

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

Dated 17th September 2022

COMPLAINT No: CMP/210717/0008140

COMPLAINANT....

Mr. Senthil Kumar

S-9, Surya Residency,
Konappana Agrahara,
Electronic City,
Bengaluru-560100.

(In Person)

V/S

RESPONDENT.....

Mr. Bharat Reddy

Aryan Hometec Pvt Ltd.,
No.609, 15th Cross,
JP Nagar 6th Phase,
Bengaluru-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-C**' developed by "**ARYAN HOMETEC PRIVATE LIMITED**" in Sy.No. 291/1, 320, 321, 319/2, Attibele-Sarjapura Main Road, Bidaraguppe Village, Attibele Hobli, Anekal Taluk, Bangalore District for the relief of refund with interest.

2. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1251/310/PR/171031/001438.

3. **Brief facts of the complaint:-** The complainant has booked a Flat No.101, Block C, Ground Floor in the project known as "**ARYAN GOLDEN**

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ARENA-C by entering into an agreement for sale, as well as construction agreement both dated 15/04/2016 and Tripartite Agreement dated 18/4/2016 with respondent (who is a GPA Holder). In pursuance of the aforesaid agreement for sale, construction agreement and tripartite agreement, the applicant has paid a total amount of Rs.8,50,046/- including loan amount sanctioned by Punjab Housing Finance Limited till date towards the aforesaid flat thereof.

4. In terms of aforesaid construction agreement, the respondent was supposed to handover the flat to the complainant on or before 15/10/2018 with a grace period of six months i.e. by the end of April 2019. However, the respondent has not handed over the flat on one or the other pretext. The complainant has claimed that as there is inordinate delay on the part of respondent in handing over the flat, has lost confidence with the respondent, and has sought relief of refund with interest. The respondent has also stopped paying pre-EMI to the Bank as promised. Hence, the complaint.

5. After registration of the complaint, several notices and summons were sent to the respondent on his old and new addresses for appearance before the Authority. Finally paper publication was issued in local Kannada daily newspaper "HOSA DIGANTHA" for the appearance of the respondent. In spite of paper publication, the respondent did not appear before the authority and hence, therefore, has been placed as ex-parte.

6. This matter was heard on 30/5/2022, 16/6/2022, 30/6/2022, 12/7/2022, 4/8/2022 and 15/9/2022. The case was finally posted for orders on 15/9/2022.

7. In support of his claim, the complainant has submitted documents such as (a) Agreement for sale dated 15/4/2016, (b) Agreement for construction dated 15/4/2016 (c) Tripartite agreement (d) Statement of account from



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Punjab Housing Finance Limited (e) Booking Form, (f) Memo of calculation as on 23/5/2022 (g) Paper publication published in "Hosa Digantha" Kannada daily dated 24.08.2022.

8. 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?

9. Our findings on the above points are as under:

1. In the Affirmative

2. As per final order for the following:

FINDINGS

10. Our findings on point no.1:

From the materials placed on record, it is apparent that inspite of entering into an agreement for sale and construction to hand over possession of the flat, the builder has not completed the project as per agreement 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. There seems to be no possibility of completing the project or handing over the possession in near future.

At this juncture, our attention is drawn towards the judgement of 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



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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".

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, plat, building as the case may be with interest such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

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.

From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid substantial sale consideration. Having accepted the said amount and failure to keep up the promise to hand over possession of apartment and paying pre-EMIs to the Bank certainly entitles the complainant herein for refund with interest. The complainant has submitted his memo of calculation as on 23/5/2022 claiming refund with interest for Rs.21,30,329/-. The complainant has also submitted that he has received a refund of Rs.97,278/- from the respondent as mentioned in the memo of calculation. Despite several opportunities given to the respondent and notice published in the local Kannada daily

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newspaper for his personal appearance, the respondent failed to appear before the Authority. This conduct of the respondent clearly shows that he has taken the complainant for a ride and deprived him of owning his own flat. The Authority upholds the refund amount claimed by the complainant vide his memo of calculation as on 23/5/2022.

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 TILL 30/04/2017	INTEREST @9%
1	30-04-2016	8,50,046	365	76,504
2	10-05-2016	2,248	355	196
3	10-06-2016	6,836	324	546
4	10-07-2016	6,836	294	495
5	10-08-2016	6,836	263	443
6	10-09-2016	6,836	232	391
7	10-10-2016	6,836	202	340
8	10-11-2016	6,836	171	288
9	10-12-2016	6,836	141	237
10	10-01-2017	6,836	119	200
11	10-02-2017	6,836	79	133
12	10-03-2017	6,836	51	85
13	10-04-2017	6,836	20	33
14			TOTAL INTEREST (I1)	79,891

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	9,27,490	53	23-06-2017	8.15	10.15 as on 01-05-2017	13,669

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2	10-05-2017	6,836	44	23-06-2017	8.15	10.15 as on 01-05-2017	83
3	10-06-2017	6,836	13	23-06-2017	8.15	10.15 as on 01-06-2017	24
4	10-07-2017	6,836	262	29-03-2018	8.15	10.15 as on 01-07-2017	498
5	10-08-2017	6,836	231	29-03-2018	8.15	10.15 as on 01-08-2017	439
6	10-09-2017	6,836	200	29-03-2018	8.15	10.15 as on 01-09-2017	380
7	10-10-2017	6,836	170	29-03-2018	8.15	10.15 as on 01-10-2017	323
8	10-11-2017	6,836	139	29-03-2018	8.1	10.1 as on 01-11-2017	262
9	10-12-2017	6,836	109	29-03-2018	8.1	10.1 as on 01-12-2017	206
10	10-01-2018	6,836	78	29-03-2018	8.1	10.1 as on 01-01-2018	147
11	10-02-2018	6,836	47	29-03-2018	8.1	10.1 as on 01-02-2018	88
12	10-03-2018	6,836	19	29-03-2018	8.35	10.35 as on 01-03-2018	36
13	10-04-2018	6,836	74	23-06-2017	7.3	9.3 as on 15-03-2022	128
14	10-05-2018	7,013	44	23-06-2017	8.15	10.15 as on 01-05-2017	85
15	10-06-2018	7,013	13	23-06-2017	8.15	10.15 as on 01-06-2017	25
16	10-07-2018	7,013	262	29-03-2018	8.15	10.15 as on 01-07-2017	510
17	10-08-2018	7,013	231	29-03-2018	8.15	10.15 as on 01-08-2017	450

REHS,

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18	10-09-2018	7,013	200	29-03-2018	8.15	10.15 as on 01-09-2017	390
19	10-10-2018	7,013	170	29-03-2018	8.15	10.15 as on 01-10-2017	331
20	10-11-2018	7,155	139	29-03-2018	8.1	10.1 as on 01-11-2017	275
21	10-12-2018	7,155	109	29-03-2018	8.1	10.1 as on 01-12-2017	215
22	10-01-2019	7,155	1229	23-05-2022	8.75	10.75 as on 10-01-2019	2,589
23	10-02-2019	7,155	1198	23-05-2022	8.75	10.75 as on 10-02-2019	2,524
24	10-03-2019	7,205	1170	23-05-2022	8.75	10.75 as on 10-03-2019	2,482
25	10-04-2019	7,205	1139	23-05-2022	8.7	10.7 as on 10-04-2019	2,405
26	10-05-2019	7,205	1109	23-05-2022	8.65	10.65 as on 10-05-2019	2,331
27	10-06-2019	7,205	1078	23-05-2022	8.65	10.65 as on 10-06-2019	2,266
28	10-07-2019	7,205	1048	23-05-2022	8.6	10.6 as on 10-07-2019	2,192
29	10-08-2019	7,205	1017	23-05-2022	8.45	10.45 as on 10-08-2019	2,097
30	10-09-2019	7,205	986	23-05-2022	8.35	10.35 as on 10-09-2019	2,014
31	10-10-2019	7,205	956	23-05-2022	8.25	10.25 as on 10-10-2019	1,934
32	10-11-2019	7,205	925	23-05-2022	8.2	10.2 as on 10-11-2019	1,862
33	10-12-2019	7,205	895	23-05-2022	8.2	10.2 as on 10-12-2019	1,802

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34	10-01-2020	7,205	864	23-05-2022	8.2	10.2 as on 10-01-2020	1,739
35	10-02-2020	7,205	833	23-05-2022	8.15	10.15 as on 10-02-2020	1,668
36	10-03-2020	7,098	804	23-05-2022	8.05	10.05 as on 10-03-2020	1,571
37	10-04-2020	7,098	773	23-05-2022	7.7	9.7 as on 10-04-2020	1,458
38	10-05-2020	7,098	743	23-05-2022	7.55	9.55 as on 10-05-2020	1,379
39	10-06-2020	6,992	712	23-05-2022	7.3	9.3 as on 10-06-2020	1,268
40	10-07-2020	6,992	682	23-05-2022	7.3	9.3 as on 10-07-2020	1,214
41	10-08-2020	6,992	651	23-05-2022	7.3	9.3 as on 10-08-2020	1,159
42	10-09-2020	6,992	620	23-05-2022	7.3	9.3 as on 10-09-2020	1,104
43	10-10-2020	6,992	590	23-05-2022	7.3	9.3 as on 10-10-2020	1,051
44	10-12-2020	6,983	529	23-05-2022	7.3	9.3 as on 10-12-2020	941
45	10-01-2021	6,983	498	23-05-2022	7.3	9.3 as on 10-01-2021	886
46	10-02-2021	6,983	13	23-05-2022	7.3	9.3 as on 15-03-2022	23
47	10-03-2021	6,983	439	23-05-2022	7.3	9.3 as on 10-03-2021	781
48	10-04-2021	6,150	408	23-05-2022	7.3	9.3 as on 10-04-2021	639
49	10-05-2021	6,150	378	23-05-2022	7.3	9.3 as on 10-04-2021	592

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50	10-06-2021	6,150	347	23-05-2022	7.3	9.3 as on 15-05-2021	543
51	10-07-2021	6,150	317	23-05-2022	7.3	9.3 as on 15-06-2021	496
52	10-08-2021	6,150	286	23-05-2022	7.3	9.3 as on 15-07-2021	448
53	10-09-2021	6,150	255	23-05-2022	7.3	9.3 as on 15-08-2021	399
54	10-10-2021	6,150	225	23-05-2022	7.3	9.3 as on 15-09-2021	352
55	10-11-2021	6,150	194	23-05-2022	7.3	9.3 as on 15-10-2021	303
56	10-12-2021	6,150	164	23-05-2022	7.3	9.3 as on 15-11-2021	256
57	10-01-2022	6,150	133	23-05-2022	7.3	9.3 as on 15-12-2021	208
58	10-02-2022	5,513	102	23-05-2022	7.3	9.3 as on 15-01-2022	143
59	10-03-2022	5,513	74	23-05-2022	7.3	9.3 as on 15-02-2022	103
60	10-04-2022	5,513	43	23-05-2022	7.3	9.3 as on 15-03-2022	60
61	10-05-2022	5,513	13	23-05-2022	7.3	9.3 as on 15-03-2022	18
62	TOTAL AMOUNT	13,34,418				TOTAL INTEREST (12)	65,864

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Refund Interest Calculation

S.NO	AMOUNT PRINCIPLE	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	13,34,418	29-06-2016	9,085	13,25,333	2	01-07-2016	7.3	9.3 as on 15-03-2022	675
2	13,25,333	01-07-2016	9,084	13,16,249	98	07-10-2016	7.3	9.3 as on 15-03-2022	32,866
3	13,16,249	07-10-2016	11,423	13,04,826	108	23-01-2017	7.3	9.3 as on 15-03-2022	35,905
4	13,04,826	23-01-2017	27,344	12,77,482	151	23-06-2017	7.3	9.3 as on 15-03-2022	49,149
5	12,77,482	23-06-2017	27,000	12,50,482	279	29-03-2018	8.15	10.15 as on 01-06-2017	97,018
6	12,50,482	29-03-2018	13,342	12,37,140	1516	23-05-2022	8.35	10.35 as on 01-03-2018	5,31,821
7								TOTAL INTEREST (I3)	7,47,434

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 23-05-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
13,34,418	8,93,189	97,278	21,30,329

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

13. **Our findings on point no.2:** In view of the above discussion, the complaint deserves to be allowed. Hence, we proceed to pass the following order:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate(Regulation and Development) Act, 2016, the complaint bearing No: **CMP/210717/0008140** is hereby allowed.


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1. The respondent is hereby directed to refund amount of Rs.21,30,329/- (Rupees Twenty One Lakh Thirty Thousand Three Hundred and Twenty Nine only) towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 30/4/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 23/05/2022. The interest due from 24/05/2022 up to the date of final payment will be calculated likewise and paid 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.


(Neelmani N Raju)
Member-2, KREERA

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