

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 16TH NOVEMBER 2022

PRESIDED BY HON'BLE MEMBER MRS.NEELMANI N RAJU

COMPLAINT No: CMP/220713/0009744

COMPLAINANT....

**MR. SHAKTI HIRWANI
JANHAVI MEADOWS
FLAT 606, 34/2
YELENAHALLI
BEGUR KOPPA ROAD
BANGALORE-560068.
(In person)**

V/S

RESPONDENT.....

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

**Aryan Hometec Pvt Ltd
No.87, 2nd Floor, 3rd Main
Dollars Colony
JP Nagar 4th 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-C' developed by "ARYAN HOMETEC PRIVATE LIMITED" within the limits of Attibele-Sarjapura Main Road,



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

Bidaraguppe Village, Attibele Hobli, Anekal Taluk, Bangalore Urban 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. The registration of the project was valid till 31/12/2018.

3. Brief facts of the complaint:- The complainant has booked a Flat Block C 903 in the project known as "ARYAN GOLDEN ARENA-C" by entering into an agreement of sale, as well as construction agreement both dated 18/04/2016 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.19,74,600/- including loan from PNB Housing Finance Ltd 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 18/04/2019 including six months grace period and handover the flat to the complainant. Though there was good progress till March 2019, later there was no further progress. The respondent paid the pre-EMI to the PNBHFL till March 2019 and later, stopped paying pre-EMIs. There is no progress in the construction for the past three years. The builder is absconding and the complainant is repaying loan raised from the Bank. 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. 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



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

never attended the hearings. Finally paper publication was issued in local Kannada daily newspaper "HOSA DIGANTHA" on 14/9/2022 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 21/9/2022.

7. This matter was heard on 7/9/2022, 27/9/2022 and 15/11/2022. The case was finally posted for orders on 15/11/2022.

8. In support of his claim, the complainant has submitted documents such as (a) Agreement of Sale (b) Construction Agreement (c) Tripartite Agreement (d) Payment receipts, (e) Memo of calculation as on 21/9/2022 (f) Paper publication published in "Hosa Digantha" Kannada daily dated 14/9/2022.

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

19/11/22

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

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 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.



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

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 the complainant has already 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 and not 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 21/9/2022 claiming refund with interest for Rs.31,97,765/-. 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 21/9/2022.

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	18-04-2016	16,23,097	377	30-04-2017	1,50,881
2				TOTAL INTEREST (I1)	1,50,881

(Signature)

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

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	16,23,097	1969	21-09-2022	8.15	10.15 as on 01-05-2017	8,88,716
2	31-07-2017	3,51,503	1878	21-09-2022	8.15	10.15 as on 01-07-2017	1,83,568
3	TOTAL AMOUNT	19,74,600				TOTAL INTEREST (I2)	10,72,284

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 21-09-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
19,74,600	12,23,165	0	31,97,765

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/220713/0009744** is hereby allowed. Respondent is directed to pay a sum of Rs.31,97,765/- (Rupees Thirty One Lakh Ninety Seven Thousand Seven Hundred and Sixty Five only) towards refund with interest calculated at 9% from 18/4/2016 till 30/4/2017 and MCLR + 2% from 01/05/2017 to

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

21/09/2022 to the complainant within 60 days from the date of this order. The interest accruing from 22/09/2022 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

NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY