

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

Date of decision: - 18.04.2025

NAME OF THE BUILDER		Vigneshwara Developwell Pvt Ltd	
PROJECT NAME		Aquarius Business Park sector-74	
S. No.	Case No.	Case title	Appearance
1.	CR/6294/2022	Ravinder Kumar and Ramesh V/s Vigneshwara Developwell Pvt Ltd	Shri Avinash Sharma Adv. (Complainant) None on behalf of the respondent
2.	CR/6296/2022	Kamlesh Yadav and Nitu Yadav V/s Vigneshwara Developwell Pvt Ltd	Shri Avinash Sharma Adv. (Complainant) None on behalf of the respondent
3.	CR/5747/2022	Mahvir Singh and Ramesh Kumar V/s Vigneshwara Developwell Pvt Ltd	Shri Avinash Sharma Adv. (Complainant) None on behalf of the respondent

CORAM:

Shri Ashok Sangwan

Member

ORDER

- The order shall dispose off all the three complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules"). Since the core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, Aquarius



Business Park sector-74 Gurugram being developed by the same respondent- promoter i.e., Vigneshwara Developwell Pvt Ltd. The terms and conditions of the builder buyer's agreements that had been executed between the parties *inter se* are also similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver the possession as per the terms of the builder buyers' agreement, seeking refund along with interest.

2. The details of the complaints, reply status, unit no., date of allotment letter, date of agreement, due date of possession, offer of possession and relief sought are given in the table below:

Possession Clause 11: The developer to the proposed allottee within sixty months from the date of finalization of construction and after necessary approvals. Occupation certificate received on N/A Offer of Possession: N/A							
S r. N o	Complain t No./Title /Date of filing/ Reply status	Unit/ shop no. and area	Date of execution of builder buyer's agreement	Due date of possession	Total sale considera tion	Amount Paid up by the complainan t	Relief sought
1	CR/6294 /2022 DOF: 13.09.20 22 Reply not filed yet	RT- UG-6 on the Upper Ground Floor 250 sq. ft.	03.09.201 3	03.09.201 6	Rs. 14,10,000/- -	Rs. 14,10,000/-	Refund along with interest.
2.	CR/6296 /2022 DOF: 13.09.20 22 Reply not filed yet	RT- UG-57 on the Upper Ground Floor 250 sq. ft.	08.08.201 3	08.08.201 6	Rs. 29,10,000/- -	Rs. 29,10,000/-	Refund along with interest.



3.	CR/5747/2022 DOF: 12.09.2022 Reply not filed yet	RT-UG-58 on the Upper Ground Floor 250 sq. ft.	13.08.2013	13.08.2016	Rs. 17,10,000/-	Rs. 17,10,000/-	Refund along with interest.
----	--	--	------------	------------	-----------------	-----------------	-----------------------------

3. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/6294/2022** titled as **Ravinder Kumar and Ramesh V/s Vigneshwara Developwell Pvt Ltd** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

4. 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. N.	Particulars	Details
1.	Name of the project	Aquarius Business Park sector-74
2.	Nature of the project	Commercial complex
3.	RERA Registered/ not registered	Not registered
4.	Unit no.	RT-UG-6 on the Upper Ground Floor
5.	Unit area admeasuring	250 sq. ft. upper ground floor
6.	Date of booking	13.08.2013
7.	Date of BBA	03.09.2013 [Page 35 of the complaint]
8.	Possession clause	11. The developer to the proposed allottee within sixty months from the date of finalization of construction and after necessary approvals.

9.	Due date of possession	03.09.2016 [calculated from the date of BBA in absence date of start of construction]
10.	Total sale consideration	Rs. 14,10,000/-
11.	Amount paid by the complainant	Rs. 14,10,000/-
12.	Occupation certificate /Completion certificate	N/A
13.	Notice of possession	N/A
14.	Legal notice	29.05.2021 [Page 61 of the complaint]

B. Facts of the complaint

5. The complainants have pleaded the complaint on the following facts:

- i. That in July-August 2013 Complainants were interested in purchasing a Technology Commercial Unit in the Business Park Project "Aquarius Business Park", being developed and constructed by the opposite party in Sector - 74, Gurugram, Haryana. Relying on the assurance with respect to quality, timely delivery, availability of all statutory approvals etc., Complainants booked a Technology Commercial Unit in the aforesaid project, by submitting jointly the Application Form dated 02nd August 2013. Subsequently, complainants paid the respective amount through cheques in total a sum of Rs 14,10,000/- to the opposite party for the aforesaid unit in the aforesaid project.
- ii. That on receipt of the above-mentioned amount along with the Application Form on 02nd August 2013, a Developer-Anchor Unit

Agreement dated 3th September 2013 was duly executed between the respondent and complainants and in terms of the aforesaid Developer-Anchor Unit Agreement, the complainants were allotted Commercial Retail measuring 250 square feet having Unit No. RT-UG-6 on the Upper Ground Floor in the proposed Cyber Park in the aforesaid project for the total consideration of Rs 14,10,000/- (Rupees Fourteen Lakh Ten Thousand only). The factum of the aforesaid payment made by the complainant towards total consideration to the opposite party stands duly reflected in the aforesaid Developer-Anchor Unit Agreement dated 3th September 2013 duly executed between the opposite party and the complainants. It is pertinent to mention that on the same date, another agreement, titled Developer-Anchor Option Agreement – Assured Return Plan dated 3th September 2013 was also executed between the complainants and the opposite party in which the opposite party assured my aforesaid clients assured return @Rs 120 per sq. ft. per month for a period of 60 (sixty) months.

- iii. That it is pertinent to mention that at the time of signing of the Developer-Anchor Unit Agreement dated 3th September 2013, the complainants were informed that the possession of the aforesaid unit would be given within maximum 60 months (5 years). The said assurance of the opposite party also stands reflected in Clause 11 of the aforesaid Developer-Anchor Unit Agreement dated 3th September 2013, however, unfortunately, till date, no progress whatsoever, has been made in this regard. Needless to mention, whenever my aforesaid client tried to contact and reach to the opposite party in past several years, the opposite party has been making lame excuses and only empty assurances are being given

time and again and no definite and concrete responses are forthcoming. There is still no definite answer as to when the opposite party propose to give possession of the aforesaid unit in your aforesaid project to the complainant.

- iv. That as noted above, in terms of aforesaid Clause 11 of the Developer-Anchor Unit Agreement dated 3th September 2013, the possession of the aforesaid unit was supposed to be given within 60 months (5 years) i.e. to say by August 2018, however, now, even after around 8 years, there is no progress whatsoever on the ground. Not only that, even the assured return for 5 years, as assured by the opposite party, has not been complied with by the opposite party inspite of several requests/ visits made in this regard. In the aforesaid circumstances, the complainants have been running from pillar to post in order to find a definite time framework/ period as to when the opposite party are going to give possession of the aforesaid unit in your aforesaid project for which the complainants have already paid the total consideration in the year 2013 itself i.e. at the time of booking of the aforesaid unit in your aforesaid project.
- v. That there has been considerable delay in the execution of the project and whenever the complainants had approached the opposite party by visiting their office, to enquire about as to why project is getting delayed, no satisfactory answer was given from the opposite party.
- vi. That it is pertinent to mention that timely completion of the aforesaid project and delivery/ to hand over the possession of the aforesaid unit to the complainants on time was the essence. However, inspite of making the aforesaid substantial payment/

total consideration, which is the hard earned money of the complainants, on account of inordinate delay on your part in the execution of the project, there is no sign as to when the possession is likely to be given. Needless to mention, whenever the complainants visited/ enquired about the project, only false/ evasive/ empty responses were forthcoming from last 7-8 years. The opposite party kept delaying the matter on one or another pretext. This by itself speaks volume of your utmost dishonest intention in the matter.

- vii. That the complainants were not having slightest doubt in their mind about your mala fide intentions, keeping in mind the brand, image and profile of your company and tall promises which were made by the opposite party to the complainants by way of inducing/ alluring my aforesaid clients to put their hard-earned money for buying the aforesaid unit in your aforesaid project. However, by your aforesaid unfair, arbitrary and anti-competitive and abusive practices, the opposite party has not only shattered the confidence of the complainants in the real estate, and companies like you but have also made them wiser for the future.
- viii. That in view of the above, the Complainants was constrained to send a legal notice through his counsel on 29.05.2021 calling upon the Opposite Party to immediately refund the aforesaid amount of Rs 14,10,000/- which was paid to the Opposite Party towards full and final basic price for the plot in the aforesaid project, along with the interest @18 percent on the aforesaid principal amount, from the date on which the said payments were made in the year 2006 to till date or actual payment, within 15 (fifteen) days from the date

of receipt of the notice, but till date the Opposite Party has not been even responded to the aforesaid Legal Notice.

C. Relief sought by the complainants:

6. The complainants have sought the following reliefs:

a. Direct the respondents to refund the entire amount paid by the complainants at the prescribed rate @MCLR+2% from due date of payment till actual realization.

7. The respondent was proceeded ex-parte vide order of this authority dated 08.12.2023. Despite sufficient opportunities none has appeared on behalf of the respondent.

8. Copies of all the 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.

D. Jurisdiction of the authority

9. The Authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I. Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

D.II. Subject matter jurisdiction



11. 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;

12. 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.
13. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the **Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and 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 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the

✓

power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainants.

E.I Direct the respondents to refund the entire amount paid by the complainants at the prescribed rate @MCLR+2% from due date of payment till actual realization.

15. 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."



16. **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. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate 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.

17. 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.
18. 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., 18.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
19. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:



"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

20. In the present case, the complainants booked a unit with the respondent in its project "Aquarius Business Park" situated in Sector-74 Gurugram, Haryana. The complainants were allotted a unit bearing no. RT-UG-6 on the Upper Ground Floor, admeasuring 250 sq. ft. of super-area vide allotment letter dated 13.08.2013 and subsequently, builder buyer agreement was executed between the parties on 03.09.2013. As per possession clause 11 of buyer's agreement which states that the developer to the proposed allottee within sixty months from the date of finalization of construction and after necessary approvals. The due date of possession is calculated from the date of execution of builder buyers' agreement. Therefore, the due date of possession is 03.09.2016.

21. It is pertinent to mention over here that even after a passage of more than 8 years neither the occupation certificate has been obtained by the competent authority nor the offer of possession of the allotted unit has been made to the allottees 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.

22. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.***

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

23. 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."

24. 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 wishes 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.
25. 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 respondents 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*.

F. Directions of the authority

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



- i. The respondent is directed to refund the amount of Rs.14,10,000/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as prescribed under section 18 (1) of the Act, 2016 read with rule 15 of the rules from the date of each payment till the date of realization.
 - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainants-allottees.
27. This decision shall mutatis mutandis apply to cases mentioned in para 2 of this order wherein details of paid-up amount is mentioned in each of the complaints.
28. Complaint as well as applications, if any, stands disposed off accordingly.
29. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram
Dated: 18.04.2025