

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 BEFORE BENCH - 4**

**CORUM:**

**SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN**

**COMPLAINT NO.: CMP/200208/0005396**

**DATED THIS 21<sup>st</sup> DAY OF DECEMBER, 2022**

**COMPLAINANT.....**

**RAHUL KUMAR,**

No. 4, Pamadi Towers,  
Gandhinagar 1<sup>st</sup> Main Road,  
Bengaluru - 560009.

(Rep. By Sri. Vinay Kumar.P, Advocate)

**V/S**

**RESPONDENT.....**

**NARAYAN ENTERPRISES.,**

No. 259, 17<sup>th</sup> Cross,  
Sampige Road, Malleswaram,  
Bengaluru - 560003.

(In person)

**PROJECT NAME &  
REGISTRATION NO.**

**ARIES LAKEVIEW  
PR/KN/170810/001255**

**J U D G E M E N T**

1. This complaint is filed under section 31 of the RERA Act against the project 'Aries Lakeview' developed by 'Narayan Enterprises' for the relief of refund of amount with interest.
2. This project has been registered under RERA bearing registration No. PR/KN/170810/001255. The registration of the project was valid till 24/04/2018.



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**Brief facts of the complaint are as under:-**

3. As per memorandum of understanding dated 02/09/2016, it was agreed that the complainant as purchaser shall buy an apartment bearing No. B1-202 for Rs.75,90,500/- (Rupees Seventy Five Lakhs Ninety Thousand Five Hundred only). The initial amount of 5% of the above said amount i.e., Rs. 3,79,525/- (Rupees Three Lakhs Seventy Nine Thousand Five Hundred and Twenty Five Only) shall be paid by the complainant and balance amount shall be organized through a home loan from HDFC / PNB housing finance and the complainant shall provide all necessary documents for processing of loan. It was agreed that the builder shall pay to the complainant two times the invested sum which was not done. Therefore, the complainant sought for refund of agreed sum of Rs.7,59,050/- (Rupees Seven Lakhs Fifty Nine Thousand Fifty Only) with interest at the rate of 12% p.a. with effect from 28/04/2018 till the date of actual payment. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice the respondent has appeared before this Authority but not contested the matter by filing statement of objections, producing documents on its behalf etc.,
5. This matter was heard on 30/05/2022, 17/06/2022 and finally on 04/07/2022.
6. In support of his claim, the complainant has submitted documents such as copy of
  - (i) Verifying affidavit in support of the complaint dated 31/12/2019.
  - (ii) Agreement to sell dated 24/08/2016
  - (iii) Memorandum of Understanding dated 01/09/2016
  - (iv) The statement of accounts showing proof of payment dated 19/08/2016
  - (v) The cheque bearing No. 743415 dated 28/10/2016 drawn on HDFC Bank and the deposit slip for the said cheque for the same date.

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- (vi) Receipt issued by the HDFC Bank
  - (vii) Sample copies of correspondences from the financier to the complainant regarding the delay in payment of the builders share of the EMI, including communications from HDFC bank regarding failure to pay ECS in the months of January, July, November 2018, and in the months of March, April, May, June, October, November and December 2019.
  - (viii) The copies of several correspondences exchanged between the complainant and the builder regarding delayed payments of interest and affecting the financial stability of the complainant.
  - (ix) Tripartite Agreement
  - (x) The legal notice dated 14/08/2019 issued by the complainant to the builder for which no response has been received.
7. Heard arguments of both the parties.
8. **On the above averments, the following points would arise for my consideration:-**
1. Whether the complaint is entitled for the relief claimed?
  2. What order?
9. **My answer to the above points is as under:-**
1. In the Affirmative.
  2. As per final order for the following

**REASONS**

10. **Our findings on Point No. 1:** The claim of the complainant is that, he has entered into an memorandum of understanding dated 01/09/2016 in respect of purchase and buyback transaction in respect of apartment bearing No. B-1, 202 in the project of respondent. Later, the respondent had failed to abide by the terms and conditions of said memorandum of



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understanding. Therefore, he has approached this forum for seeking relief of refund of amount paid with along with interest.

11. In response to the notice, the respondent has appeared before this Authority. But, he has not filed any statement of objections and produced any documents on its behalf inspite of providing sufficient opportunity.
12. During the proceedings, the respondent had agreed to settle the matter and to submit memo of calculation. But it didn't to do so.
13. On 04/07/2022, the respondent had undertaken to clear the due of
  - a) Rs.7,59,050/- (Rupees Seven Lakhs Fifty Nine Thousand Fifty Only) by 31/08/2022.
  - b) Rs.60,14,228/- (Rupees Sixty Lakhs Fourteen Thousand Two Hundred and Twenty Eight Only) will be repaid before 31/12/2022.
  - c) EMI of Rs.38,320/- (Rupees Thirty Eight Thousand Three Hundred and Twenty Only) is paid by the respondent to HDFC.

The complainant advocate had agreed for the aforesaid proposition.

14. Once again after providing sufficient opportunity to the respondent to comply with the undertaking before the Authority, it didn't turn up.
15. The materials placed before the Authority by the complainant clearly goes to show that, both the parties have entered into a memorandum of understanding dated 02/09/2016. The claim of the complainant is corroborating with the cogent materials. In the absence of any resistance by the respondent there is no other go except to accept the claim of complainant which is supported by relevant documents.
16. Accordingly, the point raised above is answered in the Affirmative.

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17. **Our findings on Point No. 2:** In view of the above discussion, the complaint deserves to be allowed. Hence, I proceed to pass the following

**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/200208/0005396 is hereby allowed.

- (i) The respondent is directed to pay Rs.7,59,050/- (Rupees Seven Lakhs Fifty Nine Thousand Fifty Only) to the complainant.
- (ii) Further, the respondent is directed to pay an amount of Rs.60,14,228/- (Rupees Sixty Lakhs Fourteen Thousand Two Hundred and Twenty Eight only) to the HDFC Bank along with accumulated interest before 31/12/2022.
- (iii) Further, the respondent is directed to continue to pay EMI of Rs.38,320/- (Rupees Thirty Eight Thousand Three Hundred and Twenty only) to HDFC Bank till such time the loan is cleared.
- (iv) The complainants are at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order within 60 days from the date of this order.

No order as to costs.

  
(H.C. KISHORE CHANDRA)  
CHAIRMAN  
K-RERA



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