

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

PRESIDED BY HON'BLE MEMBER G.R. REDDY

BEFORE BENCH 5

COMPLAINT NO: CMP/1786/2023

DATED THIS 15th DAY OF JULY, 2024

COMPLAINANT : Mr.Aditya Jeurkar
204, Esteem Splendor 2, Hosur Main
Road, Behind Madhuban Apartment
Adugeodi, Bangalore:560 030

(Mr.Abhishek Wadiyar, Advocate)

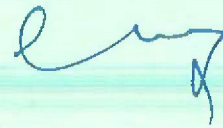
RESPONDENT / : M/s.Shashwati Realty Pvt Ltd.
PROMOTER No.19/1, 2nd Floor, Doddamane
Building, Vittalmallya Road
Bangalore : 560 001

(M/s.Srinivas & Badri, Advocates)

PROJECT NAME & : **PASHMINA BROOKWOODS**
REGISTRATION NO. PRM/KA/RERA/1250/304/PR/
171015/000556

J U D G E M E N T

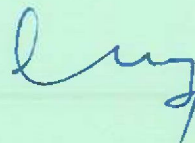
This complaint is filed under Sec-18 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project **PASHMINA BROOKWOODS** praying for a direction to Refund the amount paid with Interest.



BRIEF FACTS OF THE COMPLAINT ARE AS UNDER: -

1. The complainant has entered into an agreement of sale on 24.10.2013 for purchase of an Apartment in the project known as **PASHMINA BROOKWOODS**. The project completion date as agreed and mentioned in the Memo of calculation was 31.08.2016. The complainant have paid an amount of Rs.18,68,346/- (Rupees Eighteen Lakhs Sixtyeight thousand three hundred fortysix only) to the respondent by availing loan from the bank for the purpose of purchasing the said flat. Since there was more than 08 years of delay in completion of the project the complainant wanted to exit from the project and requested for the amount paid with interest. Hence the complainant filed the above complaint seeking for refund of the amount paid with interest.

2. As per the memo of calculation, it is seen that the completion date agreed as 31.08.2016. The promoter-respondent was required to complete the project and hand over possession of the apartment by 31.08.2016. Since the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottees, even after 6 years from the date of agreement. As stated above, the respondent has not made any progress in the construction work and there is no communication from the respondent as to when the construction will be completed and the apartment will be handed over to the complainants. Hence the complainant has filed the present complaint seeking for refund of the money paid together with interest and the same is admissible for relief in accordance with Section 18 of the Act.



3. After registration of the complaint, notice was issued to both complainant and respondent to appear before the authority on 27.03.2024. In pursuance of the notice, the complainant has appeared through their counsel and filed vakalath and documents and served on the respondent. Advocate representing the respondent appeared and filed memo of appearance and prayed for time to file vakalath and statement of objections. The hearing of the above complaint was adjourned to 19.06.2024.

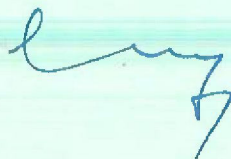
4. On 18.06.2024 Complainant filed MOC together with supporting documents and served the same on the respondent and produced copy of the acknowledgement for having served on the respondent. Respondent advocate appeared and filed vakalath and application for recalling the placement of respondent as ex-parte in the previous hearing. Since, there is no provision under the Act to recall the earlier order and hence not considered by the Authority. The respondent was given more than 3 months' time to file statement of objection from the last date of hearing but failed to file statement of objections even on the hearing of 18.06.2024 and also did not file objections to the MOC filed by the Complainant, hence the Respondent is placed ex-parte.

5. From the above averments, the following points would arise for my consideration:

- a) Whether the complainants are entitled for the relief claimed?
- b) What order?

6. My findings on the above points are as under:

- a) In the affirmative
- b) As per the final order



FINDINGS ON THE ABOVE POINTS

6. From the information furnished by the Complainant in his memo calculation for refund with interest, it is apparent that the promoter has to deliver the apartment on or before 31.08.2016, but failed to handover possession of the apartment. Since it was more than 8 years from the date of agreement, the possession was not handed over to the complainant nor was any communication sent by the respondent intimating the probable date of completion. As per Section 18 of RERA Act, in case the allottees wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act. Therefore, as per Section 18 of the Act, the promoter is liable to return the amount received along with interest.

7. From the above averments made in the complaint, it is evident that complainant has paid the advance sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted by the complainant. In support of their contention, the Complainants have produced Xerox copy of payment receipts, construction agreement, sale agreement, supplementary agreement, statement of account, bank statement, allotment letter and etc. On the other hand the Respondent appeared before the Authority did not file statement of objections, objections to the MOC and not produced any documents to support its contention. Hence, the MOC filed by the complainant is taken on record.

8. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Memo of Calculation for Refund with Interest submitted by the Complainants as on 24.03.2024

Principle amount (A) Rs.	Interest (B) As on 24.03.2024 Rs.	Refund from Promoter (C) Rs.	Total Balance Amount (A+B) Rs.
18,68,346	17,63,532	--	36,31,878

9. Accordingly, the **point (a)** raised above is answered in the affirmative.

10. **Findings on Point No.b**. In view of the above observations, I conclude that this complaint deserves to be allowed and accordingly, I proceed to pass the following:

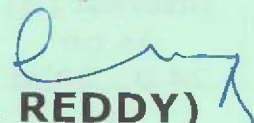
ORDER

1. In exercise of the powers conferred under Section 18 read with section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint Bearing No. CMP/1786/2023 is hereby allowed.

2. Respondent is directed to refund a sum of **Rs.36,31,878/- (Rupees Thirtysix lakhs thirtyone thousand eight hundred seventy eight only)** towards refund with interest to the complainant as per the calculation submitted by the Complainant, within 60 days from the date of this order, calculated from 21/03/2013 till 24/03/2024. The interest due from 25/03/2024 up to the date of final payment will be calculated likewise and paid to



the complainant. The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.



(G.R. REDDY)
MEMBER
FIFTH ADDITIONAL BENCH
K-RERA

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