede the following order.

Order

The complaint No.CMP/181224/0001794 is allowed.

a. The developer shall pay the delay compensation on amount paid by each of the complainant as per the schedule annexed here with @ 9% commencing for the month of March and April 2017 and also @ 10.75% per annum commencing from the May 2017 till the possession is delivered.

b. The developer shall pay Rs.5,000/- as cost of this petition.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 14/05/2019).

(K.PALAKSHAPPA)
Adjudicating Officer