

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/UR/220214/0009004

COMPLAINANT....

Mr. Abhiranjan Kumar
Flat B-307, Oasis Nine Apartment
1st Main, 7th Cross,
Near Bus Stand, ISRO Layout
Bangalore-560078.
(In person)

V/S

RESPONDENT.....

Aryan Hometec Pvt Ltd.,
No.87, 2nd Floor, 3rd Main,
J.P. Nagar, 4th Phase,
Dollars Layout,
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-J BLOCK' developed by "ARYAN HOMETEC PRIVATE LIMITED" in the limits of Golden Arena, Attibele, Bangalore South for the relief of refund with interest.
2. This project has not been registered under RERA.
3. **Brief facts of the complaint:-** The complainant has booked two Flats in the project known as "ARYAN GOLDEN ARENA-J BLOCK" by entering into an agreement for sale, as well as construction agreement both dated

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22/11/2017 and a tripartite agreement with respondent (who is a GPA Holder). In pursuance of the aforesaid agreement for sale, construction agreement and tripartite agreement, the complainant has paid a total amount of Rs.31,89,425/- including loan from YES Bank to the respondent till date towards the aforesaid flats thereof.

4. In terms of aforesaid construction agreement, the respondent was supposed to handover the flat to the complainant on or before 22/5/2018 with a grace period of 9 months. However, the respondent has not handed over the possession of the flats 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 flats, 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 at his old and new addresses for appearance before the Authority. However, the respondent failed to appear before the Authority either in person or through his representative/counsel. 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, has been placed as ex-parte.
6. The complainant has submitted written submission and memo of calculation for refund with interest as on 30/6/2022.
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) Agreement for sale dated 22/11/2017, (b) Agreement for construction dated 22/11/2017 (c) Tripartite agreement (d) Allotment letter (e) Payment Receipts (f) Memo of calculation as on 30/6/2022 (g) 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 flats, the builder has not completed the project as per agreement and has delayed the project and has not handed over the apartments 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

4/1/23

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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 30/6/2022 claiming refund with interest for Rs.46,72,996/-. 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 30/6/2022.

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	NO OF DAYS TILL	INTEREST @9%
1	30-04-2017	0	0	30-04-2017	0
2				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	1886	30-06-2022	8.15	10.15 as on 01-05-2017	0
2	22-11-2017	31,89,425	1681	30-06-2022	8.1	10.1 as on 01-11-2017	14,83,571
3	TOTAL AMOUNT	31,89,425				TOTAL INTEREST (I2)	14,83,571

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 30-06-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
31,89,425	14,83,571	0	46,72,996

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/UR/220214/0009004** is hereby allowed. Respondent is directed to pay a sum of Rs.46,72,996/- (Rupees Forty Six Lakh Seventy Two Thousand Nine Hundred and Ninety Six only) towards refund with interest calculated at MCLR + 2% from 22/11/2017 to 30/06/2022 to the complainant within 60 days from the date of this order. The interest accruing from 01/07/2022 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