

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 28TH NOVEMBER 2022

PRESIDED BY HON'BLE MEMBER MRS.NEELMANI N RAJU

COMPLAINT No: CMP/200311/0005004

COMPLAINANT....

**MR.M IBOPISHAK SINGHA
S/O M MAKHAN SINGHA
AWANG LEIKAI
NEAR 128 MANGALPUR LP
SCHOOL
SONAIMUKH
MANGALPUR-788119
DIST: CACHAR
STATE: ASSAM**

**(ATTENDED BY
SRI.P. ROMENDRA SHARMA
AUTHORIZED THROUGH
SPECIAL POWER OF ATTORNEY)**

V/S

RESPONDENT.....

**MR. BHARATH REDDY
Aryan Hometec Pvt Ltd.,
No.609, 15TH Cross
Ring Road, JP Nagar 6th 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**' developed by "**ARYAN HOMETEC PRIVATE LIMITED**" within the limits of Attibele-Sarjapura Main Road, Bidaraguppe Village, Attibele Hobli, Anekal Taluk, Bangalore Urban for the relief of refund with interest.

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2. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1251/310/PR/171031/001515. The registration of the project was valid till 20/04/2018.

3. Brief facts of the complaint:- The complainant has booked a Flat Block G 601 in the project known as "ARYAN GOLDEN ARENA" by paying an advance amount of Rs.1,03,021/- to the respondent (who is a GPA Holder) as part payment towards the purchase of the flat on 5/5/2017. The complainant entered into agreement of sale, construction agreement, tripartite agreement and Pre-EMI Payment Addendum agreement on 5/1/2018. The complainant had released an amount of Rs.5,15,000/- on 6/4/2018 to the respondent out of the loan amount sanctioned. Thus, the complainant had paid an amount of Rs.6,18,421/- to the respondent towards the aforesaid flat thereof. The respondent had agreed to pay pre-EMIs to the DHFL till the possession of the flat is handed over to the complainant vide Pre-EMI Payment Addendum Agreement dated 5/1/2018.

4. In terms of aforesaid sale agreement, the respondent was supposed to complete the project by 11/12/2020 and handover the flat to the complainant. The complainant also requested the respondent for cancellation of the unit, refund the amount and repay bank loan. The respondent has not paid pre-EMIs as agreed. 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 and repayment of loan. Hence, this 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

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never attended the hearings. Finally paper publication was issued in local Kannada daily newspaper "HOSA DIGANTHA" on 6/11/2022 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. This matter was heard on 12/10/2022, 2/11/2022 and 17/11/2022. The case was finally posted for orders on 17/11/2022.

7. In support of his claim, the complainant has submitted documents such as (a) Pre-EMI payment addendum agreement (b) Payment receipts, (c) email correspondence with the respondent, (d) Memo of calculation as on 30/9/2022 (f) Paper publication published in "Hosa Digantha" Kannada daily dated 6/11/2022.

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 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

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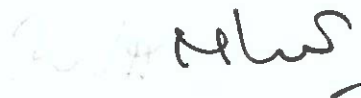
complainant till date. The builder is also said to be absconding and also failed to appear before the Authority for hearings. Hence the builder has failed to abide by the terms of agreement for sale. There seems to be no possibility of completing the project or handing over the possession in near future.

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".

11. 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.

12. 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



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promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

13. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has paid a substantial sale consideration amount to the respondent. Though the respondent vide his email dated 16/10/2020 had acknowledged the cancellation request and assured that the bank loan, own contribution made by the complainant and any pre-EMIs paid will be cleared in the next 90 days, the respondent has failed to keep up his promise. 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 30/9/2022 claiming refund with interest for Rs.9,14,363/-. Despite several opportunities 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 30/9/2022.

14. 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

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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	1978	30-09-2022	8.15	10.15 as on 01-05-2017	0
2	05-05-2017	1,03,021	1974	30-09-2022	8.15	10.15 as on 01-05-2017	56,551
3	24-03-2018	400	1651	30-09-2022	8.35	10.35 as on 01-03-2018	187
4	06-04-2018	5,15,000	1638	30-09-2022	8.35	10.35 as on 01-04-2018	2,39,204
5	TOTAL AMOUNT	6,18,421				TOTAL INTEREST (I2)	2,95,942

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 30-09-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
6,18,421	2,95,942	0	9,14,363

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

16. **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/200311/0005004** is hereby allowed. Respondent is directed to pay a sum of Rs.9,14,363/- (Rupees Nine Lakh Fourteen Thousand Three Hundred and Sixty Three only) towards refund with

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interest calculated MCLR + 2% from 05/05/2017 to 30/09/2022 to the complainant within 60 days from the date of this order. The interest accruing from 01/10/2022 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

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