

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 2810 of 2023
Complaint filed on : 26.06.2023
Date of decision : 03.01.2024

Mr. Mahesh Kumar Wadhwa

(Through its legal heir namely Mrs. Manorma Wadhwa,
W/o late Sh. Mahesh Kumar Wadhwa, R/o. 18, Ram
Vihar, Delhi-110092)
R/o- 18, Ram Vihar, Delhi-110092

Complainant

Versus

M/s. Vigneshwara Development Private Limited

Office:- D-16/C, Bhagwani House, Hauz Khas, New Delhi-
110016.

Respondent

CORAM

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Gaurav Rawat

None

**Complainant
Respondent**

EX-PARTE ORDER

1. The present complaint dated 26.06.2023 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	Cyber Park, Sector-74, Gurugram
2.	RERA Registered/ not registered	Un-registered
3.	Unit no.	Not available
4.	Unit area admeasuring	250 sq. ft. super area [as per agreement at page 46 of complaint]
5.	Date of booking	15.08.2011
6.	Date of allotment	08.09.2011 [no document on record]
7.	Date of developer-anchor unit agreement	08.09.2011 [page 42 of complaint]
8.	Date of developer-anchor unit option-agreement - ASSURED RETURN PLAN	08.09.2011 [page 62 of complaint]
9.	Addendum to AR agreement	<i>Post Assured return period of five years, where anchor unit continues for assured return plan and market conditions allow, developer shall share increased rentals over and above the basic return in proportion of 65:35 between the anchor unit and VDPL respectively.</i> [page 70 of complaint]
10.	Date of start of construction	Not available
11.	Possession clause	<i>11. The deemed possession of the unit is proposed to be delivered by the Developer to the Proposed allottee(s) within sixty months from the date of finalization of construction and after necessary approvals and sanctions have been obtained from Govt. Authorities subject to however force majeure circumstances and reasons beyond the control of the developer.</i> [page 49 of complaint]
12.	Assured return clause	<i>2.1 The Anchor unit has made investment on the assurance by the Developer to provide him an assured return of maximum Rs.55/- per sq. ft. per month basis (Rs. Fifty five only) pe sq. ft.. month per basis) on investment amount for maximum period of sixty months.</i> [page 64 of complaint]

13.	Due date of possession	08.09.2014 <i>The date of finalisation of construction cannot be ascertained from the record, thus, the due date of handing over of possession has been calculated [3 years from the date of allotment/development anchor unit - Calculated in view of judgement of Supreme Court of India in Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]</i>
14.	Total sale consideration	Rs.13,50,000/- [as per agreement at page 47 of complaint]
15.	Amount paid by the complainant at the time of agreement	Rs.13,50,000/- [as per agreement at page 47 of complaint and receipts at pg. 85 & 86 duly acknowledged by respondent]
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of possession	Not offered
18.	AR amount paid by respondent to complainant	Rs.12,375/- per month from 08.09.2011 till December 2014 [as alleged by complainant at pg.12 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That the complainant-applicant namely Late Sh. Mahesh Kumar Wadhwa died on 24.04.2018 leaving behind successors namely Mr. Mehak Taluja (daughter) Manas Wadhwa (son) and Manorma Wadhwa (wife). Furthermore, Mehak Taluja (daughter) and Manas Wadhwa (Son) given NOC and relinquishment deed dated 05.06.2023 in favor of Mrs. Manorma Wadhwa, W/o late Sh. Mahesh Kumar Wadhwa, R/o. 18, Ram Vihar, Delhi-110092 and same has been taken on record.
- ii. In 2011, the respondent launched and advertised about its new project "Vigneshwara Technology Cyber Park" by respondent. The respondent painted a rosy picture of the project in its advertisements making tall claims and thereby invited applications from prospective buyers for the purchase

- of unit in the said project. Respondent confirmed that the projects had got building plan approval from the authority.
- iii. The complainant while searching for a unit was lured by such advertisements. The respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments. Relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant booked a unit in the project by paying an amount of Rs.1,00,000/- and Rs.12,50,000/- vide cheque dated 15.08.2011 and 05.09.2011, towards the booking of the said unit having super area measuring 250 sq. ft. on 5th floor to the respondent dated 15.08.2011 and the same was acknowledged by the respondent.
- iv. That the respondent confirms the booking of the anchor unit dated 15.08.2011 to the complainant providing the details of the project, confirming the booking of the unit dated 15.08.2011, allotting a anchor unit 5th floor, having super area measuring 250 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.13,50,000/-, other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. It is pertinent to mention here that the booking was under the assured return payment plan and at the time of booking assurance was provided to the complainant that the construction of the said unit will get completed within 36 months from the agreement and till offer of possession monthly assured return will be paid and thereafter, monthly assured rental will be paid till first lease.
- v. That a developer-anchor unit agreement dated 08.09.2011 and developer-anchor option agreement-assured return plan dated 08.09.2011 was executed between the allottee and the respondent on 08.09.2011. As per the agreement the total sale consideration of the unit i.e. Rs.13,50,000/-, which

includes EDC/IDC, PLC, power back-up installation cost, club membership and other facilities.

- vi. As per clause 2.2 of the agreement respondent was under liability to pay monthly assured return of Rs.12,375 from 08.09.2011 till completion of the superstructure and then monthly assured rental till first lease out. It is pertinent to mention here that respondent has paid assured return till December,2014 thereafter, till date respondent neither has offer the possession of the subject unit nor paid the assured return. Furthermore, as per clause 11 of the agreement that the subject to the terms hereof and to the buyer having complied with all the terms and conditions of this agreement, the company proposes to hand over possession of the apartment within a period of 60 months from the date of execution of the agreement. An agreement was executed on 08.09.2011.
- vii. As per the demands raised by the respondent, based on the payment plan, the complainant timely paid a total sum of Rs.13,50,000/- towards the said unit against total sale consideration of Rs.13,50,000/-.
- viii. That complainant visited the office of the respondent regarding assured return, completion of project, money refund for the said unit. The complainant was never informed about the delay in construction of said unit. Since the complainant already paid 100% of the amount, and the delay is a sheer distress for them, demands refund of the entire amount paid by them.
- ix. That complainant requested for the inspection of the unit as per the agreement. That thereafter complainant sent several reminders to the respondent's company, but they were never able to give any satisfactory response regarding the aforesaid issues raised by the complainant. During the period the complainant went to the office of respondent several times and requested them to allow them to visit the site, but it was never allowed saying that they do not permit any buyer to visit the site during construction

period, once complainant visited the site but was not allowed to enter the site and even there was no proper approach road. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them.

- x. The complainant contacted the respondents on several occasions and was regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and was never definite about the delivery of the possession.
- xi. That the complainant continuously asked the respondent company about the status of the project, assured return, time by which the project is expected to be completed and the penalty amount that respondent is liable to pay till the handing over of possession, but respondent was never able to give any satisfactory response to the complainant.
- xii. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- xiii. The above said acts of the respondent clearly reveal that the "opposite parties" with prejudice has been indulging in unfair trade practices and has also been providing gross deficient services and thereby causing deficiency

in services. All such Act and omissions on the part of the respondent has caused an immeasurable mental stress and agony to the complainant.

- xiv. The respondent despite having made multiple tall representations to the complainant, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees.
- xv. The respondent has completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, agreement and the different advertisements released from time to time.
- xvi. It is abundantly clear that the respondent has played a fraud upon the complainant and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period and paying the monthly assured amount. The respondent had further malafidely failed to implement the agreement executed with the complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency, and failure in service of the respondent is filing the present complaint.
- xvii. The complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the agreement.
- xviii. That the complainant continuously asking the respondent company about the status of the project, time by which the project is expected to be completed, and the penalty amount that respondent is liable to pay but respondent was never able to give any satisfactory response to the complainant.

- xix. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time. That the respondent till have not obtained the OC from the concerned department and also has failed to get the said project registered with the Authority.
- xx. That the complainant is the one who has invested his life savings in the said project and is dreaming of a unit for himself and the respondent have not only cheated and betrayed him but also used his hard-earned money for their enjoyment.
- xxi. The complainant is also entitled for any other relief which they are found entitled by this Hon'ble Adjudicating Officer.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Direct the respondents to refund the amount paid by the complainant, along with the interest at the prescribed rate, from the date of payment till the realization.
5. On the date of hearing, the authority explained to the Respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. That vide proceeding dated 11.10.2024, defence of the respondent i.e., Vigneshwara Developers Private Limited was struck off for not appearing

and filing reply and submitting cost even after various opportunities given to be heard.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to refund the amount paid by the complainant, along with the interest at the prescribed rate, from the date of payment till the realization.

12. In the present complaint, the complainants intend to withdraw from the project and are seeking refund of the amount paid by them in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, 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:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

13. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

14. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
15. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 03.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
16. In the present case, the complainants booked a unit with the respondents in its project "Cyber Park, Sector-74, Gurugram, Haryana. The complainants were allotted a unit admeasuring 250 sq. ft. of super-area vide developer-anchor option agreement-assured return dated 08.02.2011. The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018* observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. As per clause 11 of the developer-anchor agreement, the possession was to be handed over within a period of 60 months from the date of finalization of construction and after necessary approvals and sanctions. Since there is no evidentiary proof of allotment and for ascertaining the date of finalization of construction and approvals. The due date of possession is calculated 3 years from the date of developer anchor unit agreement - in view of judgement of Supreme Court of India in *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 -*

SC); MANU/SC/0253/2018. Clause 11 of the developer-anchor unit agreement is reproduced below:

11. The deemed possession of the unit is proposed to be delivered by the Developer to the Proposed allottee(s) within sixty months from the date of finalization of construction and after necessary approvals and sanctions have been obtained from Govt. Authorities subject to however force majeure circumstances and reasons beyond the control of the developer.

17. A developer-anchor unit agreement has been executed by respondent but, the said agreement was not as per the model agreement under RERA Act, 2016. The said agreement does not have proper possession clause and contains one-sided terms. In view of the same, the due date of possession is calculated 3 years from the date of developer anchor unit agreement, which comes out to be 08.09.2014.
18. It is pertinent to mention over here that even after a passage of more than 13 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The Authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
19. That the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022. observed as under:

“25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

20. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to pay the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received in respect of the unit with interest at such rate as may be prescribed.
21. Accordingly, the non-compliance of the mandate contained in section 11 (4)(a) read with section 18(1) of the Act on the part of the respondent no. 2 & 3 are established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

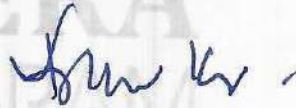
H. Directions of the authority

22. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the amount deposited by complainant with interest at the prescribed rate i.e. 11.10% per annum from the date of each deposit till the date of realization. The amount of Rs.4,82,625/- already paid by the respondent (Rs.12,375/- paid per month from 08.09.2011 till December 2014), shall be deducted from the amount so calculated.
- ii. It is also noted by the Authority that the project of the respondent falls under the category of 'ongoing projects' under section 3(i) of the Act of 2016. The promoter has prima facie violated the above provision of the Act, 2016 and is liable to be proceeded against under section 59 of the Act, 2016. The planning branch of the Authority is directed to initiate action against the promoter in this regard within 30 days of passing of this order.

23. Complaint stands disposed of.

24. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 03.01.2024