

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	263/2018 Case Titled As Mr. Nihal Singh V/S M/S Vigneshwara Developwell Pvt. Ltd.
Complainant	Mr. Nihal Singh
Represented through	Complainant in person with Shri Devansh Kakkar, Advocate.
Respondent	M/S Vigneshwara Developwell Pvt. Ltd.
Respondent Represented	None for the respondent.
Last date of hearing	26.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Arguments heard.

Complaint was filed on 14.5.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 19.7.2018, 30.10.2018 and 15.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 30.10.2018 and on 15.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the Authority. From the above

stated conduct of the respondent it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to declare the proceedings ex-parte and to decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint.

A final notice dated 31.12.2018 by way of email was sent to both the parties to appear before the authority on 10.1.2019.

The brief facts of the matter are as under :-

As per clause 11 of the Developer-Anchor Unit Agreement dated 4.1.2012 for Anchor unit, in project "Aquarius-Cyber Park", Sector-74, Gurugram, possession was proposed to be delivered within 60 months from the date of finalization of construction and after necessary approvals and sanctions have been obtained from government authorities. Complainant has already paid Rs. 30 Lakhs to the respondent against a total sale consideration of Rs.30 Lakhs. However, the respondent has miserably failed to deliver the unit in time and there are no chances to deliver the unit in near future. As such, authority has no option but to direct the respondent to refund the amount paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

Complaint is disposed of accordingly. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
10.1.2019

Subhash Chander Kush
(Member)

BEFORE THE HARYANA REAL ESTATE REGULATORY

AUTHORITY, GURUGRAM

Complaint no. : 263 of 2018
First date of hearing: 27.6.2018
Date of decision : 10.1.2019

Mr. Nihal Singh
R/o: 220, Near KV Power,
Village- Badshahpur, Gurugram, Haryana. **...Complainant**

Versus

Vigneshwara Developwell Pvt. Ltd.
Registered Office: D-16/C, Bhagwani
House, Hauz Khas, New Delhi-110016 **...Respondent**

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Shri Devansh Kakkar Advocate for the complainant
None for the respondent Advocate for the respondent



ORDER

1. A complaint dated 14.5.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant, Mr. Nihal

Singh against, Vigneshwara Developwell Pvt. Ltd. in respect of apartment/unit described below in the project “Aquarius Cyber Park”, on account of violation of the section 11(4)(a) of the Act *ibid*.

2. The complaint was filed on 14.5.2018. Notices w. r. t. hearing of the case were issued to the respondent on 3.7.2018, 4.7.2018, 6.7.2018 for making his appearance. However despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings *ex-parte* and decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint



3. Since, the anchor unit agreement has been executed on 4.1.2012 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal

proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

4. The particulars of the complaint are as under: -

1.	Name and location of the project	“Aquarius -Cyber park” Sector-74, Gurugram, Haryana.
2.	Nature of project	Commercial
3.	Registered/Unregistered	Not registered
4.	Payment plan	Assured return plan
5.	Date of execution of ARA	4.1.2012
6.	Unit no.	Anchor unit
7.	Area of unit	250 sq. ft’
8.	Total consideration	Rs.30,00,000/-
9.	Total amount paid by the complainant	Rs.30,00,000/-
10.	Due date of possession (Clause 11- possession is proposed to be delivered within 60 months from the date of finalization of construction and after necessary approvals and sanctions have been obtained from government authorities.)	Cannot be ascertained



11.	Delay in delivery of possession	Cannot be ascertained
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5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Despite service of notice the respondent neither appeared nor file their reply to the complaint therefore their right to file reply has been struck off and case is being proceeded ex-parte against the respondent.

FACTS OF THE CASE

6. The complainant booked a unit of 250 sq. ft' on ground floor in the project "Aquarius Cyber Park" which was provisionally allotted to the complainant for a total sale consideration of Rs.30,00,000/-.
7. The complainant has made complete payment by issuing four cheques of Rs.7,50,000/- each. After this the respondent sent to the complainant the agreement developer anchor unit, agreement developer option assured return plan and the assured income cheques.



8. The agreement was executed on 4.1.2012 and was signed on 10.1.2012. at the time of execution of the agreement it was promised that the unit will be delivered within 60 months from the date of execution of the agreement.
9. The complainant made the investment on the assurance of the respondent to provide him an assured return of maximum Rs.120 per sq. ft' per month on investment amount for sixty months, i.e. till the date of possession of the unit. After which ARA can be renewed further till the date of offer of possession is handed over to the complainant.
10. The total assured return comes out to be Rs.30,000/- per month and the respondent has made payments from 4.1.2012 till 4.3.2014. from March, 2014 no assured return has been paid to the complainant till present date.

ISSUES RAISED BY THE COMPLAINANTS:

11. The following issues have been raised by the complainant:
 - I. Whether the respondent stopped the assured return of the complainant and whether the



complainant is entitled to get arrears of the assured income from April, 2014 till possession?

- II. Whether there is delay in providing possession of the anchor unit to the complainant?
- III. Whether the complainant is entitled to get refund of the investment along with interest @24% p.a.?

RELIEF SOUGHT BY THE COMPLAINANTS:

12. In view of the facts mentioned the following reliefs have been sought by the complainants:
 - i. To direct the respondent to pay Rs.30,00,000/- with interest @18% p.a. from the date of payment till the date of actual realization of the amount.
 - ii. To award compensation of Rs.1,00,000 on account of mental harassment, R.60,000 for litigation expenses.
 - iii. To pass any such order which this authority may deem fit and proper.



DETERMINATION OF ISSUES

After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the issue wise findings are as hereunder:

13. With respect to the **first issue**, in case of assured return schemes, the authority has no jurisdiction, as such the complainant is at liberty to approach the appropriate forum to seek remedy.
14. With respect to the **second and third issue**, the authority came across clause 11 of the developer-anchor unit agreement which is reproduced hereunder:

“the deemed possession of the unit is proposed to be delivered by the developer to the allottee within 60 months from the date of finalization of construction and after necessary approvals and sanctions have been obtained from the government authorities.”

As per clause 11 of the Developer-Anchor Unit agreement dated 4.1.2012 for Anchor unit, in project “Aquarius-Cyber Park”, Sector-74, Gurugram, possession was proposed to be delivered within 60 months from the date of finalization of construction and after necessary approvals and sanctions have been obtained from government authorities.



Complainant has already paid Rs. 30 Lakhs to the respondent against a total sale consideration of Rs.30 Lakhs. However, the respondent has miserably failed to deliver the unit in time and there are no chances to deliver the unit in near future. As such, authority has no option but to direct the respondent to refund the amount paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum.

FINDINGS OF THE AUTHORITY

15. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
16. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions of the Act and to fulfil its obligations.



DECISION AND DIRECTIONS OF THE AUTHORITY

17. Thus, the authority exercising power under section 37 of Real Estate (Regulation & Development) Act, 2016 hereby issues directions:

- i. Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation & Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.
- ii. Complaint was filed on 14.5.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 19.7.2018, 30.10.2018 and 15.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 30.10.2018 and on 15.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent it appears that



respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to declare the proceedings ex-parte and to decide the matter on merits by taking into a count legal/factual propositions as raised by the complainant in his complaint.

- iii. A final notice dated 31.12.2018 by way of email was sent to both the parties to appear before the authority on 10.1.2019.
- iv. As per clause 11 of the Developer-Anchor Unit agreement dated 4.1.2012 for Anchor unit, in project "Aquarius-Cyber Park", Sector-74, Gurugram, possession was proposed to be delivered within 60 months from the date of finalization of construction and after necessary approvals and sanctions have been obtained from government authorities. Complainant has already paid Rs. 30



Lakhs to the respondent against a total sale consideration of Rs.30 Lakhs. However, the respondent has miserably failed to deliver the unit in time and there are no chances to deliver the unit in near future. As such, authority has no option but to direct the respondent to refund the amount paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the date of this order.

18. Complaint is disposed of accordingly.
19. Detailed order will follow. File be consigned to the registry.

(Samir Kumar)

(Subhash Chander Kush)

Member

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date:10.1.2019

Judgement uploaded on 29.01.2019

