

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 DECEMBER 2023

PRESIDED BY HON'BLE MEMBER MRS.NEELMANI N RAJU

COMPLAINT No: CMP/220805/0009854

COMPLAINANT....

**ANIL KUMAR
14/1, SUMUKHA
22ND B MAIN ROAD, 17TH CROSS
J.P. NAGAR 5TH PHASE
BANGALORE-560078**

(IN PERSON)

V/S

RESPONDENT.....

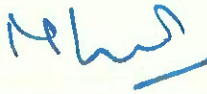
**ARYAN HOMETEC PVT LTD
NO.609, 15TH CROSS
RING ROAD,
JP NAGAR 6TH PHASE
BANGALORE-560078.**

(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 District for the relief of refund with interest.

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.



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3. Brief facts of the complaint:-

The complainant had booked a Flat bearing No. K-701, 7th Floor, Block-K in the project "ARYAN GOLDEN ARENA-K" of the respondent by entering into an agreement of sale and construction agreement on 31/08/2017. The complainant was offered a scheme of no pre-EMI till handing over possession of the flat and that the EMI will start only after handing over possession of the flat by the respondent to the complainant. The complainant has also entered into tripartite agreement along with the respondent with Indiabulls Housing Finance Limited for housing loan of Rs.18,53,373/- out of which the financial institution has disbursed an amount of Rs.12,36,249/- to the respondent. The complainant has paid Rs.13,67,248/- (Rupees Thirteen Lakh Sixty Seven Thousand Two Hundred and Forty Eight only) to the respondent on various dates. The deduction of EMI has started from the account of the complainant. The respondent was supposed to handover possession of the flat by February 2019 with a grace period of 9 months i.e. by November 2019. The respondent has not paid PEMIs as assured. The complainant is not satisfied with the progress of the construction work wants to cancel the booking of the flat. Thus, the complainant has filed this complaint before the Hon'ble Authority and prays for directions to the respondent to refund the entire amount with interest, cancellation of sale agreement, stop EMI from Bank. 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 22/07/2023 for the appearance of the respondent. In spite of paper publication, the respondent failed to appear before the Hon'ble 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 22/07/2023 and memo of calculation for refund with interest as on 02/03/2023.

6. This matter was heard on 22/12/2022, 21/02/2023, 01/03/2023, 05/04/2023, 14/06/2023, 20/07/2023 and 29/11/2023. The case was finally posted for orders on 29/11/2023.

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 and construction agreement 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 flat 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. 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.



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11. The Hon'ble Authority has perused the written submission submitted by the by the complainant. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, and hence, it is necessary that it shall be free from any ambiguity and vagueness. Here in this case, the respondent has not complied with the terms of the said agreement of sale.

12. 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:

"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."

13. 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

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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."

14. 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.

15. 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.

16. Though several notices/summons were sent to the respondent, they did not appeared before the Authority during the hearing. In spite of newspaper publication published in local Kannada daily newspaper dated 22/07/2023, the respondent failed to appear 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,

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there is no option left to this Authority except to accept the claim of the complainant.

17. The complainant has submitted his memo of calculation as on 02/03/2023 claiming refund with interest for Rs.21,36,464/- (Rupees Twenty One Lakh Thirty Six Thousand Four Hundred and Sixty Four only). Despite several opportunities were given to the respondent the respondent has not filed their memo of calculation. 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.

18. Having regarding to the above aspects, the Authority upholds the refund amount claimed by the complainant vide his memo of calculation as on 02/03/2023.

19. 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	21-04-2017	1,30,999	9	30-04-2017	936
2				TOTAL INTEREST (11)	936

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 INTE REST X%	INTEREST RATE X+2%	INTERES T @X+2%
1	01-05-2017	1,30,999	2131	02-03-2023	8.15	10.15 as on 01-05-2017	77,629

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2	31-08-2017	12,36,249	2009	02-03-2023	8.15	10.15 as on 01-08-2017	6,90,651
3	TOTAL AMOUNT	13,67,248				TOTAL INTEREST (I2)	7,68,280

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 02-03-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
13,67,248	7,69,216	0	21,36,464

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

21. **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/220805/0009854** is hereby allowed.

Respondent is directed to pay a sum of **Rs.21,36,464/- (Rupees Twenty One Lakh Thirty Six Thousand Four Hundred and Sixty Four only)** towards refund with interest calculated at 9% from 21/04/2017 till 30/04/2017 and MCLR + 2% from 01/05/2017 till 02/03/2023 to the complainant within 60 days from the date of this order.

The interest accruing from 03/03/2023 till the date of final payment will be calculated and paid likewise to the complainant.

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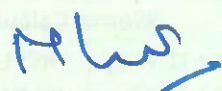
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The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA

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