

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/0627/2023**

**DATED THIS 28<sup>th</sup> DAY OF JUNE, 2024**

COMPLAINANT : 1. Mr.Rajiv Kumar Kushwaha  
2. Mrs.Bindu Kushwaha  
  
Both are residing at No.B302  
GR Regent Park Apartments  
Gottegere, Bangalore:560 083  
  
(Mr.Raj Kumar, Advocate)

RESPONDENT / PROMOTER : M/s.Shashwati Realty Pvt Ltd.  
No.19/1, 2<sup>nd</sup> Floor, Doddamane  
Building, Vittalmallya Road  
Bangalore : 560 001  
  
(M/s.Dua Associates, Advocates)

PROJECT NAME & REGISTRATION NO. : **PASHMINA BROOKWOODS**  
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 complainants have entered into an agreement of sale on 20.08.2014 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 28.02.2017. The complainants have paid an amount of Rs.16,15,654/- (Rupees Sixteen Lakhs fifteen thousand six hundred fifty four only) to the respondent for the purpose of purchasing the said flat. Since there was delay in completion of the project and construction also not happening the complainants wanted to exit from the project and requested for the amount paid with interest. Hence the complainants filed the above complaint seeking for refund of the amount paid with interest.

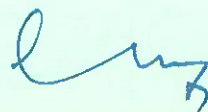
2. As per the memo of calculation, it is seen that the completion date agreed as 28.02.2017. The promoter-respondent was required to complete the project and hand over possession of the apartment by 28.02.2017. Since the respondent-promoter has failed to complete or unable to handover the possession 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 complainants have filed the present complaint for refund of the money 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 complainants and respondent to appear before the authority on 22.08.2023. In pursuance of the notice, the complainants have appeared through their counsel and filed 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 as he has not received any instructions from his client and hence he has not come prepared for attending the hearing on 22.8.2023. The hearing of the above complaint was adjourned to 25.10.2023.

4. The hearing scheduled on 25.10.1023 was postponed on two occasions and the hearing was held on 18.01.2024. On 18.01.2024 Complainants filed MOC together with supporting documents and served the same on the respondent. The complainants have also filed copy of the acknowledgement for having served on the respondent. Respondent advocate appeared and filed vakalath and prayed for time for filing objection. Since it was more than 3 months from the date of first hearing, time was granted to the Respondent to file statement of objection till 31.1.2024 and thereafter the matter will be posted for orders.

5. Respondent filed its statement of objection on 5.2.2024 and did not file objections to the MOC filed by the Complainants. In the said statement of objection, the respondent submitted various reasons for delay in completing the project. Since the complainants wanted to exit from the project and filed index of documents on 22.8.2023 itself seeking refund of the amount paid and for a direction from this Authority to restrain the Respondent from selling the unit allotted to the complainants to any third party till the case is decided. 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. Hence, the objections filed by the Respondent was not considered and as per Section 18 of the Act, the promoter is liable to return the amount received along with interest.

4. 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?

5. 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 28.02.2017, but failed to handover possession of the apartment. Since it was more than 6 years from the date of agreement, the possession was not handed over to the complainants 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 complainants have 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 complainants. In support of their contention, the Complainants have produced Xerox copy of payment receipts, construction agreement, sale agreement, statement of account, bank statement and email correspondence. The respondent filed copies of order passed by the NGT, Hon'ble Supreme Court of India and Karnataka State Pollution Control Board in support of its contention. The documents produced by the Respondent is nowhere relevant to decide the matter which is pending before this Authority as the Complainants wanted to exit from the project which the Act permits them to do so and to claim refund of the money with interest. The Respondent has not filed any objections to the MOC filed by the Complainants. Hence, the MOC filed by the complainants 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 08.08.2023**

Principle amount (A) Rs.	Interest (B) As on 08.08.2023 Rs.	Refund from Promoter (C) Rs.	Total Balance Amount (A+B) Rs.
16,15,654	10,83,674	4,63,348	22,35,980


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/01370/2023 is hereby allowed.

2. Respondent is directed to refund a sum of **Rs.22,35,980/- (Rupees Twenty two lakhs thirty five thousand nine hundred eighty only)** towards refund with interest to the complainant as per the calculation submitted by the Complainants, within 60 days from the date of this order, calculated from 01/05/2017 till 08.08.2023. The interest due from 09.08.2023 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are 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