

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

Complaint no. :	4284 of 2023
Date of filing complaint:	04.10.2023
Date of decision	20.09.2024

1. Manisha Chauhan 2. Bimla Devi R/O: Flat No 604, Truth Tower, Vatika Seven Lamp	Complainants
Versus	
M/S Ms Ninaniya Estates Ltd Regd. Office: Office At 278/3, Old Delhi Road, Opposite Ajit Cinema, Gurugram, Haryana.	Respondent
CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Anoop Kumar Chauhan (Husband of the 1 st complainant)	Complainants
None	Respondent

ORDER

- This complaint has been filed by the complainants/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 thereunder or to the allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Project name and location	"Prism Portico" Sector-89 Gurgaon-Pataudi Road, Gurugram, Haryana.
2.	Project area	5.05 acres
3.	Nature of project	Commercial Complex
4.	RERA registered/not registered	Un-registered.
5.	DTPC license no. & validity status	179 of 2008 dated 11.10.2008 valid Upto 10.10.2018
6.	Name of licensee	Ninaniya Estates Ltd.
7.	Allotment Letter	15.05.2013 (page no. 12 of complaint)
8.	MOU	22.05.2013 (page no. 18 of complaint)
9.	Date of Buyer's agreement	13.06.2013 (page no. 23 of complaint)
10.	Retail shop unit no.	PPRS-GC-07, Ground floor (page no. 27 of complaint)
11.	Unit area admeasuring	450 sq. ft. (page no. 27 of complaint)
12.	Possession clause	5. Completion and Possession <i>That the Company shall complete the construction of the said Unit within 36 months from the date of execution of this Agreement and/or from the start of construction whichever is later 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</i>

		<p>upon grant of same shall issue final letters to the Allottees(s) who shall within 30 days, thereof remit all dues.</p> <p>5.2 If there is any delay due to any force majeure reasons as explain hereinafter then the period of delay shall commence 6(six) months after the due date, as this 6 (six) months period shall be grace period available with the company to complete the said complex.</p>
13.	Assured return clause	<p>2. The Buyer has paid to the Developer an amount of Rs. 20,82,713/- on which the developer shall give an investment assured return of Rs. 36,827/- per month w.e.f. 09.05.2013 in arrears, till the date of possession of the said Unit (Retail Shop) is handed over to the Buyer.</p>
14.	Due date of possession	<p>13.12.2016</p> <p>(calculated as per possession clause as date of construction is not mentioned anywhere plus six months of grace period allowed being unconditional)</p> <p>(Inadvertently mentioned in the proceedings of the day as 13.06.2016)</p>
15.	Total sale consideration	<p>Rs. 26,30,250/-</p> <p>(As per payment plan at page no. 48 of complaint)</p>
16.	Amount paid by the complainants	<p>Rs. 22,37,069/-</p> <p>(As per receipts of payment at page 14-16 of complaint)</p>
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainants Mrs. Manisha Chauhan & Mrs. Bimla Devi were caught in the web of false promises of the agents of the respondent and paid

an initial amount of Rs. 2,00,000/- vide cheque 132715 dated 22.04.2013 for booking a commercial shop in the project of the respondent i.e Portico of Sector 89 Gurugram. The payment was acknowledged by the respondent vide payment receipt dated 22.04.2013 and accordingly filled the application form for one shop/unit and opted for construction linked payment plan.

4. That the complainants paid second payment vide cheque 132716 dated 06.05.2013 of Rs 3,00,000/- as per construction linked payment plan. The complainants paid third payment vide Cheque 132721 dated 07.05.2013 of Rs 17,37,069/-.
5. That the complainants received the allotment letter dated 15.05.2013 for the retail shop unit no. pprs-gc-07 on ground floor, measuring super area 450 sq. ft. for a total price of Rs. 26,30,250/- as per construction linked payment plan (including taxes and EDC IDC).
6. That the complainants signed a memorandum of understanding regarding the shop PPRS-GC-07 on the ground floor, with the respondent dated 22.05.2023 wherein the developer shall pay the assured investment return @ Rs 36,827/- per month (Without deducting TDS) on or before the first day of every subsequent month starting from 09.05.2013 till the possession of said unit (retail shop).
7. That the complainants signed the builder buyers agreement with the respondent on 13.06.2013, in which the completion period of the project was 36 months (plus 6 months of grace period due to force majeure) i.e. June 2018 (considering start date as date of construction i.e July 2015 and excluding grace period) as per the builder buyer agreement.
8. That the complainants received a provisional receipt stating the basic sale price + other charges of the said unit of Rs. 26,30,250/- (including taxes and edc/idc) out of that Rs 22,37,069 (including taxes and edc/idc) paid at

the time of booking itself and rest need to pay during possession of the said unit.

9. That the complainants confirmed that they received monthly assured return as per MOU page no. 2, Point no. 2, of Rs 36,837 /- per month (without Taxes) starting from 09.05.2013 till April 2019. The complainants confirmed they have received the total assured return from 09.05.2013 till April 2019 as Rs 26,40,782/- after deducting tax.
10. That the respondent stopped paying the assured return since May 2019 and after continuous follow up on phone, gave false assurance that as soon company arrange funds, they will clear the assured return dues.
11. That the grievance of the complainants relates to the assured returns payment which was not paid by the respondent from May 2019 till Aug 2023 which is approx. Rs 19 Lakh (without interest).

C. Relief sought by the complainants:

12. The complainant has sought following relief(s):
 - i. Direct the respondent to pay assured return from May 2019 till August 2023 which is of 19 lakhs along with interest.
 - ii. Direct the respondent to further pay assured return from 01.09.2023 onwards till date of possession.
13. The authority issued a notice dated 04.10.2023 of the complaint to the respondent by speed post and also on the given email address at crm@ninaniyagroup.com for filing reply within 30 days. The delivery reports have been placed in the file. The counsel for the respondent never appeared on any date and has failed to file reply to the complaint within the stipulated period despite given ample opportunities. It shows that the respondent was intentionally delaying the proceedings by avoiding filing of written reply. Therefore, in view of above, vide order dated 16.02.2024, the respondent was proceeded ex-parte.

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

D. Jurisdiction of the Authority:

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

D.I Territorial Jurisdiction

16. As per notification no. 1/92/2017-ITCP 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

17. 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.

18. 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.

E. Findings on the relief sought by the complainant:

- E.I Direct the respondent to pay assured return from May 2019 till August 2023 which is of 19 lakhs along with interest.**
- E.II Direct the respondent to further pay assured return from 01.09.2023 onwards till date of possession.**

19. The above sought relief(s) by the complainants are taken together being inter-connected.
20. The complainants are seeking unpaid assured returns on monthly basis as per the MOU dated 22.05.2013 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU and has not paid the unpaid assured return. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same. In **Gaurav Kaushik and anr. Vs. Vatika Ltd.** the authority has held that when the payment of assured returns is part and parcel of memorandum of understanding or buyer's agreement (maybe there is a clause in that document or by way of addendum or terms and conditions of the allotment of a unit), then the promoter is liable to pay that amount as agreed upon.
21. A memorandum of understanding was executed between the complainants and the respondent on 22.05.2013 by which a specific retail shop bearing no. PPRS-GC-07 on Ground Floor has been allotted to the complainants for sale consideration of Rs.26,30,250/-. Although, there is no specific due date for handing over of possession is given in the MOU but as per clause 2 of the MOU, the respondent shall give an investment assured return of Rs. 36,827/- per month w.e.f. 09.05.2013 in arrears, till the date of possession of the said Unit (Retail Shop) is handed over to the buyer. The

definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced for ready reference:

2(d)

"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainant is an allottee.

22. The money was taken by the promoter as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the promoter promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

23. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/ MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.

24. In the present complaint, the assured return was payable as per clause 2 of MoU, which is reproduced below for the ready reference:

- 2 The Buyer has paid to the Developer an amount of Rs. 20,82,713/- on which the developer shall give an investment assured return of Rs. 36,827/- per month w.e.f. 09.05.2013 in arrears, till the date of possession of the said Unit (Retail Shop) is handed over to the Buyer.

26. Thus, the assured return was payable of Rs. 36,827/- per month w.e.f. 09.05.2013 in arrears till the date of possession of the said unit is handed over to the buyer.
27. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 22.05.2013, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 22.05.2013. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. As per the facts on record, the respondent has given assured return to the complainant till April 2019. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return in terms of clause 2 of MoU dated 22.05.2013 at the agreed rate i.e., @ Rs.36,827/- per month w.e.f. 09.05.2013 in arrears till the date of possession of the said unit is handed over to the buyer after obtaining the occupation certificate after deducting the amount already paid on account of assured return against the unit in question to the complainants.

F. Directions of the authority:

28. 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 pay the assured return at the rate i.e., Rs.36,827/- per month w.e.f. 09.05.2013 in arrears till the date of possession of the said unit is handed over to the buyer after obtaining the occupation certificate after deducting the amount already paid on account of assured return against the unit in question to the complainants .



- ii. The respondent is directed to pay arrears of accrued assured return as per MoU dated 22.05.2013 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @9.10% p.a. till the date of actual realization.

29. Complaint stands disposed of.

30. File be consigned to registry.

Dated: 20.09.2024



Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM