

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-4**

**PRESIDED BY SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN**

**Dated 10<sup>th</sup> DAY OF NOVEMBER 2023**

**COMPLAINT No: CMP/ 220920/0010030**

**COMPLAINANTS..**

SANANDA KUNDU  
SOURAV PAL  
FLAT NO. 1105, SMR VINAY  
ENDEAVOUR, HOODI  
WHITEFIELD  
BENGALURU URBAN-560048

(REP. BY R. SANTOSH KUMAR  
ASSOCIATES, ADVOCATES)

V/s

**RESPONDENT....**

M/S ARYAN HOMETEC  
PRIVATE LIMITED  
NO; 609, 15<sup>TH</sup> CROSS  
RING ROAD, JP NAGAR  
6<sup>th</sup> PHASE  
BENGALURU URBAN-560078

(EX-PARTE)

**JUDGEMENT**

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "**ARYAN GOLDEN**" developed by "**M/s ARYAN HOMETEC PRIVATE LIMITED**" for the relief of refund with interest.

ARYAN GOLDEN ARENA

Rectified via order dated 20/11/2023

Aryan Golden Aren instead of Aryan Golden

2. This project is registered in RERA bearing registration no. PRM/KA/RERA/1251/310/PR/171031/001288.

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3. The promoter has developed this project in the limits of Sy.No: 320, 321, 29/1 & 319/2, Attibele-Sarjapura Main Road, Bidaraguppe Village, Attibele Hobli, Anekal, Bengaluru South, Bengaluru Urban.

4. The gist of the complaint is that the complainants have booked a flat bearing no. E-603 situated on the 6<sup>th</sup> floor in Block-E in the project "ARYAN GOLDEN ARENA" and thereafter entered into an agreement of sale and construction agreement both dated 18/11/2016 of the respondent for a total sale consideration of Rs.27,08,526/- (Rs. Twenty seven lakhs eight thousand five hundred twenty six only). The complainants have paid an amount of Rs.50,000/- on 30/9/2016, Rs.67,426/- on 12/10/2016, Rs.18,000/- on 30/11/2016, Rs.7,69,520/- on 30/11/2016, Rs.19,853/- on 13/4/2017, Rs.71,568/- on 16/4/2018, Rs.74,018/- on 24/12/2019, Rs.75,480/- on 23/4/2020, Rs.73,429/- on 15/5/2021, Rs.73,188/- on 20/1/2022, Rs.81,779/- on 7/1/2023 altogether Rs.13,74,261/- (Rs. Thirteen lakhs seventy four thousand two hundred sixty one only) to the respondent-builder as per of memo of calculation dated 14/2/2023 which has been duly acknowledged by him. The builder was required to hand over the possession of the said flat to the complainants within 30 months with a grace period of 6 months i.e. by 18/11/2019. The complainant has also entered into an tripartite agreement dated 18/11/2016 with the respondent M/s Aryan Hometec Private Limited and PNB Housing Finance Limited for loan towards purchase of the said flat. It is contended that till now he has not received possession of the said flat. He tried to reach out the builder on multiple times but no response from him.

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Therefore, the complainants have cancelled the said flat and approached this forum seeking for the relief of refund with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent did not appear before this Authority during the hearings held on 14/1/2022, 16/01/2023, 14/2/2023, 15/3/2023, 18/4/2023, 2/6/2023, 3/7/2023, 5/7/2023, 28/7/2023, 21/8/2023 and has been continuously remained absent during the aforesaid dates of hearings and hence he has been placed as Ex-parte. Subsequently, the respondent has not taken any interest to put forth his grievances before this Authority and has not filed statement of objections, producing documents if any on its behalf. A paper publication was also issued in the leading newspaper "The New Indian Express" on 20/7/2023 summoning the respondent to appear before this Authority. But the respondent has failed to do so.
6. In support of his claim, the complainants have produced documents such as (1) copy of agreement of sale and construction agreement both dated 18/11/2016 (2) tripartite agreement dated 18/11/2016 (3) loan sanction letter from PNB Housing Finance Limited (4) payment receipts (5) memo of calculation. (4) copy of summons to respondent for appearance through paper publication.
7. Heard arguments of the complainant.



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8. On the above averments, the following points would arise for my consideration:-

1. Whether the complainants are entitled for the relief claimed?
2. What order?

9. Findings on the above points are as under:-

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

**FINDINGS**

**10. Findings on point No.1:-** The complainants have approached this forum seeking for the relief of refund of amount paid along with interest.

The grounds urged are that the complainants have booked a unit/ flat no.E-603 situated on the 6<sup>th</sup> floor in Block-E in the project **ARJAN GOLDEN**

**ARENA GOLDEN** of the respondent-promoter. Accordingly, both the parties have entered into an agreement of sale and construction agreement both dated 18/11/2016 for a total sale consideration of Rs.27,08,526/-

(Rs. Twenty seven lakhs eight thousand five hundred twenty six only).

The respondent had promised to hand over the possession of the said flat within 30 months with grace period of 6 months i.e. by 18/11/2019.

It is contended that the respondent has not completed the construction and handed over the said flat to the complainants within the stipulated timeline and thereby failed to abide by the terms and conditions as enumerated in the construction agreement dated 18/11/2016.

11. Looking to the averments of agreement, parties herein have entered into an agreement of sale and construction agreement both dated 18/11/2016. The agreement of sale is key instrument which binds the parties in a contractual relation so as to be properly enforced in

*Rectified order dated 01/11/23 as Arjan Golden Arena instead of Arjan Golden.*

*ASB*

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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 and construction agreement dated 18/11/2016, the respondent was supposed to handover the possession of the said flat to the complainants by 18/11/2019. But the respondent had not completed and handed over the possession of the said flat to the complainants till date.

12. As per the decision of the judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

*"23. 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 RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.*

13. Further, in the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No(s) 6745-6749 of 2021 (arising out of SLP (Civil) No(s) 3711-3715 of 2021 between M/s Newtech

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Promoters and Developers Private Limited Versus State of UP & others, it is held as under:

*"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 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 or the amount with interest at such rate as may be prescribed in this behalf"*

The said principle is aptly applicable to the present case on hand.

14. As per Section 18 of RERA Act, 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, 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.

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

16. From the averments made in the complaint, it is obvious that the complainants have paid the substantial sale consideration and are entitled to get their amount paid along with interest as per the memo of calculation submitted by the complainants. The complainant have claimed an amount of Rs.20,53,827/- (Rs. Twenty lakhs fifty three thousand eight hundred twenty seven only) as refund with interest. The



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Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

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

**Memo Calculation submitted by the complainant as on 14/2/2023**

PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 14/2/2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
13,74,261	6,79,566	0	20,53,827

18. Having regard to all these aspects, this Authority is of the opinion that the complainant is entitled for refund along with interest.

19. Sum and substance of the case is as under:

Date of agreement of sale	18/11/2016
Date of construction agreement	18/11/2016
Sale consideration	27,08,526/- (Rs. Twenty seven lakhs eight thousand five hundred twenty six only)
Amount paid	Rs.13,74,261/- (Rs. Thirteen lakhs seventy four thousand two hundred sixty one only)
Promised date of possession as per agreement of sale	18/11/2019
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Refund of amount paid along with interest.

Asst

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20. Despite of several notices served upon the respondent, he did not appear before this Authority and has been continuously remained absent on all the dates of hearings. Subsequently, he has failed to file statement of objections and furnishing documents in support of his defence and hence not contested the matter. In the absence of any resistance by the respondent and considering the claim of the complainant which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant. Accordingly, the points raised above is answered in the Affirmative.

**21. Findings on point no.2.** In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, I proceed to pass the following:

**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: CMP/220920/0010030 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **20,53,827/-** (Rupees Twenty lakhs fifty three thousand eight hundred twenty seven only) towards refund with interest to the complainants within 60 days from the date of this order calculated at the rate of 9% from 30/9/2016 till 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 till 14/2/2023.
2. The interest due from 15/2/2023 shall be calculated likewise and paid to the complainants till the date of entire realization.





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3. The complainants are at the liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.

  
(H.C. Kishore Chandra)  
Chairman  
K-RERA

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