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 19th OCTOBER 2022

PRESIDED BY HON'BLE MEMBER MRS.NEELMANI N RAJU

COMPLAINT No: CMP/210914/0008332

COMPLAINANT....

Sangeeth C &
Esther Priya Anandan
303, Penial Residency
Udhaynagar
A – Narayanpura
Bangalore-560016.
(In person)

V/S

RESPONDENT.....

Aryan Hometec Pvt Ltd.,
No.609, 15TH Cross
Ring Road, JP Nagar 6th Phase
BANGALORE-560078.
(Ex-parte)

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JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act, against the project **'ARYAN GOLDEN ARENA'** developed by **"ARYAN HOMETEC PRIVATE LIMITED"** in the limits of S.No.320,321,291/1 & 319/2 Attibele-Sarjapura Main Road, Bidaraguppe Village, Attibele Hobli, Anekal Taluk, Bangalore Urban for the relief of refund with interest.

2. This project has notbeen registered under RERA bearing registration No. PRM/KA/RERA/1251/310/PR/171031/001288.

3. Brief facts of the complaint:- The complainant has booked a Flat in the project known as "ARYAN GOLDEN ARENA" by entering into an agreement for sale, as well as construction agreement both dated 28/09/2017 and a tripartite agreement with respondent (who is a GPA Holder). In pursuance of the aforesaid agreement for sale, the complainant has paid a total amount of Rs.8,66,858/- including loan from DHFL to the respondent till date towards the aforesaid flat thereof.

4. In terms of aforesaid sale agreement, the respondent was supposed to complete the project by 30/06/2021 and handover the flat to the complainant. However, the respondent has not handed over the flat on one or the other pretext. In fact there is no structure at all in the land. The complainant has claimed that as there is inordinate delay on the part of respondent in handing over the flat, he has lost confidence in the respondent, and has sought relief of refund with interest. The respondent has also stopped paying pre-EMI to the Bank. 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. 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" for the appearance of the respondent. Inspite of paper publication, the respondent did not appear before the Authority and hence, has been placed as ex-parte.

6. The complainant has submitted written submission and memo of calculation for refund with interest as on 20/5/2022.

7. 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.

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8. In support of his claim, the complainant has submitted documents such as (a) Loan Sanction letter (b) Statement of Accounts from DHFL (c) Memo of calculation as on 20/5/2022 (d) Paper publication published in "Hosa Digantha" Kannada daily dated 24.08.2022.

9. 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?

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

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

FINDINGS

11. Our 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 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. 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

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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".

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 complainant has already paid substantial sale consideration. Having accepted the said amount and failure to keep up promise to hand over possession of apartment and pre-EMIs to the Bank certainly entitles the complainant herein for refund with

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interest. The complainant has submitted his memo of calculation as on 20/5/2022 claiming refund with interest for Rs.12,75,450/-. Despite several opportunities 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. The Authority upholds the refund amount claimed by the complainant vide his memo of calculation as on 20/5/2022.

15. 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		0	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	1845	20-05-2022	8.15	10.15 as on 01-05-2017	0
2	28-09-2017	8,66,858	1695	20-05-2022	8.15	10.15 as on 01-09-2017	4,08,592
3	TOTAL AMOUNT	8,66,858				TOTAL INTEREST (I2)	4,08,592

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 20-05-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
8,66,858	4,08,592	0	12,75,450

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

17. 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/210914/0008332** is hereby allowed. Respondent is directed to pay a sum of Rs.12,75,450/- (Rupees Twelve Lakh Seventy Five Thousand Four Hundred and Fifty only) towards refund with interest calculated at MCLR + 2% from 28/9/2017 to 20/05/2022 to the complainant within 60 days from the date of this order. The interest accruing from 21/05/2022 till the date of final payment will be calculated and paid likewise. Failing which, the complainant is at liberty to enforce this order in accordance with law.

(Neelmani N Raju)
Member-2
K-RERA

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