

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

Complaint no. :	388 of 2021
Date of filing complaint:	27.01.2021
First date of hearing:	18.02.2021
Date of decision :	25.05.2022

1. Vipul Aggarwal R/o: Flat no. 1101, Tower no. 18, Orchid Petals, Sohna Road, Gurgaon - 122002	<b>Complainants</b>
2. Amit Tewari R/o: GPL Eden Heights, Tower C, Flat 1003, Sector 70, Gurgaon (Haryana) Pin- 122101	
Versus	
M/s Ninaniya Estates Limited R/o: 160, Karni Vihar, Ajmer Road, Near Rawat Mahila College, Jaipur (Rajasthan) Pin-302021	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Rajan Kumar Hans (Advocate)	Complainants
Sh. Shagun Singla (Advocate)	Respondent

**EXPARTE ORDER**

- The present complaint 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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S.No.	Heads	Information
1.	Project name and location	"Prism Portico", Sec 89, Gurugram
2.	Project area	5.05 acres
3.	Nature of the project	Commercial complex
4.	DTCP License	179 of 2008 dated 11.10.2008 and valid up to 10.10.2018
5.	Name of the licensee	Ninaniya Estate Ltd.
6.	RERA Registered/ not registered	<b>Unregistered</b>
7.	Unit no.	PPES- 406, 4th floor [Page 19 of the complaint]
8.	Unit measuring (super area)	550 sq. ft. [Page 19 of the complaint]
9.	Date of allotment	30.05.2012 [Page 14 of the complaint]



10.	Date of execution of builder buyer agreement	12.07.2014 [Page 16 of the complaint]
11.	Date of commencement of construction	01.04.2015 [As per email received from the respondent on 21.01.2022]
12.	Possession clause	<b>5.1</b> That the Company shall complete the construction of the said Unit <b>within 36 months from the date of execution of this agreement and/or from the start of construction whichever is later</b> and Offer of possession will be sent to the Allottee subject to the condition that all the amounts due and payable by the Allottee by the stipulated date as stated in Annexure II attached with this agreement including sale price, maintenance charges, security deposit, stamp duty and other charges etc. have been paid to the Company. The Company on completion of the construction shall apply for completion certificate and upon grant of same shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues. <b>(emphasis supplied)</b>
13.	Due date of possession	01.04.2018 Calculated from the date of start of construction
14.	Total sale consideration	Rs.30,68,900/- [Page 40 of the complaint]
15.	Total amount paid by the complainants	Rs.14,69,484/- [As per the facts of the complaint annexed at page no. 6]
16.	Payment plan	Construction linked payment plan



		[Page 40 of the complaint]
17.	Occupation certificate	Not Obtained
18.	Offer of possession	Not Offered

**B. Facts of the complaint:**

3. That on 29.05.2012, the complainants booked a commercial unit as executive suite no. 406, on 4th floor admeasuring- 550 sq. ft. super area and paid Rs. 5,00,000/- through two cheques no. 781385 & 643112 respectively.
4. That the respondent issued a allotment letter of the booked unit on 30.05.2012. A builder buyer's agreement was executed on 12.07.2014 between the parties. That as per clause no. 5.1 of the said buyer's agreement, the respondent had to complete the construction of the project in 36 months from the date of execution of the agreement i.e. by 12.07.2017
5. That as per the term of conditions of the flat buyer's agreement, the total sale consideration of the unit as per the payment plan agreed upon between the parties was arrived at Rs. 30,68,900/-
6. That on demand being raised by the respondent, till "*on casting of 2nd floor roof slab*" the complainants have already paid 48% of the agreed amount i.e. Rs. 14,69,484/- and details of the payments are given below:

S.no	Cheque no. & date	Amount
1.	29.05.2012 Cheque no. 781385	2,50,000/-
2.	29.05.2012 Cheque no. 643112	2,50,000/-
3.	06.05.2014 NEFT TRANSFER	3,67,502/-



4.	08.02.2016 RTGS TRANSFER	30,000/-
5.	09.02.2016 RTGS TRANSFER	2,76,054/-
6.	30.06.2016 RTGS TRANSFER	1,47,964/-
7.	30.06.2016 RTGS TRANSFER	1,47,964/-
	<b>TOTAL</b>	<b>14,69,484/-</b>

7. That after the demand of "On casting of 2nd floor roof slab" in June 2016, the builder stopped sending demands and also the construction work was completely halted at the site
8. That on 11.01.2021, the complainants received the email from the respondent whereby it provided the possession timeline of the project to September 2021. The complainants were shocked to see the progress of the site, and which was not in line with as agreed upon in the builder buyer agreement. It is pleaded that according to the estimates of the complainants, the project would take another 3 years for completion and delivery of possession. That on enquiry, the complainants were shocked to find out that the project is not even registered with the Authority which is a grave violation of the central act and the respondent has miserably failed in its duty to provide the possession of the unit even after almost 4 years from the due date.

**C. Relief sought by the complainants:**

9. The complainants have sought following relief(s):
- Direct the respondent to cancel the unit and refund the entire amount i.e. **14,69,484/-** without any deduction and to pay



interest at the scheduled rate of interest from the date of the actual payment till the date of actual refund.

10. Though the respondent put in appearance through its counsel but failed to file any written reply despite giving several opportunities. So, the authority was left with no option but to proceed with the complaint based on averments given in the complaint and the documents placed on the file.

**D. Jurisdiction of the authority:**

**D. I Territorial jurisdiction**

11. 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 completed territorial jurisdiction to deal with the present complaint.

**D. II Subject matter jurisdiction**

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)(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.

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.

### **E. Entitlement of the complainants for refund:**

**E.1 Direct the respondent to cancel the unit and refund the entire amount i.e. 14,69,484/- without any deduction and to pay interest at the scheduled rate of interest from the date of the actual payment till the date of actual refund.**

12. Vide letter dated 30.05.2012, the complainants were allotted the subject unit by the respondent for a total sale consideration of Rs. 30,68,900/-. A buyer's agreement dated 12.07.2014 was executed between the parties. The due date of possession of the subject unit was calculated as per clause 5.1 where the possession has to be handover **within 36 months from the date of execution of the agreement and/or from the start of construction whichever is later** and which comes out to be 01.04.2018. After signing of buyer's agreement, the complainants started depositing various amounts against the allotted unit and



paid a sum of Rs. 14,69,484/- up to July 2016 as is evident from ledger entries dated 13.01.2021. It is the case of complainants that since the construction of project was not as per schedule of payment, so they stopped making remaining amount due to the respondent and which ultimately led to their withdrawal from the project

13. So, keeping in view the fact that the allottee- complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on his failure to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016. The due date of possession of the allotted unit as per agreement for sale as mentioned in the table above was **01.04.2018** and there is delay of approx. 3 years on the date of filing of the complaint on 27.01.2021.
14. The occupation certificate of the project where the unit is situated has not been obtained by the respondent-promoter and the authority is of the view that the allottee 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.....”*

15. Further in the judgement of 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)*** and followed by the Hon'ble High Court of Punjab & Haryana in case ***Ramprastha Promoters and Developers Pvt Ltd Vs Union of India and Ors. in CWP No.6688 of 2021*** decided on 04.03.2022, and wherein it was 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*

16. 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 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 the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

This is without prejudice to any other remedy available to the allottees including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

The authority hereby directs the promoter to return to the complainants the amount received by it i.e., Rs. **14,69,484/-** with interest at the rate of 9.40% (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:**

17. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:



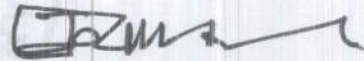
- i) The respondent /promoter is directed to refund the amount i.e. Rs. **14,69,484/-** received by it from the complainants along with interest at the rate of 9.40% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

18. Complaint stands disposed of.

19. File be consigned to the Registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Dr. KK Khandelwal)  
Chairman

Dated: 25.05.2022