

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

Dated 29th SEPTEMBER 2022

PRESENT:

SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN
RECTIFICATION UNDER SECTION 39 OF RERA ACT

COMPLAINANTS.....

- 1. CMP/210322/0007820**
VIJAY K PUROHIT,
No. 17, 2nd Floor, GB Lane,
2nd Cross, Cottonpet,
Bengaluru – 560053.
- 2. CMP/210323/0007822**
MAHENDRA KUMAR,
No.260, PV Rathnam Nilaya,
3rd Floor, Akkipet,
Bengaluru – 560053.
- 3. CMP/210324/0007831**
MAHIPAL V,
No.21/1, 3rd Floor, MR Lane,
Akkipet Main Road,
Bengaluru – 560053.
- 4. CMP/210324/0007832**
RAKESH KUMAR B,
No. 05, Attimarrma Temple Street,
OTC Road, Cottonpet Cross,
Bengaluru – 560053.

(In person)

V/S

[Signature]

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RESPONDENTS.....

1. ARYAN HOMETECH PVT LTD

609, 15th Cross, JP Nagar 6th Phase,
Bengaluru - 560078.
(Exparte)

2. B.G. ANJANAPPA,

(Landowner)

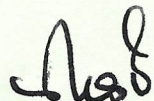
S/o. Late B.H. Gunda Reddy,
Residing at Bidaraguppe Village,
At Post Attibele Hobli, Anekal Taluk,
Bengaluru - 562107.
(Rep. By B.J. Krishna, Advocate)

3. YES BANK,

Having its registered office at
Yes Bank House,
Off Western Express Highway,
Santacruz East,
Mumbai - 400055.
(Project approved Loanee Bank)
(Exparte)

* * * * *

1. These complaints are filed under section 31 of the RERA Act against the project 'Aryan Fountain Square' developed by 'Aryan Hometec Pvt. Ltd.,' registered as PRM/KA/RERA/1251/310/PR/171031/001515 for the relief of refund of amount with interest.
2. All these matters are taken up together for disposal as they are arising from common project and in order to avoid repetition.
- 2A. The complainant Mr. Mahendra Kumar has moved an application dated 3rd January 2023 inviting the attention of the Authority to rectify the



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factual mistake that has been crept in the Authority's judgement dated 29th September 2022.

(a) Insertion of ' direction the respondent nos. 1 & 2'

The application has been verified and it is found necessary to rectify the order dated 29th September 2022.

- (i) This rectification is done within two years from the date of the original judgment i.e. 29th September 2022.
- (ii) There is no information about any appeal pending on this order.
- (iii) No substantive part of the order is amended
- (iv) The Authority's judgement dated 29th September 2022 is declared Non Est and replaced by this order dated 11/01/2023.

The brief facts of all the complaints are as under:-

3. All the complainants have booked flats in the project of respondent and paid the instalments as per the terms of the sale agreement. The respondent didn't complete the project and handed over the possession as agreed in the sale agreement. Complainants have approached the builder several times over the phone and visited the registered office. But, the builder was not ready to come forward for registration and to comply with the terms as per the agreement. In view of the above, complainants pray this Authority to direct the respondent to pay the loan amount due to the YES Bank, refund the amount with interest and EMI's borne by the complainants from the inception till date.
4. Hence, these complaints.

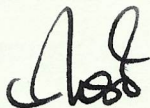
Ans

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5. In pursuance of the notice, the respondent No.2 has appeared before the Authority through its counsel and prays time to file objections. But, Further, he failed to appear and contest the matter by filing objections or documents. Respondent No. 1 and 3 have been never appeared before the Authority in spite of providing sufficient opportunity.
6. In support of their the claim, the complainants have produced in all 5 documents such as:-
 - (i) Sale agreements
 - (ii) Construction agreements
 - (iii) Tripartite agreements
 - (iv) Payment receipts
 - (v) Memo of calculations
7. Hearings were conducted on 04/07/2022, 15/07/2022, 05/08/2022, 02/09/2022, 16/09/2022 and finally on 27/09/2022.
8. Heard complainants.
9. On the above averments, the following points would arise for my consideration.
 1. Whether the complainants are entitled to the relief claimed?
 2. What order?
10. My answer to the above points are as under:-
 1. In the Affirmative
 2. As per final order for the following



REASONS

11. **My answer to point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to complete the project and to handover the possession of an apartment, the respondent has not completed the project as per the agreement. The respondent was supposed to complete and handover the respective units in favour of the complainants within six months from the date of entering into sale agreement. Further, the completion date was till 20/04/2018 as per RERA certificate. Complaints have filed this complaint in the month of March 2021. Hence, the respondent has failed to abide by the terms of sale agreement and construction agreement. There seems to be no possibility of completing the project and handing over the possession in near future.
12. 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

Ans

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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 latter 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."

13. 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 etc., in accordance with sale agreement.
14. From the averments of the complaints and the copy of agreement between the parties, it is obvious that complainants have already paid the substantial sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment certainly entitles the complainants herein for refund with interest. It is also relevant to note that inspite of putting in appearance, given sufficient opportunity; the respondent company didn't turn up to proceed further with the matter.
15. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest.
16. Further, the complainants have submitted memo of calculation pertaining to refund amount as under:-

Ans

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Sl. No.	Complaint No.	Complainant Name	Sale agreement date	Project completion date as per sale agreement	Amount paid to the respondent
1	7820	Vijay K Purohit	09.07.2019	08.01.2020	34,28,629/-
2	7822	Mahendra Kumar	11.04.2019	10.10.2019	36,03,679/-
3	7831	Mahipal V	22.05.2019	21.11.2019	34,37,060/-
4	7832	Rakesh Kumar B	30.06.2019	29.12.2019	38,96,545/-

17. Therefore, it is incumbent upon the respondent to refund the amount with interest as above.
18. Accordingly, the point raised above is answered in the Affirmative.
19. **My answer to point No.2:-** In view of the above discussion, the complaints deserves to be allowed. Hence, 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 complaints bearing No. CMP/210322/0007820, CMP/210323/0007822, CMP/210324/0007831 and CMP/210324/0007832 are hereby allowed. The respondent No. 1 and 2 are hereby directed to refund the amount to the below mentioned complainants as below:- **(amended vide order dated 11/ 01/2023)**

Ans

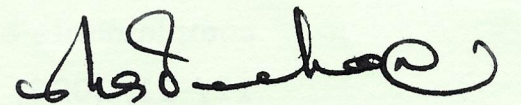
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1. In Cmp. No. 7820, the complainant Vijay K Purohit is entitled for refund of Rs.34,28,629/- along with interest at the rate of SBI MCLR + 2% commencing from 09/07/2019 till the date of entire realisation.
2. In Cmp. No. 7822, the complainant Mahendra Kumar is entitled for refund of Rs.36,03,679/- along with interest at the rate of SBI MCLR + 2% commencing from 11/04/2019 till the date of entire realisation.
3. In Cmp. No. 7831, the complainant Mahipal V is entitled for refund of Rs.34,37,060/- along with interest at the rate of SBI MCLR + 2% commencing from 22/05/2019 till the date of entire realisation.
4. In Cmp. No. 7832, the complainant Rakesh Kumar B is entitled for refund of Rs.38,96,545/- along with interest at the rate of SBI MCLR + 2% commencing from 30/06/2019 till the date of entire realisation.
5. 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.

No order as to costs.



(H.C. Kishore Chandra)

Chairman
K-RERA