

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

Complaint no. :	2468 of 2021
Date of filing complaint:	21.06.2021
First date of hearing:	12.08.2021
Date of decision :	25.05.2022

Saurabh Pandey S/o Suneel Pandey R/o: House no. 1675, Urban Estate, Sector 4, Gurugram	<b>Complainant</b>
Versus	
M/s Ninaniya Estates Limited R/o: 6 <sup>th</sup> Floor, Prism Tower, Gwal Pahari, Faridabad - Gurgaon Road, Bandh Wari, Haryana - 122102	<b>Respondent</b>

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

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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 complainant, 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 Executive Suites", Gwal Pahari, Sector 2, Gurgaon-Faridabad Road, Gurugram, Haryana
2.	Project area	5.05 acres
3.	Nature of the project	Five-star hotel 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.	PES- 104, 1st floor [Page 24 of the complaint]
8.	Unit measuring (super area)	770 sq. ft. [Page 24 of the complaint]
9.	Date of allotment	29.02.2014 [Page 19 of the complaint]
10.	Date of execution of suite buyer agreement	19.03.2012 [Page 22 of the complaint]
11.	Completion of building	<b>Clause 4</b> (i) The promoter/developer shall complete the building and hand



		<p>over the possession of the prism suites to the buyer at the earliest possible date, subject always to various prism suites buyers making timely payment, force majeure causes, availability of essential items for construction, change of policy by the governmental agencies and local authorities and other causes beyond the control of the promoter/developer (No penalty to the developer in this case).</p> <p>(ii) In case the building is not completed within 36months/ indefinitely delayed, then it will be the buyer's option whether accept the cancellation or claim back the amount paid with Interest @ 9% p.a.</p> <p>(iii) In case the project is delayed due to gross negligence of the promoter/developer then post 36 months the promoter/developer will bear a penalty of Rs. 15 per sq. ft. per month till the offer of possession. <b>(emphasis supplied)</b></p>
12.	Possession clause	<p><b>Clause 6</b></p> <p>The buyer shall be entitled to the possession of the prism suites only after amounts so payable under this agreement are paid in full and NOC issued. An undertaking from the buyer to pay External Development charges demand received from the promoter/Developer.</p>
13.	Due date of possession	<b>Cannot be ascertained</b>
14.	Total sale consideration	Rs.52,97,500/- [Page 36 of the complaint]



15.	Total amount paid by the complainant	Rs.47,98,213/- [As per the details provided in CRA]
16.	Payment plan	Construction linked payment plan [Page 36 of the complaint]
17.	Occupation certificate	24.04.2017 [Page 20 of the reply]
18.	Offer of possession	24.04.2017 [Page 46 of the complaint]
19.	Consent letter for surrender of unit	14.11.2017 [Page 19 of the reply]
20.	Amount received by the complainant	Rs.4,00,000/- [Page 23 of the reply]

**B. Facts of the complaint:**

3. The complainant has applied for booking of the unit vide booking form dated 22.02.2012 along with booking amount of Rs.10,00,000/- for allotment of the unit in the project Prism Executive Suites detailed above being developed by the respondent
4. That in pursuant to booking of a unit, the complainant was allotted a unit bearing no. 104, first floor admeasuring 770 square feet. vide allotment letter dated 29.02.2012. It led to execution of buyer's agreement between the parties on 19.03.2012. The total basic sale price of the said unit was settled at Rs.51,97,500/-. The aforesaid amount was exclusive of club membership charges amounting to Rs.1,00,000/-.
5. That it is submitted that as per clause 4 of the aforesaid buyer's agreement, possession of the said unit was to be offered to the complainant within a period of 36 months. It would not be out of



place to mention that the respondent had represented to the complainant at the time of booking that the possession of the said unit would be handed over to the complainant definitely by March 2015.

6. That the complainant was shocked to receive letter dated 08.04.2017 from the respondent wherein it had been mentioned it was planning to lease out the said unit along with other units to the hotel brand "Golden Tulip". The respondent had also mentioned in the aforesaid letter that in case it did not receive any reply from the complainant, it would assume that the complainant was not interested in leasing out the said unit to Golden Tulip. This was the first time that it had been brought to the knowledge of the complainant that the respondent was proceeding to lease out the units/suites in the said project to Golden Tulip. It would not be out of place to mention that the complainant had never accorded his consent to the aforesaid lease arrangement.
7. That the respondent was liable to handover possession of the said unit to the complainant on or before March 2015. However, possession of the said unit had been offered by the respondent to the complainant only in the month of April 2017 vide letter of offer of possession dated 24.04.2017.
8. That the complainant, on his part has duly complied with the terms and conditions incorporated in the buyer's agreement and has discharged all his contractual and financial obligations. However, the complainant was shocked to receive a call from the



official of the respondent that the respondent company had already finalized the handing over of the suites including the said unit to 'Golden Tulip' on lease and that the complainant had no choice but to surrender the said unit. The complainant vehemently objected to the same but was told outright that in case he did not grant his consent to surrendering the said unit to the respondent, in that event the respondent would proceed to forfeit the entire amount paid by the complainant to the respondent.

9. That thereafter, the complainant agreed to surrender the said unit to the respondent for a consideration amount of Rs.53,90,000/- which was to be paid by the respondent to the complainant on 14.11.2017. Consequently, the complainant had appended his signatures on consent letter dated 14.11.2017. The authorized person/representative of the respondent had also appended his signatures on the aforesaid consent letter. It had been duly stated in the consent letter that the complainant had given his consent to surrender the said unit at a consideration of Rs.53,90,000/- which was to be paid by the respondent to the complainant on 14.11.2017.
10. That however, after the complainant had appended his signatures on consent letter dated 14.11.2017, the respondent indicated to the complainant that the complainant would have to append his signatures on another letter which had been prepared by the respondent. The respondent had taken advantage of its dominant position and had left the complainant with no choice but to sign



the letter dated 14.11.2017. However, the respondent did not make payment except of Rs. 4,00,000/-

11. That the respondent kept delaying the matter on various pretexts despite the repeated requests of the complainant to make payment of the outstanding amount to him. That the complainant sent emails dated 18.03.2021, 23.03.2021 and 08.04.2021 respectively calling upon the respondent to make payment of the amount which was liable to be legally paid to him by the respondent but did not receive any reply from it.
12. That the respondent, till date has not handed over possession of the said unit to the complainant even after an inordinate delay of more than 6 years. Furthermore, the respondent has not made payment of Rs.53,90,000/- to the complainant as had been incorporated in consent letter dated 14.11.2017 duly executed between the parties. Hence this complaint.

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

13. The complainant has sought following relief(s):
  - i. Direct the respondent to refund the entire amount paid by the complainant to the respondent along with accumulated interest calculated from the date when the first payment had been made by him to it i.e. 21.02.2012. and to pay pendente lite interest and future interest at the rate of 18 % per annum to him from the date of filing of the complaint till realization of the entire amount.



- ii. Direct the respondent to pay an amount of Rs. 5,00,000/- as compensation towards the mental agony and harassment and pay Rs. 50,000/- as litigation expenses to the complainant.

**D. Reply by respondent:**

The respondent by way of written reply dated 20.07.2021 made the following submissions:

14. The complainant had booked an executive suite in the project and filed the application form/booking form dated 22.02.2012 for booking the unit. The possession of the allotted unit was offered to the complainant vide letter dated 24.04.2017 but he willingly refused to accept the same. There was also an understanding vide consent letter dated 14.11.2017 whereby the allotment of the complainant of the allotted unit was cancelled as he himself had willingly surrendered the unit to the respondent and who has already made a part payment in lieu of compliance of terms and conditions of the consent letter to the complainant and who has received the said payment without any kind of objection.
15. 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:**

16. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that



it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

### **E. I Territorial jurisdiction**

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.

### **E. 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 complainant at a later stage.

**F. Entitlement of the complainants for refund:**

**F.1 Direct the respondent to refund the entire amount paid by the complainant to the respondent along with accumulated interest calculated from the date when the first payment had been made by the complainant to the respondent i.e. 21.02.2012. and to pay pendent lite interest and future interest at the rate of 18 % per annum to the complainant from the date of filing of the complaint till realization of the entire decretal amount.**

17. Vide letter dated 29.02.2014, the complainants were allotted the subject unit by the respondent for a total sale consideration of Rs. 52,97,500/-. A buyer's agreement dated 19.03.2012 was executed between the parties with regard to the allotted unit. The authority calculated the due date of possession as per clauses 4 and 6 of the buyer's agreement which provides a provision for cancellation or claim back the amount paid if the building is not completed within 36 months and the responsibility of the buyer to take possession only after the whole amount against the total sale consideration of Rs.52,97,500/- being price of the unit. The complainant paid a sum of Rs.47,98,213/- on the basis of buyer's agreement dated 19.03.2012. After the completion of construction and receipt of occupation certificate, the



respondent offered possession of the unit to the complainant on 24.04.2017 (at page 46 of the complaint) and asked him to make payment of the amount due as per payment plan. But instead of taking possession on the basis of offer of possession, the complainant surrendered the allotted unit on 14.11.2017 leading to the acceptance of his offer and receipt of payment of Rs.4,00,000/- as part of sale consideration.

18. It is also not disputed that a letter of surrender of the unit from the complainants on 14.11.2017 was received by the respondent. Though there is no provision for surrender of the unit but in view of clause 24 of the buyer's agreement dated 19.03.2012, the respondent is entitled to retain 10% of the original sale value of the allotted unit and return the remaining amount. A part of that amount was returned on 28.01.2021 but not the remaining amount. So, now the issue for consideration arises as to whether the complainant is entitled to refund of the remaining amount from the respondent after receiving a part of the sale consideration to a tune of Rs.4,00,000/- .There is clause 24 in the buyer's agreement dated 19.03.2012 admittedly executed between the parties so as per the provisions of that document the respondent builder is entitled to retain the 10% of the sale consideration received from the complainant and return the remaining amount due to him. It is not disputed that a part of the sale consideration has been received by the complainant from the respondent on 28.01.2021. So, in view of contractual obligation entered into between the parties, the respondent is liable to



return the remaining amount to the complainant after returning 10% of the sales consideration. since that obligation was not complied with fully, so the complainant is entitled to receive the remaining amount from the respondent as per the provisions of clause 24 of the buyer's agreement dated 19.03.2012. Thus, a direction is given to the respondent builder to return the amount due after deducting 10% of the sale price of the unit and the amount already received by the complainant within a period of 90 days of this order.

**F.2 Legal expenses:**

19. The complainant is claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainant may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

**G. Directions of the Authority:**

20. 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 return the amount due after deducting 10% of the sale price of the unit minus the amount already received by the complainant after surrender of the allotted unit
- 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.

21. Complaint stands disposed of.
22. File be consigned to the Registry.

V-1-3  
(Vijay Kumar Goyal)  
Member

(Dr. KK Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.05.2022