

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 BENCH-6

Dated 4TH AUGUST 2023

PRESIDED BY HON'BLE MEMBER MRS.NEELMANI N RAJU

COMPLAINT No: CMP/220829/0009956

COMPLAINANT....

**RAJKUMAR BALBEER SHAH
NO.3, IST FLOOR
APPURAYAPPA LANE
SIDDANNA LANE GROSS
NAGARTHPETE
BANGALORE-560002.**

(IN PERSON)

V/S

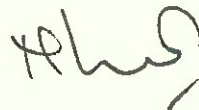
RESPONDENT.....

**ARYAN HOMETEC PVT LTD
NO.609, 15TH CROSS
RING ROAD,
JP NAGAR 6TH PHASE
BANGALORE-560078.**

(EX-PARTE)

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act, against the project 'ARYAN GOLDEN ARENA - K' developed by "ARYAN HOMETEC PRIVATE LIMITED" in the limits of Attibele-Sarjapura Main Road, Bidaraguppe Village, Attibele Hobli, Anekal Taluk, Bangalore Urban for the relief of refund with interest.



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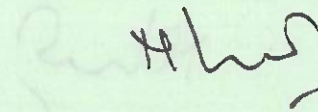
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2. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1251/308/PR/171223/002372 and was valid till 31/12/2021. The Authority has given Covid extension for a period of 9 months valid till 30/09/2022.

3. Brief facts of the complaint:-

The complainant had booked a Flat bearing No. K-602 in the project known as "ARYAN GOLDEN ARENA-K" by entering into an agreement of sale on 09/06/2017. In pursuance of the aforesaid agreement for sale, the complainant has paid an amount of Rs.2,66,493/- (Rupees Two Lakh Sixty Six Thousand Four Hundred and Ninety Three only) to the respondent till date towards the aforesaid flat thereof. The respondent had assured to deliver the possession of the flat by 31/12/2019. All the efforts made by the complainant to get delivery of the flat failed as the respondent nor his employees responded to his request. Due to the enormous delay in the delivery of the flat, the complainant requested the respondent for refund, the respondent asked for time to repay the amount. The complainant submits that the respondent has stopped receiving calls and not responded to refund the amount. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondent to refund the amount with interest. Hence, this complaint.

4. After registration of the complaint, several notices were sent to the respondent at his old and new addresses for appearance before the Authority. The respondent failed to appear before the Authority and never attended the hearings. Finally paper publication was issued in local Kannada daily newspaper "HOSA DIGANTHA" on 27/06/2023 for the appearance of the respondent. In spite of paper publication, the respondent did not appear before the Authority and hence, has been placed as **EX-PARTE**.



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5. The complainant has submitted payment receipts, newspaper publication published in "Hosa Digantha" Kannada daily dated 27/06/2023 and memo of calculation for refund with interest as on 01/03/2023.

6. This matter was heard on 22/12/2022, 21/02/2023, 01/03/2023, 05/04/2023, 14/06/2023 and 26/07/2023. The case was finally posted for orders on 26/07/2023.

7. On the above averments, the following points would arise for our consideration:

1. Whether the complainant is entitled to the relief claimed?
2. What order?

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


1. In the Affirmative
2. As per final order for the following:-

FINDINGS

9. My findings on Point No.1:

From the materials placed on record, it is apparent that in spite of entering into an agreement for sale to hand over possession of the flat, the builder has not completed the project as per agreement and has delayed the project and has not handed over the apartment to the complainant till date. Hence, the builder has failed to abide by the terms of agreement for sale. It also appears that the builder is absconding. There seems to be no possibility of completing the project or handing over the possession of the flat in the near future.

10. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s Newtech Promoters v/s The State of Uttar Pradesh it is held that:



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“Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf.”

11. In the Judgement reported in Civil Appeal No.3581-3590 of 2020 at Para No.23 between M/s Imperia Structures Ltd v/s Anil Patni and another by the Hon'ble Supreme Court it is held that:

“In terms of section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himanshu Giri came under the later category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment.”

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12. In case the allottee 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, flat, 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.

13. Therefore, as per **section 18(1)** of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has paid substantial sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to hand over possession of the apartment, certainly entitles the complainant herein for refund with interest.

15. Though several notices were sent to the respondent and newspaper publication was published in local Kannada daily newspaper on 27/6/2023, the respondent has not appeared before the Authority to participate in the proceedings by filing statement of objections and producing documents on his behalf. The respondent has not at all disputed the claim of the complainant in any manner. Therefore, the claim of the complainant remained unchallenged and it is corroborated with the cogent evidence. These being the facts, in the absence of any resistance by the respondent, there is no option left to this Authority except to accept the claim of the complainant.

16. The complainant has submitted his memo of calculation as on 01/03/2023 claiming refund with interest for Rs.4,12,031/- (Rupees Four Lakh Twelve Thousand and Thirty One only). Despite several opportunities

M/S

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that were given to the respondent and notice was published in the local Kannada daily newspaper for his personal appearance, the respondent failed to appear before the Authority. This conduct of the respondent clearly goes to show that he has taken the complainant for a ride and deprived him of owning his own flat.

17. Having regarding to the above aspects, the Authority upholds the refund amount claimed by the complainant vide his memo of calculation as on 01/03/2023.

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

Interest Calculation Till 30/04/2017 (Before RERA)					
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	30-04-2017	0	0	30-04-2017	0
2				TOTAL INTEREST (I1)	0

Interest Calculation From 01/05/2017 (After RERA)							
S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	0	2130	01-03-2023	8.15	10.15 as on 01-05-2017	0
2	09-06-2017	1,66,493	2091	01-03-2023	8.15	10.15 as on 01-06-2017	96,810
3	03-07-2018	1,00,000	1702	01-03-2023	8.45	10.45 as on 01-07-2018	48,728
4	TOTAL AMOUNT	2,66,493				TOTAL INTEREST (I2)	1,45,538

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 01-03-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
2,66,493	1,45,538	0	4,12,031

19. Accordingly, the point raised above is answered in the Affirmative.

20. **My findings on Point No.2:** In view of the above discussion, the complaint deserves to be allowed. Hence, the following order is passed:


ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/220829/0009956** is hereby allowed.

Respondent is directed to pay a sum of Rs.4,12,031/- (Rupees Four Lakh Twelve Thousand and Thirty One only) towards refund with interest calculated at MCLR + 2% from 09/06/2017 till 01/03/2023 to the complainant within 60 days from the date of this order. The interest accruing from 02/03/2023 till the date of final payment will be calculated and paid likewise 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.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA

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Member & Clerk