

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 BENCH 5

PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER

Dated 10th July 2024

COMPLAINT NO: CMP/00774/2023

COMPLAINANTS...

**Ivan Dsouza & Judit Andrade
Pashmina Brookwoods,
No. 17, Battarahalli, Old Madras Road,
Bangalore-560084.
DISTRICT: Bangalore
STATE: KARNATAKA
(Mr. Shivakumar.S.B, Advocate)**

RESPONDENT.....

**Vs
Shashwathi Realty Pvt Ltd.,
No. 19/1, 2nd Floor, Doddamane
Building,
Vittalimalya Road,
BANGALORE-560001.
(M/s. Dua Associates)**

JUDGEMENT

1. This complaint has been filed by the complainant under section 31 of the RERA Act against the project "**Pashmina Brookwoods**" developed by M/s Shashwathi Realty Pvt Ltd., seeking for the relief of interest on delay period, possession and occupancy certificate.

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2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1250/304/PR/171015/000556 valid till 30-09-2021.

3. Said project is situated at Khatha no. 48,49,50 & 51.(Old Sy. No. 22,23/1 & 24), Kammasandra Village, Bidarahalli Hobli, Bengaluru East, Hoskote, Bengaluru Rural.

Brief facts of the complaint are as under:-

4. The complainant had booked a flat bearing No. B1A0305, in the project 'Pashmina Brookwoods' of the respondent by entering into an agreement of sale and construction agreement both dated 01/09/2014 for a total sale consideration of Rs. 26,58,079/- (Rupees Twenty Six Lakhs Fifty Eight Thousand and Seventy Nine only). The complainant had paid the sum of Rs.23,86,785/- (Rupees Twenty Three Lakhs Eighty Six Thousand Seven Hundred and Eighty Five only) on the various dates to the respondent. The respondent was supposed to handover the possession of the said flat to the complainant on 31-08-2016, with 6 months grace period i.e., in February 2017. Though more than 06 years have been lapsed, the respondent has failed to complete the project as agreed and to handover the possession of the said flat to the complainant along with the occupancy certificate. Hence, the complainant had approached this Authority to

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direct the respondent to pay interest on delay period till possession. Hence, this complaint.

5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notices, the complainant had appeared before the Authority and filed statement of bank account, payment receipts, agreements of sale and construction. The respondent has appeared before the Authority through his counsel and filed his vacalath but he is not filed statement of objections inspite of providing sufficient opportunity.
6. In support of his claim, the complainant has produced documents such as copies of agreement of sale and construction, email conversation with the respondent, payment receipts and memo of calculation as on 01-11-2023.
7. This matter is heard on 27-06-2023 and 25-07-2023.
8. **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?
9. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following.

REASONS

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10. **My answer to Point No. 1:-** Initially the complainant has approached this forum seeking relief of adjustment of balance amount with Rs.5,00,000/- (Rupees Five Lakhs only) paid by him on behalf of the builder. During the proceedings, the complainant has filed an application for amendment of his prayer to interest on delay period. Same is accepted by this Authority.
11. Contention of the complainant is that the respondent is charging the additional interest unnecessarily and not completed the project as agreed.
12. From the materials available in record, it is apparent from and agreement of sale and construction agreement both dated 01-09-2014, the complainant has agreed to purchase a flat bearing no. B1A0305 in the project "Pashmina Brookwoods" of the respondent for a total sale consideration of Rs. 26,58,079/- (Rupees Twenty Six Lakhs Fifty Eight Thousand and Seventy Nine only) and paid the sum of Rs.23,86,785/- (Rupees Twenty Three Lakhs Eighty Six Thousand Seven Hundred and Eighty Five only) to the respondent. The respondent was supposed to complete the project and to handover possession of the said flat to the complainant on or before February 2017. However, the respondent has failed to comply with the term of completion as agreed.

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13. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 01-09-2014. The agreement of sale is a key instrument which binds the parties in a contractual relation to be enforceable in accordance with law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement of sale, the respondent was supposed to handover the possession of said flat to the complainant in February 2017.

14. Having accepted the substantial sale consideration from the complainant and the respondent failing to complete the project as agreed certainly entitles the complainant claiming for interest on delay period.

15. In response to the notice the respondent has not appeared before the Authority to participate in the proceedings inspite of providing sufficient opportunity. Therefore, the claim of the complainant has remained unchallenged and undisputed which is corroborating with cogent evidence. Hence, there is no option left to this Authority except to accept the claim of complainant.

16. As per decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters vs The State Of Uttar Pradesh it is held as under

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Para No.22. 'If we take a conjoint reading of subsections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed'.

17. The said principle laid down in the above decision is aptly applicable to the present case on hand.

18. As per sec.18 of RERA Act, the respondent is liable to pay interest for delay period. Considering the entire materials available on record, the delay in handing over possession being apparent, this Authority see no legal impediment in allowing the complaint as prayed. The complainant had paid Rs. 23,86,785/- (Rupees Twenty Three Lakhs Eighty Six Thousand Seven Hundred and Eighty Five only) to the respondent towards entire sale consideration.

19. The complainant has claimed Rs.17,44,010/- (Rupees Seventeen Lakhs Forty Four Thousand and Ten only) as delay period interest vide their memo of calculation as on 01-11-2023 calculated from 31-08-2016 to 01-11-2023. Despite opportunities were given, the respondent has not filed his memo of calculation. Having regard to all these aspects, this

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Authority concludes that the complainant is entitled for delay period interest from 31-08-2016 to 01-11-2023.

20. A thorough verification of the documentary evidence placed by the complainant reveals that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for interest on delay period as submitted vide their memo of calculation as on 11-03-2023 from March 2017.

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION AS PER AGREEMENT	23,86,785	31-08-2016
2	SUBSEQUENT PAYMENT 1	1,06,515	03-09-2019
3	TOTAL PRINCIPLE AMOUNT	24,93,300	
4	TOTAL DELAYED INTEREST as on 01/11/2023		16,21,012

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 23,86,785						
1	28-03-2017	28-04-2017	31		9	18,244
2	28-04-2017	28-05-2017	30		9	17,655
3	28-05-2017	28-06-2017	31	8.15	10.15 as on 01-05-2017	20,575
4	28-06-2017	28-07-2017	30	8.15	10.15 as on 01-06-2017	19,911
5	28-07-2017	28-08-2017	31	8.15	10.15 as on 01-07-2017	20,575
6	28-08-2017	28-09-2017	31	8.15	10.15 as on 01-08-2017	20,575
7	28-09-2017	28-10-2017	30	8.15	10.15 as on 01-09-2017	19,911
8	28-10-2017	28-11-2017	31	8.15	10.15 as on 01-10-2017	20,575
9	28-11-2017	28-12-2017	30	8.1	10.1 as on 01-11-2017	19,813
10	28-12-2017	28-01-2018	31	8.1	10.1 as on 01-12-2017	20,474
11	28-01-2018	28-02-2018	31	8.1	10.1 as on 01-01-2018	20,474
12	28-02-2018	28-03-2018	28	8.1	10.1 as on 01-02-2018	18,492
13	28-03-2018	28-04-2018	31	8.35	10.35 as on 01-03-2018	20,980

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14	28-04-2018	28-05-2018	30	8.35	10.35 as on 01-04-2018	20,304
15	28-05-2018	28-06-2018	31	8.35	10.35 as on 01-05-2018	20,980
16	28-06-2018	28-07-2018	30	8.45	10.45 as on 01-06-2018	20,500
17	28-07-2018	28-08-2018	31	8.45	10.45 as on 01-07-2018	21,183
18	28-08-2018	28-09-2018	31	8.45	10.45 as on 01-08-2018	21,183
19	28-09-2018	28-10-2018	30	8.65	10.65 as on 01-09-2018	20,892
20	28-10-2018	28-11-2018	31	8.7	10.7 as on 01-10-2018	21,690
21	28-11-2018	28-12-2018	30	8.7	10.7 as on 01-11-2018	20,990
22	28-12-2018	28-01-2019	31	8.75	10.75 as on 10-12-2018	21,791
23	28-01-2019	28-02-2019	31	8.75	10.75 as on 10-01-2019	21,791
24	28-02-2019	28-03-2019	28	8.75	10.75 as on 10-02-2019	19,682
25	28-03-2019	28-04-2019	31	8.75	10.75 as on 10-03-2019	21,791
26	28-04-2019	28-05-2019	30	8.7	10.7 as on 10-04-2019	20,990
27	28-05-2019	28-06-2019	31	8.65	10.65 as on 10-05-2019	21,588
28	28-06-2019	28-07-2019	30	8.65	10.65 as on 10-06-2019	20,892
29	28-07-2019	28-08-2019	31	8.6	10.6 as on 10-07-2019	21,487
30	28-08-2019	28-09-2019	31	8.45	10.45 as on 10-08-2019	21,183
31	28-09-2019	28-10-2019	30	8.35	10.35 as on 10-09-2019	20,304
32	28-10-2019	28-11-2019	31	8.25	10.25 as on 10-10-2019	20,778
33	28-11-2019	28-12-2019	30	8.2	10.2 as on 10-11-2019	20,009
34	28-12-2019	28-01-2020	31	8.2	10.2 as on 10-12-2019	20,676
35	28-01-2020	28-02-2020	31	8.2	10.2 as on 10-01-2020	20,676
36	28-02-2020	28-03-2020	29	8.15	10.15 as on 10-02-2020	19,247
37	28-03-2020	28-04-2020	31	8.05	10.05 as on 10-03-2020	20,372
38	28-04-2020	28-05-2020	30	7.7	9.7 as on 10-04-2020	19,028
39	28-05-2020	28-06-2020	31	7.55	9.55 as on 10-05-2020	19,359
40	28-06-2020	28-07-2020	30	7.3	9.3 as on 10-06-2020	18,244
41	28-07-2020	28-08-2020	31	7.3	9.3 as on 10-07-2020	18,852
42	28-08-2020	28-09-2020	31	7.3	9.3 as on 10-08-2020	18,852
43	28-09-2020	28-10-2020	30	7.3	9.3 as on 10-09-2020	18,244
44	28-10-2020	28-11-2020	31	7.3	9.3 as on 10-10-2020	18,852
45	28-11-2020	28-12-2020	30	7.3	9.3 as on 10-11-2020	18,244
46	28-12-2020	28-01-2021	31	7.3	9.3 as on 10-12-2020	18,852
47	28-01-2021	28-02-2021	31	7.3	9.3 as on 10-01-2021	18,852
48	28-02-2021	28-03-2021	28	7.3	9.3 as on 10-02-2021	17,027
49	28-03-2021	28-04-2021	31	7.3	9.3 as on 10-03-2021	18,852
51	28-04-2021	28-05-2021	30	7.3	9.3 as on 10-04-2021	18,244
52	28-05-2021	28-06-2021	31	7.3	9.3 as on 15-05-2021	18,852
52	28-06-2021	28-07-2021	30	7.3	9.3 as on 15-06-2021	18,244
53	28-07-2021	28-08-2021	31	7.3	9.3 as on 15-07-2021	18,852
54	28-08-2021	28-09-2021	31	7.3	9.3 as on 15-08-2021	18,852
55	28-09-2021	28-10-2021	30	7.3	9.3 as on 15-09-2021	18,244
56	28-10-2021	28-11-2021	31	7.3	9.3 as on 15-10-2021	18,852
57	28-11-2021	28-12-2021	30	7.3	9.3 as on 15-11-2021	18,244

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58	28-12-2021	28-01-2022	31	7.3	9.3 as on 15-12-2021	18,852
59	28-01-2022	28-02-2022	31	7.3	9.3 as on 15-01-2022	18,852
60	28-02-2022	28-03-2022	28	7.3	9.3 as on 15-02-2022	17,027
61	28-03-2022	28-04-2022	31	7.3	9.3 as on 15-03-2022	18,852
62	28-04-2022	28-05-2022	30	7.4	9.4 as on 15-04-2022	18,440
63	28-05-2022	28-06-2022	31	7.5	9.5 as on 15-05-2022	19,257
64	28-06-2022	28-07-2022	30	7.7	9.7 as on 15-06-2022	19,028
65	28-07-2022	28-08-2022	31	7.8	9.8 as on 15-07-2022	19,865
66	28-08-2022	28-09-2022	31	8	10.0 as on 15-08-2022	20,271
67	28-09-2022	28-10-2022	30	8	10.0 as on 15-09-2022	19,617
68	28-10-2022	28-11-2022	31	8.25	10.25 as on 15-10-2022	20,778
69	28-11-2022	28-12-2022	30	8.35	10.35 as on 15-11-2022	20,304
70	28-12-2022	28-01-2023	31	8.6	10.6 as on 15-12-2022	21,487
71	28-01-2023	28-02-2023	31	8.6	10.6 as on 15-01-2023	21,487
72	28-02-2023	28-03-2023	28	8.7	10.7 as on 15-02-2023	19,591
73	28-03-2023	28-04-2023	31	8.7	10.7 as on 15-03-2023	21,690
74	28-04-2023	28-05-2023	30	8.7	10.7 as on 15-04-2023	20,990
75	28-05-2023	28-06-2023	31	8.7	10.7 as on 15-05-2023	21,690
76	28-06-2023	28-07-2023	30	8.7	10.7 as on 15-06-2023	20,990
77	28-07-2023	28-08-2023	31	8.75	10.75 as on 15-07-2023	21,791
78	28-08-2023	28-09-2023	31	8.75	10.75 as on 15-08-2023	21,791
79	28-09-2023	28-10-2023	30	8.75	10.75 as on 15-09-2023	21,088
80	28-10-2023	01-11-2023	1	8.75	10.75 as on 15-09-2023	2,811
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 1,06,515						
1	03-09-2019	03-10-2019	30	8.45	10.45 as on 10-08-2019	914
2	03-10-2019	03-11-2019	31	8.35	10.35 as on 10-09-2019	936
3	03-11-2019	03-12-2019	30	8.25	10.25 as on 10-10-2019	897
4	03-12-2019	03-01-2020	31	8.2	10.2 as on 10-11-2019	922
5	03-01-2020	03-02-2020	31	8.2	10.2 as on 10-12-2019	922
6	03-02-2020	03-03-2020	29	8.2	10.2 as on 10-01-2020	863
7	03-03-2020	03-04-2020	31	8.15	10.15 as on 10-02-2020	918
8	03-04-2020	03-05-2020	30	8.05	10.05 as on 10-03-2020	879
9	03-05-2020	03-06-2020	31	7.7	9.7 as on 10-04-2020	877
10	03-06-2020	03-07-2020	30	7.55	9.55 as on 10-05-2020	836
11	03-07-2020	03-08-2020	31	7.3	9.3 as on 10-06-2020	841
12	03-08-2020	03-09-2020	31	7.3	9.3 as on 10-07-2020	841
13	03-09-2020	03-10-2020	30	7.3	9.3 as on 10-08-2020	814
14	03-10-2020	03-11-2020	31	7.3	9.3 as on 10-09-2020	841
15	03-11-2020	03-12-2020	30	7.3	9.3 as on 10-10-2020	814
16	03-12-2020	03-01-2021	31	7.3	9.3 as on 10-11-2020	841
17	03-01-2021	03-02-2021	31	7.3	9.3 as on 10-12-2020	841
18	03-02-2021	03-03-2021	28	7.3	9.3 as on 10-01-2021	759
19	03-03-2021	03-04-2021	31	7.3	9.3 as on 10-02-2021	841
20	03-04-2021	03-05-2021	30	7.3	9.3 as on 10-03-2021	814

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21	03-05-2021	03-06-2021	31	7.3	9.3 as on 10-04-2021	841
22	03-06-2021	03-07-2021	30	7.3	9.3 as on 15-05-2021	814
23	03-07-2021	03-08-2021	31	7.3	9.3 as on 15-06-2021	841
24	03-08-2021	03-09-2021	31	7.3	9.3 as on 15-07-2021	841
25	03-09-2021	03-10-2021	30	7.3	9.3 as on 15-08-2021	814
26	03-10-2021	03-11-2021	31	7.3	9.3 as on 15-09-2021	841
27	03-11-2021	03-12-2021	30	7.3	9.3 as on 15-10-2021	814
28	03-12-2021	03-01-2022	31	7.3	9.3 as on 15-11-2021	841
29	03-01-2022	03-02-2022	31	7.3	9.3 as on 15-12-2021	841
30	03-02-2022	03-03-2022	28	7.3	9.3 as on 15-01-2022	759
31	03-03-2022	03-04-2022	31	7.3	9.3 as on 15-02-2022	841
32	03-04-2022	03-05-2022	30	7.3	9.3 as on 15-03-2022	814
33	03-05-2022	03-06-2022	31	7.4	9.4 as on 15-04-2022	850
34	03-06-2022	03-07-2022	30	7.5	9.5 as on 15-05-2022	831
35	03-07-2022	03-08-2022	31	7.7	9.7 as on 15-06-2022	877
36	03-08-2022	03-09-2022	31	7.8	9.8 as on 15-07-2022	886
37	03-09-2022	03-10-2022	30	8	10.0 as on 15-08-2022	875
38	03-10-2022	03-11-2022	31	8	10.0 as on 15-09-2022	904
39	03-11-2022	03-12-2022	30	8.25	10.25 as on 15-10-2022	897
40	03-12-2022	03-01-2023	31	8.35	10.35 as on 15-11-2022	936
41	03-01-2023	03-02-2023	31	8.6	10.6 as on 15-12-2022	958
42	03-02-2023	03-03-2023	28	8.6	10.6 as on 15-01-2023	866
43	03-03-2023	03-04-2023	31	8.7	10.7 as on 15-02-2023	967
44	03-04-2023	03-05-2023	30	8.7	10.7 as on 15-03-2023	936
45	03-05-2023	03-06-2023	31	8.7	10.7 as on 15-04-2023	967
46	03-06-2023	03-07-2023	30	8.7	10.7 as on 15-05-2023	936
47	03-07-2023	03-08-2023	31	8.7	10.7 as on 15-06-2023	967
48	03-08-2023	03-09-2023	31	8.75	10.75 as on 15-07-2023	972
49	03-09-2023	03-10-2023	30	8.75	10.75 as on 15-08-2023	941
50	03-10-2023	01-11-2023	29	8.75	10.75 as on 15-09-2023	909
					TOTAL DELAYED INTEREST as on 01/11/2023	16,21,012

22. Accordingly the point raised above is answered in the Affirmative.

23. **My answer to point No.2:-** In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, I proceed to pass the following:

[Handwritten signature]

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

ORDER

1. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/00774/2023** is hereby allowed. The Respondent is directed to pay a sum of **Rs.16,21,012/- (Rupees Sixteen Lakhs Twenty One Thousand and Twelve only)** towards interest on delay period with interest at 9% from 28-03-2017 to 30-04-2017 at MCLR + 2% from 01-05-2014 till 19-03-2024 to the complainants within 60 days from the date of this order.
2. The interest due from 02-11-2023 up to the date of final payment will be calculated MCLR + 2% and paid to the complainant.
3. Further, the respondent is directed to complete all the pending works in the project bearing no. B1A0305, and execute the sale deed of flat and hand over the possession of the same to the complainant.
4. The complainant is at liberty to initiate action for recovery in accordance with law if the

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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,

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respondent fails to comply with the order of
this Authority.

No order as to costs.


(G R REDDY, IRS)
Member, K-RERA

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